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Administrative Review
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June 17, 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 Results of the
Countervailing Duty Administrative Review of Laminated Woven
Sacks from the People's Republic of China; 2018

I. SUMMARY

The U.S. Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on laminated woven sacks (sacks) from the People's Republic of China (China). The period of review (POR) is January 1, 2018 through December 31, 2018. We have preliminarily applied total facts otherwise available with an adverse inference with respect to Shandong Shouguang Jianyuan Chun Co., Ltd. (Shouguang) and preliminarily find that Shouguang received countervailable subsidies during the POR.

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

II. BACKGROUND

In August 2008, Commerce published in the *Federal Register* a CVD order on sacks from China.¹ On August 2, 2019, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the *Sacks CVD Order* for the period January 1, 2018 through December 31, 2018.² On August 30, 2019, Commerce received a timely request for an administrative review of the *Sacks CVD Order* from the Laminated Woven Sacks Fair Trade

¹ See *Laminated Woven Sacks from the People's Republic of China: Countervailing Duty Order*, 73 FR 45955 (August 7, 2008) (*Sacks CVD Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 37834 (August 2, 2019).

Coalition and its individual members, Polytex Fibers Corporation and ProAmpac Holdings Inc. (collectively, the petitioners).³ On October 7, 2019, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published in the *Federal Register* a notice of initiation of an administrative review of the *Sacks CVD Order* for the POR with respect to 20 companies.⁴

We stated in the *Initiation Notice* that, in the event Commerce limits the number of respondents for individual examination, we intended to base our selection of mandatory respondents on CBP import data.⁵ On February 24, 2020, we placed CBP import data for entries of sacks from China that entered the United States during the POR.⁶ No parties filed comments.

On March 13, 2020, Commerce issued the Respondent Selection Memo,⁷ in which we found that the CBP entry data indicated that, of the twenty companies subject to review, Shouguang was the only company with entries of subject merchandise during the POR.⁸ Therefore, we selected Shouguang as the sole mandatory respondent in this administrative review.

On March 16, 2020, Commerce issued its initial questionnaire to the Government of China (GOC) seeking information regarding the alleged subsidies, instructing the GOC to forward the questionnaire to the respondent, Shouguang.⁹ Also, on March 16, 2020, we sent, as a courtesy, a

³ See Petitioners' Letter, "Laminated Woven Sacks from the People's Republic of China: Request for Countervailing Duty Administrative Review," dated August 30, 2019.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 53411 (October 7, 2019) (*Initiation Notice*). We initiated a review of the following twenty companies: (1) Cangnan Color Make The Bag; (2) Changle Baodu Plastic Co., Ltd.; (3) First Way (H.K.) Limited; (4) Han Shing Chemical Co., Ltd.; (5) Jiangsu Hotson Plastics Co., Ltd.; (6) Ningbo Yong Feng Packaging Co., Ltd.; (7) Polywell Industrial Co.; (8) Polywell Plastic Product Factory; (9) Shandong Longxing Plastic Products Company Ltd.; (10) Shandong Qikai Plastics Product Co., Ltd.; (11) Shandong Qilu Plastic Fabric Group, Ltd.; (12) Shandong Shouguang Jianyuan Chun Co., Ltd.; (13) Shandong Youlian Co., Ltd.; (14) Wenzhou Hotson Plastics Co., Ltd.; (15) Zibo Aifudi Plastic Packaging Co., Ltd.; (16) Zibo Linzi Luitong Plastic Fabric Co., Ltd.; (17) Zibo Linzi Qitianli Plastic Fabric Co., Ltd.; (18) Zibo Linzi Shuaiqiang Plastics Co., Ltd.; (19) Zibo Linzi Worun Packing Product Co., Ltd.; and (20) Zibo Qigao Plastic Cement Co., Ltd.

⁵ *Id.* at 53412.

⁶ See Memorandum, "Countervailing Duty Administrative Review of Laminated Woven Sacks from the People's Republic of China: U.S. Customs Entries," dated February 24, 2020.

⁷ See Memorandum, "2018 Administrative Review of the Countervailing Duty Order on Laminated Woven Sacks from the People's Republic of China: Respondent Selection," dated March 13, 2020 (Respondent Selection Memo).

⁸ *Id.* at 2. We note that Shouguang was found to be cross-owned with Shandong Longxing Plastic Products Co., Ltd. in the underlying investigation. See Memorandum, "Cross-ownership and the Application of Adverse Facts Available to Shandong Shouguang Jianyuanchun Co., Ltd. and Shandong Longxing Plastic Products Co., Ltd., (SSJ/SLP)," dated April 22, 2008, 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). Thus, Shandong Longxing Plastic Products Co., Ltd. is subject to the same rate as Shouguang.

⁹ See Commerce's Letter, "2018 Administrative Review of the Countervailing Duty Order on Laminated Woven Sacks from China: Initial Questionnaire," (March 16, 2020) (Initial Questionnaire) ("We have selected the following company as respondent in this administrative review: Shandong Shouguang Jianyuan Chun Co., Ltd. (Shouguang). Please note that your government is responsible for forwarding copies of this cover letter and questionnaire to this respondent company."). The questionnaire was issued to the GOC via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). See Memorandum, "2018 Administrative Review of the Countervailing Duty Order on Laminated Woven Sacks from the People's Republic of China: Public Release Digest Email Record from ACCESS," dated April 23, 2020.

copy of the questionnaire via FedEx to Shouguang.¹⁰ The GOC and Shouguang each failed to timely submit a response to the initial questionnaire provided by Commerce within the established deadlines. We did not receive any requests for an extension of time to file a response.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these preliminary results until June 23, 2020.¹¹

III. SCOPE OF THE ORDER

The merchandise covered by this order is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (BOPP) or to an exterior ply of paper that is suitable for high quality print graphics;¹² printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. Laminated woven sacks are also classifiable under HTSUS 6305.33.0040. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

¹⁰ See Memorandum, “2018 Administrative Review of the Countervailing Duty Order on Laminated Woven Sacks from the People’s Republic of China: FedEx Shipping Record of Initial Questionnaire for Shandong Shouguang Jianyuan Chun Co., Ltd.,” dated April 28, 2020.

¹¹ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April 24, 2020.

¹² “Paper suitable for high quality print graphics,” as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

IV. INTENT TO RESCIND REVIEW, IN PART

It is Commerce's practice to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.¹³ Normally, upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period.¹⁴ Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct CBP to liquidate at the calculated CVD assessment rate calculated for the POR.¹⁵

As noted in the "Background" section above, according to the CBP import data, 19 of the 20 companies subject to this review did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended.¹⁶ However, as noted above, Commerce has previously found one of these 19 companies, Shandong Longxing Plastic Products Co., Ltd., to be cross-owned with Shouguang. Thus, Shandong Longxing Plastic Products Co., Ltd. remains subject to this review and is subject to the same rate as Shouguang. Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR by the 18 companies at issue, we intend to rescind this administrative review, in part, with respect to these 18 companies, in accordance with 19 CFR 351.213(d)(3).¹⁷

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

A. Legal Framework

Section 776(a) of the Act provides that Commerce shall, subject to section 782(d) of the Act, use the "facts otherwise available" 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 provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the

¹³ See, e.g., *Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review*; 2015, 82 FR 14349 (March 20, 2017); and *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review*; 2017, 84 FR 14650 (April 11, 2019).

¹⁴ See 19 CFR 351.212(b)(2).

¹⁵ See 19 CFR 351.213(d)(3).

¹⁶ See Memorandum, "Countervailing Duty Administrative Review of Laminated Woven Sacks from the People's Republic of China: U.S. Customs Entries," dated February 24, 2020.

¹⁷ See Appendix I for a list of the 18 companies for whom we are rescinding this review because each had no reviewable, suspended entries during the POR.

deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available (AFA) when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an 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."¹⁸ Commerce's practice also ensure "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."¹⁹ At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

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."²⁰ It is Commerce's practice to consider information to be corroborated if it has probative value.²¹ In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.²² However, the SAA emphasizes that Commerce need not prove that the selected facts are the best alternative information.²³ Furthermore, Commerce is not required to corroborate any CVD rate applied in a separate segment of the same proceeding.²⁴

In a CVD proceeding, Commerce requires information from both the foreign producers and exporters of the subject merchandise and the government of the country where those producers and exporters are located. When the government fails to provide requested and necessary

¹⁸ See, e.g., *Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 58175 (December 11, 2017), and accompanying Issues and Decision Memorandum (IDM) at "Use of Facts Otherwise Available and Adverse Inferences;" *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), and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences;" 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).

¹⁹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 870.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 869.

²³ *Id.* at 869-70.

²⁴ See section 776(c)(2) of the Act.

information concerning alleged subsidy programs, Commerce, applying AFA, may find that a financial contribution exists under the alleged program and that the program is specific.²⁵ However, where possible, Commerce will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit conferred, to the extent that those records are useable and verifiable.²⁶

Finally, under section 776(d) of the Act, Commerce may use any CVD rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the CVD rate would have been if the interested party had cooperated or to demonstrate that the CVD rate reflects an "alleged commercial reality" of the interested party.²⁷

B. Application of AFA to the GOC and Shouguang

As discussed in the "Background" section above, the GOC has not participated in this review, having not entered an appearance or responded to Commerce's initial questionnaire. In addition, Shouguang, the sole mandatory respondent in this review, has not provided a timely response to Commerce's initial questionnaire. As a result of the GOC's and Shouguang's failure to participate in this review and respond to the initial questionnaire, necessary information is not on the record of this review. Further, we find that the GOC and Shouguang withheld information that had been requested of them and failed to provide information within the deadlines established. By not responding to the initial questionnaire, the GOC and Shouguang significantly impeded this proceeding. Thus, for these preliminary results, pursuant to sections 776(a)(1), (a)(2)(A), (a)(2)(B), and (a)(2)(C) of the Act, we are basing our findings regarding each program on the facts otherwise available.²⁸

Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not responding to the initial questionnaire, the GOC and Shouguang did not cooperate to the best of their ability to comply with Commerce's requests for information in this review. Accordingly, we preliminarily find that the application of AFA is warranted to ensure that the GOC and Shouguang do not obtain a more favorable result by failing to cooperate than if they had fully complied with Commerce's requests for information.

²⁵ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34828 (July 23, 2018), and accompanying IDM at 6-7.

²⁶ *Id.*

²⁷ See section 776(d)(3) of the Act

²⁸ In the investigation segment of this proceeding, we made financial contribution and specificity findings for these programs. See *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Sacks CVD Final Determination*), and accompanying IDM. It is Commerce's practice not to revisit past financial contribution and specificity determinations made in a prior segment of the same proceeding, absent the presentation of new facts or evidence. See *Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, Products from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 27 n.130 ("In a CVD administrative review, we do not revisit past determinations of countervailability made in the proceeding, absent new information."); see also *Magnola Metallurgy, Inc. v. United States*, 508 F. 3d 1349, 1353-56 (Fed. Cir. 2007).

As AFA, we preliminarily find that Shouguang used and benefitted from each program being examined during the POR and we selected program-specific AFA rates pursuant to Commerce's CVD AFA hierarchy for administrative reviews, as discussed below.

C. Selection of the AFA Rates

Consistent with section 776(d) of the Act, it is Commerce's practice in CVD proceedings to apply an AFA rate for a non-cooperating company using the highest calculated program-specific rates determined for the identical or similar programs.²⁹ Specifically, under the first step of Commerce's CVD AFA hierarchy for administrative reviews, Commerce applies the highest non-*de minimis* rate calculated for the identical program in any segment of the same proceeding. If there is no identical program match within the same proceeding, or if the rate is *de minimis*, under step two of the hierarchy, Commerce applies the highest non-*de minimis* rate calculated for a similar program within any segment of the same proceeding. If there is no non-*de minimis* rate calculated for a similar program within the same proceeding, under step three of the hierarchy, Commerce applies the highest non-*de minimis* rate calculated for an identical or similar program in another CVD proceeding involving the same country. Finally, if there is no non-*de minimis* rate calculated for an identical or similar program in another CVD proceeding involving the same country, under step four, Commerce applies the highest calculated rate for any program from the same country that the industry subject to the review could have used.³⁰

Furthermore, Commerce's methodology is consistent with section 502 of the Trade Preferences Extension Act of 2015 (TPEA), which the President of the United States signed into law on June 29, 2015. Section 502 of the TPEA added new subsection (d) to section 776 of the Act. Section 776(d)(1)(A) of the Act states that when applying an adverse inference in selecting from the facts otherwise available, Commerce may: (i) use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country; or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that Commerce considers reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for Commerce's existing practice of using an AFA hierarchy in selecting a rate "among the facts otherwise available" in CVD cases, should the facts warrant such a selection.

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

²⁹ See, e.g., *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review*; 2014, 82 FR 27466 (June 15, 2017), and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences"; see also *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013), and accompanying IDM at 13.

³⁰ See section 776(d) of the Act; see also *SolarWorld Americas, Inc. v. United States*, 229 F. Supp. 3d 1362 (Ct. Int'l Trade 2017) (sustaining Commerce's CVD AFA hierarchy and selection of AFA rate for CVD reviews).

language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

We find that the Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: (1) Commerce may apply its hierarchical methodology; and (2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.³¹

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³² Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.”³³ It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.³⁴

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

³¹ This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B). Under that provision, “any dumping margin from any segment of the proceeding under the applicable antidumping order” may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

³² See SAA at 870; see also *Essar Steel Ltd. v. United States*, 678 F. 3d 1268, 1276 (Fed. Cir. 2012) (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000) (finding that “{t}he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate with Commerce’s investigation, not to impose punitive damages.’”) (*De Cecco*)).

³³ See *De Cecco*, 216 F. 3d at 1032.

³⁴ Commerce has adopted a practice of applying its hierarchy in CVD cases. See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at 28-31 (applying the AFA hierarchical methodology within the context of a CVD investigation); and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of a CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. See, e.g., *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a “pool” of available rates that Commerce can rely upon for purposes of identifying an AFA rate for a particular program. In reviews, for example, this “pool” of rates could include a non-*de minimis* rate calculated for the identical program in any segment of the proceeding, a non-*de minimis* rate calculated for a similar program in any segment of that proceeding, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy therefore does not focus on identifying the highest possible rate that could be applied from among the “pool” of rates; rather, it adopts the factors identified above of inducement, relevancy to the industry and to the particular program.

In applying AFA for Shouguang, we are guided by Commerce’s methodology detailed above. For the income tax reduction or exemption programs, we are applying an adverse inference that Shouguang paid no income taxes during the POR. In the investigation, we applied a combined rate of 33 percent for these programs based on the income tax rate in effect during the period of investigation.³⁵ However, the standard income tax rate for corporations in China in effect during the POR was 25 percent.³⁶ Thus, the highest possible benefit for all income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the nine programs listed below as “GOC and Local Income Tax Programs,” combined, provide a 25 percent benefit). Consistent with past practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and value-added tax (VAT) exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.³⁷ For all other programs listed below, we selected, as AFA, the highest calculated program-specific non-*de minimis* rates in prior segments of this proceeding (*i.e.*, the final determination in the underlying investigation).³⁸

VAT Programs

- VAT Rebate for Foreign Invested Enterprises (FIE) Purchases of Domestically Produced Equipment
- VAT and Tariff Exemptions for FIEs Using Imported Technology and Equipment in Encouraged Industries
- VAT and Tariff Exemptions on Imported Equipment (Domestic Enterprises)

³⁵ See *Sacks CVD Final Determination* IDM at 7.

³⁶ See *Vertical Metal File Cabinets from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 84 FR 37622 (August 1, 2019), and accompanying Preliminary Decision Memorandum (PDM) at 20, unchanged in *Vertical Metal File Cabinets from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 57394 (October 25, 2019).

³⁷ See, e.g., *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 84 FR 5989 (February 25, 2019), and accompanying PDM at 28-29, unchanged in *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances*, 84 FR 32723 (July 9, 2019).

³⁸ See *Sacks CVD Final Determination*, as amended by *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube from the People’s Republic of China*, 77 FR 52683 (August 30, 2012) (*Sacks CVD Section 129*), and accompanying Memorandum, “Final Determinations: Section 129 Proceedings Pursuant to the WTO Appellate Body’s Findings in WTO DS379 Regarding the Antidumping and Countervailing Duty Investigations of Laminated Woven Sacks from the People’s Republic of China,” dated July 31, 2012.

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

- Government Provision of Land for LTAR
- Government Provision of Inputs for LTAR

GOC Loan Programs

- Government Policy Lending

GOC and Local Income Tax Programs

- Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Program)
- Preferential Tax Policies for Export-Oriented FIEs
- Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises
- Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Origin Machinery
- Tax Program for FIEs Recognized as High or New Technology Enterprises
- Preferential Tax Policies for Research & Development
- Tax Subsidies to FIEs in Specially Designated Geographic Areas
- Preferential Tax Policies for Township Enterprises by FIEs
- Local Income Tax Exemption and Reduction Programs for “Productive” FIEs

Grant Programs

- The State Key Technologies Renovation Project
- Grants and Other Funding for High Technology Equipment for the Textile Industry
- Grants to Loss-Making, State-Owned Enterprises
- Export Interest Subsidy Funds for Enterprises Located in Zhejiang and Guangdong Provinces
- Technology Innovation Funds Provided by Zhejiang Province
- Programs to Rebate Antidumping Legal Fees
- Loan Forgiveness for LWS Producers by the GOC
- Grants for Market Exploration (Shandong Province)
- Grants for Attending International Trade Fairs (Shandong Province)
- Grants Key Export Enterprises (Shandong Province)
- Interest Discount to Export Enterprises (Shandong Province)
- Grants Covering Export Credit Insurance Fees (Shandong Province)
- Grants to Enterprises Exporting Key Products (Shandong Province)
- Interest Discounts for Export Enterprises (Shouguang Municipality)
- Grants for Attending International Trade Fairs (Shouguang Municipality)
- Preferential Treatment for Key Exporting Enterprises (Shouguang Municipality)
- Grants for Exporting Key Enterprises (Shouguang Municipality)

Based on the methodology described above, we preliminarily determine the net AFA countervailable subsidy rate for Shouguang to be 398.62 percent *ad valorem*.³⁹ Appendix II to this memorandum contains a chart summarizing the selection of the AFA rate.

³⁹ This rate will also be applicable to Shandong Longxing Plastic Products Co., Ltd.

D. Corroboration of the AFA Rate

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 defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁴⁰ The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.⁴¹

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.⁴² Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁴³

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.⁴⁴

Because the record does not contain any evidence submitted by the GOC and Shouguang as a result of their decision not to participate in this review, we reviewed the information concerning the subsidy programs that is available in this and other proceedings. For the income tax reduction or exemption programs for which Commerce found a program-type match in another proceeding involving China, we find that, because these are the same or similar programs, they are relevant to the programs under review in this case. Further, the rate selected reflects the benefit a company could have received during the POR. Consistent with section 776(c) of the Act, we have corroborated the rate selected for the income tax reduction and exemption programs to the extent practicable. For all other programs, as explained above, we selected the program-specific rates from the underlying investigation. Because the selected program-specific rates are from a prior segment of this proceeding, Commerce is not required to corroborate the AFA rates for these programs.⁴⁵

⁴⁰ See SAA at 870.

⁴¹ *Id.*

⁴² *Id.* at 869-70.

⁴³ See section 776(d) of the Act.

⁴⁴ See, e.g., *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017), and accompanying IDM at 14 (citing *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996)).

⁴⁵ See section 776(c)(2) of the Act.

VI. DISCLOSURE AND PUBLIC COMMENT

Normally, Commerce discloses to interested parties the calculations performed in connection with preliminary results within five days after the date of publication of the preliminary results in the *Federal Register*.⁴⁶ However, because Commerce has preliminarily applied a rate based on AFA to the sole mandatory respondent in this review, in accordance with section 776 of the Act, and because the method for determining the subsidy rate is outlined in this memorandum, there are no further calculations to disclose.

Case briefs may be submitted to ACCESS no later than thirty days after the date of publication of the preliminary results in the *Federal Register*. Rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than seven days after the deadline for case briefs.

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.⁴⁷

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of these preliminary results in the *Federal Register*.⁴⁸ Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, Commerce intends to hold the hearing at a time to be determined. Prior to the hearing, Commerce will contact all parties who submitted case or rebuttal briefs to determine if they wish to participate in the hearing. Commerce will then distribute a hearing schedule to these parties prior to the hearing and only those parties listed on the schedule may present issues raised in their briefs.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.⁴⁹ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time, on the due dates established above (or, where applicable, to be established by Commerce at a later date).⁵⁰ Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until July 17, 2020, unless extended.⁵¹

⁴⁶ See 19 CFR 351.224(b).

⁴⁷ See 19 CFR 351.309(c)(2) and (d)(2).

⁴⁸ See 19 CFR 351.310(c).

⁴⁹ See 19 CFR 351.303(b)(2)(i).

⁵⁰ See 19 CFR 351.303(b)(1).

⁵¹ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 29615 (May 18, 2020).

VII. RECOMMENDATION

We recommend that you approve the preliminary results described above.

Agree

Disagree

6/17/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

Appendix I

List of Non-Selected Companies for Rescission

1. Cangnan Color Make The Bag
2. Changle Baodu Plastic Co., Ltd.
3. First Way (H.K.) Limited
4. Han Shing Chemical Co., Ltd.
5. Jiangsu Hotson Plastics Co., Ltd.
6. Ningbo Yong Feng Packaging Co., Ltd.
7. Polywell Industrial Co.
8. Polywell Plastic Product Factory
9. Shandong Qikai Plastics Product Co., Ltd.
10. Shandong Qilu Plastic Fabric Group, Ltd.
11. Shandong Youlian Co., Ltd.
12. Wenzhou Hotson Plastics Co., Ltd.
13. Zibo Aifudi Plastic Packaging Co., Ltd.
14. Zibo Linzi Luitong Plastic Fabric Co., Ltd.
15. Zibo Linzi Qitianli Plastic Fabric Co., Ltd.
16. Zibo Linzi Shuaiqiang Plastics Co., Ltd.
17. Zibo Linzi Worun Packing Product Co., Ltd.
18. Zibo Qigao Plastic Cement Co., Ltd.

Appendix II

List of Net AFA Rates Assigned for Shouguang

Program Names	Rate
VAT Programs	
VAT Rebate for FIE Purchases of Domestically Produced Equipment	16.12 ⁵²
VAT and Tariff Exemptions for FIEs Using Imported Technology and Equipment in Encouraged Industries	16.12 ⁵³
VAT and Tariff Exemptions on Imported Equipment (Domestic Enterprises)	16.12 ⁵⁴
Government Provision of Goods & Services for LTAR	
Government Provision of Land for LTAR	13.36 ⁵⁵
Government Provision of Inputs for LTAR	69.92 ⁵⁶
GOC Loan Programs	
Government Policy Lending	0.06 ⁵⁷
GOC and Local Income Tax Programs (For AFA respondents, the following 9 tax programs combine to provide a 25% benefit.)	25.00 ⁵⁸

⁵² See *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Sacks CVD Final Determination*), and accompanying IDM at 7.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*, and accompanying IDM at 18.

⁵⁶ See *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 77 FR 52683 (August 30, 2012), and accompanying Memorandum, "Final Determinations: Section 129 Proceedings Pursuant to the WTO Appellate Body's Findings in WTO DS379 Regarding the Antidumping and Countervailing Duty Investigations of Laminated Woven Sacks from the People's Republic of China," dated July 31, 2012, at 37 (citing Memorandum, "Section 129 Preliminary Determination Calculation Memorandum; Provision of Petrochemicals at Less Than Adequate Remuneration," dated May 18, 2012, at Attachment 3).

⁵⁷ See *Sacks CVD Final Determination* IDM at 26.

⁵⁸ See *Vertical Metal File Cabinets from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 84 FR 37622 (August 1, 2019), and accompanying PDM at 20, unchanged in *Vertical Metal File Cabinets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 57394 (October 25, 2019).

Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Program)	
Preferential Tax Policies for Export-Oriented FIEs	
Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises	
Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Origin Machinery	
Tax Program for FIEs Recognized as High or New Technology Enterprises	
Preferential Tax Policies for Research & Development	
Tax Subsidies to FIEs in Specially Designated Geographic Areas	
Preferential Tax Policies for Township Enterprises by FIEs	
Local Income Tax Exemption and Reduction Programs for “Productive” FIEs	
Grant Programs	
The State Key Technologies Renovation Project	16.12 ⁵⁹
Grants and Other Funding for High Technology Equipment for the Textile Industry	16.12 ⁶⁰
Grants to Loss-Making, State-Owned Enterprises	16.12 ⁶¹
Export Interest Subsidy Funds for Enterprises Located in Zhejiang and Guangdong Provinces	16.12 ⁶²
Technology Innovation Funds Provided by Zhejiang Province	16.12 ⁶³
Programs to Rebate Antidumping Legal Fees	16.12 ⁶⁴

⁵⁹ See *Sacks CVD Final Determination* IDM at 7.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

Loan Forgiveness for LWS Producers by the GOC	16.12 ⁶⁵
Grants for Market Exploration (Shandong Province)	16.12 ⁶⁶
Grants for Attending International Trade Fairs (Shandong Province)	16.12 ⁶⁷
Grants Key Export Enterprises (Shandong Province)	16.12 ⁶⁸
Interest Discount to Export Enterprises (Shandong Province)	0.06 ⁶⁹
Grants Covering Export Credit Insurance Fees (Shandong Province)	16.12 ⁷⁰
Grants to Enterprises Exporting Key Products (Shandong Province)	16.12 ⁷¹
Interest Discounts for Export Enterprises (Shouguang Municipality)	0.06 ⁷²
Grants for Attending International Trade Fairs (Shouguang Municipality)	16.12 ⁷³
Preferential Treatment for Key Exporting Enterprises (Shouguang Municipality)	16.12 ⁷⁴
Grants for Exporting Key Enterprises (Shouguang Municipality)	16.12 ⁷⁵
Total Assigned AFA Rates	398.62

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*, and accompanying IDM at 7-8.

⁷⁰ *Id.*, and accompanying IDM at 7.

⁷¹ *Id.*

⁷² *Id.*, and accompanying IDM at 7-8.

⁷³ *Id.*, and accompanying IDM at 7.

⁷⁴ *Id.*

⁷⁵ *Id.*