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Investigation
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July 6, 2020

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

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Countervailing Duty Investigation of Corrosion Inhibitors from the
People's Republic of China

I. SUMMARY

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

II. BACKGROUND

A. Initiation and Case History

On February 5, 2020, Wincom Incorporated (the petitioner), filed petitions with Commerce seeking the imposition of antidumping duties (AD) and countervailing duties (CVD) on imports of corrosion inhibitors from China.¹ Pursuant to section 702(b)(4)(A)(ii) of the Act, on February 5, 2020, Commerce invited the Government of China (GOC) for consultations with

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Corrosion Inhibitors from China," dated February 5, 2020 (the Petitions).

respect to the CVD Petition.² The GOC did not respond to Commerce’s invitation. On February 25, 2020, Commerce initiated a CVD investigation on corrosion inhibitors from China.³

In the “Respondent Selection” section of the Initiation Notice, Commerce stated that, in the event Commerce determined that the number of potential respondents is large and it cannot individually examine each company, it intended to select respondents based on responses to quantity and value (Q&V) questionnaires issued to potential respondents.⁴ On February 26, 2020, Commerce issued Q&V questionnaires to the nine exporters or producers of the subject merchandise that were identified by the petitioner in the Petition.⁵ Additionally, Commerce posted the Q&V questionnaire, along with filing instructions, on the Enforcement and Compliance website.⁶

On March 11, 2020, Commerce received timely filed Q&V questionnaire responses from seven potential respondents: Anhui Trust Chem Co., Ltd. (ATC), Nanjing Trust Chem Co., Ltd. (NTC),⁷ Gold Chemical Limited (Gold Chemical), Nantong Botao Chemical Co., Ltd. (Botao),⁸ Jiangsu Yangnong Chemical Group Co., Ltd. (Jiangsu Yangnong),⁹ Jiangyin Delian Chemical Co., Ltd. (Delian),¹⁰ and Nantong Kanghua Chemical Co., Ltd. (Kanghua).¹¹ On March 17, 2020, Commerce received respondent selection comments from Delian, ATC, and NTC.¹² On March 18, 2020, Commerce requested additional information from Botao,¹³ which Botao

² See Commerce’s Letter, “Countervailing Duty Petition on Corrosion Inhibitors from the People’s Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition,” dated February 5, 2020.

³ See Memorandum, “Countervailing Duty Investigation Initiation Checklist: Corrosion Inhibitors from the People’s Republic of China,” dated February 25, 2020 (Initiation Checklist); see also *Certain Corrosion Inhibitors from the People’s Republic of China: Initiation of Countervailing Duty Investigation*, 85 FR 12502 (March 3, 2020) (*Initiation Notice*).

⁴ *Id.*, 85 FR at 12505.

⁵ See Memorandum, “Countervailing Duty Investigation of Corrosion Inhibitors from the People’s Republic of China: Issuance of Quantity and Value Questionnaires for Corrosion Inhibitors from the People’s Republic of China,” dated February 26, 2020 (Q&V Questionnaire); see also Petitioner’s Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Corrosion Inhibitors from China,” dated February 5, 2020 (the Petition) at Exhibit I-5.

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

⁷ See ATC and NTC’s Letter, “Corrosion Inhibitors from the People’s Republic of China, Case No. C-570-123: Quantity and Value Questionnaire Response,” dated March 11, 2020.

⁸ See Gold Chemical and Botao’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Quantity & Value Response,” dated March 11, 2020 (Botao Q&V Response).

⁹ See Jiangsu Yangnong’s Letter, “Corrosion Inhibitors from the People’s Republic of China: Quantity and Value Questionnaire,” dated March 11, 2020.

¹⁰ See Delian’s Letter, “Corrosion Inhibitors from China; C-570-123; Q&V Questionnaire Response and Supporting Information,” dated March 11, 2020 (Delian Q&V Response).

¹¹ See Kanghua’s Letter, “Corrosion Inhibitors from China; C-570-123; Q&V Questionnaire Response and Supporting Information,” dated March 11, 2020.

¹² See Delian’s Letter, “Corrosion Inhibitors from China; C-570-123; Rebuttal Factual Information and Comment on Respondent Selections,” dated March 17, 2020 (Delian Q&V Comments); see also ATC and NTC’s Letter, “Corrosion Inhibitors from the People’s Republic of China, Case No. A-570-122, Case No. C-570-123: Comments on Quantity and Value Questionnaire,” dated March 17, 2020.

¹³ See Commerce’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Quantity and Value Questionnaire,” dated March 18, 2020.

provided on March 23, 2020.¹⁴ On March 25, 2020, Commerce requested additional information from Kanghua,¹⁵ which it provided on March 27, 2020.¹⁶ On March 30, 2020, Commerce received additional comments on respondent selection from ATC and NTC.¹⁷ On April 3, 2020, Commerce received comments on respondent selection from Botao.¹⁸ On April 8, 2020, Commerce received additional comments on respondent selection from Delian and Kanghua.¹⁹ On April 9, 2020, Commerce selected Botao and Delian as mandatory respondents.²⁰

B. Questionnaires and Responses

On April 10, 2020, Commerce issued its initial questionnaire to the GOC requesting information on programs used by the two mandatory respondents which may constitute subsidies under U.S. law.²¹ Delian and Botao filed their responses to Section III, “Identifying Affiliates,” on April 24, 2020, and May 1, 2020, respectively.²² On May 15, 2020, the petitioner provided comments regarding the affiliation responses of Delian and Botao.²³ On May 21, 2020, Botao filed rebuttal comments regarding the petitioner’s affiliation comments.²⁴ On May 27, 2020, Commerce issued supplemental questionnaires regarding affiliation to Botao and Delian.²⁵ On May 28, 2020, Commerce received timely filed responses to the Initial Questionnaire from the GOC;²⁶

¹⁴ See Botao’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Quantity & Value Questionnaire Response,” dated March 23, 2020 (Botao’s Q&V Supplemental Response).

¹⁵ See Commerce’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Quantity and Value Questionnaires Supplemental Questions,” dated March 25, 2020.

¹⁶ See Kanghua’s Letter, “Corrosion Inhibitors from China; C-570-123; Supplemental Questionnaire Response and Supporting Information,” dated March 27, 2020.

¹⁷ See ATC and NTC’s Letter, “Corrosion Inhibitors from the People’s Republic of China, Case No. A-570-122, Case No. C-570-123: Comments on Quantity and Value Questionnaire Responses and Respondent Selection,” dated March 30, 2020.

¹⁸ See Botao’s Letter, “Corrosion Inhibitors from the People’s Republic of China: Rebuttal Comments to ATC Comments on Quantity and Value Questionnaire Responses and Respondent Selection,” dated April 3, 2020.

¹⁹ See Delian and Kanghua’s Letter, “Corrosion Inhibitors from China; C-570-123; Request for Selection of Respondents,” dated April 8, 2020.

²⁰ See Memorandum, “Countervailing Duty Investigation of Corrosion Inhibitors from the People’s Republic of China: Respondent Selection,” dated April 9, 2020 (Respondent Selection Memorandum).

²¹ See Commerce’s Letter, “Countervailing Duty Investigation of Corrosion Inhibitors from the People’s Republic of China: Countervailing Duty Questionnaire,” dated April 10, 2020 (Initial Questionnaire).

²² See Delian’s Letter, “Corrosion Inhibitors from China; C-570-123; Affiliation Response,” dated April 24, 2020 (Delian Affiliation Response); see also Botao’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Botao Section III Identifying Affiliates Response,” dated May 1, 2020 (Botao Affiliation Response).

²³ See Petitioner’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Petitioner’s Comments on Delian and Nantong Botao’s Affiliated Companies Responses,” dated May 15, 2020.

²⁴ See Botao’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Botao Rebuttal Comments,” dated May 21, 2020.

²⁵ See Commerce’s Letter to Delian, “Certain Corrosion Inhibitors from the People’s Republic of China: Affiliation Supplemental Questionnaire,” dated May 27, 2020; see also Commerce’s Letter to Botao, “Certain Corrosion Inhibitors from the People’s Republic of China: Affiliation Supplemental Questionnaire,” dated May 27, 2020.

²⁶ See GOC’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Government of China’s Response to Section II Questionnaire,” dated May 28, 2020 (GOCIQR).

from Botao²⁷ and its cross-owned affiliates Rugao Connect Chemical Co., Ltd. (Connect),²⁸ Rugao Jinling Chemical Co., Ltd. (Jinling),²⁹ and Nantong Yutu Group Co., Ltd. (Yutu);³⁰ and from Delian,³¹ and one of its suppliers, Kanghua.³² On June 10, 2020, Botao and Delian responded to Commerce’s affiliation supplemental questionnaires,³³ and the petitioner timely submitted new subsidy allegations.³⁴ On June 11, 2020, Botao, Delian, and the petitioner provided benchmark information, and the petitioner provided comments on the initial questionnaire responses.³⁵ On June 16, 2020, Commerce issued supplemental questionnaires to Botao, Delian, and the GOC.³⁶ On June 22, 2020, Commerce issued a second supplemental questionnaire to Botao,³⁷ Botao provided rebuttal benchmark data,³⁸ and the petitioner provided rebuttal comments on Delian’s supplemental affiliation response.³⁹ On June 29, 2020, Commerce issued a second supplemental questionnaire to the GOC.⁴⁰ On July 1, 2020, Botao

²⁷ See Botao’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Botao Section III Response,” dated May 28, 2020 (Botao IQR).

²⁸ See Connect’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Rugao Connect Section III Response,” dated May 28, 2020 (Connect IQR).

²⁹ See Jinling’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Rugao Jinling Section III Response,” dated May 28, 2020 (Jinling IQR).

³⁰ See Yutu’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Yutu Section III Response,” dated May 28, 2020 (Yutu IQR).

³¹ See Delian’s Letter, “Corrosion Inhibitors from China; C-570-123; Response to Section III of the Department’s Initial Countervailing Duty Questionnaire,” dated May 28, 2020 (Delian IQR).

³² See Kanghua’s Letter, “Corrosion Inhibitors from China; C-570-123; Response to Section III of the Department’s Initial Countervailing Duty Questionnaire,” dated May 28, 2020 (Kanghua IQR).

³³ See Botao’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Botao Supplemental Identifying Affiliates Response,” dated June 10, 2020; *see also* Delian’s Letter, “Corrosion Inhibitors from China; C-570-123; Supplemental Affiliation Questionnaire Response,” dated June 10, 2020.

³⁴ See Petitioner’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: New Subsidy Allegations,” dated June 10, 2020 (Petitioner’s New Subsidy Allegations).

³⁵ See Botao’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Benchmark Submissions,” dated June 11, 2020 (Botao Benchmark Submission); *see also* Delian’s Letter, “Corrosion Inhibitors from China; C-570-123; Benchmark Data and Request for Extension,” dated June 11, 2020 (Delian Benchmark Submission); Petitioner’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Petitioner’s Benchmark Submission,” dated June 11, 2020 (Petitioner’s Benchmark Submission); and Certain Corrosion Inhibitors from the People’s Republic of China: Petitioner’s Comments on the Questionnaire Responses of the Mandatory Respondents and Cross-Owned Affiliates and the Government of China,” dated June 11, 2020.

³⁶ See Commerce’s Letter to Botao, “Certain Corrosion Inhibitors from the People’s Republic of China: Supplemental Questionnaire,” dated June 16, 2020 (Botao June 16 Supplemental Questionnaire); *see also* Commerce’s Letter to Delian, “Certain Corrosion Inhibitors from the People’s Republic of China: Supplemental Questionnaire,” dated June 16, 2020 (Delian June 16 Supplemental Questionnaire); and Commerce’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Section II Supplemental Questionnaire for the Government of China,” dated June 16, 2020 (GOC June 16 Supplemental Questionnaire) (collectively, June 16 Supplemental Questionnaires).

³⁷ See Commerce’s Letter to Botao, “Certain Corrosion Inhibitors from the People’s Republic of China: Supplemental Questionnaire,” dated June 22, 2020.

³⁸ See Botao’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Rebuttal Benchmark Submission,” dated June 22, 2020 (Botao’s Rebuttal Benchmark Submission).

³⁹ See Petitioner’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Petitioner’s Rebuttal Comments on Delian’s Supplemental Affiliation Questionnaire Response,” dated June 22, 2020.

⁴⁰ See Commerce’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Section II Supplemental Questionnaire for the Government of China,” dated June 29, 2020 (GOC June 29 Supplemental Questionnaire).

responded to Commerce’s questionnaire issued on June 22, 2020.⁴¹ Responses to the June 16 Supplemental Questionnaire and GOC June 29 Supplemental Questionnaire remain pending as of the date of this preliminary determination and are not on the record.

C. Postponement of Preliminary Determination

On April 7, 2020, based on a request from the petitioner,⁴² Commerce postponed the deadline for the preliminary determination until July 6, 2020, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).⁴³

D. Period of Investigation

The period of investigation (POI) is January 1, 2019 through December 31, 2019.

E. Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioner’s request,⁴⁴ we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of corrosion inhibitors 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 November 16, 2020, unless postponed.

F. 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 27, 2020, the ITC published a preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of corrosion inhibitors from China that are allegedly subsidized by the GOC.⁴⁵

G. Diversification of China’s Economy

On June 12, 2020, Commerce placed on the record of this investigation “The Extent of Diversification of Economic Activities in the People’s Republic of China (China) for the Purpose

⁴¹ See Botao’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Section III Supplemental Questionnaire Response,” dated July 1, 2020.

⁴² See Petitioner’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Request to Postpone Preliminary Determination,” dated March 27, 2020.

⁴³ See *Certain Corrosion Inhibitors from the People’s Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 85 FR 19455 (April 7, 2020).

⁴⁴ See Petitioner’s Letter, “Certain Corrosion Inhibitors from the People’s Republic of China: Petitioner’s Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination,” dated June 3, 2020.

⁴⁵ See *Corrosion Inhibitors from China; Determinations*, 85 FR 17364 (March 27, 2020).

of Determining Specificity of a Domestic Subsidy for Countervailing Duty (CVD),” dated September 13, 2018.⁴⁶ This information reflects a wide diversification of economic activities in China across 19 industry groups.⁴⁷

III. SCOPE COMMENTS

In accordance with the preamble to Commerce’s regulations,⁴⁸ we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, *i.e.*, scope.⁴⁹ No parties provided comments.

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is tolyltriazole and benzotriazole. This includes tolyltriazole and benzotriazole of all grades and forms, including their sodium salt forms. Tolyltriazole is technically known as Tolyltriazole IUPAC 4,5 methyl benzotriazole. It can also be identified as 4,5 methyl benzotriazole, tolyltriazole, TTA, and TTZ.

Benzotriazole is technically known as IUPAC 1,2,3-Benzotriazole. It can also be identified as 1,2,3-Benzotriazole, 1,2-Aminozophenylene, IH-Benzotriazole, and BTA.

All forms of tolyltriazole and benzotriazole, including but not limited to flakes, granules, pellets, prills, needles, powder, or liquids, are included within the scope of this investigation.

The scope includes tolyltriazole/sodium tolyltriazole and benzotriazole/sodium benzotriazole that are combined or mixed with other products. For such combined products, only the tolyltriazole/sodium tolyltriazole and benzotriazole/sodium benzotriazole component is covered by the scope of this investigation. Tolyltriazole and sodium tolyltriazole that have been combined with other products is included within the scope, regardless of whether the combining occurs in third countries.

Tolyltriazole, sodium tolyltriazole, benzotriazole and sodium benzotriazole that is otherwise subject to this investigation is not excluded when commingled with tolyltriazole, sodium tolyltriazole, benzotriazole, or sodium benzotriazole from sources not subject to this investigation. Only the subject merchandise component of such commingled products is covered by the scope of this investigation.

A combination or mixture is excluded from this investigation if the total tolyltriazole or benzotriazole component of the combination or mixture (regardless of the source or sources) comprises less than 5 percent of the combination or mixture, on a dry weight basis.

⁴⁶ See Memorandum, “Countervailing Duty Investigation of Corrosion Inhibitors from the People’s Republic of China: Economic Diversification Memorandum,” dated June 12, 2020.

⁴⁷ *Id.*

⁴⁸ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*AD Preamble*).

⁴⁹ See *Initiation Notice*, 85 FR at 12503.

Notwithstanding the foregoing language, a tolyltriazole or benzotriazole combination or mixture that is transformed through a chemical reaction into another product, such that, for example, the tolyltriazole or benzotriazole can no longer be separated from the other products through a distillation or other process is excluded from this investigation.

Tolyltriazole has the Chemical Abstracts Service (CAS) registry number 299385-43-1. Tolyltriazole is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2933.99.8220.

Sodium Tolyltriazole has the CAS registry number 64665-57-2 and is classified under HTSUS subheading 2933.99.8290.

Benzotriazole has the CAS registry number 95-14-7 and is classified under HTSUS subheading 2933.99.8210.

Sodium Benzotriazole has the CAS registry number 15217-42-2. Sodium Benzotriazole is classified under HTSUS subheading 2933.99.8290.

Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

V. 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.⁵⁰ Pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System,⁵¹ the AUL in this proceeding is 9.5 years. Consistent with the Commerce's practice, we have rounded the 9.5 years up to 10 years for purposes of setting the AUL.⁵² No party in this proceeding submitted comments challenging the proposed AUL period. Therefore, we preliminarily determine that a 10-year period is appropriate for purposes of allocating non-recurring subsidies.

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

⁵⁰ See 19 CFR 351.524(b).

⁵¹ See U.S. Internal Revenue Service Pub 946 (2017), "Appendix B - Table of Class Lives and Recovery Periods" (IRS Pub. 946).

⁵² See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review*, 72 FR 43607 (August 6, 2007) (unchanged in final).

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 the 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. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

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 in essentially the same ways it can use its own assets. This section of Commerce's regulations state 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 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 ways it can use its own assets (or subsidy benefits)...Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.⁵³

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.⁵⁴

Botao

As discussed above, Commerce selected Botao as a mandatory respondent. Botao, a producer of subject merchandise identified and provided responses for its cross-owned affiliates Connect,

⁵³ See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

⁵⁴ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d. 593, 600-604 (CIT 2001).

Jinling, and Yutu, which are cross-owned within the definition of 19 CFR 351.525(b)(6)(vi).⁵⁵ The specific nature of the relationship between Botao and its cross-owned affiliates is business proprietary information, and we have provided a full analysis in the Botao Calculation Memorandum.⁵⁶ Connect and Jinling's subsidiaries are attributable to Botao under 19 CFR 351.525(b)(6)(ii) as corporations producing the subject merchandise. Therefore, pursuant to 19 CFR 351.525(b)(6)(ii), subsidiaries to Botao, Connect, and Jinling are attributed to the combined sales of the three companies, net of intercompany sales. For purposes of attributing Yutu's subsidiaries to Botao, for this preliminary determination, we have summed Yutu's reported sales with Botao's, Connect's and Jinling's sales, net of intercompany sales, to produce a sales value appropriate for attributing to Botao subsidies received by Yutu.⁵⁷

Delian

As discussed above, Commerce selected Delian as a mandatory respondent. Delian is a trading company that exports, but does not produce, the subject merchandise.⁵⁸ Pursuant to 19 CFR 351.525(c), benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company shall be cumulated with benefits from subsidies provided to a trading company which exports subject merchandise. Delian exported subject merchandise from several producers during the POI. To cumulate with Delian's subsidies the subsidies provided to the producers that supplied it, we weighted each producer's subsidies by the percentage of Delian's exports to the United States during the POI accounted for by each producer, and added those subsidy rates to Delian's subsidy rates to determine the countervailable subsidy rate for Delian.⁵⁹ Consistent with prior practice, we have not required Delian to provide responses for any producers whose subject merchandise accounts for a very small percentage of Delian's exports of subject merchandise to the United States during the POI.⁶⁰ This business proprietary information is discussed in more detail in Delian Calculation Memorandum.⁶¹

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for a respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. We identified the denominator we used to calculate the countervailable

⁵⁵ See Botao Affiliation Response; *see also* Memorandum, "Countervailing Duty Investigation of Corrosion Inhibitors from China; Preliminary Determination Calculations for Nantong Botao Chemical Co., Ltd.," dated July 6, 2020 (Botao Calculation Memorandum).

⁵⁶ See Botao Calculation Memorandum at 2.

⁵⁷ *Id.* at 2 for a discussion of the business proprietary information that explains the attribution to Botao of subsidies received by Yutu.

⁵⁸ See Delian Q&V Response.

⁵⁹ See Delian Q&V Comments at Exhibit EXR-1.

⁶⁰ See *Countervailing Duty Investigation of 1,1,1,2 - Tetrafluoroethane from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Determination*, 79 FR 21895 (April 18, 2014) and accompanying PDM at 11.

⁶¹ See Memorandum, "Countervailing Duty Investigation of Corrosion Inhibitors from China; Preliminary Determination Calculations for Jiangyin Delian Chemical Co., Ltd.," dated July 6, 2020 (Delian Calculation Memorandum).

subsidy rate for each program, as discussed below and in the calculation memoranda prepared for this preliminary determination.⁶²

VI. NEW SUBSIDY ALLEGATIONS

On June 10, 2020, the petitioner timely filed new subsidy allegations alleging that countervailable subsidies are being provided to Chinese producers of corrosion inhibitors under two additional programs, Tax Offsets for Research and Development and the provision of oPDA for less than adequate remuneration (LTAR).⁶³ Because Botao self-reported Tax Offsets for Research and Development in its IQR,⁶⁴ we are examining it under section 775 of the Act.⁶⁵ However, with regard to the provision of oPDA for LTAR, we will examine the allegation and determine whether to initiate an investigation after the Preliminary Determination. Should we initiate on this program, we will solicit the necessary information from the GOC, Delian, and Botao, and issue a post-preliminary decision.

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely

⁶² See Botao Calculation Memorandum at 2; *see also* Delian Calculation Memorandum at 2.

⁶³ See Petitioner’s New Subsidy Allegations.

⁶⁴ See Botao IQR at 18.

⁶⁵ See section 775 of the Act (“If, in the course of a proceeding under this title, the administering authority discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition, or if the administering authority receives notice from the Trade Representative that a subsidy or subsidy program is in violation of Article 8 of the Subsidies Agreement, then the administering authority . . . 1) shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding...”).

manner.”⁶⁶ 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.”⁶⁷ At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that, while the statute does not provide an express definition of the “failure to act to the best of its ability” standard, the ordinary meaning of “best” is “one’s maximum effort.”⁶⁸ Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency’s inquiries would suffice to find that a respondent did not act to the best of its ability. While the Federal Circuit noted that the “best of its ability standard” does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.⁶⁹ The “best of its ability” standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, “have familiarity with all of the records it maintains,” and “conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of” its ability to do so.⁷⁰ Moreover, affirmative evidence of bad faith on the part of a respondent is not required before Commerce makes an adverse inference.⁷¹

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.”⁷² It is Commerce’s practice to consider information to be corroborated if it has probative value.⁷³ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.⁷⁴ However, the SAA emphasizes that Commerce need

⁶⁶ 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).

⁶⁷ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol. 1 (1994) at 870.

⁶⁸ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

⁶⁹ *Id.*, 337 F.3d at 1382.

⁷⁰ *Id.*

⁷¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel*, 337 F.3d at 1382-83.

⁷² See, e.g., SAA at 870.

⁷³ *Id.*

⁷⁴ *Id.* at 869.

not prove that the selected facts available are the best alternative information.⁷⁵ Furthermore, Commerce is not required to corroborate any countervailing subsidy rate applied in a separate segment of the same proceeding.⁷⁶

Under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁷⁷

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

B. Application of AFA: Non-Responsive Q&V Questionnaire Recipients

As noted above, Commerce issued Q&V questionnaires to nine companies identified in the Petition: seven companies via Federal Express (FedEx) and two companies via ACCESS.⁷⁸ We confirmed that six of the seven Q&V questionnaires issued via FedEx were delivered.⁷⁹ Of the six companies for which we confirmed delivery via FedEx, three timely responded to our request for information.⁸⁰ Therefore, the remaining three Q&V recipients did not respond to our request for information: CAC Shanghai Chemical Co., Ltd., Jianguyin Gold Fuda Chemical Co., Ltd., and Xinji Xi Chen Re Neng Co., Ltd.

We preliminarily determine that the non-responsive companies withheld necessary information that was requested of them, failed to provide information within the deadlines established, and significantly impeded this proceeding. Thus, Commerce will rely on facts otherwise available in making our preliminary determination with respect to these companies, pursuant to sections 776(a)(2)(A)-(C) of the Act.⁸¹ Moreover, we preliminarily determine that an adverse inference is warranted in selecting from the facts available, pursuant to section 776(b) of the Act, because, by not responding to the Q&V questionnaire, each of these companies did not cooperate to the best of its ability to comply with the requests for information in this investigation. Accordingly, we preliminarily find that application of AFA is warranted to ensure that these companies do not obtain a more favorable result by failing to cooperate than if they had fully complied with our requests for information.

⁷⁵ *Id.* at 869-70.

⁷⁶ *See* section 776(c)(2) of the Act.

⁷⁷ *See* section 776(d)(3) of the Act.

⁷⁸ *See* Quantity and Value Questionnaire.

⁷⁹ *See* Memorandum, “Certain Corrosion Inhibitors from the People’s Republic of China: Quantity and Value Questionnaires: Delivery Confirmation,” dated March 18, 2020.

⁸⁰ *See* Respondent Selection Memorandum.

⁸¹ For the derivation of the preliminary AFA subsidy rate assigned to the companies who did not respond to the Q&V questionnaire, *see* Appendix.

As AFA, we find the non-responsive companies used and benefited from all programs at issue in this proceeding. For the six initiated-upon programs that were used by the cooperating mandatory respondents and where the GOC provided partial or no response, we have found those programs to be specific, to provide a financial contribution, and, for the Export Buyer's Credits Program, to provide a benefit on the basis of facts otherwise available and AFA, as described in more detail below. For the remaining non-used programs that we initiated upon, the GOC did not respond to our CVD questionnaire on these programs.⁸² The GOC directed Commerce to refer to the respondent's questionnaire responses or declined to answer some or all of the questions because, in the GOC's "understanding," the questions and relevant appendices were not applicable because the mandatory respondents did not use the program.⁸³ The initial questionnaire that Commerce issued included this instruction to the GOC, under the heading "Program Specific Questions":

For each program, provide full and complete responses regardless of whether the companies under investigation or their "cross-owned" companies, as defined in Section III, applied for, used, or benefited from that program during the POI.⁸⁴

By not responding to our requests for information regarding these programs, the GOC withheld information that was requested of it, failed to provide information within the deadlines established, and significantly impeded this proceeding. It also failed to cooperate by not acting to the best of its ability to respond to our requests for information. Therefore, relying on sections 776(a)(2)(A)-(C) and 776(b) of the Act, we find that these programs constitute financial contributions, meet the specificity requirements of the Act, and, for the Export Buyer's Credits program, provide a benefit. For the subsidies that were self-reported by the respondents, we issued a supplemental questionnaire to the GOC that is due after this preliminary determination. Therefore, as described in more detail below, for this preliminary determination we are applying facts otherwise available, pursuant to section 776(a) of the Act, to find financial contribution and specificity for these self-reported programs.

Accordingly, we are including in the determination of the AFA rate for the non-responsive companies all programs that we initiated upon and the self-reported programs.⁸⁵ We selected an AFA rate for each program based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's practice, and we summed them to determine the AFA rate applied to the non-responsive companies. Commerce has previously found countervailable these or similar programs.⁸⁶ For a description of the selection of the AFA rate and our corroboration

⁸² See GOC IQR at 7,20-26, and 39.

⁸³ *Id.*

⁸⁴ See Initial Questionnaire, at Section II, "Questions for the Government of the People's Republic of China."

⁸⁵ See Appendix.

⁸⁶ See *High Pressure Steel Cylinders from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2017, 84 FR 71373 (December 27, 2019) (HPSC from China); see also *Aluminum Wire and Cable from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 58137 (October 30, 2019) (AWC from China); see also *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) (CORE from China); see also *Citric Acid and*

of this rate, see the “Selection of the AFA Rate” and “Corroboration of the AFA Rate” sections below.

Selection of the AFA Rate

It is our practice in CVD proceedings to determine an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.⁸⁷ When selecting AFA rates, section 776(d) of the Act provides that we may use a countervailable subsidy rate determined for the same or a similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates.⁸⁸ Accordingly, when selecting AFA rates, if we have cooperating respondents, as there are in this investigation, we first determine if there is an identical program in the instant investigation and use the highest calculated rate for the identical program. If there is no identical program for which we calculated a subsidy rate above zero for a cooperating respondent in the investigation, we then determine whether an identical program was used in another CVD proceeding involving the same country and apply the highest calculated rate for the identical program (excluding *de minimis* rates).⁸⁹ If no such rate exists, we then determine whether there is a similar/comparable program (based on the treatment of the benefit) in any CVD proceeding involving the same country, and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we

Certain Citrate Salts from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review, 76 FR 77206 (December 12, 2011); see also *Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions Inv Final*); see also *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from China Amended Final*).

⁸⁷ See, e.g., *Common Alloy Aluminum Sheet from the People’s Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination with Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 83 FR 17651 (April 23, 2018), and accompanying PDM at “X: Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA: Chalco Ruimin and Chalco-SWA”; see also *Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions Final*) and accompanying IDM at “VI. Use of Facts Otherwise Available and Adverse Inferences: Application of Adverse Inferences: Non-Cooperative Companies”; see also *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009) and accompanying IDM at “Application of Facts Available, Including the Application of Adverse Inferences.”

⁸⁸ See *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*) and accompanying IDM at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-74 (Fed. Cir. 2014) (upholding “hierarchical methodology for selecting an AFA rate”).

⁸⁹ For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) and accompanying IDM at “1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program” and “2. Grant Under the Elimination of Backward Production Capacity Award Fund.”

apply the highest calculated above-*de minimis* rate from any non-company-specific program in a CVD case involving the same country that the company's industry could conceivably use.⁹⁰

Commerce's methodology is consistent with section 776(d)(1)(A) of the Act, which states that when applying an adverse inference in selecting from the facts otherwise available, we may (i) use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that we consider reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for our existing practice of using an adverse facts available 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 adverse facts available rate under section 776(d)(1)(A) of the Act described above, the provision states that we "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."⁹¹ No legislative history accompanied this particular provision. Accordingly, we are left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

The Act anticipates a two-step process for determining an appropriate adverse facts available rate in CVD cases: (1) Commerce may apply its hierarchy methodology, and (2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of adverse facts available, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.⁹²

In applying the adverse facts available rate provision, it is well established that when selecting the rate from among possible sources, we seek to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁹³ 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

⁹⁰ See *Shrimp from China* and accompanying IDM at 13-14.

⁹¹ See Section 776(d)(2) of the Act.

⁹² 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.

⁹³ See SAA at 870; see also *Essar Steel*, 678 at 1276 (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (finding that "the 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*)).

facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.”⁹⁴ It is pursuant to this knowledge and experience that we have implemented our adverse facts available hierarchy in CVD cases to select an appropriate adverse facts available rate.⁹⁵

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

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

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

However, if there is no identical program match within the investigation, or if the rate is zero, then we will shift to the second step of its investigation hierarchy, and either apply the highest non-*de minimis* rate calculated for a cooperating company in another countervailing duty proceeding involving the same country for the identical program, or if the identical program is not available, for a similar program. This step focuses on the amount of subsidies that the

⁹⁴ See *De Cecco*, 216 F.3d at 1032.

⁹⁵ We have adopted a practice of applying this hierarchy in CVD cases. See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) and accompanying IDM at 28-31 (applying the adverse facts available hierarchical methodology within the context of CVD investigation); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015) and accompanying IDM at 11-15 (applying the adverse facts available hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, we may not always apply the AFA hierarchy. See, e.g., *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016) and accompanying IDM at 7-8 (applying, outside of the adverse facts available hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

government has provided in the past under the investigated program. The assumption under this step is that the non-cooperating respondent under investigation uses the identical program at the highest above *de minimis* rate of any other company using the identical program.

Finally, if no such rate exists, under the third step of Commerce's investigation hierarchy, we apply the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.⁹⁶

In all three steps of Commerce's adverse facts available investigation hierarchy, if we were to choose low adverse facts available rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the "reward" for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce's investigation adverse facts available hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), we strike a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.⁹⁷

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

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

⁹⁶ In an investigation, unlike in an administrative review, Commerce is just beginning to develop an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

⁹⁷ It is significant that all interested parties, since at least 2007, that choose not to provide requested information have notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. See, e.g., *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) and accompanying IDM at 2, (October 17, 2007) ("As AFA in the instant case, the Department is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/producer in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed..."). Therefore, when an interested party is making a decision of whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may, under its hierarchy, apply the highest rate as adverse facts available.

In applying AFA to determine a net subsidy rate for the non-cooperating companies, we applied the methodology detailed above. We began by selecting, as AFA, the highest calculated program-specific above-zero rates determined for mandatory respondents in the instant investigation. Accordingly, we are applying to the companies that did not respond to the Q&V questionnaire the subsidy rates calculated for mandatory respondents for the following programs:

1. Provision of Land-Use Rights to Encouraged Industries for LTAR
2. Provision of Electricity for LTAR
3. Provision of Ortho Toluene Diamine (oTDA) for LTAR
4. Provision of Sodium Nitrite for LTAR

Similarly, for all the programs self-reported by mandatory respondents for which we calculated a rate, we selected that rate as the AFA rate applicable to the non-cooperating companies. These programs are listed in the Appendix to this memorandum.

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

- Income Tax Reductions for High-and New-Technology Enterprises

The standard income tax rate for corporations in China in effect during the POI was 25 percent.⁹⁸ Thus, the highest possible benefit for income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on this program. Consistent with Commerce's practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and value-added tax (VAT) exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.⁹⁹

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

1. Preferential Policy Lending
2. Export Buyer's Credit
3. Export Seller's Credit
4. Export Credit Guarantees
5. Export Credit Insurance
6. Special Fund Grants for Energy Saving Technology Reform
7. Grants for Energy Conservation and Emission Reduction
8. Grants, Loans and Other Incentives for the Development of Famous Brands
9. SME Technology Innovation Fund

⁹⁸ See GOCIQR at 27.

⁹⁹ See, e.g., *Aluminum Extrusions Final* and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

10. State Key Technology Fund Grants
11. SME International Market Exploration Fund
12. Import Tariff Exemptions for Foreign Invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported Equipment
13. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment

For this preliminary determination, we were similarly able to match all of the subsidies that were self-reported by the mandatory respondents and/or its cross-owned affiliates for which we did not calculate a rate in the instant investigation to similar programs from other China CVD proceedings, for purposes of including these programs in the AFA rate applicable to the non-cooperating companies. A full list of such self-reported subsidies is contained below in the Appendix.¹⁰⁰

Based on the methodology described above, we preliminarily determine the AFA net countervailable subsidy rate for the non-cooperating companies to be 237.19 percent *ad valorem*. The Appendix contains a chart summarizing our calculation of this rate.

Corroboration of AFA Rate

Section 776(c)(1) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”¹⁰¹ The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.¹⁰²

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.¹⁰³ 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.¹⁰⁴

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

¹⁰⁰ With respect to the mandatory respondents’ self-reported subsidies, we have combined programs that had identical or nearly identical names, and which were received in the same year.

¹⁰¹ See SAA at 870.

¹⁰² *Id.*

¹⁰³ *Id.* at 869-870.

¹⁰⁴ See section 776(d) of the Act.

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.¹⁰⁵

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

C. Application of AFA: Various Subsidies

Commerce initiated on and is investigating the following programs for which the respondents reported non-use:

1. Preferential Policy Lending
2. Export Seller's Credit
3. Export Credit Guarantees
4. Export Credit Insurance
5. Special Fund Grants for Energy Saving Technology Reform
6. Grants for Energy Conservation and Emission Reduction
7. Grants, Loans, and Other Incentives for the Development of Famous Brands
8. SME Technology Innovation Fund
9. State Key Technology Fund Grants
10. SME International Market Exploration Fund
11. Import Tariff Exemptions for Foreign Invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported Equipment
12. Import Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment.¹⁰⁶

Regardless of whether the mandatory respondents reported using the program, Commerce must still determine whether the programs provided a financial contribution and are specific. In our initial questionnaire, we requested that the GOC provide complete responses for all programs "regardless of whether the companies under investigation or their 'cross-owned' companies, as defined in Section III, applied for, used, or benefited from that program during the POI."¹⁰⁷

¹⁰⁵ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

¹⁰⁶ See *Initiation Checklist*.

¹⁰⁷ See Initial Questionnaire Section II at 2.

Even with the specific instruction to provide full responses for all programs, in many instances in its IQR, the GOC simply responded that neither of the mandatory respondents used or benefited from the program in question. For all of the above programs, the GOC directed Commerce to refer to the respondent's questionnaire responses or declined to answer some or all of the questions because, in the GOC's "understanding," the questions and relevant appendices were not applicable because the mandatory did not use the program.¹⁰⁸

Commerce requires information about all programs in the event that the application of facts available is deemed appropriate in determining subsidy usage for uncooperative companies, including companies to whom Commerce issued quantity and value questionnaires, but who did not respond to the Q&V questionnaire. Consequently, we preliminarily determine, in accordance with sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, that information necessary to perform our analyses of financial contribution and specificity for the programs listed above is not available on the record, the GOC has withheld information that was clearly requested of it, and that the GOC significantly impeded the investigation, and, as a result, we must rely on "facts available" in making our preliminary determination. 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 when it failed to respond to our questions in the initial questionnaire despite clear instructions to respond regardless of whether the companies under investigation applied for, used or benefited from the program during the POI. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b)(1) of the Act. In applying AFA, we find that the programs listed above 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.

We have issued an additional supplemental questionnaire to the GOC regarding these programs, the due date for which is after the preliminary determination. Pending the GOC's provision of additional information regarding these programs, Commerce may reconsider its decision in the final determination.

D. Application of AFA: Export Buyer's Credit

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

In our initial CVD questionnaire, we requested that the GOC provide the information requested in the Standard Questions Appendix "with regard to all types of financing provided by the China ExIm under the Buyer Credit Facility."¹⁰⁹ The Standard Questions Appendix requested various information that Commerce requires in order to analyze the specificity and financial contribution of this program, including the following: translated copies of the laws and regulations pertaining to the program, identification of the agencies and types of records maintained for administration of the program, a description of the program, and the program application process, program

¹⁰⁸ See GOCIQR at 7, 20-26, and 39.

¹⁰⁹ See Initial Questionnaire at 4.

eligibility criteria, and the program use data. Rather than responding to the questions in the Appendix, the GOC stated that it had confirmed that “neither the respondents nor the respondents’ U.S. customers applied for, used, or benefited from, this alleged program during the POI. Therefore, this question is not applicable and, thus, the corresponding appendix is not applicable.”¹¹⁰ We have issued a supplemental questionnaire to the GOC;¹¹¹ the response to that supplemental questionnaire is due after the date of our preliminary determination.

In its IQR, the GOC stated that the Export-Import Bank of China (Ex-Im Bank) strictly limits the provision of Export Buyer’s Credits to business contracts exceeding USD 2 million.¹¹² In that same response, the GOC provided a copy of its 7th Supplemental Response in the Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China (7th SQR).¹¹³ Information in that document indicates that the GOC revised this program in 2013 to eliminate this minimum requirement,¹¹⁴ and, in prior proceedings, the GOC has placed the 7th SQR on the record.¹¹⁵ As a result, we revised our initial CVD questionnaire to request that the GOC also provide original and translated copies of any laws, regulations, or other governing documents cited by the GOC in the Export Buyer’s Credit Supplemental Questionnaire Response.¹¹⁶ This request necessarily incorporated a request for the 2013 Administrative Measures revisions (2013 Revisions) to the Export Buyer’s Credit program. In its IQR, the GOC failed to provide the 2013 Revisions.¹¹⁷ We, therefore, again requested that the GOC provide the 2013 Revisions; the due date for this response is after the preliminary determination.¹¹⁸ Through its response to Commerce’s initial questionnaire, the GOC has refused to provide the requested information or any information concerning the 2013 Revisions, which is necessary for Commerce to analyze how the program functions.

Additional information in the GOC’s IQR also indicated that the loans associated with this program are not limited to direct disbursements through the Ex-Im Bank.¹¹⁹ Specifically, this record information indicates that customers can open loan accounts for disbursements through this program with other banks.¹²⁰ The funds are first sent from the Ex-Im Bank to the importer’s account, which could be at the Ex-Im Bank or other banks, and then these funds are sent to the exporter’s bank account.¹²¹ Given the complicated structure of loan disbursements for this program, Commerce’s complete understanding of how this program is administered is necessary. Thus, the GOC’s refusal to fully respond to Commerce’s request for information significantly impeded Commerce’s ability to conduct its investigation of this program.

¹¹⁰ See GOCIQR at 9 and 10.

¹¹¹ See GOC Supplemental Questionnaire.

¹¹² See GOCIQR at Exhibit II.A.8 (containing the Administrative Measures of Export Buyer’s Credit of the Ex-Im Bank).

¹¹³ *Id.* at Exhibit II.A.9.

¹¹⁴ *Id.*

¹¹⁵ See *AWC from China*.

¹¹⁶ See Initial Questionnaire Section II at 5.

¹¹⁷ See GOCIQR.

¹¹⁸ See GOC June 29 Supplemental Questionnaire.

¹¹⁹ *Id.* at Exhibit II.A.9.

¹²⁰ *Id.*

¹²¹ *Id.*

In response to our request that it provide a list of all partner/correspondent banks involved in disbursement of funds under the program, the GOC stated “{t}o the best of the GOC’s knowledge, none of the respondents applied for, used, or benefited from, this alleged program during the POI. Therefore, this question is not applicable.”¹²² To support its claim that none of the respondents’ customers applied for, used, or benefitted from this program during the POI, the GOC stated that it obtained from the respondents their customer lists and provided these lists to Ex-Im Bank who searched its records to confirm that the customers provided in the lists did not receive any Export Buyer’s Credits from the Ex-IM Bank during the POI.¹²³ The GOC also stated that “whether a foreign buyer receives any loan pursuant to EBCP of China Ex-Im Bank normally can be confirmed by the Chinese exporter. Normally, if there is a loan under EBCP of Ex-Im Bank, the Chinese exporter should be aware of the buyer’s receipt of loans and should be involved in the loan evaluation proceeding and in particular in the post-lending loan management. . . . Therefore, the Chinese exporter is in a position to verify and confirm the existence, if any, of sales contracts that were supported by the buyer’s export credits of the Ex-Im Bank.”¹²⁴

Commerce cannot verify claims of non-usage, whether originating with the respondents or their U.S. customers, if it does not know the names of the intermediary banks that might appear in the books and records of the recipient of the credit (*i.e.*, loan) or the cash disbursement made pursuant to the credit. There will not necessarily be an account in the name “China ExIm Bank” or “Ex-Im Bank” in the books and records (*e.g.*, subledger, tax return, bank statements) of either the exporter or the U.S. customer.

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

Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of not providing this information to Commerce, failed to cooperate by not acting to the best of its ability. Accordingly, we find that the application of AFA is warranted. Specifically, the GOC has not provided complete information concerning the administration and operation of the program, including how loans are disbursed, such as through intermediate or correspondent banks, the identities of which the GOC has withheld from Commerce, or whether the Ex-Im Bank employs threshold criteria. This information is necessary to understand fully how the Export Buyer’s Credits program operates, and is, therefore critical to Commerce’s ability to verify the program operation and the accuracy of the GOC’s claims, including with respect to the respondent’s

¹²² *Id.* at 12.

¹²³ *Id.* at Exhibit II.A.9.

¹²⁴ *See* GOCIQR at 13.

claimed non-use of this program. By not providing us with this critical information, we find that the GOC failed “to do the maximum it is able to do.”¹²⁵

Regarding specificity, although the record regarding this program suffers from significant deficiencies, we note that the GOC’s description of the program and supporting materials (albeit found to be deficient) demonstrate that through this program, state-owned banks, such as the Ex-Im Bank, provide loans at preferential rates for the purchase of exported goods from China.¹²⁶ In addition, the program was alleged by the petitioner as a possible export subsidy.¹²⁷ Finally, Commerce has found this program to be an export subsidy in the past.¹²⁸

For these reasons, we preliminarily find, as AFA, that under this program, the GOC bestowed a financial contribution pursuant to section 771(5)(D) of the Act, provided a benefit pursuant to section 771(5)(E) of the Act, and is contingent on exports within the meaning of sections 771(5A)(A) and (B) of the Act. As noted above, we have sent additional supplemental questionnaires to the GOC regarding this program, the due date for which is after the preliminary determination.¹²⁹ Pending the GOC’s provision of additional information regarding the operation of this program, Commerce may reconsider its decision in the final determination.

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 Amended Final* proceeding, as the rate for all companies that exported subject merchandise to the United States during the POI.¹³⁰ Additionally, based on the methodology also described above for corroborating secondary information, we have corroborated the selected rate to the extent possible and find that the rate is reliable and relevant for use as an AFA rate for the Export Buyer’s Credit program.

E. Application of Facts Available: Provision of Land-Use Rights for LTAR for Encouraged Industries

The GOC provided a partial response to our initial questionnaire on this program. Specifically, in response to our request for all government laws or regulations pertaining to the provision of land or land-use rights, the GOC provided the *Land Administration Law of the People’s Republic of China (2004 Revision)(Land Administration Law)*, the *Regulation on the Implementation of the Land Administration Law of the People’s Republic of China (2014 Version)*, and the *Provisions on the Assignment of State-owned Construction Land Use Right through Bid Invitation Auction and Quotation*.¹³¹ Article 2 of the *Land Administration Law* establishes that

¹²⁵ See *Nippon Steel*, 337 F. 3d at 1382.

¹²⁶ See GOC IQR at Exhibits II.B.8.

¹²⁷ See Initiation Checklist at 9.

¹²⁸ See, e.g., *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 17382 (April 25, 2019), and accompanying IDM at Comment 16.

¹²⁹ See June 16 Supplemental Questionnaires; see also GOC June 29 Supplemental Questionnaire.

¹³⁰ See *Coated Paper from China Amended Final* (revised rate for “Preferential Lending to the Coated Paper Industry” program).

¹³¹ See GOC IQR at Exhibits II.E1.1, II.E1.2, and II.E1.3.

the “the State Council is empowered to be on behalf of the State to administer the land owned by the State” and Article 5 establishes that the “land administrative department of the State Council shall be unifiedly responsible for the administration and supervision of land in the whole country.”¹³² In addition, we requested that the GOC “identify all instances in which land or land-use rights were provided by the GOC to any mandatory respondent after December 11, 2001, through the end of the POI.”¹³³ The GOC’s response to this question was to “refer to the relevant information provided by the respondents in their responses.”¹³⁴

Regarding whether the provision of land-use rights was contingent upon the status or industry of the mandatory respondents, the GOC responded that “any provision of land or land-use rights was not contingent upon the firm’s status (*e.g.*, enterprise in which the state may have an interest, located in a particular geographical area, etc.) or activity.”¹³⁵ Record evidence from Kanghua and the petitioner indicates that Kanghua is located in Binjiang Fine Chemical Industrial Park Zone¹³⁶ and Botao is located in Fine Chemical Industrial Park.¹³⁷ The names of the industrial parks indicate that the provision of land-use rights within them may be contingent upon the industry of the company. Furthermore, the record also indicates that chemical producers are encouraged by the GOC and that chemical producers, such as the mandatory respondents, may receive land-use rights on a preferential basis.¹³⁸

We have issued a supplemental questionnaire requesting that the GOC provide local and regional laws and regulations relevant to the mandatory respondents, including in the chemical parks; that the GOC identify all instances in which land or land-use rights were provided to the mandatory respondents; and that the GOC provide explanations for how the details of the respondents’ land-use were established. However, the due date for response is after the preliminary determination.¹³⁹

Consequently, we preliminarily determine, in accordance with sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, that information necessary to perform our analysis of financial contribution and specificity is not available on the record. Thus, we must rely on “facts available” in making our preliminary determination that the GOC’s provision of land-use rights for encouraged industries constitutes a financial contribution within the meaning of section 771(5)(D) of the Act. We preliminarily determine that the GOC directly administers land-use rights through the State Council and certain laws and regulations, including the Land Administration Act,¹⁴⁰ and that facts available from the Land Analysis Memorandum indicate that the GOC “exercises direct control over the sale of land-use rights and land pricing in the primary market and indirect control in the secondary market through restrictions and limitations on land-use and land-use

¹³² *Id.* at Exhibit II.E1.1.

¹³³ *See* Initial Questionnaire at 12.

¹³⁴ *See e.g.*, GOCIQR at 40.

¹³⁵ *Id.* at 41.

¹³⁶ *See* Kanghua IQR at 5.

¹³⁷ *See* Petition Volume III at 24 and at Exhibit III-21.

¹³⁸ *See* Initiation Checklist at 17-18.

¹³⁹ *See* GOC Supplemental Questionnaire.

¹⁴⁰ *See* GOCIQR at Exhibit II.E1.1.

transfers.”¹⁴¹ Furthermore, as “facts available” from Kanghua¹⁴² and the petitioner,¹⁴³ we preliminarily determine that the provision of land-use rights specific within the meaning of section 771(5A) of the Act because the provision is contingent upon the respondents being producers or exporters in the chemical industry. Consistent with our practice, where respondents have provided information regarding their receipt of land-use rights and the rates they pay for their land use rights, we will rely on that for the calculation of the benefits.

F. Application of AFA: Provision of Electricity for LTAR

The GOC did not provide complete responses to Commerce’s questions regarding the alleged provision of electricity for LTAR. These questions solicited information needed to determine whether the provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provides a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision is 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 and 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 POI; all original NDRC Electricity Price Adjustment Notice(s) that were in effect during the POI; the procedure for adjusting retail electricity tariffs and the role of the NDRC and the provincial governments in this process; the price adjustment conferences that took place between the NDRC and the provinces, grids and power companies with respect to the creation of all tariff schedules that were applicable 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.¹⁴⁴ 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 impact price adjustment processes, and to examine cost elements included in the derivation of electricity prices in effect throughout China during the POI.

In its IQR, 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.”¹⁴⁵ Therefore, according to the GOC, Provincial Price Proposals no longer exist and did not exist during the POI.¹⁴⁶ Consequently, according to the GOC, the “NDRC’s role in regulating

¹⁴¹ See Memorandum, “Countervailing Duty Investigation of Corrosion Inhibitors from the People’s Republic of China: Land Analysis Memo,” dated March 3, 2020.

¹⁴² See Kanghua IQR at 5.

¹⁴³ See Petition Volume III at 24 and at Exhibit III-21.

¹⁴⁴ See Initial Questionnaire at Electricity Appendix.

¹⁴⁵ See GOC IQR at 43.

¹⁴⁶ *Id.* at 45-46.

provincial electricity pricing is at the macro level; however, the NDRC no longer determines the specific electricity *sale prices*.”¹⁴⁷

Commerce preliminarily determines that the record indicates that 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).¹⁴⁸ Article 1 contained therein stipulates a lowering of the coal-fired power grid benchmark price of “about 2 cents” per kilowatt hour.¹⁴⁹ Annex 1 of Notice 748 applies this adjustment in varying amounts to the provinces. Article 2 indicates that the reduction {shall} “mainly used for reducing the price of industrial and commercial electricity.”¹⁵⁰ Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity.¹⁵¹ 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.”¹⁵²

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.¹⁵³ Consequently, both Notice 748 and Notice 3105 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.¹⁵⁴ 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. These notices 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,

¹⁴⁷ *Id.* at 43.

¹⁴⁸ *Id.* at Exhibit II.E2.1.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.* at Exhibit II.E2.2.

¹⁵⁴ *Id.*

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.

In a supplemental questionnaire, we requested that the GOC explain how the NDRC monitors compliance with the price changes directed in Notice 748 and what action the NDRC would take were any province not to comply with the directed price changes.¹⁵⁵ The GOC's response to this questionnaire is due after the date of our preliminary determination. As explained above, the GOC's response does not constitute a full explanation regarding the roles and nature of cooperation between the NDRC and provinces in deriving electricity price adjustments. In fact, the information provided by the GOC indicates that despite its claim that the responsibility for setting prices within each province has moved from the NDRC to the provincial governments, the NDRC continues to play a major role in setting and adjusting prices.

Consequently, we preliminarily determine 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.¹⁵⁶ 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.¹⁵⁷ 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.¹⁵⁸ The benchmark rates were selected from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. We have relied upon electricity usage and rates paid by the companies under investigation to calculate POI benefits attributable to the mandatory respondents. For details regarding the remainder of our analysis, see "Provision of Electricity for LTAR" section below.

G. Application of Facts Available: Input Producers are "Authorities"

As discussed below, under "Programs Preliminarily Determined to be Countervailable," we are investigating the provision of oTDA and sodium nitrite for LTAR. We requested that the GOC provide information necessary to determine whether the specific companies that produced the oTDA and sodium nitrite that was purchased by the respondents during the POI are "authorities" within the meaning of section 771(5)(B) of the Act.¹⁵⁹

¹⁵⁵ See GOC Supplemental Questionnaire.

¹⁵⁶ See section 776(a)(2)(A) of the Act.

¹⁵⁷ See section 776(b) of the Act.

¹⁵⁸ See section 776(b)(4) of the Act.

¹⁵⁹ See Initial Questionnaire at 8, 9 and 12.

The GOC informed Commerce that the information included in Exhibits II.E3.2, II.E3.3, II.E4.2 and II.E4.3 of its IQR “constitutes a sufficient demonstration of the ownership status and changes (if any) of all the related input producers during the POI.”¹⁶⁰ The information in these exhibits provides details regarding the ownership of multiple producers of the inputs, including state-owned corporations, publicly listed corporations, and corporations owned by private individuals.¹⁶¹ The GOC also provided the registration information for those producers.¹⁶² The information provided, however, did not fully detail the listed ownership of the companies and, in multiple instances, identified additional companies for which the GOC should have provided detailed ownership information necessary for Commerce’s complete analysis of whether the producer constitutes an authority.¹⁶³ We have issued a supplemental questionnaire regarding these issues, but the due date for submitting the response is after the preliminary determination.¹⁶⁴

In our initial questionnaire, we asked the GOC to “{p}lease coordinate immediately with the company respondents to obtain a complete list of each company’s input producers,”¹⁶⁵ in order to provide a complete response to our questions regarding the input producers. The GOC did not provide a full response with respect to either the oTDA or sodium nitrite input producers. Specifically, the GOC did not complete the “Input Producers Appendix” for any of the producers, nor did the GOC provide information on the Chinese Communist Party (CCP) membership of key individuals.¹⁶⁶

The GOC argued that the requested CCP information is irrelevant.¹⁶⁷ The information we requested regarding the role of CCP officials in the management and operations of the respondents’ input producers is necessary for our determination of whether these producers are “authorities” within the meaning of section 771(5)(B) of the Act. The GOC did not indicate that it had attempted to contact the CCP or that it consulted any other sources. The GOC’s responses in prior CVD proceedings involving China demonstrate that it is, in fact, able to access information similar to what was requested in this investigation.¹⁶⁸ Additionally, pursuant to section 782(c) of the Act, if the GOC could not provide any of the requested information, it should have promptly explained to Commerce what attempts it undertook to obtain this information and proposed alternative forms of providing the information.¹⁶⁹ As we explained in

¹⁶⁰ *Id.* at 56 and 89.

¹⁶¹ *Id.* at Exhibit II.E3.2 and II.E4.2.

¹⁶² *Id.* at Exhibit II.E3.3 and II.E4.3.

¹⁶³ *Id.* at Exhibit II.E3.2 and II.E4.2.

¹⁶⁴ *See* June 16 Supplemental Questionnaires.

¹⁶⁵ *Id.*

¹⁶⁶ *See* GOC IQR at Exhibits II.E3.2, II.E3.3, II.E4.2 and II.E4.3.

¹⁶⁷ *Id.* at 62 and 94.

¹⁶⁸ *See High Pressure Steel Cylinders from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) and accompanying IDM at 13.

¹⁶⁹ Section 782(c)(1) of the Act states, “{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the

the Public Bodies Memorandum,¹⁷⁰ the CCP exerts significant control over economic activities in China. Thus, we find that the information requested regarding the role of CCP officials and CCP committees in the management and operations of the respondents' input suppliers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act.

Because Commerce did not receive information regarding the identity of all of the producers, there is incomplete information on the record to determine whether these producers are "authorities." As mentioned above, we issued supplemental questionnaires to the GOC addressing this issue and have extended the due date for the response to those questionnaires past the date of our preliminary determination. Therefore, for our preliminary determination, we must rely on "facts otherwise available," pursuant to sections 776(a)(1) and (a)(2)(A) and (C) of the Act, to determine that these producers are "authorities" within the meaning of section 771(5)(B) of the Act.¹⁷¹

H. Application of Adverse Facts Available: Inputs are Specific

For purposes of Commerce's *de facto* specificity analysis, we asked the GOC to provide a list of industries that purchase oTDA or sodium nitrite in China.¹⁷² Commerce also requested that the GOC "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."¹⁷³ The GOC did not provide information regarding the types of industries in China that purchased oTDA or sodium nitrite.¹⁷⁴ Instead the GOC stated there are a "vast number of users" for both oTDA and sodium nitrite and the types of consumers that purchase these inputs varies across numerous industries.¹⁷⁵ The GOC noted that, in prior investigations, the GOC has provided substantial information, including examples of industries that used the input, relevant research reports and standards, and input consumption data.¹⁷⁶ However, while the GOC explains that it can and has provided such information in the past, it did not provide such information in this investigation; instead the GOC chose to state that the inputs were used by a vast number of users without any supporting reference material.¹⁷⁷ The requested information is necessary for Commerce to analyze the data for the number of users, industries, and quantities of inputs supplied to various industries is necessary to determine specificity.

interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."

¹⁷⁰ See Memorandum, "Countervailing Duty Investigation of Corrosion Inhibitors from the People's Republic of China: Placing Documents on the Record," dated March 3, 2020 (Public Bodies Memorandum).

¹⁷¹ *Id.*

¹⁷² See Initial Questionnaire at 10 and 14.

¹⁷³ *Id.*

¹⁷⁴ See GOCIQR at 79 and 112-113.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

Consequently, consistent with past proceedings,¹⁷⁸ we preliminarily determine that necessary information is not available on the record. As indicated above, we issued supplemental questionnaires to the GOC addressing this issue and have extended the due date for the response to those questionnaires past the date of our preliminary determination. Therefore, for our preliminary determination, we must rely on “facts otherwise available,” pursuant to sections 776(a)(1) and (a)(2)(A) and (C) of the Act, to determine the provision of oTDA and sodium nitrite to be specific pursuant to section 771(5A)(D)(iii)(I) 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 when it failed to respond to our questions in the initial questionnaire and failed to support its claims that the users of oTDA and sodium nitrite are varied, despite having provided such information in prior investigations. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b)(1) of the Act. In applying AFA, we find that these programs are specific, within the meaning of section 771(5A) of the Act.

I. Application of Facts Available: Whether Certain Input Markets are Distorted

For the purposes of determining the level of government involvement in the oTDA and sodium nitrite industries and, thus, whether domestic prices in China in these respective markets are distorted, we asked the GOC numerous questions about these industries.¹⁷⁹ These questions included, but were not limited to, information regarding the total number of producers, the total volume and value of domestic production and domestic consumption, the total volume and value of imports, and the percentage of volume and value of production accounted for by companies in which the GOC maintains a majority ownership or controlling management interest.¹⁸⁰

Further, if the percentage of production accounted for by those companies is less than 50 percent, we requested that the GOC provide the percentage of volume and value of production accounted for by companies in which the GOC maintains some, but less than a majority, ownership interest.¹⁸¹ Finally, we requested certain information regarding laws, plans, policies, price controls, export restrictions, etc.¹⁸²

The GOC provided some, but not all of the information requested. For example, the GOC provided the volume and value of imports of oTDA and sodium nitrite, details describing the ownership of various producers, and registration information for some producers.¹⁸³ In addition, the GOC provided data regarding imports of the inputs into China, import duties and VAT rates.¹⁸⁴ The information provided, however, did not fully detail the listed ownership of the

¹⁷⁸ See, e.g., *Utility Scale Wind Towers from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 33422 (June 6, 2012) (unchanged in *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*)).

¹⁷⁹ See Initial Questionnaire at 9 to 15.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ See GOCIQR at 76-77 and 108-109.

¹⁸⁴ *Id.* at 76-78.

companies and, in multiple instances, identified additional companies for which the GOC should have provided detailed ownership information necessary for Commerce’s analysis of whether the producer constitutes an authority.¹⁸⁵ The information provided also does not provide total amounts of domestic production accounted for by the companies that were identified in the exhibits provided by the GOC. We have issued a supplemental questionnaire regarding these issues, but the due date for submitting the response is after the preliminary determination.¹⁸⁶

Thus, while the GOC has provided some information regarding government ownership for the purposes of a distortion analysis, we require additional information to conduct a full analysis of the GOC’s involvement in these respective markets and, thus, determine if the domestic prices in these markets are distorted such that they are unusable as “Tier 1” benchmarks. We preliminarily determine that necessary information is not available on the record. However, as indicated above, we issued supplemental questionnaires to the GOC addressing this issue and have extended the due date for the response to those questionnaires past the date of our preliminary determination. Therefore, for our preliminary determination, we must rely on “facts otherwise available,” pursuant to sections 776(a)(1) and (a)(2)(A) and (C) of the Act, to determine whether the markets for oTDA and sodium nitrite are distorted by GOC involvement. These analyses are described in greater detail below in the section titled “Input Benchmarks.”

J. Application of Facts Available: Other Subsidies

Botao and its cross-owned affiliate Yutu reported in their IQRs that they received certain “Other Subsidies” during the POI.¹⁸⁷ Our initial questionnaire specifically requests that the GOC “provide full and complete responses to all programs referenced in the questionnaire, including any other subsidies that may be reported.”¹⁸⁸ However, Commerce inadvertently omitted a standard question that directly requests the GOC to coordinate with the mandatory respondents regarding any other subsidies or assistance under any other subsidy programs that the companies may have received and are reporting. Thus, while the GOC was directed to provide full and complete responses regarding all programs, the GOC was not explicitly requested to coordinate with the mandatory respondents to identify, and provide full responses for, any other assistance the mandatory respondents may have received. As a result, the GOC did not provide information in its IQR regarding these other subsidies. Commerce has issued a supplemental questionnaire to the GOC requesting that the GOC coordinate with the mandatory respondents and answer all questions in the appropriate appendices for any programs under which the mandatory respondents received assistance and for which the GOC wishes to challenge the countervailability.¹⁸⁹ However, the deadline for the submission of this response is after the date of this preliminary determination.

Consequently, we preliminarily determine, in accordance with sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, that information necessary to perform our analysis of financial contribution and specificity is not available on the record. Thus, we must rely on “facts available” in making

¹⁸⁵ *Id.* at Exhibit II.E3.2 and II.E4.2.

¹⁸⁶ *See* June 16 Supplemental Questionnaires.

¹⁸⁷ *See* Botao IQR at 18 and 33 and Exhibit 14; *see also* Yutu IQR at 20 and Exhibit 10.

¹⁸⁸ *See* Initial Questionnaire at Section II at 1.

¹⁸⁹ *See* GOC June 16 Supplemental Questionnaire at 7.

our preliminary determination. In applying facts available, we find that the “other subsidies” reported by Botao and its cross-owned affiliate, Yutu, 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.

For Tax Offsets for Research and Development, we preliminarily determine that the program confers a benefit to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program, in accordance with 19 CFR 351.509(1). For the remaining “other subsidies,” we preliminarily determine that they are grant programs which confer a benefit equal to the amount of the grant provided, in accordance with 19 CFR 351.504(a). To calculate the benefit received under these “other subsidies,” we followed the methodology described in 19 CFR 351.525

To calculate the *ad valorem* subsidy rate for these subsidies, we divided the benefit conferred by the subsidy by the appropriate POI sales denominator. We preliminarily determine a net countervailable subsidy rate of 0.77 percent *ad valorem* for Botao and 0.37 percent *ad valorem* for Delian.

Furthermore, for the reasons explained in the “Application of AFA: Non-Responsive Companies” section, we determine on the basis of AFA that the non-responsive companies benefitted from these programs during the POI, pursuant to 19 CFR 351.504(a) and 19 CFR 351.509(1). Consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate of 0.77 percent *ad valorem* for the non-responsive companies, the highest rate calculated for an identical program in this investigation.

VIII. BENCHMARKS

Loan Interest Rate Benchmarks and Discount Rates

We are investigating non-recurring, allocable subsidies received by the mandatory respondents. The derivation of the benchmark and discount rates used to value these subsidies is discussed below.¹⁹⁰

A. Short-Term and Long-Term 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, we use comparable commercial loans reported by the company as a benchmark.¹⁹¹ If the firm did not have any comparable commercial loans during the period, Commerce’s regulations provide that we “may use a national average interest rate for comparable commercial loans.”¹⁹²

¹⁹⁰ See 19 CFR 351.524(b)(1).

¹⁹¹ See 19 CFR 351.505(a)(3)(i).

¹⁹² See 19 CFR 351.505(a)(3)(ii).

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.¹⁹³ On July 21, 2017, Commerce conducted a reassessment of China’s financial system for CVD benchmarking purposes.¹⁹⁴ Based on this re-assessment, Commerce concluded that, despite reforms to date, 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 respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, Commerce is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with Commerce’s practice.¹⁹⁵

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*.¹⁹⁶ 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.¹⁹⁷ Beginning in 2010, however, China fell within the upper-middle income category and remained there from 2011 to 2017.¹⁹⁸ 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 discount rates for 2010-2017. This is consistent with Commerce’s calculation of interest rates for recent CVD proceedings involving Chinese merchandise.¹⁹⁹

¹⁹³ See *CFS from China* IDM at Comment 10.

¹⁹⁴ See Memorandum, “Countervailing Duty Investigation of Corrosion Inhibitors from the People’s Republic of China: Analysis of China’s Financial System,” dated March 3, 2020.

¹⁹⁵ 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) (*OTR from China 2015 Final Results*)).

¹⁹⁶ See *CFS from China* and accompanying IDM at Comment 10; see also *Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*) and accompanying IDM at 8-10.

¹⁹⁷ See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups>; see also Memorandum, “Countervailing Duty Investigation of Corrosion Inhibitors from the People’s Republic of China: Loan Interest Rate Benchmarks,” dated March 3, 2020 (Interest Rate Benchmark Memorandum).

¹⁹⁸ *Id.*

¹⁹⁹ 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) (*Shrimp from China*)).

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.²⁰⁰ For 2010, however, the regression does not yield that outcome for China's income group.²⁰¹ 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 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 2001-2009.²⁰² 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.²⁰³ Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.²⁰⁴

B. Long-Term RMB-Dominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, Commerce developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.²⁰⁵

²⁰⁰ See Interest Rate Benchmark Memorandum.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ See, e.g., *Thermal Paper from China* and accompanying IDM at 10.

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.²⁰⁶ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.²⁰⁷ The resulting inflation-adjusted benchmark lending rates are provided in the preliminary calculation memorandums.

C. 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.

D. Input Benchmarks

We selected benchmarks for determining the benefit from the provision of oTDA and sodium nitrite for LTAR in accordance with 19 CFR 351.511. Section 351.511(a)(2) of Commerce’s regulation sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three).²⁰⁸

To determine the appropriate benchmark for measuring the benefits of inputs provided at LTAR under 19 CFR 351.511, we asked the GOC several questions concerning the structure of the corrosion inhibitors industry.²⁰⁹ In response, the GOC provided summary data for the corrosion inhibitors industry. This information included the number of domestic producers of each input, the number of such producers in which the GOC maintains an ownership or management interest, the total volume of production of each input, the volume and value of imports, and the volume of exports and domestic consumption.²¹⁰

However, as noted above in section “Application of FA: Whether Certain Input Markets are Distorted,” the GOC did not provide complete information with respect to our questions regarding oTDA and sodium nitrite production, including what percent of production of each during the POI is accounted for by producers in which the GOC maintains an ownership or

²⁰⁶ 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.

²⁰⁷ See Interest Rate Benchmark Memorandum.

²⁰⁸ See 19 CFR 351.511(a)(2).

²⁰⁹ See Initial Questionnaire at questions 9, 10, 12 and 13.

²¹⁰ *Id.*

management interest. As noted above, we have sent an additional supplemental questionnaire to the GOC regarding these programs, the due date for which is after the preliminary determination.

However, record evidence demonstrates that the GOC has significant involvement in both markets. For example, the record indicates many of the oTDA and sodium nitrite producers within China are state-owned enterprises.²¹¹ The *Industry Transfer Guidance Catalogue* lists the chemical industry, which includes oTDA and sodium nitrite producers, as an “advantaged industry” for the purposes of lending.²¹² Additionally, Commerce has found that sodium nitrite producers received receive significant countervailable subsidies.²¹³ Therefore, as facts available, we conclude that domestic prices in China for oTDA and sodium nitrite are distorted such that they cannot be used as a tier one benchmark. Thus, to measure the adequacy of remuneration for the provision of oTDA and sodium nitrite we are relying on world market prices as the tier two benchmark provided for in 19 CFR 351.511(a)(2)(ii).

For purposes of this preliminary determination, Commerce is relying upon world export prices from the United Nations Commodity Trade Statistics Database (UN Comtrade) for oTDA and sodium nitrite.²¹⁴ We have removed exports to China from the data, as well as any shipments for which no volume was reported. The UN ComTrade data are provided on a monthly basis, allowing us to derive monthly benchmarks, our preferred practice, and includes export prices from all countries.

In addition to its revised UN Comtrade data for oTDA, Botao provided benchmark information for oTDA using data from Eurostat and Global Trade Atlas (GTA).²¹⁵ However, the provided data are less inclusive and consist only of six self-selected countries.²¹⁶ Consequently, for purposes of the preliminary determination, we find that the revised UN Comtrade data is more appropriate benchmark.

Delian’s Benchmark Submission consisted of advertised prices and grading information for oTDA from Alibaba.com and several other sites and trade statistics from GTA.²¹⁷ For sodium nitrite, Delian provided grading information.²¹⁸ We find that the self-selected pricing data and GTA trade statistics are less inclusive than the UN ComTrade data and that the grading information is incompatible with any of the benchmarks provided.

Pursuant to 19 CFR 351.511(a)(2)(iv), benchmarks should reflect “delivered prices” and include import and delivery charges. Accordingly, we added international freight charges, VAT, import

²¹¹ See Petition at Exhibits III-38, III-39, III-41 and III-42.

²¹² *Id.* at Exhibit III-6.

²¹³ See e.g., *Sodium Nitrite from the People’s Republic of China: Countervailing Duty Order*, 73 FR 50595 (August 27, 2008).

²¹⁴ See Petitioner’s Benchmark Submission at Attachment 1B; see also Botao’s Rebuttal Benchmark Submission Exhibit 3. (Commerce has used the revised data for oTDA that provides specific partner country information. However, partner country information was not provided for sodium nitrite and, consequently, Commerce has used the world partner information.)

²¹⁵ See Botao Benchmark Submission at Exhibit 3.

²¹⁶ *Id.*

²¹⁷ See Delian Benchmark Submission at Exhibit B-1.

²¹⁸ *Id.* at Exhibit B-2.

duties, and inland freight charges on applicable purchases, to calculate the price that a respondent would have paid on the world market for this input.

E. Land Benchmark

As explained in detail in previous investigations, we cannot rely on the use of tier one and tier two benchmarks to assess the benefits from the provision of land for LTAR in China. Specifically, in *Sacks from China*, we determined that “Chinese land prices are distorted by the significant government role in the market,” and hence, no usable tier one benchmarks exist.²¹⁹ Furthermore, we found that tier two benchmarks (world market prices that would be available to purchasers in China) are not appropriate.²²⁰

On October 2, 2018, Commerce completed a memorandum analyzing developments in China’s land market since 2007.²²¹ The Land Benchmark Analysis was prepared to assess the continued application of Commerce’s land for LTAR benchmark methodology, as established in 2007 in *Sacks from China*.²²² As discussed in the Land Benchmark Analysis, 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.²²³ 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.²²⁴ 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.²²⁵

As a result, and consistent with our methodology established in *Sacks from China*, we determine that we cannot use 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 tier two world prices as a benchmark for land-use rights. Finally, because land prices in China are not established consistent with market principles, and they reflect the government’s control and allocation of land-use on an administrative basis, we will continue to use land-use prices outside of China, consistent with our practice, as a tier three benchmark for purposes of calculating a benefit for this program.

²¹⁹ 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) (*Sacks from China*).

²²⁰ *Id.*

²²¹ See Memorandum, ““Countervailing Duty Investigation of Corrosion Inhibitors from the People’s Republic of China: Land Analysis Memo,” dated March 3, 2020 (Land Analysis Memo) (containing a memorandum titled “Benchmark Analysis of the Government Provision of Land-Use Rights in China for Countervailing Duty Purposes,” dated October 2, 2018) (Land Benchmark Analysis).

²²² *Id.* at 2.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

We have placed on the record benchmark information to value land from “Asian Marketview Reports” by CB Richard Ellis (CBRE) for Thailand for 2010.²²⁶ We used this benchmark in the CVD investigations of *Solar Cells from China* and *IMTDCs from China*.²²⁷ 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.²²⁸ We find that the benchmark continues to be suitable for this preliminary determination, and we relied on it for our calculation of benefits to Botao, Connect, Jinling, and Yutu from their land purchases, and the countervailable subsidy rate attributable to Delian based on benefits provided to Botao and Kanghua. We will continue to examine benchmark prices on a case-by-case basis and will consider the extent to which proposed benchmarks represent prices in a comparable setting (*e.g.*, a country proximate to China; the country’s level of economic development, etc.).

IX. ANALYSIS OF PROGRAMS

A. Programs Preliminarily Determined to be Countervailable

1. Export Buyer’s Credits

Commerce is examining whether the GOC provides preferential financing to exporters by offering local and foreign currency loans to overseas borrowers through the Export-Import Bank of China. For the reasons explained in the “Application of AFA: Export Buyer’s Credits” section, our preliminary determination regarding whether the GOC’s provision of export buyer’s credits constitutes a financial contribution, is specific, and confers a benefit is based on AFA, pursuant to sections 776(a) and (b) of the Act.

As AFA, we preliminarily determine that the GOC’s provision of export buyer’s credits confers a financial contribution within the meaning of section 771(5)(D) of the Act. As AFA, we preliminarily determine that the Export Buyer’s Credit program is specific because the credits are contingent upon export performance under sections 771(5A)(A) and (B) of the Act. As AFA, we preliminarily determine that this program confers a benefit to the mandatory respondents, pursuant to section 771(5)(E) of the Act. Furthermore, for the reasons explained in the “Application of AFA: Non-Responsive Companies” section, we determine on the basis of AFA that the non-responsive companies benefitted from this program during the POI within the

²²⁶ See Memorandum, “Countervailing Duty Investigation of Corrosion Inhibitors from the People’s Republic of China: Asian Marketview Report” dated March 3, 2020 (Land Benchmark Data Memo) (containing “Asian Marketview Report” pricing data).

²²⁷ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China*) and accompanying IDM at 6 and Comment 11; see also *Countervailing Duty Investigation of Certain 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) (*IMTDCs from China*) and accompanying PDM at 13.

²²⁸ 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.

meaning of section 771(5)(E)(ii) of the Act. For Botao, Delian, and the non-responsive companies, we preliminarily determine a countervailable subsidy rate of 10.54 percent *ad valorem*, a rate calculated for a similar program in another CVD proceeding involving imports from China.²²⁹

2. Income Tax Reduction for High or New Technology Enterprises (HNTEs)

Commerce is examining whether the GOC is providing support to certain companies by allowing them to reduce their tax liabilities. The GOC has reported that this program was established according to Article 28 of the Enterprise Income Law of China and Article 93 of the Implementing Regulations of the Enterprise Income Tax Law of China, effective on January 1, 2008, to support and encourage development of high and new technology enterprises.²³⁰ Companies utilizing the program can benefit from a preferential income tax rate of 15 percent, rather than the usual 25 percent, if it is designated as a HNTE.²³¹

We preliminarily determine that the GOC's provision of income tax reductions for HNTEs confers a financial contribution in the form of revenue forgone by the GOC within the meaning of section 771(5)(D)(ii) of the Act.²³² We preliminarily determine that the income tax reductions for HNTEs are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, because they are limited as a matter of law to only certain enterprises designated as high and new technology enterprises.²³³

The respondents reported benefitting from this program during the POI. To calculate the benefit, in accordance with section 771(5)(E)(ii) of the Act, we calculated the difference between the tax actually paid at the reduced 15 percent rate and the tax that would otherwise be paid at the standard 25 percent tax rate. We divided the benefits by the appropriate denominator. On this basis, we calculated a net countervailable subsidy rate for Botao of 3.55 percent *ad valorem*. To determine Delian's net countervailable subsidy rate, we first determined the net countervailable subsidy rate for each producer that supplied Delian according to the methodology described above. We cumulated the subsidy benefits from the producers that supplied Delian, in accordance with 19 CFR 351.525(c), by weighting the producers' subsidy rates by each producer's percentage of Delian's exports of subject merchandise to the United States during the POI. We added together the resulting rates, and on this basis, we calculated a net countervailable subsidy rate of 1.72 percent *ad valorem* for Delian. As described in "Use of Facts Otherwise Available and Adverse Inferences," we are assigning a rate of 25.00 percent *ad valorem* to the non-responsive companies.

²²⁹ See *Coated Paper from China Amended Final*.

²³⁰ See GOCIQR at 26-27 and Exhibits II.D.1 and II.D.2.

²³¹ *Id.* at 27.

²³² See GOCIQR at 26-27.

²³³ *Id.*

3. Provision of Land Use Rights for LTAR to Encouraged Industries

The respondents reported receiving land-use rights from the GOC or local authorities.²³⁴ Our preliminary determination that the GOC's provision of land use rights to encouraged industries for LTAR constitutes a financial contribution and is specific is based on facts otherwise available, pursuant to with sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, as discussed above. 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.

According to record evidence, 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.²³⁵ Specifically, China's 13th Five-Year Plan continued the GOC's longstanding practice of allocating land: "siloing" of land-use rights allows the government to determine what land is used for and prevents land from being put to use on the basis of market outcomes determined by individual users, thus distorting land prices in China and precluding meaningful, market-based land valuation.²³⁶ Furthermore, national and provincial governments instruct government agencies to provide such land-use rights to favored projects and producers.²³⁷ Specifically, 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.²³⁸

Additionally, the Thirteenth Five Year Plan, which covers 2016-2020, places strategic importance on the chemical industry and water supply systems, including the production of water treatment chemicals.²³⁹ In addition, the GOC's Catalogue of Industries for Guiding Foreign Investment, identifies "water treatment chemicals" as an "encouraged" industry.²⁴⁰ Finally, the GOC's Decision No. 40 calls for the provision of financing and "taxation, credit, land, import and export, etc." benefits to encouraged projects listed in the catalogue.²⁴¹

As facts otherwise available, we preliminarily determine that the GOC's provision of land-use rights for LTAR confers a financial contribution through the provision of a good within the meaning of section 771(5)(D)(iii) of the Act. As facts otherwise available, we preliminarily find that the GOC's provision of land-use rights for LTAR is specific pursuant to section 771(5A)(D)(i) of the Act, because it is limited to certain encouraged industries, and as discussed above, the chemical industry, including the producers of water treatment chemicals, is among the encouraged industries.

To determine the benefit pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we first multiplied the Thailand industrial land benchmarks discussed above, by the total land area

²³⁴ See Botao IQR at Exhibit 19; Connect IQR at Exhibit 13; Jinling IQR at Exhibit 13; Kanghua IQR at 19 and at Exhibits 12 and 13; and Yutu IQR at Exhibit 12.

²³⁵ See Petition at Exhibits III-1 and III-2.

²³⁶ See Land Analysis Memo.

²³⁷ See Petition at 22.

²³⁸ *Id.* at Exhibit III-3B.

²³⁹ *Id.* at Exhibit III-1B.

²⁴⁰ *Id.* at Exhibit III-3A.

²⁴¹ *Id.* at Exhibit III-3B.

of the land-use rights held by Botao, Connect, Jinling, and Yutu, and for purposes of calculating the net countervailable subsidy to Delian, we did the same for Kanghua. We then subtracted the price actually paid for the land in the year in which the land use rights were approved, as reported by Botao, Connect, Jinling, and Yutu, and for purposes of calculating the net countervailable subsidy to Delian, we did the same for Kanghua to derive the total unallocated benefit. We next conducted the “0.5 percent test” provided for under 19 CFR 351.524(b)(2) for the year of the relevant land-rights agreement by dividing the total unallocated benefit by the appropriate sales denominator. Because the benefits were greater than 0.5 percent of relevant sales, we allocated the total benefit amounts across the terms of the land-use agreements, using the standard allocation formula of 19 CFR 351.524(d), and determined the amount of benefits attributable to the POI.

We divided the POI benefits by the appropriate sales denominators. For Yutu, we divided the benefit provided to Yutu by the appropriate denominator as described in the section “Subsidies Valuation.” For Botao, Connect, and Jinling, pursuant to 19 CFR 351.525(b)(6)(ii) as producers of the same merchandise, we divided the benefit provided to Botao, Connect and Jinling by the combined sales of the three, net of intercompany sales. We added together the resulting rates to preliminarily determine a net countervailable subsidy rate of 1.54 percent *ad valorem* for Botao. To determine Delian’s net subsidy rate, we first determined the net countervailable subsidy rate for each producer that supplied Delian according to the methodology described above. We cumulated the subsidy benefits from the producers that supplied Delian, in accordance with 19 CFR 351.525(c), by weighting the producers’ subsidy rates by each producer’s percentage of Delian’s exports of subject merchandise to the United States during the POI. We added together the resulting rates, and on this basis, we calculated a net countervailable subsidy rate of 1.29 percent *ad valorem* for Delian.

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

4. Provision of Electricity for LTAR

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

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

Consistent with our approach in *Wind Towers*, we first calculated each company’s variable electricity costs by multiplying the monthly kilowatt hours (kWh) consumed at each price category (e.g., peak, normal, and valley, where appropriate) by the corresponding electricity rates paid during each month of the POI.²⁴² 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 respective company during the POI from the monthly benchmark variable electricity costs.

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

Botao and its cross-owned affiliate Yutu, reported benefiting from this program. Delian benefitted from this program to the extent that its suppliers benefitted from this program.²⁴³ To determine the net countervailable subsidy rate for Botao, we divided the benefits provided to Botao by the combined sales of Botao, Connect, and Jinling, pursuant to 19 CFR 351.525(b)(6)(ii) as producers of the same merchandise and divided the benefits provided to Yutu by Yutu’s appropriate sales denominator as described in the section “Subsidies Valuation.” We then added these rates together, to preliminarily determine a countervailable subsidy rate of 0.65 percent *ad valorem* for Botao. To determine the net countervailable subsidy rate for Delian, we first determined the net countervailable subsidy rate for each producer that supplied Delian according to the methodology described above. We then cumulated the subsidy benefits from the producers that supplied Delian, in accordance with 19 CFR 351.525(c), by weighting the producers’ subsidy rates by each producer’s percentage of Delian’s exports of subject merchandise to the United States during the POI. We added together the resulting rates, and on this basis, we calculated a net countervailable subsidy rate of 0.57 percent *ad valorem* for Delian. As described in “Use of Facts Otherwise Available and Adverse Inferences,” we are assigning the highest calculated rate for the mandatory respondents to preliminarily determine a subsidy rate of 0.65 percent *ad valorem* for non-responsive companies.

²⁴² See *Wind Towers from China Final* and accompanying IDM at 21-22.

²⁴³ See Botao IQR at Exhibit 22; see also Yutu IQR at Exhibit 15; and Kanghua IQR at Exhibit 14.

5. Provision of oTDA for LTAR

We are examining whether the GOC or other “authorities” within China provided oTDA for LTAR to the mandatory respondent Botao or its cross-owned affiliates, or to Delian through the producers that supply it, Botao and Kanghua. Botao and Kanghua reported that they purchased oTDA during the POI.²⁴⁴ Our preliminary determination regarding whether the GOC’s provision of oTDA for LTAR constitutes a financial contribution and is specific is based on facts otherwise available, pursuant to section 776(a) of the Act.

Available record evidence indicates that one of the primary inputs in the production of Chinese corrosion inhibitors is oTDA.²⁴⁵ Additionally, record evidence also supports that the oTDA industry in China features several large oTDA producing SOEs which results in a distorted market.²⁴⁶

As FA, we find that, through significant ownership of several Chinese oTDA producers, the GOC is able to control the oTDA market and provide low-cost provision of this the primary input in the production of corrosion inhibitors, oTDA.²⁴⁷

As facts otherwise available, we preliminarily determine that the GOC’s provision of oTDA for LTAR confers a financial contribution within the meaning of section 771(5)(D)(iii) of the Act. We preliminarily find that the GOC exercises meaningful control over the government and non-government owned domestic producers of oTDA and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.²⁴⁸ Therefore, we preliminarily determine that these enterprises are “authorities” within the meaning of section 771(5)(B) of the Act.²⁴⁹ Thus, the provision of oTDA to corrosion inhibitor producers for LTAR constitutes a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.

As AFA, we preliminarily find that the provision of oTDA for LTAR is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, as it is provided to a limited number of Chinese industries, namely, producers of corrosion inhibitors.²⁵⁰

As discussed above under “Input Benchmarks,” because we find that the Chinese market for oTDA was distorted by government involvement, we are selecting external benchmark prices, *i.e.*, tier two or world market prices, consistent with 19 CFR 351.511(a)(2)(ii) and the *CVD Preamble*.²⁵¹ Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, we 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, as appropriate, any ocean freight and inland freight

²⁴⁴ See Botao IQR at Exhibit 24; *see also* Kanghua IQR at Exhibits 16 and 17.

²⁴⁵ See Petition at 29.

²⁴⁶ *Id.*

²⁴⁷ See Public Bodies Memorandum.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ See Petition at 30.

²⁵¹ See *CVD Preamble*, 63 FR at 65401

that would be incurred to deliver the inputs to the respondents' production facilities. We then added to the benchmark prices the appropriate import duties applicable to imports of oTDA into China, as provided by the GOC. Additionally, we added the appropriate VAT of 16 percent for January through March and 13 percent for April through December to the benchmark prices.

We compared these monthly benchmark prices to the purchase prices that the respondents reported for individual domestic transactions, including VAT. We determined the benefit to be the difference between the benchmark prices and the prices reported by the respondents. To determine the net countervailable subsidy rate for Botao, we divided Botao's benefits by the combined sales during the POI of Botao, Connect and Jinling, pursuant to 19 CFR 351.525(b)(6)(ii) as producers of the same merchandise. On this basis, we preliminarily determine a net subsidy rate of 21.95 percent *ad valorem* for Botao. To determine the net countervailable subsidy rate for Delian, we first determined the net countervailable subsidy rate for each producer that supplied Delian according to the methodology described above. We then cumulated the subsidy benefits from the producers that supplied Delian, in accordance with 19 CFR 351.525(c), by weighting the producers' subsidy rates by each producer's percentage of Delian's exports of subject merchandise to the United States during the POI. We added together the resulting rates, and on this basis, we calculated a net countervailable subsidy rate of 62.10 percent *ad valorem* for Delian.

For the reasons explained in the "Application of AFA: Non-Responsive Companies" section, we determine on the basis of AFA that the non-responsive companies benefitted from this program during the POI within the meaning of section 771(5)(E)(iv) of the Act. Consistent with Commerce's AFA rate selection methodology, we determine a countervailable subsidy rate of 62.10 percent *ad valorem* for the non-responsive companies, the highest rate calculated for an identical program in this investigation.

6. Provision of Sodium Nitrite for LTAR

We are examining whether the GOC or other "authorities" within China provided sodium nitrite for LTAR to Botao or its cross owned affiliates or to Delian through the producers that supply it, Botao and Kanghua. Botao and Kanghua reported that they purchased sodium nitrite during the POI.²⁵² Our preliminary determination regarding whether the GOC's provision of sodium nitrite for LTAR constitutes a financial contribution and is specific is based on facts otherwise available, pursuant to section 776(a) of the Act.

Available record evidence indicates that one of the primary inputs in the production of Chinese corrosion inhibitors is sodium nitrite.²⁵³ Available record evidence also supports that the GOC actively provides sodium nitrite to producers of corrosion inhibitors at below market prices.²⁵⁴ Additionally, record evidence also supports that the sodium nitrite industry in China features several large corrosion inhibitors producing SOEs which results in a distorted market.²⁵⁵

²⁵² See Botao IQR at Exhibit 24; see also Kanghua IQR at Exhibit 19.

²⁵³ See Petition at 31.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

As facts otherwise available, we find that, through ownership of several Chinese sodium nitrite producers, the GOC is able to control the industrial development through low-cost provision of one of the primary inputs in the production of corrosion inhibitors, sodium nitrite.²⁵⁶

As facts otherwise available, we preliminarily determine that the GOC's provision of sodium nitrite for LTAR confers a financial contribution within the meaning of section 771(5)(D)(iii) of the Act. We preliminarily find that the GOC exercises meaningful control over the government and non-government owned domestic producers of sodium nitrite and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.²⁵⁷ Therefore, we preliminarily determine that these enterprises are "authorities" within the meaning of section 771(5)(B) of the Act.²⁵⁸ Thus, the provision of sodium nitrite to corrosion inhibitor producers for LTAR constitutes a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.

As AFA, we preliminarily find that the provision of sodium nitrite for LTAR is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, as it is provided to a limited number of Chinese industries, namely, producers of corrosion inhibitors.²⁵⁹

We preliminarily determine that the domestic market for sodium nitrite is distorted, and we are relying on an external benchmark for determining the benefit from the provision of sodium nitrite for LTAR under section 771(5)(E)(iv) of the Act.

As discussed above under "Input Benchmarks," because we find that the Chinese market for sodium nitrite was distorted by government involvement, we are selecting external benchmark prices, *i.e.*, tier two or world market prices, consistent with 19 CFR 351.511(a)(2)(ii) and the *CVD Preamble*.²⁶⁰ Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, we 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, as appropriate, any ocean freight and inland freight that would be incurred to deliver the inputs to the respondents' production facilities. We then added to the benchmark prices the appropriate import duties applicable to imports of sodium nitrite into China, as provided by the GOC. Additionally, we added the appropriate VAT of 16 percent for January through March and 13 percent for April through December to the benchmark prices.

We compared these monthly benchmark prices to the purchase prices that the respondents reported for individual domestic transactions, including VAT. We determined the benefit to be the difference between the benchmark prices and the prices reported by the respondents. To determine the net countervailable subsidy rate for Botao, we divided Botao's benefits by the combined sales during the POI of Botao, Connect and Jinling, pursuant to 19 CFR

²⁵⁶ See Public Bodies Memorandum.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ See Petition at 32.

²⁶⁰ See *CVD Preamble*, 63 FR at 65401

351.525(b)(6)(ii) as producers of the same merchandise. On this basis, we preliminarily determine a net subsidy rate of 15.37 percent *ad valorem* for Botao. To determine the net countervailable subsidy rate for Delian, we first determined the net countervailable subsidy rate for each producer that supplied Delian according to the methodology described above. We then cumulated the subsidy benefits from the producers that supplied Delian, in accordance with 19 CFR 351.525(c), by weighting the producers' subsidy rates by each producer's percentage of Delian's exports of subject merchandise to the United States during the POI. We added together the resulting rates, and on this basis, we calculated a net countervailable subsidy rate of 15.64 percent *ad valorem* for Delian.

For the reasons explained in the "Application of AFA: Non-Responsive Companies" section, we determine on the basis of AFA that the non-responsive companies benefitted from this program during the POI within the meaning of section 771(5)(E)(iv) of the Act. Consistent with Commerce's AFA rate selection methodology, we determine a countervailable subsidy rate of 15.64 percent *ad valorem* for the non-responsive companies, the highest rate calculated for an identical program in this investigation.

7. "Other Subsidies"

The respondents self-reported their receipt of various non-recurring subsidies from the GOC during the POI. Several of these programs appeared possibly to refer to the identical programs either as a recurring subsidy or as a grant approved at a single time and distributed in increments. We have issued the GOC a supplemental questionnaire to clarify whether these payments were recurring, non-recurring or may have been misreported, but responses remain pending as of the date of this preliminary determination and are not on the record. Consequently, we are treating all such programs as reported non-recurring subsidies. The subsidies self-reported, which conferred a measurable benefit, are as follows:

1. City-level Subsidy of Science and Technology Bureau
2. Employment Injury Insurance Subsidy
3. Industrial Economic Incentives and Subsidies of 2018
4. Patent Fund Subsidy for the Second Half of 2018
5. Policy Incentives and Subsidies of Jiang'an Town
6. Service Charges of Individual Income Tax
7. Subsidy for Post Stability
8. Subsidy for Removed Boilers
9. Subsidy for Supply and Marketing Cooperative
10. Tax Offsets for Research and Development

The total measurable benefit for Botao's self-reported subsidies is 0.77 percent *ad valorem*. As discussed above in the section "Use of Facts Available and Adverse Inferences," we preliminarily determine that these subsidies constitute a financial contribution under section 771(5)(D)(i) of the Act and are specific under section 771(5A) of the Act. With the exception of Tax Offsets for Research and Development, we preliminarily determine that these "other subsidies" are grant programs which confer a benefit equal to the amount of the grant provided, in accordance with 19 CFR 351.504(a). For Tax Offsets for Research and Development, we

preliminarily determine that the programs confers a benefit to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program, in accordance with 19 CFR 351.509(1). To calculate the benefit received under these “other subsidies,” we followed the methodology described in 19 CFR 351.524

To calculate the *ad valorem* subsidy rate for these subsidies, we divided the benefit conferred by the subsidy by the appropriate POI sales denominator. For Yutu, we divided the benefit provided to Yutu by Yutu’s appropriate sales denominator, as described in the section “Subsidies Valuation.” Pursuant to 19 CFR 351.525(b)(6)(ii), as producers of the same merchandise, we divided the benefit provided to Botao by the combined sales of Botao, Connect and Jinling, net of intercompany sales. We added together the resulting rates to preliminarily determine a net countervailable subsidy rate of 0.77 percent *ad valorem* for Botao. To determine the net countervailable subsidy rate for Delian, we first determined the net countervailable subsidy rate for each producer that supplied Delian according to the methodology described above. We then cumulated the subsidy benefits from the producers that supplied Delian, in accordance with 19 CFR 351.525(c), by weighting the producers’ subsidy rates by each producer’s percentage of Delian’s exports of subject merchandise to the United States during the POI. We added together the resulting rates, and on this basis, we calculated a net countervailable subsidy rate of 0.37 percent *ad valorem* for Delian.

Additionally, for all the programs self-reported by mandatory respondents for which we calculated a rate, we selected that rate as the AFA rate applicable to the non-cooperating companies.

B. Programs Preliminarily Determined to be Not Used

1. Preferential Policy Lending
2. Export Seller’s Credits
3. Export Credit Guarantees
4. Export Credit Insurance
5. Special Fund Grants for Energy Saving Technology Reform
6. Grants for Energy Conservation and Emission Reduction
7. Grants, Loans, and Other Incentives for the Development of Famous Brands
8. SME Technology Innovation Fund
9. State Key Technology Fund Grants
10. SME International Market Exploration Fund
11. Import Tariff Exemptions for Foreign Invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported Equipment
12. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment

In addition, Botao and its cross-owned affiliates and Delian’s unaffiliated supplier of subject merchandise, Kanghua, self-reported receiving benefits under various programs that did not confer a measurable benefit.²⁶¹ Based on the record evidence, we preliminarily determine that

²⁶¹ See Botao IQR at 21 and at Exhibit 14; see also Connect at Exhibit 11; Jinling IQR at Exhibit 14; Yutu IQR at Exhibit 12; and Kanghua IQR at Exhibit 20.

the benefits from certain programs were either fully expensed prior to the POI or result in a rate that is less than 0.005 percent *ad valorem* when attributed to the appropriate respondent's applicable sales, and therefore provide no measurable benefit in the POI. For the list of self-reported programs, *see* the Appendix.

X. CALCULATION OF THE ALL-OTHERS RATE

Sections 703(d)(1)(A)(i) and 705(c)(5)(A) of the Act provide 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.

XI. ITC NOTIFICATION

In accordance with section 703(f) of the Act, Commerce will notify the ITC of its determination. 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 the final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

XII. DISCLOSURE AND PUBLIC COMMENTS

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.²⁶² Case briefs 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 investigation, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.²⁶³

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.²⁶⁴ This summary should be limited to five pages in total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.²⁶⁵ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the

²⁶² *See* 19 CFR 351.224(b).

²⁶³ *See* 19 CFR 351.309(c)(1)(i) and (d)(1).

²⁶⁴ *See* 19 CFR 351.309(c)(2) and (d)(2).

²⁶⁵ *See* 19 CFR 351.310(c).

hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.²⁶⁶ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,²⁶⁷ on the due dates established above.

XIII. VERIFICATION

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

XIV. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

Agree

Disagree

7/6/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

²⁶⁶ See 19 CFR 351.303(b)(2)(i).

²⁶⁷ See 19 CFR 351.303(b)(1).

APPENDIX

Program	Subsidy Rate
Preferential Lending	
Preferential Policy Lending	10.54% ²⁶⁸
Export Buyer's Credit	10.54% ²⁶⁹
Export Credit Guarantees	10.54% ²⁷⁰
Export Seller's Credit	4.25% ²⁷¹
Export Credit Insurance²⁷²	
Export Credit Insurance	1.27%
Grants²⁷³	
Special Funds Grants for Energy Saving Technology Reform	1.27%
Grants for Energy Conservation and Emission Reduction	1.27%
Grants, Loans and Other Incentives for Development of Famous Brands	1.27%
SME Technology Innovation Fund	1.27%
State Key Technology Fund Grants	1.27%
SME International Market Exploration Fund	1.27%
Tax Programs	
Income Tax Reductions for High and New Technology Enterprises ²⁷⁴	25%
Import Tariff Exemptions for Foreign Invested Enterprises and Certain Domestic Enterprises Using Imported Equipment ²⁷⁵	9.71%
Income Tax Credit for Domestically Owned Companies Purchasing Domestically Produced Equipment ²⁷⁶	9.71%
Provision of Goods/Services for Less Than Adequate Remuneration	
Provision of Land-Use Rights to Corrosion Inhibitor Producers for LTAR	1.54%
Provision of Electricity For LTAR	0.65%
Provision of Ortho Toluene Diamine (oTDA) For LTAR	62.10%

²⁶⁸ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010).

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ See *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011).

²⁷² See *High Pressure Steel Cylinders from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017*, 84 FR 71373 (December 27, 2019) (*High Pressure Steel Cylinders*).

²⁷³ *Id.*

²⁷⁴ See GOCIQR at 27, indicating the standard income tax rate.

²⁷⁵ See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final*, 80 FR 68843 (November 6, 2015)

²⁷⁶ *Id.*

Provision of Sodium Nitrite For LTAR	15.64%
Self-Reported Programs²⁷⁷	
2013 Provincial Agricultural Industrialization Subsidy	1.27%
2013 Rewards for Opening	1.27%
2015 Nantong Award for Scientific and Technological Advancement	1.27%
2016 Rewards for Foreign Trade and Service Outsourcing	1.27%
2017 Funds for Transformation and Upgrading of International Trade and Business	1.27%
Agricultural Product Promotion Award, Leading Enterprise Subsidy	1.27%
Award for Energy Saving and Audit	1.27%
Booth Subsidy	1.27%
Bronze Award of Tourism Administration	1.27%
City-Level Subsidy of Science and Technology Bureau	0.01%
Cold-Chain Logistics Project Funds	1.27%
Development Funds for Small/Medium Enterprises	1.27%
E-Commerce Platform Award	1.27%
Employment Injury Insurance Subsidy	0.01%
Employment Subsidy	1.27%
Excellent Performance Unit in Enterprise Engineering Technology Research Center	1.27%
Excess Sales	1.27%
Exhibition Booth Subsidy	1.27%
Exhibition Expense Subsidy	1.27%
Extension of Workshop	1.27%
Famous Trademark Incentives	1.27%
Financial Subsidy	1.27%
Hefei Exhibition Subsidy	1.27%
Industrial Economic Award, Technological Award	1.27%
Industrial Economic Incentives and Subsidies Of 2018	0.02%
Industrial Rewards	1.27%
Infrastructure Funding	1.27%
Intellectual Property Protection Award	1.27%
Key Enterprise Ranking Promotion	1.27%
Key Industry Ranking Promotion Award	1.27%
Nantong Famous Brand Incentives	1.27%
National Torch Plan Acceptance Rewards	1.27%
Patent Award	1.27%
Patent Fund Subsidy for The Second Half Of 2018	0.01%
Patent Funds for The First Half Year Of 2016	1.27%
Patent Funds for The Second Half Of 2013	1.27%

²⁷⁷ See *High Pressure Steel Cylinders* for all rates of 1.27%.

Patent Funds for The Second Half Of 2016	1.27%
Patent Funds for The Second Half Of 2017	1.27%
Patent Grants	1.27%
Policy Incentives and Subsidies of Jiang'an Town	0.01%
Poverty Alleviation Funds for Old Revolutionary Base Areas	1.27%
Project Subsidy	1.27%
Prosperous County Project	1.27%
Qualified Acceptance Award for National Torch Plan	1.27%
Reward	1.27%
Rugao City-Level Project Approval of Science and Technology Bureau In 2019	1.27%
Science and Technology Bureau Patent Grants	1.27%
Service Charges of Individual Income Tax	0.01%
Sewage Treatment	1.27%
Software Subsidies	1.27%
Steaming Technology Award	1.27%
Subsidy for Booth Fees	1.27%
Subsidy for Clean Production	1.27%
Subsidy for Demonstration Enterprise in The Integration of Informatization And Industrialization	1.27%
Subsidy for Post Stability	0.02%
Subsidy for Removed Boilers	0.04%
Subsidy for Supply and Marketing Cooperative	0.11%
Subsidy Income of Intellectual Property Strategy	1.27%
Tax Offsets for Research and Development	0.53%
Technology Bonus	1.27%
Technology Innovation Incentives	1.27%
The Award for Technology Progress	1.27%
Well-Known Trademark Review	1.27%
Total AFA Subsidy Rate	237.19%