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Investigation
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August 17, 2020

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

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

SUBJECT: Decision Memorandum for the Preliminary Determination of the
Countervailing Duty Investigation of Certain Vertical Shaft
Engines between 99cc and up to 225cc, and Parts Thereof from the
People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines) from the People's Republic of China (China), as provided in section 703 of the Tariff Act of 1930, as amended (the Act). Pursuant to section 701(f) of the Act, Commerce is applying the countervailing duty law to countries designated as non-market economies under section 771(18) of the Act, such as China.

II. BACKGROUND

A. Initiation and Case History

On March 18, 2020, Commerce received antidumping duty (AD) and countervailing duty (CVD) petitions concerning imports of small vertical engines from China, filed on behalf of Briggs and Stratton Corporation (the petitioner).¹

On April 7, 2020, we initiated a CVD investigation on small vertical engines from China.² In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, from the People's Republic of China," dated March 18, 2020 (the Petition).

² See *Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 85 FR 20667 (April 14, 2020) (*Initiation Notice*).



investigation.³ In May through August 2020, certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*.⁴

B. Respondent Selection

The Petition identified 43 companies in China that produce and/or export small vertical engines to the United States.⁵ On March 31, 2020, we released the U.S. Customs and Border Protection (CBP) data for U.S. imports of small vertical engines under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings to all interested parties under an administrative protective order (APO).⁶ In the *Initiation Notice*, Commerce stated that, where appropriate, it intended to select respondents based on CBP data for U.S. imports of small vertical engines under the appropriate HTSUS subheadings and requested that interested parties comment on the data within three days of the publication of the *Initiation Notice*.⁷

In April 2020, we received comments on the CBP data placed on the record from the petitioner, Kohler Co., and Chongqing Zongshen General Power Machine Co., Ltd. (Chongqing Zongshen).⁸ The petitioner argued that Commerce should only rely on the HTSUS subheading for finished engines (*i.e.*, HTSUS subheading 8407.90.1010) to select respondents.⁹ Kohler Co. argued that Commerce should obtain CBP data for additional HTSUS subheadings (HTSUS subheadings 8407.9040, 8407.90.9060, 8433.11.0050, 8433.11.0060, and 8424.30.9000) and issue quantity and value questionnaires to select respondents.¹⁰ Chongqing Zongshen argued that Commerce should only rely on the HTSUS subheading for finished engines and also noted that its entries during the POI came in under the name of an affiliate.¹¹

On April 27, 2020, Commerce selected Chongqing Kohler Yinxiang Ltd. and Chongqing Zong Shen Motorcycle Corp. (Zong Shen Motorcycle) as the mandatory respondents based on the CBP data for the HTSUS subheading for finished engines.¹²

³ *Id.*, 85 FR at 20667.

⁴ See Memorandum, “Antidumping and Countervailing Duty Investigations of Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People’s Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination,” dated concurrently with this notice (Preliminary Scope Decision Memorandum).

⁵ See Volume I of the Petition at Exhibit I-9.

⁶ See Memorandum, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection,” dated March 31, 2020.

⁷ See *Initiation Notice*, 85 FR at 20669.

⁸ See Petitioner’s Letter, “Certain Vertical Shaft Engines Between 99cc and 225cc, and Parts Thereof from China: Petitioner’s Comments on CBP Data,” dated April 16, 2020 (Petitioner’s Respondent Selection Comments); see also Kohler Co.’s Letter, “Certain Vertical Shaft Engines Between 99cc and 225 from the People’s Republic of China: Comments on U.S. Customs and Border Protection Data,” dated April 17, 2020 (Kohler Co.’s CBP Comments); and Chongqing Zongshen’s Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China; CVD Investigation; Chongqing Zongshen Comments on CBP Data,” dated April 17, 2020 (Chongqing Zongshen’s CBP Comments).

⁹ See Petitioner’s Respondent Selection Comments at 2.

¹⁰ See Kohler Co.’s CBP Comments at 2-4.

¹¹ See Chongqing Zongshen’s CBP Comments at 1-2.

¹² See Memorandum, “Countervailing Duty Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Respondent Selection,” dated April 27, 2020.

C. Questionnaires and Responses

On April 28, 2020, Commerce issued the questionnaire to the Government of China (GOC).¹³ On May 19, 2020, we received a timely response to the “affiliated companies” section of the questionnaire from Chongqing Kohler Engines Ltd. (Chongqing Kohler).¹⁴ On the same day, we received a timely response to the same section of the questionnaire from Chongqing Zongshen and Chongqing Zongshen Automobile Industry Co., Ltd. (Chongqing Automobile).¹⁵

In May and June 2020, we issued supplemental questionnaires to Chongqing Kohler and Chongqing Zongshen regarding their “affiliated companies” responses; they provided timely responses in June 2020.¹⁶

In June 2020, we received a timely response from the GOC to the full initial questionnaire,¹⁷ as well as timely responses from Chongqing Kohler¹⁸ and Chongqing Zongshen¹⁹ to the remainder of their respective initial questionnaires. In July 2020, we issued supplemental questionnaires to Chongqing Kohler, Chongqing Zongshen, and the GOC. We received timely responses to these supplemental questionnaires in August 2020.²⁰ On July 8, 2020, petitioner filed a timely new subsidy allegation.²¹

We intend to issue supplemental questionnaires to resolve certain issues involving Chongqing Kohler’s and Chongqing Zongshen’s reporting of policy loans and other subsidies.

As appropriate, we intend to verify the information submitted by Chongqing Kohler and Chongqing Zongshen and will consider it for purposes of the final determination.

¹³ See Commerce’s Letter, “Countervailing Duty Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Countervailing Duty Questionnaire,” dated April 28, 2020 (Initial Questionnaire).

¹⁴ See Chongqing Kohler’s May 19, 2020 Affiliation Response (Chongqing Kohler’s May 19, 2020 AFFR). In its affiliation response, Chongqing Kohler stated that Chongqing Kohler Yinxiang Ltd.’s name changed to Chongqing Kohler Engines following an equity transfer in May 2014.

¹⁵ See Chongqing Zongshen’s May 19, 2020 AFFR. In its affiliation response, Chongqing Zongshen stated that: (1) the correct English name for Zong Shen Motorcycle is Chongqing Automobile; (2) Chongqing Automobile neither manufactured nor exported subject merchandise to the United States during the POI; and (3) because the shipments in the CBP data under the name Zong Shen Motorcycle were actually shipments made by Chongqing Zongshen, Chongqing Zongshen would be responding to the questionnaire. See Chongqing Zongshen’s May 19, 2020 AFFR at 1; see also “Attribution of Subsidies,” below, for further information.

¹⁶ See Chongqing Kohler’s June 18, 2020 Supplemental Affiliation Response; see also Chongqing Zongshen’s June 22, 2020 Supplemental Affiliation Response; Chongqing Zongshen’s June 22, 2020 Second Supplemental Affiliation Response; and Chongqing Zongshen’s August 3, 2020 Third Supplemental Affiliation Response.

¹⁷ See GOC’s June 18, 2020 Initial Questionnaire Response (GOC June 18, 2020 IQR).

¹⁸ See Chongqing Kohler’s June 18, 2020 Initial Questionnaire Response (Chongqing Kohler June 18, 2020 IQR).

¹⁹ See Chongqing Zongshen’s June 22, 2020 Initial Questionnaire Response (Chongqing Zongshen June 22, 2020 IQR).

²⁰ See Chongqing Kohler’s August 3, 2020 Supplemental Questionnaire Response (Chongqing Kohler August 3, 2020 SQR); Chongqing Zongshen’s August 3, 2020 Supplemental Questionnaire Response (Chongqing Zongshen August 3, 2020 SQR); and GOC’s August 3, 2020 Supplemental Questionnaire Response (GOC August 3, 2020 SQR).

²¹ See Petitioner’s Letter, “Certain Vertical Shaft Engines Between 99cc and 225cc, and Parts Thereof, from China: Petitioner’s New Subsidy Allegation,” dated July 8, 2020.

D. Potential Benchmark Data

On July 20, 2020, the petitioner and Chongqing Zongshen submitted data for Commerce to consider using as benchmarks in the less than adequate remuneration (LTAR) and loan program subsidy rate calculations.²²

E. Postponement of the Preliminary Determination

On May 12, 2020, the petitioner requested that Commerce postpone the preliminary determination of this investigation.²³ Commerce granted the petitioner's request and, on May 20, 2020, we postponed the date of the preliminary determination until August 17, 2020, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).²⁴

F. Period of Investigation

The POI is January 1, 2019 through December 31, 2019.

G. Alignment

On August 4, 2020, the petitioner requested that Commerce align the date of the CVD final determination with that of the companion AD final determination. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioner's request,²⁵ we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of small vertical engines from China. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is scheduled to be issued no later than December 28, 2020, unless postponed.

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is small vertical engines from China. Based on our analysis of certain scope comments, we are preliminarily modifying the scope language as it appeared in the *Initiation Notice*.²⁶ For a full description of the scope of this investigation, see the *Federal Register* notice accompanying this memorandum at Appendix I.

²² See Petitioner's Letter, "Certain Vertical Shaft Engines Between 99cc and 225cc, and Parts Thereof, from China: Petitioner's Submission of Benchmark Information," dated July 20, 2020 (Petitioner's Benchmark Submission); see also Chongqing Zongshen's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China: CVD Investigation; Chongqing Zongshen Benchmark Submission," dated July 20, 2020 (Chongqing Zongshen's Benchmark Submission).

²³ See Petitioner's Letter, "Certain Vertical Shaft Engines Between 99cc and 225cc, and Parts Thereof, from China: Request to Postpone Preliminary Determination," dated May 12, 2020.

²⁴ See *Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 85 FR 30683 (May 20, 2020).

²⁵ See Petitioner's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Petitioner's Request for Alignment of the Final Countervailing Duty and Antidumping Duty Final Determinations," dated August 4, 2020.

²⁶ See Preliminary Scope Decision Memorandum.

IV. 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 May 4, 2020, the ITC determined that there is a reasonable indication that an industry in the United States is threatened with injury by reason of imports of small vertical engines from China.²⁷

V. DIVERSIFICATION OF CHINA’S ECONOMY

On June 30, 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 of Determining Specificity of a Domestic Subsidy for Countervailing Duty (CVD) Purposes” dated September 13, 2018.²⁸ This information reflects a wide diversification of economic activities in China across 19 industry groups. The industrial sector in China alone is comprised of 37 listed industries and economic activities, indicating the diversification of China’s economy.

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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

²⁷ See *Small Vertical Shaft Engines from China*, 85 FR 27243 (May 7, 2020).

²⁸ See Memorandum, “The Extent of Diversification of Economic Activities in the People’s Republic of China (China) for the Purpose of Determining Specificity of a Domestic Subsidy for Countervailing Duty (CVD) Purposes,” dated June 30, 2020.

manner.”²⁹ 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.”³⁰

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.”³¹ It is Commerce’s practice to consider information to be corroborated if it has probative value.³² In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.³³ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.³⁴

Finally, under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.³⁵

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

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

GOC – Whether Certain Input Producers are “Authorities”

As discussed below under “Programs Found to Be Countervailable,” Commerce examined whether the GOC provided unwrought aluminum for LTAR to Chongqing Kohler and Chongqing Zongshen. We asked the GOC to provide information regarding the specific companies that produced unwrought aluminum which Chongqing Zongshen purchased during the POI. Specifically, we sought information from the GOC which would allow us to analyze

²⁹ 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), and accompanying IDM at 7; 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).

³⁰ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. I at 870 (1994).

³¹ See, e.g., SAA at 870.

³² *Id.* at 870.

³³ *Id.* at 869.

³⁴ *Id.* at 869-870.

³⁵ See section 776(d)(3) of the Act.

whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.³⁶ Moreover, where a respondent purchases an input from a trading company or non-producing supplier, Commerce has determined in prior CVD proceedings that a subsidy is conferred if the producer of the input is an “authority” within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input is for LTAR.³⁷

In Commerce’s Initial Questionnaire, we asked the GOC to respond to the Input Producer Appendix for each company that produced the unwrought aluminum purchased by the respondents. With respect to the producers that the GOC identified as majority government-owned, Commerce requested that the GOC provide the articles of incorporation and capital verification reports. Instead, the GOC provided partial information (*i.e.*, basic registration and shareholder structure). The GOC did not provide the articles of incorporation and capital verification reports for any of the majority government-owned enterprises.³⁸

As explained in the Public Bodies Memorandum,³⁹ record evidence demonstrates that producers in China that are majority-owned by the government possess, exercise, or are vested with, governmental authority.⁴⁰ Record evidence demonstrates that the GOC exercises meaningful control over such entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.⁴¹ Therefore, in light of our prior findings and the GOC’s failure to provide rebuttal information to the contrary, we determine that these majority government-owned enterprises are “authorities” within the meaning of section 771(5)(B) of the Act.

With respect to the producers that were reported as being non-majority government-owned, while the GOC provided basic ownership structure information, the GOC did not provide other relevant documentation requested by Commerce, including company by-laws, annual reports, tax registration documents, and articles of association.⁴² Moreover, in response to Commerce’s request for information concerning the involvement of the Chinese Communist Party (CCP) in the management and operation of the producers, the GOC stated that it could not obtain the requested information.⁴³

Such information is necessary to our determination of whether the input producers are authorities within the meaning of section 771(5)(B) of the Act. Therefore, we determine that necessary information is not available on the record, and that the GOC withheld information regarding the second group of producers.⁴⁴ Accordingly, Commerce must rely on “facts otherwise available”

³⁶ See Initial Questionnaire at 11-12.

³⁷ See, *e.g.*, *Circular Welded Carbon Quality Steel Pipe from the Peoples’ Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying IDM at 9-12; see also *Certain Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying IDM at 14-16.

³⁸ See GOC June 18, 2020 IQR at 68-69.

³⁹ See Memorandum, “Public Bodies Analysis Memo,” dated July 30, 2020 (Public Bodies Memo).

⁴⁰ *Id.* at 35-36 and sources cited therein.

⁴¹ *Id.*

⁴² See GOC June 18, 2020 IQR at 68, and Exhibits II.E1.1 and II.E1.2.

⁴³ *Id.* at 79-81.

⁴⁴ See sections 776(a)(1) and (a)(2)(A) of the Act.

in reaching a determination. Furthermore, we find that the GOC failed to cooperate in complying with requests for information.⁴⁵ Consequently, we find that an adverse inference is warranted in the application of facts available.⁴⁶ As AFA, we preliminarily determine that the non-government-owned producers are “authorities” within the meaning of section 771(5)(B) of the Act.

GOC – Whether the Provision of Unwrought Aluminum is Specific

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

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

Commerce requests such information for purposes of its *de facto* specificity analysis. The GOC responded simply that “{t}here are a vast number of users for unwrought aluminum and the type of consumers that purchase unwrought aluminum is highly varied within the economy.”⁴⁷ The GOC provided no data or supporting documentation, indicating that “sales volumes by industrial sectors” are not collected by its statistical agency.⁴⁸

Therefore, consistent with past proceedings,⁴⁹ we preliminarily determine that necessary information is not available on the record and that the GOC has withheld information that was requested of it, and, thus, that Commerce must rely on “facts available” in making our preliminary determination, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we preliminarily find that the GOC’s provision of unwrought aluminum is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

⁴⁵ See sections 776(a) and (b) of the Act.

⁴⁶ See section 776(b) of the Act.

⁴⁷ See GOC June 18, 2020 IQR at 92.

⁴⁸ *Id.* at 92-93.

⁴⁹ See e.g., *Utility Scale Wind Towers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from China*), and accompanying IDM at Comment 13.

GOC – Whether the Unwrought Aluminum Market is Distorted

Commerce asked that the GOC provide information concerning the unwrought aluminum industry in China for the POI. Specifically, we requested that the GOC provide the following information:

- a) The total number of producers.
- b) The total volume and value of Chinese domestic consumption of {input} and the total volume and value of Chinese domestic production of {input}.
- c) The percentage of domestic consumption accounted for by domestic production.
- d) The total volume and value of imports of {input}.
- e) The percentage of total volume and (separately) value of domestic production that is accounted for by companies in which the Government maintains a majority ownership or a controlling management interest, either directly or through other Government entities. Please also provide a list of the companies that meet these criteria.⁵⁰

Commerce requested such information to determine whether the GOC is the predominant provider of unwrought aluminum in China and whether its significant presence in the market distorts all transaction prices. The GOC claimed that the National Bureau of Statistics does not collect production data specific to unwrought aluminum, but instead provided us with production data for primary aluminum, the statistical category the National Bureau of Statistics uses, which is closest to unwrought aluminum.⁵¹ For the purposes of this preliminary determination, we used the GOC's primary aluminum production figures as a proxy for unwrought aluminum. For import and export data for unwrought aluminum, the GOC provided data from China Nonferrous Metals Industrial Association.⁵²

The information provided by the GOC regarding primary aluminum indicates that China's domestic production amounted to 100.82 percent of apparent domestic consumption in 2019, while imports accounted for a relatively insignificant 0.82 percent.⁵³ Further, the information provided by the GOC shows that majority state-owned enterprises accounted for 44.37 percent of domestic consumption of primary aluminum in 2019, while they previously accounted for 39.71 percent and 42.49 percent in 2017 and 2018, respectively;⁵⁴ thus, this data indicates an upward trend in the share of the consumption of primary aluminum by state-owned enterprises over the three years.

To analyze the GOC's calculation of the market share percentages identified above, we asked the GOC several questions regarding companies producing unwrought aluminum in which the GOC claims it maintains less than a controlling ownership or management interest. Specifically, we

⁵⁰ See Initial Questionnaire at 9.

⁵¹ See GOC June 18, 2020 IQR at 85.

⁵² See GOC's Letter, "GOC Resubmission of Pages 86 and 87 of Initial Questionnaire Response in the Countervailing Duty Investigation on Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof, from the People's Republic of China (C-570-125)," dated August 7, 2020 at Attachment 1.

⁵³ *Id.*

⁵⁴ *Id.*

requested information on the percentages of total volume and value of domestic production, separately, that is accounted for by these companies, a list of the names of these companies, and a detailed explanation of how it was determined that the GOC has less than a controlling ownership or management interest in such companies, including identification of the information sources relied upon to make this assessment. In its original questionnaire response, the GOC only responded that it does not maintain the requested information, but provided no additional explanation and proposed no alternative sources for providing the information.⁵⁵ Given the GOC's insufficient response, we issued a supplemental questionnaire to the GOC reiterating our request for such industry-specific information. However, the GOC again failed to identify, and provide information regarding, the companies in the unwrought aluminum industry for which the GOC claims to have less than a majority ownership or management interest, again stating that it does not possess this information.⁵⁶ As a result, necessary information to demonstrate how the GOC determined its market share percentage is not on the record.

In a previous proceeding, Commerce was able to confirm at verification that the GOC maintains two databases at the State Administration of Industry and Commerce. One of these databases is the business registration database, showing the most up-to-date company information; a second system, "ARCHIVE," houses electronic copies of documents such as business licenses, annual reports, capital verification reports, *etc.*⁵⁷ Therefore, we preliminarily find that the GOC has an electronic system available to gather the industry-specific information Commerce requested, including the GOC's minority ownership interests in companies producing unwrought aluminum.

Further, the GOC refused to meaningfully respond to our request for information on laws, plans, and policies specific to pricing, production, cross-border trades, and development capacity of unwrought aluminum.⁵⁸ We requested such information to inform our analysis of the degree of the GOC's presence in the markets and whether such presence results in the distortion of prices. Accordingly, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information necessary for our analysis of that input market in China.

Consequently, we preliminarily determine, in accordance with section 776(a)(2)(A) of the Act, that the GOC withheld necessary information that was requested of it, and, thus, that Commerce must rely on facts available in this preliminary determination. Moreover, in accordance with section 776(b) of the Act, 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. Accordingly, an adverse inference is warranted in the application of facts available.⁵⁹ As AFA, we preliminarily find that the GOC's involvement in the unwrought aluminum industry, through enterprises in which it owns an interest, is significant such that prices from actual transactions are distorted and unreliable for use as "tier one" benchmarks.⁶⁰ Therefore, we preliminarily find that the use of

⁵⁵ See GOC June 18, 2020 IQR at 89.

⁵⁶ See GOC August 3, 2020 SQR at 5.

⁵⁷ See, e.g., *Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 11177 (March 14, 2018), and accompanying IDM at 10-11.

⁵⁸ See GOC June 18, 2020 IQR at 89-90.

⁵⁹ See section 776(b) of the Act.

⁶⁰ See *Preamble to Countervailing Duty Regulations*, 63 FR 65348, 65377 (November 25, 1998) (*CVD Preamble*).

external benchmark (*i.e.*, “tier two” (world market) prices as described under 19 CFR 351.511(a)(2)(ii)) is warranted for calculating the benefit for the provision of unwrought aluminum for LTAR.

For details regarding the remaining elements of our analysis, *see* the “Provision of Unwrought Aluminum for LTAR,” section, below.

C. Application of AFA: Provision of Electricity for LTAR

As discussed below under the section “Programs Preliminarily Determined to be Countervailable,” Commerce is investigating whether the GOC provided electricity for LTAR. The GOC did not provide complete responses to Commerce’s questions regarding the alleged provision of electricity for LTAR. These questions requested information needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act.

In order for Commerce to analyze the financial contribution and specificity of this program, we requested that the GOC provide information regarding the roles of provinces, the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC in electricity price adjustments. Specifically, Commerce requested, *inter alia*: Provincial Price Proposals for the 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.⁶¹ Commerce requested this information to determine the process by which electricity prices and price adjustments are derived, identify entities that manage and impact price adjustment processes, and examine cost elements included in the derivation of electricity prices in effect throughout China during the POI.

In its initial questionnaire response, the GOC stated that, since January 1, 2016, “all of the provincial governments have been given authority to prepare and publish electricity tariff rates for their own jurisdictions.”⁶² Therefore, according to the GOC, Provincial Price Proposals no longer exist and did not exist during the POI.⁶³ Consequently, according to the GOC, the

⁶¹ *See* Initial Questionnaire at Section II (Electricity Appendix).

⁶² *See* GOC June 18, 2020 IQR at 108.

⁶³ *Id.* at 111.

“NDRC’s role in regulating provincial electricity pricing is at the macro level; however, the NDRC no longer determines the specific electricity sales prices.”⁶⁴

Commerce preliminarily determines that the record indicates the NDRC continues to play a significant and determinative role in setting electricity prices, and that the GOC’s failure to provide detailed information concerning the establishment of varying prices across provinces by the NDRC and the provinces constitutes a lack of cooperation. Because of this failure to cooperate fully, Commerce lacks information that would allow it to determine whether the varying provincial prices established under the NDRC-administered program are the result of market considerations or the result of a design to subsidize certain regions or industries. In particular, Notice 748 is based upon consultations between the NDRC and the “National Energy Administration” or “State Energy Bureau” (depending on translation).⁶⁵ Article 1 contained therein stipulates a lowering of the coal-fired power grid benchmark price of “about 2 cents” per kilowatt hour.⁶⁶ Annex 1 of Notice 748 applies this adjustment in varying amounts to the provinces. Article 2 indicates that the reduction shall be “mainly used for reducing the price of industrial and commercial electricity.”⁶⁷ Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity.⁶⁸ 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.”⁶⁹

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.⁷⁰ 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.⁷¹ Instead, both notices indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices by mandating price adjustment targets.

Notice 748 and Notice 3105, issued by the NDRC, direct provinces to reduce prices by amounts specific to provinces. They neither explicitly eliminate Provincial Price Proposals nor define distinctions in price-setting roles between national and provincial pricing authorities. The GOC failed to explain fully the roles of each level of government and the nature of the cooperation between the NDRC and the provinces in deriving electricity price adjustments. The information provided by the GOC indicates that, despite its claim that the responsibility for setting prices within each province has moved from the NDRC to the provincial governments, the NDRC continues to play a major role in setting and adjusting prices. Furthermore, the GOC failed to

⁶⁴ *Id.* at 109.

⁶⁵ *Id.* at Exhibit II.E.2.10.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at Exhibit II.E2.4.

⁷¹ *Id.* at Exhibits II.E2.4 and II.E.2.10.

explain both the derivation of price reductions required of the provinces by the NDRC and the derivation of the provincial prices themselves. Consequently, we preliminarily determine that the GOC withheld information that was requested of it for our analysis of financial contribution and specificity and, thus, Commerce must rely on “facts available” in making our preliminary determination.⁷² 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.⁷³ 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.⁷⁴ 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. For details regarding the remainder of our analysis, *see* the “Provision of Electricity for LTAR” section, below.

D. Application of AFA: Export Buyer’s Credit Program

As discussed below under the section “Programs Preliminarily Found 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 Credits program because the GOC did not provide the requested information needed to allow Commerce to fully analyze this program. In its questionnaire responses, the GOC claimed that none of the U.S. customers of the respondent companies used export buyer’s credits from the China Export-Import Bank (Ex-Im Bank) during the POI.⁷⁵ In response to our request that it provide the 2013 program revisions, the GOC stated, “The Export-Import Bank of China (the ‘Ex-Im Bank’) has confirmed to the GOC that its 2013 ‘Administrative Measure’ are internal to the bank, non-public, and not available for release.”⁷⁶

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, “{b}ased on the information available to the GOC at this stage, the GOC confirms that none of the Respondents’ customers applied for, used, or benefited from the alleged program during the POI. Thus, a list of all partner/correspondent banks in the entire world that are involved in the disbursement of funds under this program is both an overly broad question and an unnecessary one.”⁷⁷ In a supplemental questionnaire, we again requested that the GOC provide a list of partner/correspondent banks involved in the program. The GOC reiterated its response.⁷⁸ Thus, in its supplemental questionnaire response, the GOC refused to provide the requested

⁷² See section 776(a)(2)(A) of the Act.

⁷³ See section 776(b) of the Act.

⁷⁴ See section 776(b)(4) of the Act.

⁷⁵ See GOC June 18, 2020 IQR at 37.

⁷⁶ See GOC August 3, 2020 SQR at 2.

⁷⁷ See GOC June 18, 2020 IQR at 39.

⁷⁸ See GOC August 3, 2020 SQR at 2.

information or any information concerning the 2013 program revisions and the partner/correspondent banks, which is necessary for Commerce to understand how the program operates and for Commerce to be able to verify claims of non-usage. Absent this information, Commerce has no assurance of its ability to differentiate ordinary commercial lending from GOC-supported credit in the books and records of the respondents' U.S. customers, or to differentiate disbursements of funds to the respondents themselves pursuant to ordinary lending from disbursements pursuant to GOC-supported credit. Additionally, Commerce would have no guidance to follow in identifying which banks or loans to scrutinize in attempting to verify non-use. Attempting to verify non-use of the Export Buyer's Credit Program without knowing where to look, or what to look for, would be unlikely to yield accurate or meaningful results. Therefore, by withholding information concerning the operation of this program, the GOC has impeded not only Commerce's ability to determine whether the provision of the credits constitutes a financial contribution and whether such credits are specific, but also Commerce's ability to reach a verifiable conclusion regarding usage of the program.

Pursuant to sections 776(a)(2)(A) and (a)(2)(C) of the Act, when an interested party withholds information requested by Commerce and/or significantly impedes a proceeding, Commerce uses facts otherwise available to reach a determination. Because the GOC withheld the requested information described above, thereby impeding this proceeding, we preliminarily determine that the use of facts available is appropriate. Furthermore, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding information that was within its control, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted. Consequently, as AFA, we find that this program was used and provided a benefit during the POI, notwithstanding the respondents' claims of non-use.

Under section 776(d) of the Act, Commerce may use as AFA a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.⁷⁹

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 *Coated Paper from China*, as the rate for these companies.⁸⁰ 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.

⁷⁹ See section 776(d)(3) of the Act.

⁸⁰ 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, 70202 (November 17, 2010) (identifying a revised *ad valorem* subsidy rate of 10.54 percent under "Preferential Lending to the Coated Paper Industry").

E. Application of AFA: Provision of “Other Subsidies”

Chongqing Kohler and Chongqing Zongshen reported in their initial questionnaire responses that they received certain “Other Subsidies” during the POI.⁸¹ The GOC did not provide information regarding these “Other Subsidies” in its initial questionnaire responses, stating that sufficient evidence did not exist in regard to these self-reported programs, and that therefore any questions concerning these “Other Subsidies” were premature.⁸² Therefore, we issued a supplemental questionnaire requesting that the GOC provide full questionnaire responses regarding the “Other Subsidies” reported by the respondents for which we could estimate a measurable benefit. However, the GOC did not provide the requested information but instead simply reiterated its position from its initial questionnaire response.⁸³

Thus, we preliminarily determine that necessary information is not available on the record and the GOC has withheld information that was requested of it. As a result, we must rely on “facts available” in making our preliminary determination, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b)(1) of the Act. In applying AFA, we find that each of the “Other Subsidies” reported by Chongqing Kohler and Chongqing Zongshen constitute a financial contribution, pursuant to section 771(5)(D) of the Act, and are specific, within the meaning of section 771(5A) of the Act. We determined the benefit for each of these “Other Subsidies” by dividing the amount of any measurable grant applicable to the POI by the appropriate sales denominator for Chongqing Kohler or Chongqing Zongshen. For details regarding the remainder of our analysis, *see* “Other Subsidies,” below.

VII. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.⁸⁴ Commerce finds the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service’s Depreciation Range System, as revised.⁸⁵ Commerce notified the respondents of the 10-year AUL period in the Initial Questionnaire and requested data accordingly. No party in this proceeding has disputed this allocation period.

Furthermore, for non-recurring subsidies, we have 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

⁸¹ *See* Chongqing Kohler June 18, 2020 IQR at 30-31 and Exhibits CQK-APP, KCI-CAPP, and EWC-APP; *see also* Chongqing Zongshen June 22, 2020 IQR at Volume I page 52, Volume VII page 43, and Exhibits I-28, IV-17, and VII-24.

⁸² *See* GOC June 18, 2020 IQR at 121-122.

⁸³ *See* GOC August 3, 2020 SQR at 10; *see also* GOC June 18, 2020 IQR at 121-122.

⁸⁴ *See* 19 CFR 351.524(b).

⁸⁵ *See* U.S. Internal Revenue Service Publication 946 (2016), “How to Depreciate Property,” at Table B-2: Table of Class Lives and Recovery Periods.

given program in a particular year by the relevant sales value (e.g., total sales or export sales) for the year in which the assistance was approved. If the amount of the 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 period.

B. Attribution of Subsidies

Cross-Ownership

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of Commerce's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *CVD Preamble*⁸⁶ to Commerce's regulations further clarifies Commerce's cross-ownership standard. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.⁸⁷

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) has upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.⁸⁸

⁸⁶ See *CVD Preamble*, 63 FR 65348.

⁸⁷ *Id.* at 65401.

⁸⁸ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

Chongqing Kohler

Chongqing Kohler responded to Commerce's questionnaire on behalf of itself and the following affiliated company:⁸⁹

- Kohler (China) Investment Co. Ltd. (KCI)

We preliminarily find that Chongqing Kohler, the producer of subject merchandise, is cross-owned with KCI within the meaning of 19 CFR 351.525(b)(6)(vi), by virtue of KCI's majority ownership of Chongqing Kohler. In accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Chongqing Kohler to its own sales. Moreover, in accordance with 19 CFR 351.525(b)(6)(iii), we are preliminarily attributing subsidies received by KCI to its own sales and those of Chongqing Kohler.

Further, Chongqing Kohler identified other companies with which it was affiliated during the POI.⁹⁰ However, Chongqing Kohler stated that these affiliates were either not involved in the production or sale of subject merchandise or did not use any of the subsidy programs identified in Commerce's CVD questionnaire.⁹¹ Therefore, we preliminarily determine that these affiliated companies do not meet any of the conditions set forth in 19 CFR 351.525(b)(6)(ii)-(iv). As a result, we have not included them in our subsidy analysis.

Chongqing Zongshen

Chongqing Zongshen responded to Commerce's questionnaire on behalf of itself and the following affiliated companies:⁹²

- Chongqing Zongshen Power Machinery Co., Ltd. (Zongshen Power)
- Chongqing Zongshen High Speed Boat Development Co., Ltd. (Zongshen High Speed)
- Zong Shen Industrial Group (Zongshen Group)
- Chongqing Zongshen Automobile Air Intake System Manufacturing Co., Ltd. (Zongshen Air)
- Chongqing Zong Shen Electrical Appliance Co., Ltd. (Zongshen Appliance)
- Chongqing Dajiang Power Equipment Co., Ltd. (Dajiang)

Chongqing Zongshen identified itself as the producer and exporter of subject merchandise to the United States during the POI. According to Chongqing Zongshen, its immediate parent company with 100 percent ownership is Zongshen Power.⁹³ Chongqing Zongshen identified the holding companies Zongshen High Speed and Zongshen Group as additional cross-owned affiliates. According to Chongqing Zongshen, Zongshen High Speed owns 20 percent of Zongshen Power, and Zongshen Group owns 80 percent of Zongshen High Speed. In addition, Chongqing

⁸⁹ See Chongqing Kohler's May 19, 2020 AFFR at Exhibit AFF-1.

⁹⁰ *Id.* at 2 and Exhibit AFF-2.

⁹¹ *Id.*

⁹² See Chongqing Zongshen's May 19, 2020 AFFR at 4-5.

⁹³ *Id.* at 4.

Zongshen stated that it, Zongshen Power, Zongshen High Speed, and Zongshen Group have board members, including a Board Chair, and individual shareholders in common.⁹⁴ Thus, we preliminarily determine that, pursuant to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between Chongqing Zongshen, Zongshen Power, Zongshen High Speed, and Zongshen Group, and that subsidies received by the latter three companies are attributable to Chongqing Zongshen under 19 CFR 351.525(b)(6)(iii).

Moreover, Chongqing Zongshen identified Dajiang as a sister company also wholly owned by Chongqing Zongshen's immediate parent, Zongshen Power, thus, cross-owned with Chongqing Zongshen within the meaning of 19 CFR 351.525(b)(6)(vi).⁹⁵ Like Chongqing Zongshen, Dajiang also produces and exports subject merchandise, thus we are preliminarily attributing subsidies received by either Dajiang or Chongqing Zongshen to the combined sales of the two companies as cross-owned producers of subject merchandise under 19 CFR 351.525(b)(6)(ii).

Chongqing Zongshen also identified Zongshen Air and Zongshen Appliance as cross-owned affiliates and suppliers of inputs used in the production of small vertical engines.⁹⁶ Based on record information,⁹⁷ we preliminarily determine that, pursuant to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between Chongqing Zongshen, Zongshen Air, and Zongshen Appliance, and that subsidies received by either Zongshen Air or Zongshen Appliance are attributable to the combined sales of either company, as applicable, and of Chongqing Zongshen and Dajiang under 19 CFR 351.525(b)(6)(iv).

Finally, Chongqing Zongshen identified other companies with which it was affiliated during the POI.⁹⁸ However, Chongqing Zongshen stated that these affiliates were either not involved in the production or sale of subject merchandise or did not use any of the subsidy programs identified in Commerce's CVD questionnaire.⁹⁹ Therefore, we preliminarily determine that these affiliated companies do not meet any of the conditions set forth in 19 CFR 351.525(b)(6)(ii)-(iv). As a result, we have not included them in our subsidy analysis.

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total combined sales, less intercompany sales, as the denominator, as described above. Where the program has been found to be contingent upon export activities, we used the recipient's total combined export sales as the denominator. All sales used in our net subsidy rate calculations are net of inter-company sales. For a further

⁹⁴ *Id.*

⁹⁵ *Id.* at 5.

⁹⁶ However, Chongqing Zongshen stated that, as of February 2019, Zongshen Appliance was no longer affiliated with Chongqing Zongshen or its other cross-owned affiliates. *Id.* at 5.

⁹⁷ *Id.*

⁹⁸ See Chongqing Zongshen May 19, 2020 AFFR at 5 and Exhibit 1.

⁹⁹ *Id.*

discussion of the denominators used, *see* Chongqing Kohler Preliminary Calculation Memorandum and Chongqing Zongshen Preliminary Calculation Memorandum.¹⁰⁰

VIII. BENCHMARKS AND INTEREST RATES

Commerce is investigating loans received by Chongqing Kohler, Chongqing Zongshen and their respective cross-owned affiliates from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.¹⁰¹ The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

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

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, Commerce uses comparable commercial loans reported by the company as a benchmark.¹⁰² 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.”¹⁰³

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.¹⁰⁴ In an analysis memorandum dated July 21, 2017, Commerce conducted a reassessment of the lending system in China.¹⁰⁵ Based on this reassessment, Commerce concluded that, despite reforms to date, the GOC’s role in the system continues to fundamentally distort lending practices in China in terms of risk pricing and resource allocation, precluding the use of interest rates in China for CVD benchmarking or discount rate purposes. Consequently, we preliminarily find that any loans received by the 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

¹⁰⁰ *See* Memoranda, “Countervailing Duty Investigation of Certain Fabricated Structural Steel from China: Preliminary Determination Calculation Memorandum for Chongqing Kohler” (Chongqing Kohler Preliminary Calculation Memorandum); and “Countervailing Duty Investigation of Certain Fabricated Structural Steel from China: Preliminary Determination Calculation Memorandum for Chongqing Zongshen,” (Chongqing Zongshen Preliminary Calculation Memorandum), both dated concurrently with this memorandum.

¹⁰¹ *See* 19 CFR 351.524(b)(1).

¹⁰² *See* 19 CFR 351.505(a)(3)(i).

¹⁰³ *See* 19 CFR 351.505(a)(3)(ii).

¹⁰⁴ *See Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*), and accompanying IDM at Comment 10.

¹⁰⁵ *See* Memorandum, “Analysis of China’s Financial System,” dated June 30, 2020.

selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with Commerce's practice.¹⁰⁶

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*.¹⁰⁷ 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.¹⁰⁸ Beginning in 2010, however, China fell within the upper-middle income category and remained there from 2011 to 2017.¹⁰⁹ 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.¹¹⁰

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.¹¹¹ For 2010, however, the regression does not yield that outcome for China's income group.¹¹² 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

¹⁰⁶ 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).

¹⁰⁷ See *CFS from China* IDM at Comment 10; see also *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*), and accompanying IDM at 8-10.

¹⁰⁸ See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups>; see also Memorandum, "Loan Interest Rate Benchmarks," dated June 30, 2020 (Interest Rate Benchmark Memorandum).

¹⁰⁹ See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups>.

¹¹⁰ 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 13-16, unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013).

¹¹¹ See Interest Rate Benchmark Memorandum.

¹¹² *Id.*

2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank’s upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund (IMF), and they are included in that agency’s International Financial Statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as “upper middle income” by the World Bank for 2010-2017 and “lower middle income” for 2001-2009.¹¹³ 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 removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year Commerce calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.¹¹⁴ Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.¹¹⁵

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.¹¹⁶

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.¹¹⁷ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.¹¹⁸

The resulting inflation-adjusted benchmark lending rates are provided in Chongqing Zongshen’s and Chongqing Kohler’s respective Preliminary Calculation Memoranda.¹¹⁹

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ See, e.g., *Thermal Paper from China* IDM at 10.

¹¹⁷ 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.

¹¹⁸ See Interest Rate Benchmark Memorandum.

¹¹⁹ See Chongqing Zongshen Preliminary Calculation Memorandum; see also Chongqing Kohler Preliminary Calculation Memorandum.

B. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the GOC provided non-recurring subsidies.¹²⁰ The interest rate benchmarks and discount rates used in our preliminary calculations are provided in Chongqing Zongshen’s Preliminary Calculation Memorandum.¹²¹

C. Benchmarks for Government Provision of Unwrought Aluminum for LTAR

The GOC reported 86 unwrought aluminum producers in operation during the POI, 49 of which it reported as being state controlled.¹²² According to data provided by the GOC, the producers in which the GOC maintains an ownership or management interest accounted for 44.37 percent of domestic unwrought aluminum production.¹²³ The data provided by the GOC for primary aluminum show that the volume of imports as a percentage of domestic consumption was 0.82 percent,¹²⁴ and that the vast majority of domestic production is consumed domestically. Moreover, the GOC maintained an export tariff of 30 percent on unwrought aluminum during the POI,¹²⁵ thus leading to a surplus for domestic purchasers of the input. Finally, the GOC has identified the aluminum industry for priority development in the Guidance Catalogue as an encouraged industry.¹²⁶ The “Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment” (Decision 40) identifies the Guidance Catalogue as “the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, *etc.*”¹²⁷ The GOC also has plans in place specifically for the aluminum industry, which outline the GOC’s control over the industry,¹²⁸ and various interventions,¹²⁹ as well as for non-ferrous metals in general.¹³⁰ Given the substantial GOC-controlled production, the low level of imports, and the distortive effects of the GOC’s other interventions in the market, we preliminarily find the record evidence supports a conclusion that the market for unwrought aluminum is distorted. To measure the adequacy of remuneration for the provision unwrought aluminum, we are relying on world market prices that would be

¹²⁰ See Chongqing Zongshen Preliminary Calculation Memorandum; *see also* Chongqing Kohler Preliminary Calculation Memorandum; and Interest Rate Benchmark Memorandum.

¹²¹ See Chongqing Zongshen Preliminary Calculation Memorandum.

¹²² See GOC June 18, 2020 IQR at 86.

¹²³ *Id.* at 87. The percentages for 2017 and 2018 are 39.7 and 42.5 percent, respectively.

¹²⁴ *Id.* According to this data, the share of consumption represented by imports in 2017, 2018, and 2019 was insignificant, remaining consistently at less than 1 percent throughout.

¹²⁵ *Id.* at Exhibit II.E1.10.

¹²⁶ *Id.* at Exhibit II B.3 (Article VIII of the “encouraged” category (Non-Ferrous Metal)).

¹²⁷ *Id.* at Exhibit II B.6 (Chapter III).

¹²⁸ See, e.g., Volume III of the Petition at Exhibit III-2 (*Notice of Guidelines on Accelerating the Adjustment of Aluminum Industry Structure*).

¹²⁹ *Id.*

¹³⁰ See, e.g., *Id.* at Exhibit III-3 (*Nonferrous Metal Industry Development Plan (2016-2020)*).

available to purchasers in the country under investigation as the “tier two” benchmark provided for in 19 CFR 351.511(a)(2)(i).¹³¹

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

The petitioner and Chongqing Zongshen submitted the same monthly aluminum world export data from U.N. Comtrade for HTSUS subheadings 7601.10 and 7601.20 as a potential benchmark for unwrought aluminum inputs.¹³²

Both the petitioner and Chongqing Zongshen placed ocean freight rates from Descartes on the record. The petitioner provided the average freight cost for unwrought aluminum from Long Beach, CA to Xingang, China,¹³³ while Chongqing Zongshen provided the monthly freight cost from a variety of cities on both the east and west coast of the United States to several ports in China.¹³⁴ For this preliminary determination, we used the average of the two sets of rates provided.

The petitioner provided inland freight information for shipments from Shanghai and Tianjin to Chongqing from The World Bank’s *Doing Business in China: 2020*.¹³⁵ For this preliminary determination, we used the petitioner’s inland freight estimates because no other party placed inland freight information on the record.

D. Benchmark for Government Provision of Land for LTAR

As explained in detail in previous investigations, Commerce cannot rely on the use of the so-called “tier one” and “tier two” benchmarks, described above, to assess the benefits from the provision of land for LTAR in China. Specifically, in *Sacks from China*, Commerce determined that “Chinese land prices are distorted by the significant government role in the market,” and hence, no usable “tier one” benchmarks exist.¹³⁶ Furthermore, Commerce also found that “tier

¹³¹ See Chongqing Zongshen Preliminary Calculation Memorandum; see also Chongqing Kohler Preliminary Calculation Memorandum.

¹³² See Petitioner’s Benchmark Submission at Benchmark Exhibit 1; see also Chongqing Zongshen’s Benchmark Submission at Exhibit 1.

¹³³ See Petitioner’s Benchmark Submission at Benchmark Exhibit 2.

¹³⁴ See Chongqing Zongshen’s Benchmark Submission at Exhibit 6.

¹³⁵ See Petitioner’s Benchmark Submission at Benchmark Exhibit 4.

¹³⁶ 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*

two” benchmarks (world market prices that would be available to purchasers in China) are not appropriate.¹³⁷

On October 2, 2018, Commerce completed a memorandum analyzing developments in China’s land market since 2007.¹³⁸ The Land Analysis Memorandum was prepared to assess the continued application of Commerce’s land for LTAR benchmark methodology, as established in 2007 in *Sacks from China*.¹³⁹ As discussed in the Land Analysis Memorandum, although reforms in China’s land markets have improved the use-rights of some landholders, such improvements have not been comprehensive, and reforms have been implemented on an *ad hoc* basis.¹⁴⁰ 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.¹⁴¹ 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.¹⁴²

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

In this investigation, Chongqing Zongshen submitted Malaysian Investment Development Authority data and CB Richard Ellis (CBRE) world market data for 2015, 2016, and 2017.¹⁴³ Chongqing Zongshen submitted no information regarding national income levels, population density, and producers’ perceptions that would allow Commerce to determine whether the Malaysian data represents prices for land that is comparable to that which is available to the respondents. Additionally, the CBRE world market data submitted by Chongqing Zongshen is not appropriate because, as noted above, Commerce is not trying to determine a “tier two” world market price for land. We are relying on a “tier three” analysis that involves attempting to measure the value of the input at issue (land in China), which is obviously not a globally traded commodity. No other party submitted benchmark information for land prices.

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

¹³⁷ *Id.*

¹³⁸ See Memorandum, “Land Analysis Memo,” dated June 30, 2020 at Attachment 1 (Land Analysis Memorandum) (Memorandum, “Benchmark Analysis of the Government Provision of Land-Use Rights in China for Countervailing Duty Purposes,” dated October 2, 2018).

¹³⁹ *Id.* at Attachment 1 page 2.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ See Chongqing Zongshen’s Benchmark Submission at Exhibit 4.

Therefore, we are using benchmark information to value land from “Asian Marketview Reports” by CBRE for Thailand for 2010, that we have previously placed on the record.¹⁴⁴ We used this benchmark in the CVD investigations of *Solar Cells from China* and *ITDCs from China*,¹⁴⁵ and more recently in *Racks from China*.¹⁴⁶ 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.¹⁴⁷ We find that these benchmarks are suitable for this preliminary determination, adjusted accordingly for inflation, to account for any countervailable land received by Chongqing Kohler and Chongqing Zongshen during the AUL period of this investigation.¹⁴⁸

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.*). Therefore, we invite parties to submit alternative benchmark data that is consistent with the guidance provided in *Sacks from China* and the Land Analysis Memorandum.¹⁴⁹ Parties will have seven days after the publication of this memorandum to provide information to rebut, clarify, or correct information in the Land Analysis Memorandum.

IX. ANALYSIS OF PROGRAMS

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

¹⁴⁴ See Memorandum, “Asian Marketview Report,” dated June 30, 2020 at Attachment 1.

¹⁴⁵ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012), and accompanying IDM at 6 and Comment 11 (*Solar Cells from China*); 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), and accompanying PDM at 13-14, unchanged in *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination*, 81 FR 75037 (October 28, 2016) (*ITDCs from China*).

¹⁴⁶ See *Certain Steel Racks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 62297 (December 3, 2018), and accompanying PDM at 35-36, unchanged in *Certain Steel Racks and Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 35592 (July 24, 2019) (*Racks from China*).

¹⁴⁷ 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.

¹⁴⁸ See Chongqing Kohler Preliminary Calculation Memorandum; see also Chongqing Zongshen Preliminary Calculation Memorandum.

¹⁴⁹ See Land Analysis Memorandum at Attachment 1 page 30-31.

A. Programs Preliminarily Determined to Be Countervailable

1. Grants

Interest Payment Subsidies

Chongqing Zongshen and its cross-owned affiliate Zongshen Air reported using this program. Chongqing Zongshen reported receiving non-recurring payments from the Chongqing Municipal Commission of Commerce under the program to offset interest expenses it incurred.¹⁵⁰ Chongqing Zongshen also reported that it would have to reapply to receive additional payments.¹⁵¹ Commerce's evaluation of the record indicates that the payments were contingent upon export performance, pursuant to 19 CFR 351.514(a). Consistent with 19 CFR 351.524(c)(1), we are treating the payments received under this program as non-recurring grants. To measure the benefit of the grants allocable to the POI, we first conducted the "0.5 percent test." We divided the total amount approved by export sales during the year of approval. As a result, we found that each grant was greater than 0.5 percent of relevant sales and was properly allocated over the AUL period. To calculate the countervailable subsidy rate, we added together the benefits attributable to the POI, and then divided the benefits by the appropriate sales denominator, as discussed in the "Subsidies Valuation" section, above. On this basis, we preliminarily determine a subsidy rate of 0.09 percent *ad valorem* for Chongqing Zongshen for this program.¹⁵²

2. Loans and Credit

Policy Loans to the Small Vertical Engines Industry

Commerce is examining whether the GOC has encouraged the development of the small vertical engines industry through financial support from SOCBs. Commerce has found that policy lending programs confer countervailable subsidies in previous investigations.¹⁵³

Chongqing Zongshen and its cross-owned affiliates Zongshen Group, Zongshen Power, Zongshen Air, and Dajiang reported having loans that were outstanding during the POI.¹⁵⁴ Chongqing Kohler and its cross-owned affiliate KCI also reported receiving benefits under this program.¹⁵⁵ Commerce preliminarily finds that the loans provide countervailable subsidies under a policy lending program directed at the small vertical engines industry.

¹⁵⁰ See Chongqing Zongshen June 22, 2020 IQR at Volume I pages 15-18.

¹⁵¹ *Id.*

¹⁵² See Chongqing Zongshen Preliminary Calculation Memorandum.

¹⁵³ See, e.g., *Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013), and accompanying IDM at 24-25.

¹⁵⁴ See Chongqing Zongshen June 22, 2020 IQR at Volume I, page 20 and Exhibit I-13, Volume II, page 14 and Exhibit II-10, Volume III, page 17 and Exhibit III-12, Volume IV, page 19 and Exhibit IV-11, and Volume VII, page 19 and Exhibit VII-11.

¹⁵⁵ See Chongqing Kohler's Letter, "Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, from the People's Republic of China: Chongqing Kohler Engines Ltd. and Kohler (China) Investment Co. Ltd. Response to the Department's Bracketing Revision Request Regarding Initial Section II Questionnaire Response," dated August 11, 2020 at Attachment 1.

When examining a policy lending program, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support such objectives or goals. Where such plans or policy directives exist, it is Commerce's practice to find that a policy lending program exists that is *de jure* specific to the targeted industry (or producers that fall under that industry) within the meaning of section 771(5A)(D)(i) of the Act. Once that finding is made, we rely upon the analysis undertaken in *CFS from China* to conclude that national and local government control over the SOCBs renders the loans government financial contributions.¹⁵⁶

Record evidence indicates that financial support is directed specifically toward certain encouraged industries listed in the GOC's Guidance Catalogue. The GOC has identified the aluminum industry for priority development in the Guidance Catalogue, and the development of production technology within it, as encouraged.¹⁵⁷ Moreover, the *Notice of Guidelines on Accelerating the Adjustment of the Aluminum Industry Structure* states that the GOC's aim is to "increase the proportion of high value added processed products" made of aluminum.¹⁵⁸ Small vertical engines are largely the product of aluminum components.¹⁵⁹ The GOC's Decision 40 identifies the Guidance Catalogue as "the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc."¹⁶⁰

The 11th five-year plan calls for strengthened support for industrial policy, especially for high tech industries, stating: "Strengthen and improve industrial policy work, reinforce the unified planning for domestic industry development and for investment introduction, strengthen the cooperation of the policies in credit, land, environmental protection, safety and science and technology with the industrial policy and use economic means to promote the development of industries. Strengthen the support for the weak links of high-tech industries and equipment manufacturing industry, mainly support research and development and foster core competitive power."¹⁶¹

Decision 40 also directs all local, provincial, and municipal governments under the Central Government's control to cooperate closely and intensify the effectiveness of implementing industrial policies. Consistent with the central planning documents, the 11th five-year plan of Chongqing lists upgrading and strengthening the automobile and motorcycle industry as one of its goals.¹⁶² Respondents and their cross-owned companies are producers of automobile and motorcycle components in addition to small vertical engines. Moreover, the 13th five-year plan of Chongqing encourages the production of specific industries such as auto parts manufacturing and advanced manufacturing.¹⁶³

¹⁵⁶ See *CFS from China* IDM at Comment 8.

¹⁵⁷ See GOC June 18, 2020 IQR at Exhibit II B.3 (Article VIII of the "encouraged" category (Non-Ferrous Metal)).

¹⁵⁸ See Volume III of the Petition at 4.

¹⁵⁹ *Id.* at 7.

¹⁶⁰ See GOC June 18, 2020 IQR at Exhibit II B.6, Chapter III, Article 12.

¹⁶¹ *Id.* at Exhibit II B.1, Chapter 47.

¹⁶² *Id.* at Exhibit II B.2.

¹⁶³ See Volume III of the Petition at 19.

Thus, we preliminarily determine that a program exists to provide preferential lending to producers of small vertical engines within the meaning of section 771(5A)(D)(i) of the Act. For Chongqing Zongshen, Chongqing Kohler and their respective cross-owned affiliates, the loans provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.¹⁶⁴ To calculate the benefit from this program, we used the benchmarks discussed under “Benchmarks and Interest Rates,” above.¹⁶⁵ To calculate the net countervailable subsidy rate under this program, we divided the benefit by the appropriate sales denominator, as described in the “Subsidies Valuation” section, above. On this basis, we preliminarily determine a subsidy rate of 5.20 percent *ad valorem* for Chongqing Zongshen and 0.08 for Chongqing Kohler for this program.¹⁶⁶

Export Sellers Credit Program

The petitioner alleges that the Ex-Im Bank provides support to exporters through a variety of means, including export seller’s credits.¹⁶⁷ The GOC provided the “Interim Rules for the Export Seller’s Credit of Export-Import Bank of China,” which states in Article 4 that “{t}he project loan of the seller’s credit on exports refers to the special policy-based loan issued by the Export-Import Bank of China to the exporters for supporting the export of the complete equipment, ships, airplanes, communications satellites and the spare parts.”¹⁶⁸ As part of the application requirements, enterprises must have “{a}pproval files for the import-export operation right.”¹⁶⁹

Chongqing Zongshen’s cross-owned affiliate Zongshen Group reported having outstanding loans from the Ex-Im Bank during the POI which were provided under this program.¹⁷⁰ We find that the loans provided by the Ex-Im Bank under this program constitute financial contributions under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. The loans also provide a benefit under section 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid on its loans and the amount it would have paid on comparable commercial loans. Finally, because the receipt of loans under this program is tied to actual or anticipated exportation or export earnings, this program is specific under sections 771(5A)(A) and (B) of the Act.

To calculate the benefit under this program, we compared the amount of interest Zongshen Group paid on the outstanding loans to the amount of interest the company would have paid on comparable commercial loans. To calculate the benefit from this program, we used the benchmarks discussed under the “Benchmarks and Interest Rates” section, above.¹⁷¹ To calculate the net countervailable subsidy rate under this program, we divided the benefit by the appropriate sales denominator, as described in the “Subsidies Valuation” section above. On this

¹⁶⁴ See section 771(5)(E)(ii) of the Act; and 19 CFR 351.505(a).

¹⁶⁵ See 19 CFR 351.505(c).

¹⁶⁶ See Chongqing Zongshen Preliminary Calculation Memorandum; see also Chongqing Kohler Preliminary Calculation Memorandum.

¹⁶⁷ See Initiation Checklist at 29.

¹⁶⁸ See GOC June 18, 2020 IQR at Exhibit II.B.28.

¹⁶⁹ *Id.*

¹⁷⁰ See Chongqing Zongshen June 22, 2020 IQR at Volume III at 21 and Exhibit III-13.

¹⁷¹ See 19 CFR 351.505(c).

basis, we preliminarily determine a subsidy rate of 1.22 percent *ad valorem* for Chongqing Zongshen for this program.¹⁷²

Export Buyer's Credit Program

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, our preliminary determination regarding the GOC’s provision of export buyer’s credits is based on AFA. As AFA, we determine that the GOC’s provision of exporter buyer’s credits confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. Furthermore, we determine on the basis of AFA that Chongqing Kohler and Chongqing Zongshen benefited from this program during the POI within the meaning of sections 771(5)(E) of the Act. On this basis, we preliminarily determine a subsidy rate of 10.54 percent *ad valorem* for Chongqing Kohler and Chongqing Zongshen for this program.

3. Tax Programs

Income Tax Deduction for Research and Development under the Enterprise Income Tax Law

Under Article 30.1 of the Enterprise Income Tax Law, which became effective January 1, 2008, companies may deduct research and development (R&D) expenses incurred in the development of new technologies, products, or processes from their taxable income. Article 95 of the Implementing Regulations of the Enterprise Income Tax Law of China (Decree 512 of the State Council, 2007) provides that, if eligible research expenditures do not “form part of the intangible assets value,” an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount. Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets’ costs.¹⁷³

We preliminarily determine that this program constitutes a countervailable subsidy. This income tax deduction is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1), respectively. We also find that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises (i.e., those with R&D in eligible high-technology sectors); thus, it is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1).¹⁷⁴ To compute the amount of the tax savings, we

¹⁷² See Chongqing Zongshen Preliminary Calculation Memorandum.

¹⁷³ See GOC June 18, 2020 IQR at 43.

¹⁷⁴ These credits can be for either expensed or capitalized R&D expenditures. If a credit is for capitalized expenditures (e.g., the expenditures were made toward developing an “intangible asset” or patent), however, the 50 percent deduction is amortized across the useful life of the developed asset. Therefore, even credits for capitalized expenditures would be allocated over tax returns filed during a number of years and would thus be recurring. See, e.g., *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 79 FR 33174 (June 10, 2014), and accompanying PDM at 34-35,

calculated the amount of tax the respondents would have paid absent the tax deductions at the standard tax rate of 25 percent (i.e., 25 percent of the tax credit). We then divided the tax savings by the appropriate total sales denominator, as discussed in the “Subsidies Valuation” section, above. On this basis, we preliminarily determine a subsidy rate of 0.07 percent *ad valorem* for Chongqing Kohler and 0.37 percent *ad valorem* for Chongqing Zongshen for this program.

4. Less Than Adequate Remuneration

Provision of Unwrought Aluminum for LTAR

Commerce is examining whether the GOC or other “authorities” within China provided Chongqing Zongshen or its suppliers with unwrought aluminum for LTAR. Chongqing Zongshen’s cross-owned affiliate Zongshen Power reported that it purchased unwrought aluminum during the POI.

The GOC reported that certain producers of unwrought aluminum purchased by respondents are majority-owned by the government. As explained in the Public Bodies Memorandum, majority state-owned enterprises in China possess, exercise, or are vested with governmental authority.¹⁷⁵ As such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that Zongshen Power received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.¹⁷⁶

As explained in the “Use of Facts Otherwise Available and Adverse Inferences” section, above, for other producers of unwrought aluminum, the GOC failed to provide all information requested concerning their ownership and control. Therefore, based on AFA, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that Zongshen Power received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.¹⁷⁷

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

unchanged in *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014).

¹⁷⁵ See Public Bodies Memo.

¹⁷⁶ See *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009), and accompanying IDM at 6.

¹⁷⁷ *Id.*

As discussed above, because Commerce finds that the Chinese domestic market for unwrought aluminum was distorted by government involvement, we selected external benchmark prices, *i.e.*, “tier two” world market prices, consistent with 19 CFR 351.511(a)(2)(ii) and the *CVD Preamble*. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under “tier two,” Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices, we included ocean freight and inland freight that would be incurred to deliver inputs to Zongshen Power’s production facilities. We then added to the benchmark prices the appropriate import duties applicable to imports of unwrought aluminum into China, as provided by the GOC.¹⁷⁸ Additionally, we added the appropriate value-added tax (VAT) rate of 17 percent to the benchmark prices.

We compared these monthly benchmark prices to Zongshen Power’s reported purchase prices for individual domestic transactions, including VAT and delivery charges. Based on this comparison, we preliminarily determine that a benefit exists for Chongqing Zongshen in the amount of the difference between the benchmark prices and the prices its affiliate paid. We divided the total benefit by the appropriate sales denominator, as discussed in the “Subsidies Valuation” section, above. On this basis, we preliminarily determine a subsidy rate of 1.67 percent *ad valorem* for Chongqing Zongshen for this program.¹⁷⁹

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, 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 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 Chongqing Kohler and Chongqing Zongshen. Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a category.

Consistent with our approach in *Wind Towers from China*, we first calculated the respondents’ variable electricity costs by multiplying the monthly kilowatt hours (kWh) consumed at each price category (*e.g.*, peak, normal, valley, where appropriate) by the corresponding electricity rates paid during each month of the POI.¹⁸⁰ 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

¹⁷⁸ See *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2011, 79 FR 108 (January 2, 2014), and accompanying IDM at 90. We have utilized the Most Favored Nation import duty rate because it reflects the general tariff rate applicable to world trade. *Id.*

¹⁷⁹ See Chongqing Zongshen Preliminary Calculation Memorandum.

¹⁸⁰ See *Wind Towers from China* IDM at 21-22.

subtracted the variable electricity costs paid by the respondents during the POI from the monthly benchmark variable electricity costs.

To measure whether Chongqing Kohler and Chongqing Zongshen received a benefit with regard to their base rate (*i.e.*, either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to each company by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying each 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 respondents 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 Chongqing Kohler's and Chongqing Zongshen's variable electricity payments and base rate payments.

To calculate the net subsidy rates attributable to each company, we divided each company's benefit by the appropriate sales denominators, as described in the "Subsidies Valuation" section, above. On this basis, we preliminarily determine a subsidy rate of 0.12 percent *ad valorem* for Chongqing Kohler and 0.10 percent *ad valorem* for Chongqing Zongshen for this program.¹⁸¹

Provision of Land-Use Rights for LTAR to Small Vertical Engine Producers

Commerce is examining whether the GOC has encouraged the development of the small vertical engine industry through the provision of land for LTAR, including land that may be located in industrial zones and parks. Chongqing Kohler and Chongqing Zongshen's cross-owned affiliates Zongshen Group and Zongshen High Speed reported purchasing land in industrial parks.¹⁸² While additional tracts of land were purchased by Chongqing Zongshen's cross-owned affiliates, the record indicates that such tracts were either first purchased from local land bureaus before the "cutoff" date for measuring subsidies provided in China (*i.e.*, December 2001) or were resold to unaffiliated companies outside the group before the POI.¹⁸³

In examining this program, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for preferential land pricing to support such objectives or goals. The GOC's national five-year plans identify the provision of land and land financing as policy tools to direct economic development for key objectives. For example, the 13th national five-year plan states that, "Approval procedures related to the projects and initiatives included in this plan will be streamlined and priority will be given to them in site selection, land availability, and funding arrangements."¹⁸⁴ Additionally, the GOC's Decision No. 40 instructs "people's governments of all provinces, autonomous regions,

¹⁸¹ See Chongqing Kohler Preliminary Calculation Memorandum; *see also* Chongqing Zongshen Preliminary Calculation Memorandum.

¹⁸² See Chongqing Kohler June 18, 2020 IQR at 26; *see also* Chongqing Zongshen June 22, 2020 IQR at Volume I page 48, Volume III page 33, and Volume V page 30. Regarding the land purchased by Chongqing Zongshen's cross-owned affiliates, these tracts were later resold to other members of the group. However, Commerce based its subsidy rate calculation on the amount paid by the cross-owned affiliates in the original transaction with the local land bureau.

¹⁸³ See Chongqing Zongshen June 22, 2020 IQR at Exhibit I-25.

¹⁸⁴ See GOC June 18, 2020 IQR at Exhibit II.B.1, Chapter 80, Section 2.

and municipalities” to formulate policies on land in order to implement industrial policies, including those aimed at buttressing China’s steel industry.¹⁸⁵ Moreover, the 13th five-year plan of Chongqing encourages the production of specific industries such as auto parts manufacturing and advanced manufacturing and provides for “land” support to achieve the plan’s goals.”¹⁸⁶

The 12th five-year plan similarly identifies land management policies as development tools, referencing the importance of the Guidance Catalogue’s encouraged industries alongside implementing differential land management policy: “Modify and perfect the current industrial guidance catalogue, clarify the encouraged, limited and prohibited industrial for different principle function areas. Implement the differential land management policy, scientifically set the different land using scale, and carry out strict land use control.”¹⁸⁷

The 11th five-year plan calls for strengthened support for industrial policy, especially for high tech industries, alongside strengthened cooperation on land policies: “Strengthen and improve industrial policy work, reinforce the unified planning for domestic industry development and for investment introduction, strengthen the cooperation of the policies in credit, land, environmental protection, safety and science and technology with the industrial policy and use economic means to promote the development of industries. Strengthen the support for the weak links of high tech industries and equipment manufacturing industry, mainly support research and development and foster core competitive power.”¹⁸⁸

As noted above in our discussion of the unwrought aluminum industry, the GOC has identified the aluminum industry for priority development in the Guidance Catalogue, which includes aluminum, and the development of production technology within it, as encouraged.¹⁸⁹ Moreover, the *Notice of Guidelines on Accelerating the Adjustment of the Aluminum Industry Structure* states that the GOC’s aim is to “increase the proportion of high value added processed products” made of aluminum.¹⁹⁰ Small vertical engines are largely the product of aluminum components,¹⁹¹ and small vertical engines appear to fall within Article XIII, paragraph 1 of the “encouraged” category of the Guidance Catalog (“Systematic design and development of for automobile, motorcycle, engine and their key components and parts”).¹⁹² Decision 40 identifies the Guidance Catalogue as “the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, *etc.*”¹⁹³ Decision 40 also directs all local, provincial, and municipal governments under the Central Government’s control to cooperate closely and intensify the effectiveness of implementing industrial policies. Consistent with the central planning documents, the 11th five-year plan of Chongqing lists upgrading and strengthening the automobile and motorcycle industry as one it is goals.¹⁹⁴

¹⁸⁵ *Id.* at Exhibit II.B.6.

¹⁸⁶ *See* Volume III of the Petition at 19 and Exhibit III-34.

¹⁸⁷ *See* GOC May 18, 2020 IQR at Exhibit II.B.1, Chapter 19, Section 2.

¹⁸⁸ *Id.* at Exhibit II.B.1, Chapter 47.

¹⁸⁹ *Id.* at Exhibit II.B.3, Article VIII.

¹⁹⁰ *See* Volume III of the Petition at 4 and Exhibit III-2.

¹⁹¹ *Id.* at 6.

¹⁹² *See* GOC June 18, 2020 IQR at Exhibit II.B.3.

¹⁹³ *Id.* at Exhibit II.B.6, Chapter III, Article 12.

¹⁹⁴ *Id.* at Exhibit II.B.1.

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

To determine the benefit pursuant to section 771(5)(E)(iv) of the Act, we first multiplied the Thailand industrial land benchmarks, discussed under the “Benchmarks and Interest Rates” section, above, by the total area of the countervailable land. We then subtracted the net price actually paid for the land to derive the total unallocated benefit. To measure the land benefits allocable to the POI, we first conducted the “0.5 percent test” by dividing the total benefit for the respective year(s) by the relevant sales in that year. For those benefits that pass the 0.5 percent test, we allocated the total benefit amounts across the terms of the land use agreement, using the standard allocation formula of 19 CFR 351.524(d), and determined the amount attributable to the POI. To calculate the countervailable subsidy rate, we then divided this amount by the appropriate total sales denominator, as discussed in the “Subsidies Valuation” section, above. On this basis, we preliminarily determine subsidy rates of 0.39 percent *ad valorem* for Chongqing Kohler and 0.22 percent *ad valorem* for Chongqing Zongshen for this program.¹⁹⁵

5. Other Subsidies

Chongqing Kohler self-reported receiving various non-recurring grants and tax benefits from the GOC during the AUL period.¹⁹⁶ These programs are as follows:

- 1) Income Tax Reduction for Enterprise in Western China
- 2) Dreamland
- 3) Foreign Trade Company Research and Development and Transformation Awards
- 4) High-Tech Products Recognition
- 5) The Second Batch of Municipal Industry and Information Special Funds in 2019
- 6) 2018 R&D Subsidy for Companies in Yubei District
- 7) The Third Batch of Stable Jobs Subsidy
- 8) Special Funds for Industrial Development in 2019

As discussed above in the section “Use of Facts Otherwise Available and Adverse Inferences,” we preliminarily determined that these grants constitute a financial contribution under section 771(5)(D)(i) of the Act and are specific under section 771(5A) of the Act. Further, we preliminarily determined that each of these grants confers a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504(a). To calculate the benefit received under

¹⁹⁵ See Chongqing Kohler Preliminary Calculation Memorandum; *see also* Chongqing Zongshen Preliminary Calculation Memorandum.

¹⁹⁶ See Chongqing Kohler June 18, 2020 IQR at Exhibits CQK-APP and KCI-APP.

these programs, Commerce followed the methodology described in 19 CFR 351.524. To calculate the *ad valorem* subsidy rate for these grants, Commerce divided the benefit conferred under each of these programs by the appropriate AUL sales denominator for Chongqing Kohler as discussed under “Subsidies Valuation,” above, depending on the nature of the subsidy program.

Chongqing Kohler self-reported receiving measurable benefits under multiple programs.¹⁹⁷ Based on the methodology outlined above, we preliminarily determined a cumulative *ad valorem* subsidy rate of 2.25 percent for Chongqing Kohler for these programs.

Chongqing Zongshen and its cross-owned affiliates self-reported receiving various non-recurring grants and tax benefits from the GOC during the POI.¹⁹⁸ These programs are as follows:

- 1) Income Tax Reduction for Enterprise in Western China
- 2) Return of tax service fee of individual income tax
- 3) Market development assistance
- 4) Export credit insurance assistance
- 5) Social insurance assistance
- 6) Assistance for job stabilization
- 7) Research and development (R&D) cost assistance
- 8) Assistance for purchasing raw materials of small and medium-sized or micro enterprises by leading enterprises in Chongqing
- 9) Assistance for stable growth of foreign trade
- 10) Special assistance for Chongqing's industrial and informational development
- 11) Assistance for job stabilization (third patch)
- 12) The second batch of industrial special funds in 2019 (leading enterprises)
- 13) The second batch of industrial special funds (green factory)
- 14) Employment assistance for talents in Banan District
- 15) Government assistance for district level R & D investment
- 16) Special funds for key projects of Municipal Science and Technology Bureau (R & D assistance)
- 17) Municipal R & D reserve assistance in 2019
- 18) Municipal Supply Chain subsidy
- 19) Assistance for technical transformation equipment (machine replacement labor project)
- 20) Job stability Assistance
- 21) Job stabilization assistance
- 22) Job stabilization for difficult enterprise
- 23) Assistance for China Smart City International Fair
- 24) Income Tax Reduction for Enterprise in Western China
- 25) International market development assistance
- 26) Export credit insurance assistance
- 27) Science and technology innovation encourage high and new technology assistance

¹⁹⁷ *Id.*

¹⁹⁸ See Chongqing Zongshen June 22, 2020 IQR at Volume I page 52, Volume VII page 43, and Exhibits I-28, II-26, III-18, IV-17, and VII-24.

- 28) Special assistance for foreign investment and cooperation
- 29) Assistance for high-level talents
- 30) High value patent cultivation plan project funds
- 31) Assistance for employment and probation of college graduates
- 32) Leading enterprise supporting industry chain cultivation and upgrading project funds
- 33) Allowance for R & D reserves of enterprises
- 34) Special assistance for industrial technology innovation (General power equipment design, inspection and testing capacity improvement project)

As discussed above in the section “Use of Facts Otherwise Available and Adverse Inferences,” we preliminarily determined that these grants constitute a financial contribution under section 771(5)(D)(i) of the Act and are specific under section 771(5A) of the Act. Further, we preliminarily determined that each of these grants confers 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 programs, Commerce followed the methodology described in 19 CFR 351.524. To calculate the *ad valorem* subsidy rate for these grants, Commerce divided the benefit conferred under each of these programs by the appropriate POI sales denominator for Chongqing Zongshen, as discussed under “Subsidies Valuation,” above, depending on the nature of the subsidy program.

Chongqing Zongshen and its cross-owned affiliates self-reported receiving measurable benefits under multiple programs.¹⁹⁹ Based on the methodology outlined above, we preliminarily determined a cumulative *ad valorem* subsidy rate of 1.01 percent for Chongqing Zongshen for these programs.

B. Programs Preliminarily Determined Not to Provide Measurable Benefits During the POI

The respondents reported receiving benefits under various programs, some of which were specifically alleged, while others were self-reported. Based on the record evidence, we preliminarily determine that the benefits from certain programs were either: (1) fully expensed prior to the POI; or (2) amounted to less than 0.005 percent *ad valorem* when attributed to the respondent’s applicable sales as discussed above in the “Attribution of Subsidies” section above. Consistent with Commerce’s practice,²⁰⁰ we are treating the benefits from these programs as non-measurable and have not included them in our preliminary subsidy rate calculations. Accordingly, it is unnecessary for Commerce to make a preliminary determination as to the countervailability of these programs.

¹⁹⁹ *Id.*

²⁰⁰ See, e.g., *CFS from China* IDM at 15-16 (“Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE”); see also *Certain Steel Wheels from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and accompanying IDM at 36 (“Income Tax Reductions for Firms Located in the Shanghai Pudong New District”); and *Aluminum Extrusions From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at 45-48 (“Programs Used by the Alnan Companies”).

For a list of the subsidy programs that do not provide a benefit and programs that were not used for each respondent, *see* Appendix I attached to this memorandum.

X. CONCLUSION

We recommend that you approve the preliminary findings described above.

Agree

Disagree

8/17/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

APPENDIX I

NOT-USED AND NOT-MEASURABLE PROGRAMS, BY COMPANY

Chongqing Kohler

Programs Preliminarily Determined Not to Provide Measurable Benefits to Chongqing Kohler During the AUL

Count	Title
1	2018 Yubei District Patent Funding and Awards
2	Stable Growth Awards in 2017
3	National Tax Withholding Fee
4	The Second Batch of Stable Job Subsidy in 2018
5	Subsidy for Processing Trade Gradient Transfer Projects Undertaken by the Bureau of Commerce
6	Incentive Subsidy for Stable Growth of Key Companies and Growth Companies in 2016
7	Withholding Fee
8	Stable Job Subsidy in 2016
9	District Subsidy for Purchase
10	District Economic and Information Commission-Incentives and Subsidy for Stable Growth of Industrial Companies in 2015
11	Stable Job Subsidy
12	District Economic and Information Commission – 2016 New Industrialization Award Fund
13	Local Withholding Fee
14	Tax Control System Maintenance Fee in May
15	January-April 2015 Municipal Government Supporting Fund for Export Company's Technology Reform and R&D
16	Purchase Subsidy of Economic and Information Commission of Yubei District
17	District Commercial Bureau-Export Incremental Rewards from Foreign Trade Enterprises Division, January-September 2015
18	District Commerce Bureau-Export Company Technical Reform from May to September 2015
19	District Commerce Bureau-Municipal Government Export Enterprise R&D
20	Special Funds for Industrial Development from Chongqing Yubei District Economic and Information Commission Finance
21	Yubei District Foreign Trade Export Company Award
22	2012 Export Technical Reform Subsidy Award
23	2012 Loan Interest Subsidy from the District Foreign Trade and Economic Commission
24	2012 Loan Interest Subsidy from the District Economic and Information Commission in 2013
25	Employment Subsidy for Talent Services
26	Received the District Financial Bureau's Steady Growth Incentive Funds for the Fourth Quarter of 2012

27	Received the Export Technical Support R&D Grant in November 2011
28	October 2011 Technical Reform and R&D Funding for Export Company
29	Received the 2011 Subsidy for the Technical Reform of Export Companies by the District Finance Bureau
30	Technical Reform Funding of the 4th phase in 2010
31	Fifth Batch of Export Technical Research Funding in 2010
32	Clean Production Check Financial Subsidy Income from the Environmental Protection Bureau of Yubei District
33	Technological Research and Development Subsidy from Financial Bureau/Foreign Trade Economic Bureau in the first half of 2011
34	Technology Reform and Research Subsidy from Yubei Foreign Economic and Trade Bureau for July to September of 2011
35	2009 Industrial Company Marketing Proficient Bonus
36	Financial Grant/ Second Batch of Export Technical Reform Subsidy
37	Interest Subsidy for Products Imported in 2009
39	The Third Batch of Technical Reform Funds in 2010
40	The Fourth Batch of Export Company Technological Reform Funds in 2009
41	The Fifth Batch of Export Technical Reform Subsidy in 2009
42	The First Batch of Technical Reform Funds in 2010
43	Package Fee Returned by the Airport Industrial Park Management Committee

Programs Preliminarily Determined Not to Be Used by Chongqing Kohler During the POI

Count	Title
1	Foreign Trade Development Fund Grants
2	Export Assistance Grants
3	Interest Payment Subsidies
4	GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands
5	State Key Technology Fund Grants
6	Grants for Retiring Outdated Capacity/ Industrial Restructuring
7	Grants for Energy Conservation and Emission Reduction
8	Government Directed Debt Restructuring in the Small Vertical Engine Industry
9	Export Loans from Chinese State-Owned Banks
10	Export Credit Insurance
11	Export Seller's Credits
12	Income Tax Reductions for High and New Technology Enterprises
13	Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
14	Income Tax Credits for Domestically Owned Companies Engaging in Research and Development
15	Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Refund for Enterprise Income Taxes on Foreign-Invested Enterprise Profits Reinvested in an Export Oriented Enterprise
16	Import Tariff and VAT Exemptions for Imported Equipment in Encouraged Industries

17	Government Provision of Unwrought Aluminum for LTAR
18	Provision of Pig Iron for LTAR
19	Provision of Steam Coal for LTAR
20	Provision of Hot-Rolled Steel for LTAR
21	Payments Under the State Capital Operating Budget

Chongqing Zongshen

Programs Preliminarily Determined Not to Provide Measurable Benefits to Chongqing Zongshen During the POI

Count	Title
1	Return of tax service fee of individual income tax
2	Assistance for technical transformation equipment (Lean Manufacturing Project)
3	Land use right tax refund assistance (purchase LUR from locomotive company)
4	Land use right tax refund assistance (purchase LUR from Zongshen Industrial Park)
5	Assistance for technical transformation equipment (machine replacement labor project)
6	Assistance for technical transformation equipment (Small displacement engine production line capacity expansion and technical transformation project)
7	Assistance for technical transformation equipment (A3, A4 production line)
8	Assistance for steady growth of foreign trade
9	Assistance for job stabilization (first patch)
10	Assistance for job stabilization (second patch)
11	Elite program talent introduction assistance
12	Assistance for job stabilization (fourth patch)
13	Assistance for technical transformation equipment(Auto parts production line)
14	Assistance for technical transformation equipment(Technical transformation of construction project of Technology Center)
15	Assistance for technical transformation equipment(Technology center construction project-private economy project)
16	Assistance for technical transformation equipment (small engine R&D)
17	Assistance for technical transformation equipment (pressure casting automatic upgrading project)
18	Assistance for technical transformation equipment (energy saving transformation for pressure casting)
19	Assistance for technical transformation equipment (Technical transformation of aluminum alloy parts production line)
20	Assistance for technical transformation equipment (National green manufacturing integration project)

21	Land use right tax refund assistance (pressure casting workshop)
22	Land use right tax refund assistance (Logistics Centre)
23	Land use right tax refund assistance (R&D Center)
24	Exhaust gas treatment assistance
25	Scientific and technological innovation assistance
26	Exhaust gas treatment assistance
27	Assistance for high-level talents
28	Reward and assistance for probation demonstration base
29	Subsidy for navigation project of enterprise technological innovation patent
30	Foreign trademark registered in China assistance
31	Patent assistance
32	Special assistance for infrastructure construction
33	Special assistance for Industry and informatization
34	Import Tariff and VAT Exemptions for Foreign Invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Programs Preliminarily Determined Not to Be Used by Chongqing Zongshen During the POI

Count	Title
1	Foreign Trade Development Fund
2	Export Assistance Grants
3	GOC and Sub-Central Government Subsidies for the Development of Famous and China World Top Brands
4	State Key Technology Fund Grants
5	Grants for Retiring Outdated Capacity/Industrial Restructuring
6	Grants for Energy Conservation and Emission Reduction
7	Government Directed Debt Restructuring in the Chinese Small Vertical Engine Industry
8	Export Loans from Chinese State-Owned Banks
9	Export Credit Insurance
10	Income Tax Reduction for High and New Technology Enterprises (HNTEs)
11	Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
12	Income Tax Credits for Domestically Owned Companies Engaging in Research and Development

13	Refund for Enterprise Income Taxes on FIE Profits Reinvested in an Export-Oriented Enterprise
14	Provision of Pig Iron for LTAR
15	Provision of Steam Coal for LTAR
16	Provision of Hot-Rolled Steel (HRS) for LTAR
17	Payments Under the State Capital Operating Budget