



C-570-132  
Investigation  
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November 23, 2020

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

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

**SUBJECT:** Decision Memorandum for the Affirmative Preliminary  
Determination of the Countervailing Duty Investigation of Twist  
Ties from the People's Republic of China

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## I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of twist ties from the People's Republic of China (China), as provided in section 703 of the Tariff Act of 1930, as amended (the Act). Commerce is also aligning the final determination of this investigation with the final determination in the companion antidumping duty (AD) investigation.

## II. BACKGROUND

### A. Case History

On June 26, 2020, Commerce received a countervailing duty (CVD) petition concerning imports of twist ties from China, filed on behalf of Bedford Industries, Inc. (the petitioner).<sup>1</sup> We describe the supplements to the petition and our consultations with the Government of China (GOC) in the Initiation Checklist.<sup>2</sup>

On July 16, 2020, we initiated a CVD investigation on twist ties from China.<sup>3</sup> In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation.<sup>4</sup> In August and October 2020, certain interested parties commented on the scope

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<sup>1</sup> See Petitioner's Letter, "Petition for the Imposition of Antidumping and Countervailing Duties on Twist Ties from the Republic of China," dated June 26, 2020 (the Petition).

<sup>2</sup> See "Countervailing Duty Initiation Checklist: Twist Ties from the People's Republic of China (China)," dated July 16, 2020 (Initiation Checklist).

<sup>3</sup> See *Twist Ties from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 85 FR 45188 (July 27, 2020) (*Initiation Notice*) (specifying an applicable date of July 16, 2020).

<sup>4</sup> *Id.* at 85 FR 45188-89.

of the investigation as it appeared in the *Initiation Notice*.<sup>5</sup> We have addressed these comments in the Preliminary Scope Memorandum.<sup>6</sup>

## B. Respondent Selection

In the *Initiation Notice*, Commerce notified the public that we would select the companies required to respond to our CVD questionnaire using data collected via quantity and value (Q&V) questionnaires.<sup>7</sup> On July 20, 2020, we posted the Q&V questionnaire to Commerce's website and also issued the Q&V questionnaire via Federal Express (FedEx) to six producers/exporters of subject merchandise in China listed in the Petition. Additionally, Commerce posted the Q&V questionnaire, along with filing instructions, on the Enforcement and Compliance website.<sup>8</sup> On August 3, 2020, Commerce received timely Q&V questionnaire responses from three companies which received the Q&V questionnaire, as well as from one additional company.<sup>9</sup>

On August 7, 2020, based on the Q&V questionnaire responses received, Commerce selected Zhenjiang Hongda and Zhenjiang Zhonglian as the mandatory respondents in this investigation.<sup>10</sup>

## C. Questionnaires and Responses

On August 7, 2020, Commerce issued its questionnaire to the GOC.<sup>11</sup> On the same date, Commerce requested that the Department of the Treasury (Treasury) provide its evaluation and

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<sup>5</sup> See Greenbrier International Inc.'s (Greenbrier's) Letter, "Twist Ties from the People's Republic of China: Scope Comments," dated August 5, 2020; see also Petitioner's Letter, "Twist Ties from the People's Republic of China: Scope Issues," dated August 12, 2020; Petitioner's Letter, "Twist Ties from the People's Republic of China: Supplement to Bedford Industries, Inc. Response to Scope Comments of August 12, 2020," dated October 14, 2020; and Greenbrier's Letter, "Twist Ties from the People's Republic of China: Response to Petitioner's Supplemental Scope Comments," dated October 19, 2020.

<sup>6</sup> See Memorandum, "Antidumping and Countervailing Duty Investigations of Twist Ties from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination," dated concurrently with this memorandum.

<sup>7</sup> See *Initiation Notice* at 85 FR 45190.

<sup>8</sup> See <http://trade.gov/enforcement/news.asp>.

<sup>9</sup> See Kyoei Packaging Supplies Co. Ltd.'s Letter, "Twist Ties from the People's Republic of China: Quantity & Value Questionnaire Response," dated August 3, 2020 (Kyoei Packaging Q&V Response); see also Zhenjiang Hongda Commodity Co. Ltd.'s (Zhenjiang Hongda's) Letter, "Twist Ties from the People's Republic of China: Submission of Zhenjiang Hongda's Q&V Response," dated August 3, 2020 (Zhenjiang Hongda Q&V Response); Zhenjiang Rongfa Plastics Products Co., Ltd.'s Letter, "Rongfa Quantity and Value Response: Countervailing Duty Investigation of Twist Ties from the People's Republic of China (C-570-132)," dated August 3, 2020 (Zhenjiang Rongfa Q&V Response); Zhenjiang Zhonglian I/E Co., Ltd.'s (Zhenjiang Zhonglian's) Letter, "Twist Ties from the People's Republic of China: Submission of Zhenjiang Zhonglian's Q&V Response," dated August 3, 2020; and Memorandum, "Countervailing Duty Investigation of Twist Ties from the People's Republic of China: Confirmation of Delivery of Quantity and Value Questionnaires," dated July 28, 2020 (Q&V Delivery Memorandum). Commerce did not receive responses to the Q&V questionnaire from the following companies which received them: Dongguan Guanqiao Industrial Co., Ltd. (Dongguan Guanqiao); Foshan Shunde Ronggui Yingli Industrial Co., Ltd. (Foshan Shunde); and Yiwu Kurui Handicraft Co. Ltd. (Yiwu Kurui).

<sup>10</sup> See Memorandum, "Countervailing Duty Investigation of Twist Ties from the People's Republic of China: Respondent Selection," dated August 7, 2020.

<sup>11</sup> See Commerce's Letter, "Countervailing Duty Investigation of Twist Ties from the People's Republic of China: Countervailing Duty Questionnaire," dated August 7, 2020 (Initial Questionnaire).

conclusion on the allegation that China's currency, the renminbi (RMB), was undervalued during the period of investigation (POI).<sup>12</sup>

On August 24, 2020, Zhenjiang Hongda and Zhenjiang Zhonglian notified Commerce that they would not be participating in this investigation.<sup>13</sup>

Also in August 2020, the petitioner timely requested that Commerce postpone the preliminary determination.<sup>14</sup> Commerce granted the petitioner's request and, on September 1, 2020, published the notification of postponement of the preliminary determination, until November 23, 2020, in the *Federal Register*, in accordance with section 703(c)(1)(A) of the Act.<sup>15</sup>

In September 2020, we received a timely response from the GOC to the Initial Questionnaire.<sup>16</sup> In October 2020, we issued supplemental questionnaires to the GOC, to which we received timely responses in October and November 2020.<sup>17</sup>

On October 28, 2020, Commerce placed data from the International Monetary Fund (IMF) and Organization for Economic Cooperation and Development (OECD) on the record and provided interested parties with an opportunity to submit rebuttal information.<sup>18</sup> On November 6, 2020, the GOC filed rebuttal information regarding this data.<sup>19</sup>

On November 9, 2020, Treasury responded to our request for information.<sup>20</sup> In November 2020, the petitioner and the GOC submitted information in response to Treasury's Response.<sup>21</sup> Given the proximity of these submissions to the date of the preliminary determination, we are unable to fully consider these comments for the preliminary determination. However, we will continue to

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<sup>12</sup> See Commerce's Letter to Treasury, dated August 7, 2020.

<sup>13</sup> See Zhenjiang Zhonglian and Zhenjiang Hongda's Letter, "Twist Ties from the People's Republic of China: Withdrawal of Zhenjiang Hongda and Zhenjiang Zhonglian from the Countervailing Duty Investigation and Counsel's Certification of Compliance with the Terms of the APO," dated August 24, 2020.

<sup>14</sup> See Petitioner's Letter, "Twist Ties from the People's Republic of China: Request for Extension of Preliminary Determination," dated August 19, 2020, clarified by Petitioner's Letter, "Twist Ties from the People's Republic of China: Supplemental Request for Extension of Preliminary Determination By 130 Days," dated August 24, 2020.

<sup>15</sup> See *Twist Ties from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 85 FR 54352 (September 1, 2020).

<sup>16</sup> See GOC's September 21, 2020 Initial Questionnaire Response (GOC's September 21, 2020 IQR).

<sup>17</sup> See GOC's October 20, 2020 Supplemental Questionnaire Response (GOC's October 20, 2020 SQR); see also GOC's November 4, 2020 Supplemental Questionnaire Response (GOC's November 4, 2020 SQR); and GOC's November 6, 2020 Supplemental Questionnaire Response (GOC's November 6, 2020 SQR).

<sup>18</sup> See Memorandum, "International Monetary Fund and the Organization for Economic Cooperation and Development Data," dated October 28, 2020 (IMF/OECD Memorandum); see also Memorandum "Additional International Monetary Fund Data," dated October 28, 2020.

<sup>19</sup> See GOC's Letter, "Twist Ties from the People's Republic of China, Case No. C-570-132: Response to IMF and OECD Data," dated November 6, 2020 (GOC's IMF/OECD Rebuttal Info).

<sup>20</sup> See Department of Treasury's Letter, dated November 9, 2020 (Treasury's Response). We intend to issue a supplemental questionnaire regarding Treasury's Response after the preliminary determination.

<sup>21</sup> See Petitioner's Letter, "Countervailing Duty Investigation of Twist Ties from China: Petitioner's Comments in Response to U.S. Treasury Department Evaluation and Conclusion regarding Currency Undervaluation in China," dated November 16, 2020; see also GOC's Letter, "Twist Ties from the People's Republic of China, Case No. C-570-132: Government of China's Re-Filed Response to Treasury Report," dated November 18, 2020.

analyze these comments and will consider all arguments presented in case briefs for the final determination.

#### D. Period of Investigation

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

#### E. Alignment

On August 27, 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,<sup>22</sup> we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of twist ties 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 February 16, 2021, unless postponed.

### III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is twist ties from China. A full description of the products covered by this investigation is provided in Appendix I of the preliminary determination published in the *Federal Register*.

### IV. INJURY TEST

Because China is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the 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 August 10, 2020, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of twist ties from China.<sup>23</sup>

### V. DIVERSIFICATION OF CHINA'S ECONOMY

On October 22, 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.<sup>24</sup> This information reflects a wide diversification of economic

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<sup>22</sup> See Petitioner's Letter, "Twist Ties from the People's Republic of China: Request to Align Final Countervailing Duty Determination with the Companion Antidumping Duty Final Determination," dated August 27, 2020.

<sup>23</sup> See *Twist Ties from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 85 FR 49681 (August 14, 2020).

<sup>24</sup> 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 October 22, 2020.

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 manner."<sup>25</sup> 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."<sup>26</sup>

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that, while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."<sup>27</sup> Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the Federal Circuit noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.<sup>28</sup> The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.<sup>29</sup>

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<sup>25</sup> 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).

<sup>26</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

<sup>27</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

<sup>28</sup> *Id.* at 1382.

<sup>29</sup> *Id.*

Moreover, further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.<sup>30</sup>

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.<sup>31</sup> Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>32</sup> It is Commerce’s practice to consider information to be corroborated if it has probative value.<sup>33</sup> In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.<sup>34</sup> However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.<sup>35</sup>

Finally, under section 776(d) of the Act, when applying AFA, 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 section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>36</sup>

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

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

As noted above, Commerce issued Q&V questionnaires via FedEx to the six companies identified in the Petition.<sup>37</sup> We confirmed that all six of these Q&V questionnaires were delivered.<sup>38</sup> Of the six companies that we confirmed received delivery of the questionnaire, only three timely responded to our request for information.<sup>39</sup> The following three Q&V recipients did not respond to our request for information: Dongguan Guanqiao, Foshan Shunde, and Yiwu Kurui.

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<sup>30</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); see also *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel*, 337 F.3d at 1382-83.

<sup>31</sup> See 19 CFR 351.308(d).

<sup>32</sup> See SAA at 870.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 869.

<sup>35</sup> *Id.* at 869-870.

<sup>36</sup> See section 776(d)(3) of the Act.

<sup>37</sup> See Q&V Delivery Memorandum at Attachment I.

<sup>38</sup> *Id.* at Attachment II.

<sup>39</sup> See Kyoei Packaging Q&V Response; Zhenjiang Hongda Q&V Response; and Zhenjiang Rongfa Q&V Response.

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

As facts otherwise available with an adverse inference, we find that all programs in this proceeding were used by Dongguan Guanqiao, Foshan Shunde, and Yiwu Kurui and confer a benefit on these companies within the meaning of sections 771(5)(B) and (E) of the Act. Therefore, we are including each of these programs in the determination of the AFA rate for Dongguan Guanqiao, Foshan Shunde, and Yiwu Kurui. We selected an AFA rate for each of these programs based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's practice.<sup>40</sup> Commerce has previously countervailed these or similar programs. For a description of the selection of the AFA rate and our corroboration of this rate, *see* the "Selection of the AFA Rate" and "Corroboration of the AFA Rate" sections.

### C. Application of Total AFA: Zhenjiang Hongda and Zhenjiang Zhonglian

As discussed in the "Respondent Selection" section above, while Zhenjiang Hongda and Zhenjiang Zhonglian were selected as mandatory respondents in this investigation, they notified Commerce that they would not be participating and neither responded to the initial CVD questionnaire. Therefore, we preliminarily find that, by not responding to any section of Commerce's questionnaire, Zhenjiang Hongda and Zhenjiang Zhonglian withheld information that was requested, failed to provide information within the deadlines established, and thus significantly impeded this proceeding.<sup>41</sup>

Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because by not responding to the initial CVD questionnaire and not participating in this investigation, Zhenjiang Hongda and Zhenjiang Zhonglian failed to cooperate to the best of their ability to comply with the requests for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted to ensure that Zhenjiang Hongda and Zhenjiang Zhonglian do not obtain a more favorable result by failing to cooperate than if they had fully complied with our requests for information.

As facts otherwise available with an adverse inference, we find that all programs in this proceeding were used by Zhenjiang Hongda and Zhenjiang Zhonglian and confer a benefit on

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<sup>40</sup> For the derivation of the preliminary AFA subsidy rate assigned to the companies who did not respond to the Q&V questionnaire, *see* Appendix II.

<sup>41</sup> *See* sections 776(a)(2)(A)-(C) of the Act.

these companies within the meaning of sections 771(5)(B) and (E) of the Act. Therefore, we are including each of these programs in our determination of the AFA rate for Zhenjiang Hongda and Zhenjiang Zhonglian. We selected an AFA rate for each of these programs based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's practice.<sup>42</sup> Commerce has previously countervailed these or similar programs. For a description of the selection of the AFA rate and our corroboration of this rate, *see* the "Selection of the AFA Rate" and "Corroboration of the AFA Rate" sections.

### *Selection of the AFA Rate*

It is Commerce's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.<sup>43</sup> When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any countervailable subsidy rate applied for the same or similar program in a countervailing duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.<sup>44</sup> Accordingly, when selecting AFA rates, if we have cooperating respondents in the investigation, we first determine if there is an identical program in the instant investigation and use the highest calculated rate for the identical program. If we have no cooperating respondents, as is the case in this investigation, we look outside the current investigation to other CVD proceedings involving products from the same country (*i.e.*, China). We first determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate above-*de minimis* rate for the identical program.<sup>45</sup> If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in any CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use.<sup>46</sup>

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<sup>42</sup> *Id.*

<sup>43</sup> *See, e.g., Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination with Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 83 FR 17651 (April 23, 2018), and accompanying Preliminary Decision Memorandum (PDM) at "X: Use of Facts Otherwise Available and Adverse Inferences: A. Application of Total AFA: Chalco Ruimin and Chalco-SWA," unchanged in *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018), and accompanying Issues and Decision Memorandum (IDM).

<sup>44</sup> *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM at 12-14; *see also Essar Steel, Ltd. v. United States*, 753 F. 3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

<sup>45</sup> For purposes of selecting AFA program rates, we normally consider rates less than 0.5 percent to be *de minimis*. *See, e.g., Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at "E. Various Grant Programs: 1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

<sup>46</sup> *See Shrimp from China* IDM at 13-14.

Commerce’s methodology is consistent with section 776(d)(1)(A) of the Act. Section 776(d)(1)(A) of the Act states that when applying an adverse inference in selecting from the facts otherwise available, Commerce may (i) use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that Commerce considers reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for Commerce’s existing practice of using an AFA hierarchy in selecting a rate “among the facts otherwise available” in CVD cases, should the facts warrant such a selection.

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

We find that the Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: (1) Commerce may apply its hierarchy methodology; and (2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.<sup>47</sup>

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>48</sup> Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable

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<sup>47</sup> This differs from AD proceedings, for which no hierarchy applies, under section 776(d)(1)(B) of the Act. Under that provision, “any dumping margin from any segment of the proceeding under the applicable antidumping order” may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

<sup>48</sup> See SAA, H.R. Doc. No. 103-316, vol. 1, at 870, reprinted in 1994 U.S.C.C.A.N 4040, 4090; see also *Essar Steel*, 678 at 1276 (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000) (finding that “{t}he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate’ with Commerce’s investigation, not to impose punitive damages.”) (*De Cecco*).

margin.”<sup>49</sup> It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.<sup>50</sup>

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

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

Under the first step of Commerce’s investigation hierarchy, Commerce applies the highest nonzero rate calculated for a cooperating company for the identical program in the investigation. Under this step, we will even use a *de minimis* rate as AFA if that is the highest rate calculated for another cooperating respondent in the same industry for the same program. However, if there is no identical program match within the investigation, or if the rate is zero, then Commerce will shift to the second step of its investigation hierarchy, and either apply the highest non-*de minimis* rate calculated for a cooperating company in another CVD proceeding involving the same country for the identical program, or if the identical program is not available, for a similar program. This step focuses on the amount of subsidies that the government has provided in the past under the investigated program. The assumption under this step is that the non-cooperating respondent under investigation uses the identical program at the highest above *de minimis* rate of any other company using the identical program.

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<sup>49</sup> See *De Cecco*, 216 F. 3d at 1032.

<sup>50</sup> Commerce has adopted a practice of applying its hierarchy in CVD cases. See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at Comment 4 at 28-31 (applying the AFA hierarchical methodology within the context of a CVD investigation); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of a CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. See, e.g., *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

Finally, if no such rate exists, under the third step of Commerce’s investigation hierarchy, Commerce applies the highest rate calculated for a cooperating company from any noncompany-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.<sup>51</sup>

In all three steps of Commerce’s AFA investigation hierarchy, if Commerce were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the “reward” for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce’s investigation AFA hierarchy (which is different from selecting the highest possible rate in the “pool” of all available rates), Commerce strikes a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.<sup>52</sup>

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

There are no facts on this record that suggest that a rate other than the highest rate envisioned under the appropriate step of the hierarchy applied in accordance with section 776(d)(1) of the Act should be applied as AFA. As explained above, Commerce is preliminarily applying AFA because the non-responsive companies chose not to participate in this investigation. Therefore, we preliminarily find that the record does not support the application of an alternative rate, pursuant to section 776(d)(2) of the Act.

In determining the AFA rate we will apply to each of the non-responsive companies, we are guided by Commerce’s methodology detailed above. We begin by calculating the program rate for the following income tax reduction program on which Commerce initiated an investigation; we applied an adverse inference that each of the non-responsive companies referenced above paid no income tax during the POI. The standard income tax rate for corporations in China is 25

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<sup>51</sup> In an investigation, unlike an administrative review, Commerce is just beginning to achieve an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

<sup>52</sup> It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. *See, e.g., Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying IDM at 2 (“As AFA in the instant case, the Department is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/producer in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed...”). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as AFA under its hierarchy.

percent.<sup>53</sup> Thus, we are applying the highest possible benefit, 25 percent, to the “Income Tax Deductions for Research and Development (R&D) Expenses” program. Consistent with past practice,<sup>54</sup> application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.

For all other programs, we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a China CVD investigation or administrative review. For this preliminary determination, we are able to match, based on program names, descriptions, and benefit treatments, the following programs to the same or similar programs from other China CVD proceedings:

Same Programs:

- Export Assistance Grants
- Export Buyer’s Credits
- Export Credit Guarantees
- Export Credit Insurance
- Export Seller’s Credits
- GOC and Sub-Central Subsidies for the Development of Famous Brands and China World Top Brands
- Provision of Electricity for Less than Adequate Remuneration (LTAR)
- Provision of Wire Rod for LTAR
- Provision of Zinc for LTAR
- Small and Medium Enterprise (SME) International Market Exploration/ Development Fund
- SME Technology Innovation Fund

Similar Programs:

- Currency Undervaluation
- Export Policy Loans from Chinese State-Owned Banks
- Grants for Energy and Emission Reduction

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for each of the non-responsive companies to be 122.5 percent *ad valorem*. The Appendix to this memorandum contains a chart summarizing our calculation of this rate.

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<sup>53</sup> See Petition at 7 (citing *Large Diameter Welded Pipe from the Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 30697 (June 29, 2018), and accompanying PDM at 14, unchanged in *Large Diameter Welded Pipe from the Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 6367 (February 27, 2019), and accompanying IDM).

<sup>54</sup> See, e.g., *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 84 FR 5989 (February 25, 2019), and accompanying PDM at 28; unchanged in *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances*, 84 FR 32723 (July 9, 2019).

### *Corroboration of AFA Rate*

Section 776(c)(1) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>55</sup> The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.<sup>56</sup>

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.<sup>57</sup> Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>58</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>59</sup>

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

### Application of AFA: GOC – Various Programs

In the Initial Questionnaire, Commerce requested information for each of the programs on which we initiated an investigation. Specifically, Commerce requested that the GOC “provide full and

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<sup>55</sup> See SAA at 870.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 869-870.

<sup>58</sup> See section 776(d) of the Act.

<sup>59</sup> See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

complete responses regardless of whether the companies under investigation or their ‘cross-owned’ companies, as defined in Section III, applied for, used, or benefited from that program during the POI.”<sup>60</sup> In its initial questionnaire response, for the vast majority of these programs, the GOC stated that “{t}he GOC understands that responses to the appendices are not applicable because both selected respondents have withdrawn from this investigation, and the GOC understands that the Department has not selected alternative respondents.”<sup>61</sup> With respect to the Export Loans, Provision of Electricity for LTAR, Export Buyer’s Credit, and Currency Undervaluation programs, the GOC provided some information. With respect to the first program mentioned, Export Loans, the GOC stated that “there is no government program.”<sup>62</sup> We address the Provision of Electricity for LTAR and Export Buyer’s Credit Programs in the following sections, and the Currency Undervaluation program in the section titled “A. Programs Preliminarily Determined to be Countervailable.”

In a supplemental questionnaire, Commerce requested that “for each program for which the GOC did not provide a response or declared that the questions in the initial questionnaire were ‘not applicable,’ we reiterate our request from the initial questionnaire that the GOC provide a full questionnaire response for each of the programs...”<sup>63</sup> In response, the GOC provided little substantive information, and none directly responsive to the question noted above, except to claim that “the majority of subsidy programs investigated by the Department do not exist, and in particular, the major alleged programs...are not subsidy programs at all.”<sup>64</sup> In addition, Commerce also requested for a second time specific information from the GOC on the Export Loans program, including specific documents from the State Council or other documents that govern the provision of export financing, municipal and provincial five-year plans, and a complete Standard Questions Appendix.<sup>65</sup> The GOC failed to adequately respond to these questions, either asserting that the information did not exist without proper explanation, or noting that “the GOC firmly opposes the investigation on the so-called “Export Policy Loans” program, since it is not a subsidy program.”<sup>66</sup>

Commerce requires information for all programs on which it initiated an investigation and included in the Initial Questionnaire and, with the exception of those programs specifically addressed below, the GOC failed to provide this information. Consequently, we preliminarily determine, in accordance with sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, that information necessary to perform our analyses of financial contribution and specificity for various programs, other than those addressed below, is not available on the record, the GOC has withheld information that was requested of it, and that the GOC significantly impeded the investigation; as a result, we must rely on “facts available” in making our preliminary determination. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information when it failed to fully

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<sup>60</sup> See Initial Questionnaire at 2.

<sup>61</sup> See, e.g., GOC’s September 21, 2020 IQR at 4.

<sup>62</sup> *Id.* at 6 and Exhibits D-4 and E-1.

<sup>63</sup> See Commerce’s Letter, “Countervailing Duty Investigation of Twist Ties from the People’s Republic of China,” dated October 6, 2020 at 2.

<sup>64</sup> See, e.g., GOC’s October 20, 2020 SQR at 1.

<sup>65</sup> See Commerce’s Letter, “Countervailing Duty Investigation of Twist Ties from the People’s Republic of China,” dated October 21, 2020.

<sup>66</sup> See GOC’s November 4, 2020 SQR at 3.

respond to our questions in its initial questionnaire response. Consequently, an adverse inference is warranted in selection from among the facts otherwise available, pursuant to section 776(b)(1) of the Act. In applying AFA, we find that the various programs referenced 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.

#### Application of AFA: GOC – 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.<sup>67</sup> 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.”<sup>68</sup> Therefore, according to the GOC, Provincial Price Proposals no longer exist and did not exist during the POI.<sup>69</sup> Consequently, according to the GOC, while the NDRC establishes specific formulas that need to be considered by provincial pricing authorities, the NDRC does not develop specific price levels for specific provinces or municipalities; rather,

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<sup>67</sup> See Initial Questionnaire at Section II (Electricity Appendix).

<sup>68</sup> See GOC’s September 21, 2020 IQR at Exhibit D-4.

<sup>69</sup> *Id.*

the provincial pricing authorities publish the electricity pricing adjustments for their own provinces.<sup>70</sup>

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).<sup>71</sup> Article 1 contained therein stipulates a lowering of the coal-fired power grid benchmark price of "about 2 cents" per kilowatt hour.<sup>72</sup> 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."<sup>73</sup> Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity.<sup>74</sup> 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."<sup>75</sup>

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.<sup>76</sup> 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.<sup>77</sup> 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. In our second supplemental questionnaire, we asked the GOC for further clarification regarding the role of the NDRC in pricing electricity. The GOC explained that province-level government authorities set

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at Exhibit D-10.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at Exhibit D-2.

<sup>77</sup> *Id.* at Exhibits D-2 and D-4.

provincial electricity prices and submit them to the NDRC for review, which then ensures these prices follow principles set by the NDRC. The GOC stated that, “{f}or example, the provincial authorities would not be permitted to set electricity prices that are below the cost of coal. The NDRC’s macro-level guidance is to reinforce the market-oriented character of electricity pricing, and to achieve the policy objectives that electricity prices in China are based on purely market mechanisms and reflect market supply and demand.”<sup>78</sup> The information provided by the GOC indicates that, despite its claim that the responsibility for setting prices within each province has moved from the NDRC to the provincial governments, the NDRC continues to play a major role in setting and adjusting prices. Furthermore, the GOC failed to explain both the derivation of price reductions required of the provinces by the NDRC and the derivation of the provincial prices themselves. Consequently, we preliminarily determine that the GOC withheld information that was requested of it for our analysis of financial contribution and specificity and, thus, Commerce must rely on “facts available” in making our preliminary determination.<sup>79</sup> Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Thus, an adverse inference is warranted in selecting from among the facts otherwise available.<sup>80</sup> 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.

#### Application of AFA: GOC – 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 Credit program because the GOC did not provide the requested information needed to allow Commerce to fully analyze this program.

In the Initial Questionnaire, we requested that the GOC “provide the information requested in the Standard Questions Appendix as it applies to export seller’s credits from the Export Import Bank of China (China ExIm).”<sup>81</sup> Commerce requests various information in the Standard Questions Appendix that we require in order to analyze the specificity and financial contribution of this program, including the following: the date the program was established, the name and address of government agencies and authorities administering the program, translated copies of the laws and regulations pertaining to the program, copies of the laws and regulations relating to the program, copies of reports pertaining to the program, identifying the types of records regarding the program which are maintained by the government, a description of the program and the program application process, program eligibility criteria, and program use data. Rather than responding to these questions in the Appendix, the GOC stated, “The GOC understands that the above-listed questions are not applicable because both selected respondents have withdrawn

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<sup>78</sup> See GOC’s November 4, 2020 SQR at 12.

<sup>79</sup> See section 776(a)(2)(A) of the Act.

<sup>80</sup> See section 776(b) of the Act.

<sup>81</sup> See GOC’s September 21, 2020 IQR at Section II, Part B, Question 7a.

from this investigation, and the GOC understands that the Department has not selected additional respondents.”<sup>82</sup>

We then issued a supplemental questionnaire to the GOC, requesting that it provide the “2013 Administrative Measures (2013 Revisions) to the Export Buyer’s Credit Program” or “2013 Guidelines” (2013 program revisions). In response to our request, the GOC stated it, “sees no necessity to respond to this question.”<sup>83</sup>

In response to our request that it provide a list of all partner/correspondent banks involved in disbursement of funds under the program, the GOC stated, “{t}he GOC understands that the above-listed questions are not applicable because both selected respondents have withdrawn from this investigation, and the GOC understands that the Department has not selected additional respondents.”<sup>84</sup> 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, and further stated “none of the mandatory respondents reported that they have applied for, used, or benefited from this alleged program during the POI. Thus, requesting a list of all partner/correspondent banks around the world that are involved in the disbursement of funds under this program is both an overly broad question and an unnecessary one.”<sup>85</sup> Thus, in its supplemental questionnaire response, the GOC refused to provide the requested information or any information concerning the 2013 program revisions and the partner/correspondent banks, which is necessary for Commerce to understand how the program operates and for Commerce to be able to verify claims of non-usage.

Information on the record indicate that the 2013 Revisions affected important program changes. For example, the 2013 Revisions may have eliminated the U.S. dollar 2 million contract minimum associated with this lending program.<sup>86</sup> Furthermore, information on the record indicate the loans associated with this program are not limited to direct disbursements through the China ExIm Bank.<sup>87</sup> Given the complicated structure of loan disbursements for this program, Commerce’s complete understanding of how this program is administered is necessary.

Therefore, by withholding information concerning the operation of this program, the GOC has impeded Commerce’s ability to determine whether the provision of the credits constitutes a financial contribution and whether such credits are specific.

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

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<sup>82</sup> See GOC’s September 21, 2020 IQR at 24.

<sup>83</sup> See GOC’s November 4, 2020 SQR at 7.

<sup>84</sup> See GOC’s September 21, 2020 IQR at 24-25.

<sup>85</sup> See GOC’s November 4, 2020 SQR at 7.

<sup>86</sup> See Memorandum, “Countervailing Duty Investigation of Twist Ties from the People’s Republic of China: Placing Information on the Record,” dated concurrently with this memorandum at Attachment I.

<sup>87</sup> *Id.* at Attachment II.

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. Specifically, the GOC has not provided complete information concerning the administration and operation of the program, including how loans are disbursed (*e.g.*, the 2013 Revisions), such as through intermediate or correspondent banks, the identities of which the GOC has withheld from Commerce, the interest rates under the program during the POI, or whether the China ExIm Bank employs threshold criteria, such as minimum 2 million U.S. dollar contract value. This information is necessary to understand fully how the Export Buyer's Credit program operates. By not providing us with this critical information, we find that the GOC failed "to do the maximum it is able to do."<sup>88</sup> Accordingly, the application of AFA is warranted. Consequently, as AFA, we find that each of the companies to which we are applying AFA in this investigation used this program and it provided a benefit during the POI.

Regarding specificity, although the record regarding this program suffers from significant deficiencies, we note that the GOC's description of the program and supporting materials (albeit found to be deficient) demonstrate that through this program, state-owned banks, such as the China ExIm Bank, provide loans for the purchase of export goods from China.<sup>89</sup> In addition, the petitioner alleged that this program is a possible export subsidy.<sup>90</sup> Finally, Commerce has found this program to be an export subsidy in the past.<sup>91</sup> Thus, taking all such information into consideration indicates the provision of Export Buyer's Credit is contingent on exports within the meaning of section 771(5A)(A) and (B) of the Act.

## VII. ANALYSIS OF PROGRAMS

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

### A. Programs Preliminarily Determined to Be Countervailable

#### 1. Currency Undervaluation

The GOC reported that the People's Bank of China and State Administration of Foreign Exchange (SAFE) are the main authorities handling foreign exchange activities in China.<sup>92</sup> Through various decrees and laws, the government sets forth certain guidelines and procedural requirements that credit institutions, including private Chinese banks and foreign-owned banks, must follow. Currently, under Chinese law, banks and financial companies are the entities primarily allowed to engage in the exchange foreign currency.<sup>93</sup> Only after a financial entity

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<sup>88</sup> See *Nippon Steel*, 337 F. 3d at 1382-83.

<sup>89</sup> See GOC's September 21, 2020 IQR at Exhibit B-22.

<sup>90</sup> See Initiation Checklist at 10.

<sup>91</sup> See, *e.g.*, *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 17382 (April 25, 2019), and accompanying IDM at Comment 16.

<sup>92</sup> See GOC's September 21, 2020 IQR at Exhibit E-1.

<sup>93</sup> *Id.*

receives approval from SAFE is it allowed to engage in foreign exchange activities in the retail market.<sup>94</sup>

Commerce in the initial questionnaire asked the respondent companies to report the financial institutions or other entities with which they exchanged U.S. dollars for RMB during the POI.<sup>95</sup> However, due to the companies' complete non-participation in this investigation, we do not have information on the record pertaining to the financial institutions with which they made these exchanges. As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are inferring, as AFA, that all respondents used this subsidy program. This includes an inference that the financial institutions with which they exchanged U.S. dollars for RMB are "authorities" within the meaning of section 771(5)(B) of the Act. With respect to this issue, we note that Commerce has previously explained in its Financial Sector Memorandum that banking in China is dominated by the Bank of China, Industrial and Commercial Bank of China, China Construction Bank Corporation, Agriculture Bank of China, and the Bank of Communication. There are also three more national specialized policy banks in China: the China Development Bank, Agricultural Development Bank of China, and the Export-Import Bank. All of these banks are majority state-owned and, as explained in the Financial Sector Memorandum, are public bodies.<sup>96</sup> Additionally, Commerce has found that the GOC has ownership stakes of some degree in almost all banks in China.<sup>97</sup>

With respect to private banks, the Financial Sector Memorandum explains that, under Article 34 of the Commercial Banking Law, "{c}ommercial banks shall carry out their loan business upon the needs of national economy and the social development and under the guidance of the state industrial policies. . . ." Thus, Article 34 expressly vests all commercial banks in China with the authority, and assigns them the responsibility, to carry out government policy directed lending. Article 34 provides a legal basis for the use of commercial banks as policy instruments with which the government intervenes directly in the economy, specifically in the allocation of capital on a systemic basis, in the pursuit of state industrial policy objectives, and to carry out its constitutional mandate to uphold the "socialist market economy." Although the currency exchanges we would examine under this program are not loans, we preliminarily find – in light of the non-cooperation of the parties – that all Chinese banks authorized to exchange foreign currency are "authorities" within the meaning of section 771(5)(B) of the Act."<sup>98</sup>

Therefore, we preliminarily find that all foreign currency exchange transactions in China constitute financial contributions by "authorities" under section 771(5)(B) of the Act in the form of direct transfers of funds within the meaning of 771(5)(D)(i) of the Act.

In determining whether currency undervaluation by the GOC is specific, we considered 19 CFR 351.502(c) and preliminarily find that the subsidy is predominantly used by the group of enterprises constituting the traded goods sector. We have based this finding on the responses

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<sup>94</sup> *Id.*

<sup>95</sup> See Initial Questionnaire at Company Currency Undervaluation Appendix.

<sup>96</sup> See Memorandum, "Analysis of Banks and Trust Companies in China as Public Bodies for Countervailing Duty (CVD) Purposes," dated June 27, 2019 (Financial Sector Memorandum) at 8.

<sup>97</sup> *Id.* at 31.

<sup>98</sup> *Id.* at 10.

provided by the GOC to our initial and supplemental questionnaires. In the GOC's responses, there are certain places where it stated that it was unable to provide the information we requested for our evaluation.<sup>99</sup> As a result, we considered information Commerce placed on the record, which reflects data submitted by SAFE to the IMF.<sup>100</sup>

In response to our Initial Questionnaire, the GOC stated that “the GOC does not collect USD inflows and/or USD conversions on an industry- or sector-specific basis.”<sup>101</sup> As a result, we relied upon the available data regarding U.S. dollar inflows to China as a proxy for U.S. dollar currency conversions. In our initial questionnaire, we requested that the GOC provide us with total U.S. dollar inflow from the “traded goods sector,” “the traded services sector and utilized FDI and inbound portfolio investment,”<sup>102</sup> and in its response, the GOC reported values on a different basis as explained below. Following the GOC's initial response, Commerce placed IMF data on U.S. dollar inflows to China on the record,<sup>103</sup> and because these data were based on information reported by SAFE, we asked the GOC to clarify in a supplemental questionnaire response whether these data were consistent with the values it had reported and to provide us with the values we had originally requested.<sup>104</sup>

When asked to “reconcile and explain any discrepancies” between its own data and the IMF data, and to “define the relevant reporting categories” in its data,<sup>105</sup> the GOC largely ignored the question, stating simply, “in the GOC's Initial Questionnaire Response (“IQR”), SAFE provided the data for Annual Cross-border Receipts and Payments by Non-banking Sectors, the scope of which is different from the Balance of Payments Statistics. Therefore, it is different from the data found in the IMF's Balance of Payments database and yearbook as placed on the record by the Department.”<sup>106</sup> However, this did not adequately explain why the U.S. dollar inflow data provided by the GOC was, in some respects, markedly different from similar data it provided to the IMF covering the same period. Further, in response to our request for the same data inclusive of the banking sector, the GOC stated there was “no more information to add.” Therefore, in order to conduct our analysis of whether the exchange of foreign currency is disproportionately or predominantly used by the traded goods sector, we have relied upon the IMF data on the record.<sup>107</sup>

Using this IMF data, we estimated the total proportion of U.S. dollar inflows China received in the POI through the following four major channels of exchange: (a) exports of goods; (b) exports of services; (c) various forms of portfolio and direct investment; and (d) earned income from abroad. To add precision to the amount of U.S. dollar inflows received from China's

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<sup>99</sup> See GOC's September 21, 2020 IQR at Exhibit E-1; see also GOC's November 6, 2020 SQR at 2.

<sup>100</sup> See IMF/OECD Memorandum; see also Commerce's Letter, “Countervailing Duty Investigation of Twist Ties from the People's Republic of China,” dated October 28, 2020 (Third Supplemental Questionnaire) at 1.

<sup>101</sup> See GOC's September 21, 2020 IQR at Exhibit E-1.

<sup>102</sup> See Initial Questionnaire at Government Currency Undervaluation Appendix.

<sup>103</sup> See IMF/OECD Memorandum.

<sup>104</sup> See Third Supplemental Questionnaire at 1.

<sup>105</sup> *Id.*

<sup>106</sup> See GOC's November 6, 2020 SQR at 1.

<sup>107</sup> See IMF/OECD Memorandum.

exports of goods, we discounted China's exports of goods value by the amount of intermediary imported inputs to arrive at a reasonable estimate of exports that earned foreign exchange.<sup>108</sup>

Commerce placed data from the IMF and OECD on the record and provided parties with an opportunity to comment.<sup>109</sup> The GOC provided comments, stating that the OECD underestimated the import content in Chinese exports by not properly accounting for processing trade.<sup>110</sup> However, the papers and data the GOC provided on the record are dated. For example, the 2012 paper by Koopman, Wang, and Wei relies on 2004 data to construct an integrated Inter-Country Input-Output, Global Trade Analysis Project, and United Nations' International Trade Statistics (COMTRADE) database.<sup>111</sup> Moreover, the papers' findings are not necessarily reflective of modern trade flows. Given that the GOC has not recommended a practical alternative to applying the findings of the papers, and given how dated the papers and the underlying data were, Commerce has employed an alternative approach that seeks to address some of the GOC's comments regarding processing trade in China.

In this alternative approach, Commerce used processing trade data published by the General Administration of Customs of the People's Republic of China (China Customs) to gain a more precise estimate for the imported content in Chinese exports, and has placed this information on the record.<sup>112</sup> These official data, obtained through the CEIC database, show that 26.3 percent of Chinese exports are processed using mostly foreign intermediary inputs.<sup>113</sup> Even after adjusting China's exports by its share of intermediary imported inputs, based on this analysis we found that, among the four channels, the vast majority (69.9 percent) of U.S. dollar inflows coming into China during the POI came from goods exports.<sup>114</sup> As a result, we preliminarily determine that enterprises that buy or sell goods internationally are the predominant users of the GOC's currency undervaluation subsidy; as a result, this program is *de facto* specific under section 771(5A)(D)(iii)(II) of the Act.

With respect to benefit, our analysis is guided by 19 CFR 351.528. Pursuant to 19 CFR 351.528(a), Commerce considers whether a benefit is conferred from the exchange of currency under a unified exchange rate system only if that currency is undervalued. In determining whether there is undervaluation, we will normally "take into account the gap between the country's real effective exchange rate (REER) and the real effective exchange rate that achieves an external balance over the medium term that reflects appropriate policies (equilibrium REER)."<sup>115</sup> Pursuant to 19 CFR 351.528(a)(2), we normally will make an affirmative finding of undervaluation only if there has been government action on the exchange rate that contributes to that undervaluation. Next, pursuant to 19 CFR 351.528(b)(1), after making an affirmative finding of undervaluation, we will determine the existence of a benefit after examining the

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<sup>108</sup> *Id.*; see also Memorandum, "Placing Additional Data on the Record: China Customs Processing Trade," dated concurrently with this memorandum (CEIC Data Memo).

<sup>109</sup> *Id.*

<sup>110</sup> GOC's IMF/OECD Rebuttal Info at Attachment 2.

<sup>111</sup> *Id.* at Attachment 2-O.

<sup>112</sup> See CEIC Data Memo.

<sup>113</sup> *Id.*

<sup>114</sup> See Memorandum, "Countervailing Duty Investigation of Twist Ties from the People's Republic of China: Calculation Based on USD Inflows," dated concurrently with this memorandum.

<sup>115</sup> See 19 CFR 351.528(a)(1).

difference between the “nominal, bilateral United States dollar rate consistent with the equilibrium REER,” and the “actual nominal, bilateral United States dollar rate during the relevant time period, taking into account any information regarding the impact of government action on the exchange rate.” Consistent with 19 CFR 351.528(c), we requested that “the Secretary of the Treasury provide Treasury’s evaluation and conclusion as to the determinations” under 19 CFR 351.528(a) and (b)(1).

In Treasury’s Response, it reported that the RMB was undervalued during 2019 because there was a gap between China’s REER and its equilibrium REER.<sup>116</sup> Treasury also reported its finding that “Treasury assesses that the Government of China’s actions on the exchange rate had the effect of undervaluing the RMB vis-à-vis the U.S. dollar by about 5% in 2019.”<sup>117</sup> Based on this evidence, we preliminarily determine that China’s currency vis-à-vis the U.S. dollar was undervalued during the POI.

With respect to government action on the exchange rate within the meaning of 19 CFR 351.528(a)(2), Treasury also determined that China “undertook ‘government action on the exchange rate’ that contributed to the undervaluation of the RMB in 2019, with this determination taking into consideration the GOC’s lack of transparency regarding actions that could alter the exchange rate.” According to Treasury, “...China does not disclose the amount of its intervention in foreign exchange markets, including from state banks, nor does it disclose other key features of its exchange rate management regime.”<sup>118</sup> Additionally, Treasury noted that it determined China was a currency manipulator during the POI due to concrete steps taken to devalue the RMB.<sup>119</sup> Consequently, we preliminarily determine that the undervaluation of the RMB vis-à-vis the U.S. dollar in the POI was attributable to government action.

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we determine on the basis of AFA that Zhenjiang Hongda, Zhenjiang Zhonglian and the non-responsive Q&V questionnaire recipients used and 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 the respondents for this program. This rate is based on the highest subsidy rate calculated for a similar program in any CVD proceeding involving China; specifically, it is based on a preferential lending program in a prior CVD proceeding.<sup>120</sup>

## 2. All Other Programs

As noted above in Section VI, due to non-participation by the mandatory respondents and certain non-responsive Q&V companies, and a lack of cooperation by the GOC in responding to our requests for information, we based our preliminary determination on facts otherwise available

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<sup>116</sup> See Treasury’s Response at 2.

<sup>117</sup> Treasury reported that, “{t}he uncertainty range around this assessment, based on Treasury’s judgment of the range of potential impacts of China’s actions and China’s lack of transparency regarding those actions, spans from bilateral undervaluation of 3% to 7%.” See Treasury’s Response at 3.

<sup>118</sup> See Treasury’s Response at 2.

<sup>119</sup> *Id.*

<sup>120</sup> See Appendix titled “AFA Rate Calculation.”

with an adverse inference for all other programs. Therefore, we find the following programs in this proceeding are countervailable with respect to Zhenjiang Hongda and Zhenjiang Zhonglian and the non-responsive Q&V questionnaire recipients, as noted above - that is, they provide a financial contribution within the meaning of sections 771(5)(B) and (D) of the Act, confer a benefit within the meaning of sections 771(5)(B) and (E) of the Act, and are specific within the meaning of section 771(5A) of the Act. Additionally, we preliminarily determine that the Export Buyer's Credit is contingent on exports within the meaning of sections 771(5A)(A) and (B) of the Act.

- Income Tax Deductions for R&D Expenses
- Export Assistance Grants
- Export Buyer's Credits
- Export Credit Guarantees
- Export Credit Insurance
- Export Seller's Credits
- GOC and Sub-Central Subsidies for the Development of Famous Brands and China World Top Brands
- Provision of Electricity for LTAR
- Provision of Wire Rod for LTAR
- Provision of Zinc for LTAR
- SME International Market Exploration/ Development Fund
- SME Technology Innovation Fund
- Export Policy Loans from Chinese State-Owned Banks
- Grants for Energy and Emission Reduction

### VIII. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

\_\_\_\_\_

Agree

\_\_\_\_\_

Disagree

11/23/2020

**X** 

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Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

## APPENDIX

### AFA Rate Calculation

Program Name	AFA Rate (%)
<b>Income Tax Programs</b>	
Income Tax Deductions for R&D Expenses	25.00 <sup>121</sup>
<b>Preferential Lending</b>	
Export Policy Loans from Chinese State-Owned Banks	10.54 <sup>122</sup>
Export Seller's Credits	10.54 <sup>123</sup>
Export Credit Guarantees	10.54 <sup>124</sup>
Export Buyer's Credits	10.54 <sup>125</sup>
<b>Currency Undervaluation</b>	
Currency Undervaluation	10.54 <sup>126</sup>
<b>Grant Programs</b>	
GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands	1.27 <sup>127</sup>
SME International Market Exploration/ Development Fund	1.27 <sup>128</sup>
SME Technology Innovation Fund	1.27 <sup>129</sup>
Export Assistance Grants	1.27 <sup>130</sup>
Grants for Energy Conservation and Emission Reduction	1.27 <sup>131</sup>
<b>LTAR Programs</b>	
Provision of Wire Rod for LTAR	9.17 <sup>132</sup>
Provision of Zinc for LTAR	9.17 <sup>133</sup>

<sup>121</sup> The standard income tax rate for corporations in China is 25 percent. Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, that the two programs, combined, provide a 25 percent benefit).

<sup>122</sup> See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from China*), and accompanying Ministerial Error Memorandum at "Revised Net Subsidy Rate for the Gold Companies" (regarding "Preferential Lending to the Coated Paper Industry").

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> See *High Pressure Steel Cylinders from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017*, 84 FR 71373 (December 27, 2019), and accompanying IDM at Comment 6 ("Production Base Construction for Gas Storage and Transportation Equipment" grant program).

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> See *Carbon and Alloy Steel Threaded Rod from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 8833 (February 18, 2020).

<sup>133</sup> *Id.*

Provision of Electricity for LTAR	<b>20.06</b> <sup>134</sup>
<b>Export Credit Insurance Subsidies</b>	
Export Credit Insurance	<b>0.05</b> <sup>135</sup>
<b>Total AFA Rate:</b>	<b>122.5</b>

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<sup>134</sup> See *Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 2012, 79 FR 56560 (September 22, 2014), and accompanying IDM at 22.

<sup>135</sup> *Id.* at 12-13.