



A-570-135
Investigation
POI: 1/1/2020 – 6/30/2020
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E&C/OI: Team

February 25, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Certain Chassis and Subassemblies Thereof from the People’s
Republic of China: Decision Memorandum for Preliminary
Affirmative Determination of Sales at Less Than Fair Value
Investigation

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that certain chassis and subassemblies thereof (chassis) from the People’s Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margin of sales at LTFV is shown in the accompanying *Federal Register* notice.

II. BACKGROUND

On July 30, 2020, we received an antidumping duty (AD) petition covering imports of chassis from China,¹ which was filed in proper form on behalf of the Coalition of American Chassis Manufacturers (the petitioner).² We initiated this investigation on August 19, 2020.³

In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (NME) LTFV investigations.⁴ Exporters are required to submit a separate rate application (SRA) to

¹ See Petitioner’s Letter, “Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties,” dated July 30, 2020 (the Petition).

² The members of the Coalition of American Chassis Manufacturers are: Cheetah Chassis Corporation; Hercules Enterprises, LLC; Pitts Enterprises, Inc.; Pratt Industries, Inc.; and Stoughton Trailers, LLC.

³ See *Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 85 FR at 52552 (August 26, 2020) (*Initiation Notice*).

⁴ *Id.*, 85 FR at 52555.



demonstrate an absence of both *de jure* and *de facto* government control over their exporter activities. See the “Separate Rates Determination” section for more information.

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of chassis to be reported in response to Commerce’s AD questionnaire.⁵ We received comments and rebuttal comments from interested parties concerning the appropriate physical characteristics to be used for the purpose of reporting sales of the subject merchandise.⁶ We also received comments and rebuttal comments on the scope of the investigation.⁷ See “Scope Comments” section for more information.

On September 14, 2020, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of chassis from China.⁸

On September 17, 2020, the petitioner timely requested that Commerce fully extend the deadline for the preliminary determination.⁹ Accordingly, on October 20, 2020, Commerce fully postponed the preliminary determination by 50 days (*i.e.*, 190 days after the date on which the investigation was initiated) to February 25, 2021.¹⁰

⁵ See *Initiation Notice*, 85 FR at 52553.

⁶ See Petitioner’s Letter, “Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Petitioner’s Comments on Model Match and Physical Characteristics,” dated September 18, 2020; see also CIMC Vehicles (Group) Co., Ltd., responding on behalf of mandatory respondents Dongguan CIMC Vehicle Co., Ltd., and Qingdao CIMC Special Vehicles Co., Ltd.’s (collectively, CIMC) Letter, “Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Comments on Product Characteristics,” dated September 18, 2020; Petitioner’s Letter, “Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Petitioner’s Rebuttal Comments On Product Characteristics,” dated September 28, 2020; and CIMC’s Letter, “Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Rebuttal Comments on Product Characteristics for the AD Questionnaire,” dated September 28, 2020.

⁷ See Guangdong Fuwa Heavy Industries Co., Ltd.’s (Fuwa) Letter, “Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Scope Comments,” dated September 22, 2020; see also CIMC’s Letter, “Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Scope Comments,” dated September 22, 2020; TRP International, LLC’s (TRP) Letter, “Scope Comments Regarding Certain Chassis and Subassemblies Thereof from the People’s Republic of China (A-570-135 & C-570-136),” dated September 22, 2020; and Master Tow, Inc’s (Master Tow) Letter “Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Submission of Scope Comments,” dated September 22, 2020.

⁸ See Certain Chassis and Subassemblies Thereof from China: Investigation Nos. 701-TA-657 and 731-TA-1537 (September 21, 2020) (Preliminary ITC Determination).

⁹ See Petitioner’s Letter, “Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Request for Postponement of Preliminary Determination,” dated September 17, 2020.

¹⁰ See *Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 85 FR 68559 (October 20, 2020).

Between October 13 and November 6, 2020, we received questionnaire responses from CIMC¹¹ and Fuwa.¹² Between October 27 and November 25, 2020, the petitioner submitted comments with respect to the initial responses submitted by CIMC and Fuwa.¹³ On November 5, 2020, CIMC filed rebuttal comments.¹⁴

On October 21, 2020, we placed on the record a list of potential surrogate countries and invited interested parties to comment on the selection of the primary surrogate country and provide surrogate values (SV) information.¹⁵ Between December 14, 2020, and January 11, 2021, we received comments on the selection of the primary surrogate country and SV information and rebuttals thereof from CIMC¹⁶ and the petitioner.¹⁷ Between January 12 and January 22, 2021, Fuwa submitted responses to supplemental questionnaires.¹⁸ On January 15, 2021, CIMC filed its supplemental questionnaire response in an untimely manner. On January 21, 2021, CIMC

¹¹ See CIMC's Letters, "Chassis and Subassemblies Thereof from the People's Republic of China: Response to Section A of the Antidumping Duty Questionnaire," dated October 13, 2020 (CIMC AQR), "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Response to Section C, D, and E of the Antidumping Questionnaire," dated November 5, 2020; and "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Response to Double Remedies Questionnaire," dated October 26, 2020.

¹² See Fuwa's Letters, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Section A Response," dated October 13, 2020 (Fuwa AQR); "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Double Remedies Response," dated October 28, 2020; and "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Sections C-D Response," dated November 2, 2020.

¹³ See Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Comments on Fuwa's Section A Questionnaire Response," dated October 27, 2020; *see also* Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Comments on CIMC Vehicles' Section A Initial Questionnaire Response," dated October 27, 2020; "Certain Chassis and Subassemblies Thereof from the People's Republic of China ("PRC"): Comments on Fuwa's Section C-D Questionnaire Response," dated November 16, 2020; and "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Comments on CIMC Vehicles' Section C-E Initial Questionnaire Responses," dated November 25, 2020.

¹⁴ See CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: New Factual Information and Rebuttal to Petitioner's Comments to CV's Section A Questionnaire Response," Rebuttal dated November 5, 2020.

¹⁵ See Commerce's Letter, "Less-Than-Fair-Value Investigation of Certain Chassis and Subassemblies Thereof from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated October 21, 2020 (Surrogate Country and Value Comments Invitation Letter).

¹⁶ See Petitioner's Letters, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Comments on Surrogate Country Selection," dated December 14, 2020; "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Rebuttal Comments on Surrogate Country Selection," dated December 31, 2020; and "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Resubmission of Response to CIMC's December 4th Rebuttal Comments and New Factual Information," dated January 11, 2021.

¹⁷ See CIMC's Letters, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Comments on Proposed Primary Surrogate Country," dated December 14, 2020; "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Surrogate Value Information," dated December 31, 2020; and "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Rebuttal Surrogate Value Comments," dated January 11, 2021.

¹⁸ See Fuwa's Letters, "Certain Chassis and Subassemblies Thereof from the People's Republic of China; Supplemental Questionnaire Response," dated January 12, 2021; *see also* Fuwa's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Section C Supplemental Response," dated January 22, 2021.

filed an extension request for its untimely supplemental questionnaire response.¹⁹ On February 4, 2021, we issued a letter rejecting CIMC's supplemental questionnaire response because it was filed in an untimely manner.²⁰ On January 29, 2021, the petitioner submitted comments regarding surrogate values.²¹ On January 29, 2021, the petitioner also submitted rebuttal new factual information.²² On February 5, 2021, we rejected the petitioner's rebuttal new factual information submission because part of the new factual information directly responded to CIMC's untimely January 15, 2021, supplemental questionnaire response.²³ On February 5, 2021, the petitioner re-filed its new factual submission redacting information that directly responded to CIMC's untimely January 15, 2021, supplemental questionnaire response submission.²⁴ On February 5, 2021, the petitioner submitted pre-preliminary determination comments.²⁵ On February 5, 2021, CIMC submitted a request for reconsideration of extension request of supplemental questionnaire response, and request to refile.²⁶

On February 11, 2021, CIMC submitted pre-preliminary determination comments.²⁷ On February 18, 2021, the petitioner filed additional pre-preliminary comments.²⁸ On February 22, 2021, CIMC submitted additional pre-preliminary comments.²⁹ Because these additional pre-preliminary comments were filed three days prior to signature date for the preliminary determination, we did not consider them for the preliminary determination. As such, we will consider them for purposes of the final determination.

Commerce is conducting this investigation in accordance with section 731 of the Act.

¹⁹ See CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Request for Extension for January 19, 2021 Submission of Final BPI and Public Versions of Response to Supplemental Questionnaire Response," dated January 21, 2021 (CIMC Extension Request).

²⁰ See Commerce's Letter, "Antidumping Investigation of Certain Chassis and Subassemblies Thereof from the People's Republic of China: Rejection of Untimely Filed Submission," dated February 3, 2021 (CIMC Rejection Letter).

²¹ See Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Submission of Surrogate Values," dated January 29, 2021.

²² This submission has been removed from the record of this investigation.

²³ See Commerce's Letter, "Antidumping Investigation of Certain Chassis and Subassemblies Thereof from the People's Republic of China," dated February 5, 2021.

²⁴ See Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Resubmission of Response to Other Factual Information," dated February 5, 2021.

²⁵ See Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Initial Comments in Advance of the Department's Preliminary Determination," dated February 5, 2021.

²⁶ See CIMC Letter "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Request for Reconsideration of Extension on Supplemental Section A through E Submission and Request to Refile," dated February 5, 2021 (Request for Reconsideration Letter).

²⁷ See CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Pre-Preliminary Comments," February 11, 2021.

²⁸ See Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Additional Comments in Advance of the Department's Preliminary Determination," dated February 18, 2021.

²⁹ See CIMC's "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Additional Pre-Preliminary Comments," dated February 22, 2021.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2020, through June 30, 2020. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was August 2020.³⁰

IV. SCOPE COMMENTS

In accordance with the *Preamble* to our regulations,³¹ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.³² On September 22, 2020, we received comments from interested parties on the scope of the investigation during this period.³³ On October 5, 2020, we received scope rebuttal comments from the petitioner.³⁴ On February 9, 2021, we issued the Preliminary Scope Decision Memorandum.³⁵ In the Preliminary Scope Decision Memorandum, Commerce preliminarily modified the scope language as it appeared in the *Initiation Notice*. The revised scope language is in the accompanying *Federal Register* notice at Appendix I.

On February 11, 2021, we established a scope briefing schedule³⁶ and timely received a scope case brief from CIMC.³⁷ The scope comments from CIMC will be addressed in the final determination of the companion countervailing duty (CVD) investigation due no later than March 15, 2021.

V. RESPONDENT SELECTION

In the *Initiation Notice*, we stated that SRAs would be due 30 days after publication of the notice.³⁸ In addition, in the *Initiation Notice*, we stated that the petitioner named two companies in China as producers/exporters of chassis subject to the scope of this investigation.³⁹ Further, we stated that in the absence of any contradictory information, we intended to examine all known

³⁰ See 19 CFR 351.204(b)(1).

³¹ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³² See *Initiation Notice*, 85 FR at 52553.

³³ See Fuwa's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Scope Comments," dated September 22, 2020; see also CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Scope Comments," dated September 22, 2020; TRP International, LLC's Letter, "Scope Comments Regarding Certain Chassis and Subassemblies Thereof from the People's Republic of China (A-570-135 & C-570-136); TRP International, LLC," dated September 22, 2020; and Master Tow, Inc.'s Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China; Submission of Scope Comments," dated September 22, 2020.

³⁴ See Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Petitioner's Scope Rebuttal Comments," dated October 5, 2020.

³⁵ See Memorandum, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Scope Comments Preliminary Decision Memorandum," dated February 9, 2021 (Preliminary Scope Decision Memorandum).

³⁶ See Memorandum, "Scope Briefing Schedule," February 11, 2021.

³⁷ See CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's republic of China: Scope Case Brief," dated February 16, 2021.

³⁸ See *Initiation Notice*, 85 FR at 52555.

³⁹ *Id.* at 52555.

producers/exporters of chassis from China.⁴⁰ On August 27, 2020, CIMC provided information indicating that one of the named companies in the *Initiation Notice* did not produce and export the subject merchandise to the United States during the POI, and that the named companies were wholly-owned subsidiaries of CIMC Vehicles (Group) Co., Ltd.⁴¹ On September 4, 2020, we received a request from the petitioner asking us to issue quantity and value (Q&V) questionnaires to additional producers of chassis from China.⁴² On October 5, 2020, we issued Q&V questionnaires to the 21 companies identified by the petitioner.⁴³ We did not send the Q&V questionnaire by Federal Express to Guangdong Fuwa Construction Machinery Manufacturing Co., Ltd. and Guangdong Fuwa Heavy Industry Manufacturing Co., Ltd. because these companies submitted an entry of appearance and, therefore, were notified of the availability of the document via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).⁴⁴ We did not receive Q&V responses from any producers/exporters of subject merchandise except for Guangdong Fuwa Heavy Industries Co., Ltd. (Fuwa), which filed a full section A response. On October 28, 2020, we selected Fuwa as an additional mandatory respondent in this investigation.⁴⁵

VI. DISCUSSION OF THE METHODOLOGY

A. Application of Facts Available and Adverse Inferences

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provides that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

⁴⁰ *Id.*

⁴¹ See CIMC’s Letter, “Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Respondent Selection,” dated August 27, 2020.

⁴² See Petitioner’s Letter, “Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Request for Additional Quantity & Value Questionnaires,” dated September 4, 2020.

⁴³ See Memorandum, “Quantity and Value Questionnaires: Delivery Confirmation,” dated October 20, 2020.

⁴⁴ *Id.*; see also Memorandum, “Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Quantity & Value Questionnaire,” dated October 7, 2020.

⁴⁵ See Memorandum, “Antidumping Duty Investigation of Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Respondent Selection,” dated October 28, 2020.

Section 776(b) of the Act provides that in selecting from among the facts otherwise available, Commerce may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information.⁴⁶ In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁴⁷ 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 LTFV investigation, previous administrative review, or other information placed on the record. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴⁸ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference in selecting from the facts available.⁴⁹

It is Commerce’s practice to consider, in employing adverse facts available (AFA), the extent to which a party may benefit from its own lack of cooperation.⁵⁰ The Court of Appeals for the Federal Circuit (CAFC), in *Nippon Steel*, provided an explanation of the meaning of failure to act to “the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that “ability” refers to “the quality or state of being able.”⁵¹ Thus, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum that it is able to do.⁵² The CAFC acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.⁵³ Hence, compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in a segment of a proceeding.⁵⁴

1. Application of Facts Available, and Use of Adverse Inferences to CIMC

⁴⁶ See 19 CFR 351.308(a); *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

⁴⁷ See section 776(b)(1)(B) of the Act.

⁴⁸ See, SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; and *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

⁴⁹ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*); *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); and *Preamble*.

⁵⁰ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum (IDM) at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

⁵¹ See *Nippon Steel*, 337 F.3d at 1382.

⁵² *Id.*

⁵³ *Id.* at 1380.

⁵⁴ *Id.* at 1382.

a. Use of Facts Available

As we indicate above, CIMC submitted its sections A through E supplemental questionnaire response in an untimely manner.⁵⁵ Therefore, we preliminarily determine that necessary information is not available on the record because the CIMC failed to provide the necessary information by the deadline for submission of the information.⁵⁶ Thus, CIMC significantly impeded the proceeding. Therefore, we preliminarily find, pursuant to sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act, that the use of facts available is warranted.

b. Use of Adverse Inference

On December 23, 2020, Commerce issued a supplemental questionnaire addressing issues in sections A through E of the initial questionnaire response to CIMC.⁵⁷ The supplemental questionnaire response was initially due on January 6, 2021.⁵⁸ On January 4, 2021, CIMC requested a 14-day extension to respond to Commerce's supplemental questionnaire; we granted a 7-day extension.⁵⁹ Therefore, the supplemental questionnaire response was due on January 13, 2021.⁶⁰ On January 11, 2021, CIMC requested an extension of five days to respond to our supplemental questionnaire; we granted CIMC an extension of two additional days.⁶¹ On January 15, 2021, CIMC filed its supplemental questionnaire response but opted to finalize its submissions on January 19, 2021, due to the Bracketing Not Final/1 Day Lag Filing rule.⁶²

On January 19, 2021, at 4:55 pm, counsel for CIMC contacted the case analyst alerting him that the company was having difficulty uploading all of the documents in the ACCESS portal and claiming that ACCESS was abnormally slow between 4:00 pm and 5:00 pm.⁶³ The case analyst requested that counsel reach out to the ACCESS personnel to determine whether there were issues with the ACCESS portal system.⁶⁴ On January 19, 2021, CIMC filed parts 11 through 14 of the business proprietary information (BPI) version of its supplemental questionnaire response,

⁵⁵ See CIMC Rejection Letter.

⁵⁶ *Id.*

⁵⁷ See Commerce's Letter, "Antidumping Investigation of Certain Chassis and Subassemblies Thereof from the People's Republic of China: Supplemental Questions for Sections A through E and the Double Remedy Questionnaire for CIMC Vehicles (Group) Co., Ltd., Dongguan CIMC Vehicle Co., Ltd., and Qingdao CIMC Vehicles Co., Ltd.," dated December 23, 2020.

⁵⁸ *Id.*

⁵⁹ See CIMC's Letter "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Request for Extension of Deadline to Respond to the December 23, 2020 Supplemental Questionnaire," dated January 4, 2021.

⁶⁰ See Commerce's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Extension Request for Additional Time to Respond to Commerce's Supplemental Questionnaire," dated January 4, 2021.

⁶¹ See CIMC's Letter "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Second Request for Extension of Deadline to Respond to the December 23, 2020 Supplemental Questionnaire," dated January 11, 2021; see also Commerce's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Partial Extension to Respond to Commerce's Supplemental Questionnaire," dated January 12, 2021.

⁶² See CIMC's Extension Request; see also 19 CFR 351.303(c).

⁶³ *Id.*; see also Request for Reconsideration Letter.

⁶⁴ See CIMC's Extension Request.

and the entire public version of its supplemental questionnaire response in an untimely manner because those sections came in after 5:00 pm.⁶⁵ As such, CIMC did not file a timely and complete supplemental questionnaire response prior to the 5:00 pm deadline on January 19, 2021.⁶⁶ On January 21, 2021, CIMC submitted a request for an extension of 15 minutes explaining that extraordinary circumstances stemming from technical difficulties outside of CIMC's control existed when it attempted to finalize its submissions by 5:00 pm on January 19, 2021.⁶⁷

The parts of CV's January 15, 2021, supplemental questionnaire response which came in after 5:00 pm include critical data and information: (1) worksheets demonstrating its calculation of indirect selling expenses, and warranty expenses; (2) POI sales reconciliations which were incomplete in the initial response; (3) material input data and supporting documentation and calculations; (4) steel scrap offset calculation and supporting documentation; (5) energy monthly consumption data for electricity, natural gas and water; (6) POI labor hours calculation data and supporting documentation; (7) CIMC and CIE inventory movement data, and quantity reconciliation; and (8) DCVC 2019 Audited Financial Statements.

CIMC was provided with 23 days to submit its supplemental questionnaire response. In addition, CIMC had the extended holiday weekend including Monday January 18, 2021, to finalize the filing of its bracketing final BPI version and its public version. Further, counsel for CIMC waited until 4:15 pm on January 19 to start uploading its final BPI and public versions.⁶⁸ Between 4:15 pm and 4:35 pm, CIMC became aware that each batch of the proprietary filings was taking longer than 10 minutes to file in ACCESS.⁶⁹ CIMC could have submitted an extension request once it became aware that the ACCESS portal was performing unusually slow, as it claims. Because counsel for CIMC indicated that the ACCESS portal was unusually slow as the reason it was unable to timely file all of its supplemental questionnaire response by 5:00 pm, the case analyst reached out to ACCESS personnel to confirm whether counsel's assertion regarding the ACCESS portal was accurate. According to ACCESS Help Desk personnel, the system was operating normally on January 19, 2021.⁷⁰

Further, although this was CIMC's first participation in an LTFV investigation, the firm representing CIMC has represented multiple foreign producers and exporters in numerous investigations, as well as in numerous AD/CVD administrative reviews. Counsel for CIMC is familiar with Commerce's reporting requirements, as well as the importance of submitting requested information by the deadlines established by Commerce.⁷¹ Thus, notwithstanding the conditions imposed by the COVID-19 lockdown, which have been in place for several months, we find that CIMC knew or should have known that it would be required to submit its response to Commerce's supplemental questionnaire in a timely manner.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See Request for Reconsideration Letter.

⁶⁹ *Id.*

⁷⁰ See Memorandum to the File, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Placement of email exchanges between case analyst and ACCESS personnel," dated February 3, 2021.

⁷¹ See Request for Reconsideration Letter.

Adherence to Commerce’s administrative deadlines is necessary for Commerce to provide all interested parties with a reasonable timeframe in which to submit information and to complete the administrative review within the statutory deadline specified in sections 733(b)(1) and (c)(1) of the Act.⁷² In addition, the CAFC has explained that it is not up to the parties to establish Commerce’s deadlines or to dictate to Commerce whether and when Commerce actually needs the information.⁷³ Although CIMC submitted parts of its supplemental questionnaire response prior to the 5:00 pm deadline, it failed to submit the remaining parts by the deadline.⁷⁴ As such, because CIMC failed to file its supplemental questionnaire response in its entirety by the deadline, as required by 19 CFR 351.303(b), CIMC’s supplemental questionnaire response was rejected as untimely filed.⁷⁵

With this understanding, we find that CIMC failed to cooperate to the best of its ability in filing a timely and complete response to our sections A through E supplemental questionnaire.

Finally, because Commerce cannot conduct its full dumping analysis and calculate a valid dumping margin without the information included in CIMC’s sections A through E supplemental questionnaire, we must base CIMC’s dumping margin on total facts otherwise available. Further, because CIMC has not acted to the best of its ability to submit a complete and timely response, total AFA is warranted in determining the dumping margin. Therefore, Commerce preliminarily finds that CIMC has not acted to the best of its ability to comply with Commerce’s requests for information, pursuant to section 776(b) of the Act.

As we indicate above, on February 5, 2021, CIMC submitted a request for reconsideration.⁷⁶ We have considered the reasons CIMC outlined in its request for reconsideration and find that they are not compelling enough for us to reconsider our decision to reject CIMC’s supplemental questionnaire response. First, as we indicated in our February 3, 2021, letter rejecting CIMC’s untimely supplemental questionnaire response, even if ACCESS had been operating slowly, this is not an adequate excuse if filings are not made until the end of the business day on which filings are due.⁷⁷ Therefore, it is incumbent upon all filers to give themselves adequate time to file a document and, should problems arise, adequate time to request an extension of the deadline before 5:00 pm on the filing due date.⁷⁸ CIMC did not file an extension of the deadline before 5:00 pm on the filing due date. Further, as we explained in our February 3, 2021, rejection letter, we found no evidence that ACCESS was functioning unusually slowly on January 19, 2021,

⁷² See *Maverick Tube Corp. v. United States*, 107 F.Supp.3d 1318, 1331 (CIT 2015) (holding that Commerce has broad discretion over the establishment and enforcement of time limits in antidumping proceedings; *Dongtai Peak Honey Industries Co., Ltd. v. United States*, 777 F.3d 1343, 1352 (Fed. Cir. 2015) (*Dongtai Peak*); *Bebitz Flanges Works Private Ltd. v. United States*, 433 F. Supp. 3d 1297, 1305 (CIT 2020) (*Bebitz Flanges*); and *PSC VSMPO-Avisma Corp. v. United States*, 688 F.3d 751, 760-1 (Fed. Cir. 2012) (holding that it is “fully within Commerce’s discretion to ‘set and enforce deadlines{,}’”).

⁷³ See *Dongtai Peak*, 777 F.3d at 1352; see also *Bebitz Flanges*, 433 F. Supp. 3d at 1305 (CIT 2020).

⁷⁴ See CIMC Extension Request.

⁷⁵ See CIMC Rejection Letter.

⁷⁶ See Request for Reconsideration Letter.

⁷⁷ See CIMC Rejection Letter.

⁷⁸ Commerce’s regulations at 19 CFR 302(c) state that “{b}efore the applicable time limit established under this part expires, a party may request an extension pursuant to paragraph (b) of this section. An untimely filed extension request will not be considered unless the party demonstrates that an extraordinary circumstance exists.”

between 4:00 pm and 5:00 pm.⁷⁹ Therefore, for these reasons, we are denying CIMC’s request for reconsideration.

CIMC claims that Commerce’s rejection of its extension request is inconsistent with how it treated a similar request received from the petitioner on December 31, 2020.⁸⁰ According to CIMC, on that date, the petitioner filed an extension request for its submission of surrogate value information due to technical difficulties, but the petitioner did not file the extension request until after the 5:00pm deadline.⁸¹ Nonetheless, Commerce granted the petitioner’s request.⁸² One key difference between the petitioner’s late submission and CIMC’s late submission is that the petitioner’s late submission concerned surrogate values for which there was a later deadline under which the petitioner could have submitted the surrogate value information. Specifically, Commerce set a deadline for submitting surrogate values for use in the preliminary determination, but under 19 CFR 351.301(c)(3), interested parties may submit publicly available information to value factors of production no later than 30 days before the scheduled date of the preliminary determination.⁸³ Thus, the petitioner’s December 31, 2020 surrogate value submission was late under the deadline set for consideration in the preliminary determination, but it was timely under 19 CFR 351.301(c)(3).

As a result, we find that necessary information is not available on the record, that CIMC failed to provide information by the applicable deadlines and in the form and manner requested, in accordance with sections 776(a)(1) and (2)(B) of the Act. Therefore, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), Commerce preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.⁸⁴

⁷⁹ See Memorandum, “Certain Chassis and Subassemblies Thereof from the People’s Republic of China – Placement of email exchanges between case analyst and ACCESS personnel,” dated February 3, 2021. Please note that although the case analyst initially inquired on whether the ACCESS system was unusually slow on Monday, January 18, 2021, he clarified in a subsequent email that the date in question was Tuesday, January 19, 2021, because Monday, January 18, 2021, was a Federal Holiday.

⁸⁰ See Request for Reconsideration Letter.

⁸¹ *Id.*

⁸² *Id.*

⁸³ See Surrogate Country and Value Comments Invitation Letter. The deadline for consideration in the preliminary determination was later extended. See Commerce’s Letter, “Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Request for Extension of Deadline to Submit Rebuttal Comments Regarding the Primary Surrogate Country and to Provide Surrogate Value Information for Valuing the Factors of Production,” dated December 23, 2020.

⁸⁴ See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying Preliminary Decision Memorandum (PDM) at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People’s Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where Commerce applied total AFA when the respondent failed to respond to the antidumping questionnaire).

B. Non-Market Economy Country Status

Commerce considers China to be a non-market economy (NME) country.⁸⁵ In accordance with section 771(1)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of this preliminary determination.

C. Separate Rates Determination

In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.⁸⁶ In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate rate status in this investigation.⁸⁷ This process requires exporters to submit a SRA⁸⁸ and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. In the *Initiation Notice*, Commerce required that “respondents from China submit a response to the separate-rate application by the deadline in order to receive consideration for separate-rate status.”⁸⁹

Commerce’s policy is to assign all exporters of merchandise under consideration that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.⁹⁰ Commerce analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*⁹¹ and further developed in *Silicon Carbide*.⁹² According to this separate rate test, Commerce will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, Commerce determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the *Diamond Sawblades from China* AD proceeding, and its determinations therein.⁹³ In

⁸⁵ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).

⁸⁶ *Id.*

⁸⁷ See *Initiation Notice*, 85 FR at 12509.

⁸⁸ See Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) (Policy Bulletin 05.1), available at <https://enforcement.trade.gov/policy/bull05-1.pdf>.

⁸⁹ See *Initiation Notice*, 85 FR at 12509.

⁹⁰ See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).

⁹¹ *Id.*

⁹² See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

⁹³ See *Final Results of Redetermination pursuant to Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), and available at

particular, in litigation involving the *Diamond Sawblades from China* proceeding, the U.S. Court of International Trade (CIT) found Commerce’s existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity exercised control over the respondent exporter.⁹⁴ Following the CIT’s reasoning, in recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the government exercises or has the potential to exercise control over the company’s operations generally.⁹⁵ This may include control over, for example, the selection of board members and management, key factors in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with our normal separate rate practice, any ability to control, or possess an interest in controlling, the operations of the company including the selection of board members, management, and the profit distribution of the company by a government entity is subject to Commerce’s rebuttable presumption that all companies within the NME country are subject to government control.

1. Application of Adverse Facts Available – Non-Responsive Quantity and Value Respondents

In this investigation, as we indicate above, exporters and producers had the opportunity to file a separate-rate application no later 30 days after publication of the notice. Commerce finds that the non-responsive companies⁹⁶ to which we issued a Q&V questionnaire failed to submit the requested information and, further, did not provide documentation indicating that these companies were having difficulty providing the information, nor did they request to submit the information in an alternate form. Therefore, we are preliminarily not granting these companies a

<http://enforcement.trade.gov/remands/12-147.pdf>, *aff’d Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff’d Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*); see also *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying PDM at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying IDM at Comment 1.

⁹⁴ See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) (“The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it.”); *Id.* at 1351 (“Further substantial evidence of record does not support the inference that SASAC’s {state-owned assets supervision and administration commission} ‘management’ of its ‘state-owned assets’ is restricted to the kind of passive-investor de jure ‘separation’ that Commerce concludes.”) (footnotes omitted); *Id.*, at 1355 (“The point here is that ‘governmental control’ in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a ‘degree’ of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to ‘day-to-day decisions of export operations,’ including terms, financing, and inputs into finished product for export.”); *Id.* at 1357 (“AT&M itself identifies its ‘controlling shareholder’ as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.”) (footnotes omitted).

⁹⁵ See *Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5-9.

⁹⁶ These companies include: Anhui Kaile Special Purpose Vehicle Co. Ltd; China National Heavy Duty Truck Group; Guangdong Yiwei Automobile; Henan Haiheng Import and Export; Liangshan Changzai Machinery; Liangshan Jinkaidi; Lingshan Jinbangcheng; Shandong Jiuzhou Automobile; Shandong Liangshan Huanya; Shandong Liangshan Kunpeng; Shandong Luoxiang Automobile; Shandong Panda; Shandong UT Trailer; and Xinhongchang Heavy Industry.

separate rate. Specifically, these companies did not respond to our Q&V questionnaire, and they did not submit SRAs. These companies thereby failed to establish their eligibility for a separate rate. Because these companies have not demonstrated that they are eligible for separate rate status, Commerce considers them part of the China-wide entity. Therefore, we preliminarily find also that the China-wide entity, which includes the China exporters and/or producers that did not respond to our requests for information, withheld information requested, and significantly impeded this proceeding by not submitting the requested information. Thus, necessary information is not on the record and the China-wide entity, which encompasses the parties that failed to respond to the request for Q&V information, has withheld requested information, failed to provide such information in a timely manner or in the form or manner requested, and significantly impeded the proceeding. Therefore, we preliminarily determine that the use of facts available is warranted in determining the rate of the China-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.⁹⁷

Commerce finds that the China-wide entity's lack of participation, including the failure of certain parts of the China-wide entity to submit Q&V information, constitutes circumstances under which it is reasonable to conclude that the China-wide entity as a whole failed to cooperate to the best of its ability to comply with Commerce's request for information.⁹⁸ With respect to the missing information, no documents were filed indicating any difficulty providing the information, nor was there a request to allow the information to be submitted in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from among the facts otherwise available with respect to the China-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).⁹⁹

2. Companies Not Receiving a Separate Rate - CIMC and Fuwa

CIMC and Fuwa submitted information pertaining to their eligibility for a separate rate in their responses to section A of the AD questionnaire.¹⁰⁰ Fuwa also submitted a separate rate application.¹⁰¹

CIMC

Because we are applying total AFA to CIMC, and do not have all of the information on the record to determine whether CIMC is eligible for a separate rate, we preliminarily determine that CIMC is not eligible for a separate rate. Specifically, although CIMC responded to the separate

⁹⁷ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

⁹⁸ See *Nippon Steel Corporation v. United States*, 337 F. 3d 1373, 1383 (Fed. Cir. 2003) (noting that Commerce need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances where it is reasonable to conclude that less than full cooperation has been shown)).

⁹⁹ *Id.*, 337 F. 3d at 1382-83.

¹⁰⁰ See CIMC AQR; see also Fuwa AQR.

¹⁰¹ See Fuwa's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China; Separate Rate Application," dated September 25, 2020.

rate questions outlined in our AD questionnaire, there is information on the record that calls into question whether CIMC is eligible for a separate rate.¹⁰² In our supplemental questionnaire,¹⁰³ we requested further information concerning CIMC's eligibility for a separate rate, but CIMC failed to submit the entirety of its supplemental questionnaire response in a timely manner, as discussed above and, therefore, we do not have complete responses to our separate rate inquiries on the record. For example, we are missing information concerning a shareholder of the CIMC Group, which appears to be owned by two state-owned entities.¹⁰⁴ Thus, we preliminarily determine that CIMC failed to rebut the presumption of government control and is ineligible for a separate rate. Accordingly, we preliminarily determine that CIMC is part of the China-wide entity.

Fuwa

In the SRA, we ask respondents to provide information about all intermediate and ultimate shareholders. We state that ultimate shareholders may be individuals, government entities, *etc.*, and a shareholder entity which has further ownership is not considered the ultimate shareholder but an intermediate shareholder. In its SRA response, Fuwa responded that Fuwa Mechanical Engineering (HK) Company Limited (a Hong Kong company) (Fuwa HK) owns 100 percent of Fuwa.¹⁰⁵ The separate rate application included annual return registration documents for Fuwa HK, which indicate that Fuwa HK is wholly owned by Mega Trailer Accessories Company Limited, a Cayman Islands company.¹⁰⁶ In the supplemental questionnaire, we asked Fuwa again to report all shareholders and ultimate shareholders of its company. Fuwa responded by repeating that Fuwa HK holds 100 percent of the company and did not provide any further information.¹⁰⁷

Here, Fuwa had two opportunities to provide information on all shareholders and ultimate shareholders, and Fuwa did not provide this information. In fact, in its narrative, it only mentioned Fuwa HK, in spite of the fact that the documentation it submitted shows Fuwa HK is owned by another company. Ultimately, we do not have the names of the ultimate shareholders to complete a full analysis of government control (or lack thereof). Thus, we preliminarily find that Fuwa is not eligible for a separate rate because it failed to rebut the presumption of government control and is part of the China-wide entity.

¹⁰² See Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Comments on CIMC Vehicles' Section A Initial Questionnaire Response," dated October 27, 2020; *see also* CIMC Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: New Factual Information and Rebuttal to Petitioner's Comments to CV's Section A Questionnaire Response," dated November 5, 2020.

¹⁰³ See Commerce's Letter, "Antidumping Investigation of Certain Chassis and Subassemblies Thereof from the People's Republic of China: Supplemental Questions for Sections A through E and the Double Remedy Questionnaire for CIMC Vehicles (Group) Co., Ltd., Dongguan CIMC Vehicle Co., Ltd., and Qingdao CIMC Special Vehicles Co., Ltd.

¹⁰⁴ *Id.* Record evidence indicates that the respondent, CIMC, is majority owned by CIMC Group.

¹⁰⁵ See Fuwa's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Separate Rate Application," dated September 25, 2020.

¹⁰⁶ *Id.* at Exhibit 4.

¹⁰⁷ See Fuwa's Letter "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Supplemental Questionnaire Response," dated January 12, 2021, at 5.

3. Application of Total AFA to the China-Wide Entity

Commerce preliminarily determines that it must rely on facts otherwise available to assign an estimated weighted-average margin to the China-wide entity in accordance with sections 776(a)(1)-(2), (B) and (C) of the Act because the China-wide entity, which includes CIMC, Fuwa, and the Q&V companies, failed to provide information in the form and manner requested by Commerce and, by not providing requested information, significantly impeded the proceeding. Therefore, pursuant to section 776(b) of the Act, Commerce preliminarily determines that the China-wide entity failed to cooperate by not acting to the best of its ability and, accordingly, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to that entity.

4. Selection of an Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize Commerce to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. Commerce's practice in investigations, when selecting a rate as total AFA, is to use the highest rate from the petition which, to the extent practicable, can be corroborated.¹⁰⁸ Commerce's practice is to select an adverse facts available rate that is sufficiently adverse as to effectuate the purpose of the facts available in a timely manner, and that ensures that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.¹⁰⁹

Consistent with the statute, court precedent and our practice, Commerce is preliminarily assigning, as AFA, an estimated weighted-average dumping margin of 188.05 percent to the China-wide entity. This rate, referenced in the *Initiation Notice*, is the only dumping margin alleged in the petition.¹¹⁰

5. Corroboration of the AFA Rate

As noted above, relying on an adverse inference in selecting from the facts available may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. Section 776(c) of the Act provides that when Commerce relies on secondary information (such as the petition) in making an adverse inference, rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, that information from independent sources that are

¹⁰⁸ See *Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 15930, unchanged in *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009); see also *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325, 1336 (CIT 2009) ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.").

¹⁰⁹ See *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005); and SAA at 870.

¹¹⁰ See *Initiation Notice*, 85 FR at 52555.

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 of the Act concerning the subject merchandise. The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information used has probative value. To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information upon which it is basing the AFA dumping margin, although Commerce is not required to estimate what the dumping margin of an uncooperative interested party would have been if the interested party failing to cooperate had cooperated or to demonstrate that the AFA dumping margin used for the uncooperative party reflects an “alleged commercial reality” of the party. For purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis.¹¹¹ We examined the evidence supporting the calculation in the Petition to determine the probative value of the dumping margin alleged in the Petition for use as AFA. During our pre-initiation analysis, we examined the key elements of the constructed export price and normal-value calculations used in the Petition to derive the dumping margin alleged in the Petition.¹¹²

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we considered the petitioner’s CEP and normal-value calculations to be reliable. Because we obtained no other information that would make us question the validity of the sources of information or the validity of information supporting the U.S. price or normal-value calculations provided in the Petition, and based on our examination of the aforementioned information, we preliminarily consider the CEP and normal-value calculations from the Petition to be reliable for purposes for this preliminary determination. Because we confirmed the accuracy and validity of the information underlying the derivation of the dumping margin in the Petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that the margin in the Petition is reliable for purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The courts acknowledge that the consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected adverse-facts-available rate to uncooperative respondent by virtue of its belonging to the same industry.¹¹³ No information has been placed on the record to indicate that the rate in the Petition is not reflective of commercial practices of the chassis industry. As such, we find this rate relevant to CIMC, Fuwa, and the rest of the China-wide entity. Furthermore, because: (1) we are unable to rely on CIMC’s data to calculate an estimated weighted-average dumping margin; (2) we preliminarily find that CIMC and Fuwa are not eligible for a separate rate; and (3) there are no other respondents in this investigation for which we are calculating an estimated weighted-average

¹¹¹ See Petitioner’s Letter, “Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties,” dated July 30, 2020 (the Petition); *see also* Antidumping Duty Investigation Initiation Checklist: Certain Chassis and Subassemblies from the People’s Republic of China, dated August 19, 2020 (Initiation Checklist).

¹¹² See Initiation Checklist at 6-7.

¹¹³ See, e.g., *Ferro Union, Inc v United States*, 44 F. Supp.2d 1310, 1334 (CIT 1999).

dumping margin we relied upon the rate found in the Petition, which is the only information regarding the chassis industry reasonably at Commerce’s disposal.

Accordingly, Commerce corroborated the adverse-fact-available rate of 188.05 percent to the extent practicable within the meaning of section 776(c) of the Act because the rate: 1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and 2) is relevant to the China-wide entity, including to the mandatory respondents. Therefore, we preliminarily determine that the alleged dumping margin from the Petition has probative value to assign as the estimated dumping margin to the China-wide entity, based on AFA.¹¹⁴

VII. ADJUSTMENT UNDER SECTION 777A(f) OF THE ACT

In applying section 777A(f)(1) of the Act, Commerce examines: (A) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise; (B) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period; and (C) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of normal value determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.¹¹⁵ For a subsidy meeting these criteria, the statute requires Commerce to reduce the AD cash deposit rate by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.¹¹⁶ Because there has been no demonstration on the record that an adjustment for domestic subsidies is warranted, Commerce is not making any such adjustment to the rate being assigned to the China-wide entity, which includes CIMC and Fuwa.

VIII. ADJUSTMENT TO CASH DEPOSIT RATE FOR EXPORT SUBSIDIES

In an LTFV investigation where there is a concurrent CVD investigation, it is Commerce’s normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent’s estimated weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price “shall be increased by the amount of any countervailing duty imposed on the subject merchandise... to offset an export subsidy.”¹¹⁷

Commerce determined in the preliminary determination of the companion chassis CVD investigation that CIMC benefitted from certain subsidy programs contingent on exports totaling 5.77 percent.¹¹⁸ In addition, CIMC’s CVD rate was also applied to all other producers. The China-wide entity (including CIMC and Fuwa) preliminarily received an estimated dumping

¹¹⁴ See section 776(c) of the Act and 19 CFR 351.308(c) and (d).

¹¹⁵ See section 777A(f)(1)(A)-(C) of the Act.

¹¹⁶ See section 777A(f)(1)-(2) of the Act.

¹¹⁷ See *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying IDM at Comment 1.

¹¹⁸ See *Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 86 FR 56 (January 4, 2021), and accompanying PDM.

margin based on total AFA, which is based on the Petition rate of 188.05 percent. Commerce has determined the cash deposit rate for the China-wide entity by adjusting its estimated dumping margin by export subsidies determined for all companies in the companion CVD investigation (5.77 percent).

IX. ITC NOTIFICATION

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and BPI in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement or Compliance. In accordance with section 735(b)(2) of the Act, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after Commerce makes its final affirmative determination.

X. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

Agree

Disagree

2/25/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance