



C-570-140

Investigation

POI: 1/1/2020-12/31/2020

**Public Document**

E&C/OI: MR/TP

July 26, 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:** Decision Memorandum for the Preliminary Determination in the  
Countervailing Duty Investigation of Certain Mobile Access  
Equipment and Subassemblies Thereof 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 the producers and exporters of certain mobile access equipment and subassemblies thereof (mobile access equipment) from the People's Republic of China (China), as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act). Pursuant to section 701(f) of the Act, Commerce is applying the countervailing duty law to countries designated as non-market economies under section 771(18) of the Act, such as China.

## II. BACKGROUND

### A. Initiation and Case History

On February 26, 2021, the Coalition of American Manufacturers of Mobile Access Equipment (the petitioner) filed a petition with Commerce seeking the imposition of countervailing duties (CVD) on imports of mobile access equipment from China.<sup>1</sup> Between March 2, 2021, and March 15, 2021, we issued supplemental questionnaires and held teleconferences in which Commerce addressed questions to the petitioner regarding Volumes I and III of the Petition, to

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<sup>1</sup> See Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties," dated February 26, 2021 (the Petition) at Volumes I (Petition Volume I) and III (Petition Volume III).



which we received timely responses and revised scope language.<sup>2</sup> Pursuant to section 702(b)(4)(A)(ii) of the Act, on March 3, 2021, Commerce invited the Government of China (GOC) for consultations with respect to the Petition.<sup>3</sup> On March 11, 2021, the GOC requested consultations with Commerce. On March 15, 2021, Commerce held consultations with the GOC in which the GOC expressed general concerns with the Petition and specific concerns regarding certain alleged subsidy programs.<sup>4</sup> On March 18, 2021, Commerce initiated a CVD investigation on mobile access equipment from China.<sup>5</sup>

## **B. Respondent Selection**

In the *Initiation Notice*, we stated that, in the event that the number of companies is large and that we cannot individually examine each company based upon our resources, we intended to select mandatory respondents based on quantity and value (Q&V) questionnaires issued to potential respondents because one of the Harmonized Tariff Schedule of the United States numbers included in the Petition is a basket category, which prevents us from using Customs and Border Protection entry data.<sup>6</sup> On March 22, 2021, we determined that we could not individually

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<sup>2</sup> See Commerce's Letters, "Petition for the Imposition of Countervailing Duties on Imports of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Supplemental Questions," dated March 2, 2021; see also Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Responses to Supplemental Questionnaire on Volume I of the Petition," dated March 5, 2021; see also Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Response to Supplemental Questionnaire on Volume III of the Petition," dated March 8, 2021; see also Memorandum, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Phone Call with Counsel to the Petitioner," dated March 9, 2021; see also Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Responses to Second Supplemental Questionnaire on Volume I of the Petition," dated March 12, 2021; see also Memorandum, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China," dated March 12, 2021; see also Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Responses to Third Supplemental Questionnaire on Volume I of the Petition," dated March 15, 2021; see also Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Revision to Scope of Antidumping and Countervailing Duty Investigations," dated March 16, 2021; see also Memorandum, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Phone Call with Counsel to the Petitioner," dated March 17, 2021; see also Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Revision to Clarification Request Regarding the Scope of Antidumping and Countervailing Duty Investigations," dated March 18, 2021.

<sup>3</sup> See Commerce's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition," dated March 3, 2021.

<sup>4</sup> See Memorandum, "Consultations with Officials from the Government of China Regarding the Countervailing Duty Petition Concerning Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China," dated March 16, 2021.

<sup>5</sup> See Checklist, "Countervailing Duty Investigation Initiation Checklist: Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China," dated March 18, 2021 (Initiation Checklist); see also *Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 86 FR 15905 (March 25, 2021) (*Initiation Notice*).

<sup>6</sup> See *Initiation Notice*, 86 FR at 15908.

examine each company and issued Q&V questionnaires to all 19 producers listed in the Petition.<sup>7</sup> On April 1, 2021, and April 5, 2021, Commerce received Q&V questionnaire responses from 12 companies: Guangxi Liugong Machinery Co., Ltd. (Guanxi Liugong),<sup>8</sup> Hunan Sinoboom Intelligent Equipment Co., Ltd. (Hunan Sinoboom),<sup>9</sup> Zhejiang Dingli Machinery Co., Ltd. (Dingli),<sup>10</sup> Noblelift Intelligent Equipment Co., Ltd. (Noblelift),<sup>11</sup> Sany Marine Heavy Industry Co., Ltd. (Sany Marine),<sup>12</sup> XCMG Imp. & Exp. Co., Ltd. (XCMG),<sup>13</sup> Zoomlion Heavy Industry Science and Technology Co., Ltd. (Zoomlion),<sup>14</sup> Mantall Heavy Industry Co., Ltd. (Mantall),<sup>15</sup> Zoomlion International Trading (H.K.) Co., Limited (Zoomlion HK),<sup>16</sup> Lingong Group Jinan

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<sup>7</sup> See Petition Volume I at Exhibit I-10; *see also* Commerce's Letter, "Quantity and Value Questionnaire for the Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China," dated March 22, 2021 (Q&V Questionnaire); Commerce's Letter, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Quantity and Value Questionnaire for Noblelift Intelligent Equipment Co., Ltd.," dated March 22, 2021; Commerce's Letter, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Quantity and Value Questionnaire for Lingong Group Jinan Heavy Machinery Co., Ltd. ("LGMG")," dated March 22, 2021; Commerce's Letter, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Quantity and Value Questionnaire for Zhejiang Dingli Machinery Co., Ltd.," dated March 22, 2021; Memorandum, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Issuance of Quantity and Value Questionnaires," dated March 23, 2021; and Memorandum, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Quantity & Value Questionnaires: Delivery Confirmation," dated April 8, 2021 (Delivery Confirmation Memorandum).

<sup>8</sup> See Guanxi Liugong's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Quantity & Value Questionnaire Response," dated April 1, 2021.

<sup>9</sup> See Hunan Sinoboom's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China; Hunan Sinoboom Intelligent Equipment Co., Ltd.'s Amended Quantity and Value Questionnaire Response," dated April 16, 2021. Commerce allowed Hunan Sinoboom to file corrections to its initial Q&V response dated April 5, 2021.

<sup>10</sup> See Dingli's Letter, "Dingli Quantity and Value Response (Revised) in the Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (C-570-140)," dated April 5, 2021.

<sup>11</sup> See Noblelift's Letter, "Countervailing Duty Investigation on Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Q&V Questionnaire Response," dated April 5, 2021.

<sup>12</sup> See Sany Marine's Letter, "Sany Marine Quantity and Value Response in the Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (C-570-140)," dated April 5, 2021.

<sup>13</sup> See XCMG's Letter, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Quantity and Value Submission," dated April 5, 2021.

<sup>14</sup> See Zoomlion's Letter, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Quantity and Value Submission," dated April 5, 2021.

<sup>15</sup> See Mantall's Letter, "Mantall Quantity and Value Response in the Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (C-570-140)," dated April 5, 2021.

<sup>16</sup> See Zoomlion HK's Letter, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Quantity and Value Submission," dated April 5, 2021.

Heavy Machinery Co., Ltd. (LGMG),<sup>17</sup> Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd. (JLG Tianjin),<sup>18</sup> and Terex (Changzhou) Machinery Co. Ltd. (Terex Changzhou).<sup>19</sup>

As of April 5, 2021, 14 exporters/producers of the merchandise under consideration received Q&V questionnaires via FedEx, while five exporters/producers did not receive these questionnaires.<sup>20</sup> Commerce did not receive a response from six companies that were sent a Q&V questionnaire.<sup>21</sup> For further information regarding these non-responsive companies, *see* “Use of Facts Otherwise Available and Application of Adverse Inferences B. Application of AFA: Non-Responsive Companies.” We did not receive any additional comments or requests for voluntary treatment from any party.

On April 8, 2021, Commerce invited interested parties to comment on the Q&V response data.<sup>22</sup> On April 12, 2021, the petitioner timely submitted comments.<sup>23</sup> No other interested party submitted comments regarding Q&V data. On April 22, 2021, Commerce selected Dingli and LGMG, the two exporters/producers that account for the largest volume (in units) of the merchandise under consideration, for individual examination as mandatory respondents in this investigation. We did not receive requests for voluntary treatment from any party.

### **C. Questionnaires and Responses**

On April 23, 2021, we issued an initial questionnaire to the GOC requesting information on programs which may constitute subsidies under U.S. law that were used by the mandatory respondents: Dingli and LGMG (collectively, the respondents).<sup>24</sup> On May 7, 2021, and May 14, 2021, we received timely responses from Dingli and LGMG, respectively, for the company affiliation portion of the initial questionnaire.<sup>25</sup> Further, on June 15, 2021, we timely received

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<sup>17</sup> See LGMG’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: CVD Investigation; LGMG Q&V Response,” dated April 5, 2021.

<sup>18</sup> See JLG Tianjin’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Quantity and Value Questionnaire Response,” dated April 5, 2021.

<sup>19</sup> See Terex Changzhou’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Quantity and Value Questionnaire Response,” dated April 5, 2021.

<sup>20</sup> See Delivery Confirmation Memorandum. Of the five exporters or producers that did not receive Q&V questionnaires via FedEx, four received the questionnaire in another way, as evidenced by their timely filed Q&V responses. The fifth, Qingdao YTE Special Products, does not appear to have received the Q&V questionnaire in any form. Consequently, we are not treating Qingdao YTE Special Products as non-responsive.

<sup>21</sup> Note that one of the 12 responses was from Zoomlion International Trading (H.K.) Co., Limited, which was not requested, but appears to be affiliated with the requested company Zoomlion Heavy Industry Science and Technology Co., Ltd.

<sup>22</sup> See Commerce’s Letter, “Antidumping Duty (AD) and Countervailing Duty (CVD) Investigations of Certain Mobile Access Equipment and Subassemblies Thereof (Mobile Access Equipment) from the People’s Republic of China (China): Respondent Selection Comments,” dated April 8, 2021.

<sup>23</sup> See Petitioner’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Quantity and Value Questionnaire Response,” dated April 12, 2021.

<sup>24</sup> See Commerce’s Letter, “Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Countervailing Duty Questionnaire,” dated April 23, 2021 (Initial Questionnaire).

<sup>25</sup> See Dingli’s Letter, “Dingli Affiliation Response: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China (C-570-140) (POI: 2020),” dated

responses to the initial questionnaire from both the GOC and the respondents.<sup>26</sup> Between May 13, 2021, and June 29, 2021, the petitioner filed comments on the initial questionnaire responses, including the affiliation responses.<sup>27</sup> From June through July 2021, we issued supplemental questionnaires to the GOC and the respondents and received timely responses.<sup>28</sup>

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May 7, 2021 (Dingli Affiliation Response); *see also* LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; CVD Investigation; Response to Affiliation Questionnaire," dated May 14, 2021 (LGMG Affiliation Response).

<sup>26</sup> *See* GOC's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China, Case No. C-570-140: GOC's Initial Questionnaire Response," dated June 15, 2021 (GOCIQR); *see also* Dingli's Letter, "Dingli Initial Questionnaire Response: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China (C-570-140) (POI: 2020)," dated June 15, 2021 (Dingli IQR); and LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; AD Investigation; LGMG Initial Questionnaire Response," dated June 15, 2021 (LGMGIQR).

<sup>27</sup> *See* Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Comments on Dingli's Affiliated Companies Questionnaire Response," dated May 13, 2021; *see also* Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Comments on LGMG's Affiliated Companies Questionnaire Response," dated May 24, 2021; Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Comments on Dingli's Initial Questionnaire Response," dated June 22, 2021; Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Comments on Government of the People's Republic of China's Initial Questionnaire Response," dated June 22, 2021; and Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Comments on LGMG's Initial Questionnaire Response," dated June 29, 2021.

<sup>28</sup> *See* Commerce's Letter, "Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China (China): Affiliation Supplemental Questionnaire," dated May 26, 2021; *see also* Commerce's Letter, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Supplemental Affiliation Questionnaire for LGMG," dated June 1, 2021; LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; CVD Investigation; LGMG Supplemental Affiliation Response," dated June 15, 2021; Commerce's Letter, "Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Supplemental Questionnaire for the Government of China," dated June 29, 2021 (GOCSQ); Commerce's Letter, "Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Supplemental Questionnaire for Zhejiang Dingli Machinery Co., Ltd.," dated June 29, 2021 (Dingli SQ); Commerce's Letter, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Supplemental Questionnaire for LGMG," dated June 29, 2021 (LGMGSQ); Commerce's Letter, "Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Supplemental Questionnaire for Zhejiang Dingli Machinery Co., Ltd. Regarding the Export Buyer's Credit Program," dated July 1, 2021 (Dingli EBCSQ); Commerce's Letter, "Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Supplemental Questionnaire for Lingong Group Jinan Heavy Machinery Co., Ltd. Regarding the Export Buyer's Credit Program," dated July 1, 2021 (LGMGEBCSQ); Commerce's Letter, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Third Supplemental Questionnaire for LGMG," dated July 6, 2021; Commerce's Letter, "Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Second Supplemental Questionnaire for the Government of China," dated July 9, 2021 (GOCSQ2); Dingli's Letter, "Dingli Supplemental Questionnaire Response: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China (C-570-140) (POI: 2020)," dated July 13, 2021 (Dingli SQR); GOC's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China, Case No. C-570-140: GOC's Supplemental Questionnaire Response," dated July 13, 2021 (GOCSQR); Dingli's Letter, "Dingli Export Buyer's Credit Supp. Questionnaire Response: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China (C-570-140) (POI: 2020)," dated July 15, 2021 (Dingli EBCSQR); GOC's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China, Case No. C-570-140: GOC's Second Supplemental Questionnaire Response," dated July 19, 2021 (GOCSQR2); LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China;

In response to the affiliation supplemental questionnaires, the respondents filed comments and factual information with requests to reconsider certain questions, which Commerce approved.<sup>29</sup> On June 28, 2021, the respondents and the petitioner provided benchmark information.<sup>30</sup> On July 8, 2021, the respondents and the petitioner provided rebuttal benchmark information and comments on the benchmark submissions.<sup>31</sup> In addition, the petitioner provided comments on the preliminary determination.<sup>32</sup> On July 20, 2021, the petitioner provided further comments regarding the preliminary determination.<sup>33</sup>

#### **D. Postponement of Preliminary Determination**

On April 26, 2021, the petitioner timely filed a request for Commerce to fully extend the deadline for the preliminary determination in this investigation, pursuant to section 703(c)(1) of the Act and 19 CFR 351.205(e).<sup>34</sup> On May 4, 2021, Commerce published in the *Federal Register* a notice of the postponement of the preliminary determination.<sup>35</sup> Consequently, the

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CVD Investigation; LGMG 1st Supplemental Questionnaire Response,” dated July 19, 2021 (LGMGSQR); LGMG’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from China; CVD Investigation; LGMG 2nd Supplemental Questionnaire Response,” dated July 19, 2021 (LGMGEBCSQR); and LGMG’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from China; CVD Investigation; LGMG 3rd Supplemental Questionnaire Response,” dated July 22, 2021 (LGMGSQR3)

<sup>29</sup> See Dingli’s Letter, “Dingli Request for Reconsideration: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China (C-570-140) (POI: 2020),” dated June 7, 2021; LGMG’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from China; CVD Investigation; Affiliation Supplemental Questionnaire Reconsideration,” dated June 7, 2021; Commerce’s Letter, “Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Reconsideration of Affiliate Supplemental Responses,” dated June 10, 2021; and Commerce’s Letter, “Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Response to Request for Reconsideration Regarding Supplemental Questionnaire,” dated June 10, 2021.

<sup>30</sup> See LGMG’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from China; AD Investigation; LGMG Benchmark Submission,” dated June 28, 2021 (LGMG Benchmark Submission); *see also* Dingli’s Letter, “Dingli Benchmark Submission: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China (C-570-140) (POI: 2020),” dated June 28, 2021 (Dingli Benchmark Submission); and Petitioner’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Submission of Benchmark Information and Other Factual Information,” dated June 28, 2021 (Petitioner Benchmark Submission).

<sup>31</sup> See LGMG’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from China; AD Investigation; LGMG Rebuttal Benchmark Submission,” dated July 8, 2021 (LGMG Rebuttal Benchmark Submission); *see also* Dingli’s Letter, “Dingli Rebuttal Benchmark Information: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China (C-570-140) (POI: 2020),” dated July 8, 2021 (Dingli Rebuttal Benchmark Submission); and Petitioner’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Rebuttal Benchmark Information, Comments on New Subsidy Allegation Questionnaire Responses, and Initial Pre-Preliminary Determination Comments,” dated July 8, 2021 (Petitioner Rebuttal Benchmark Submission and NSA Comments).

<sup>32</sup> See Petitioner Rebuttal Benchmark Submission and NSA Comments.

<sup>33</sup> See Petitioner’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Additional Pre-Preliminary Determination Comments,” dated July 20, 2021.

<sup>34</sup> See Petitioner’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Request for Postponement of Preliminary Determination,” dated April 26, 2021.

<sup>35</sup> See *Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 86 FR 23681 (May 4, 2021).

deadline for the preliminary determination is 130 days after the date on which the investigation was initiated, *i.e.*, July 26, 2021.

### **E. Treasury's Currency Evaluation and the Currency Undervaluation Program**

On April 23, 2021, Commerce requested that the Department of Treasury (Treasury) provide its evaluation and conclusion on the allegation that China's currency, the renminbi (RMB), was undervalued during the 2020 POI. In particular, pursuant to 19 CFR 351.528(c), we requested that Treasury provide an evaluation and conclusion with respect to the determinations under 19 CFR 351.528(a) and (b)(1).<sup>36</sup> On May 28, 2021, Treasury responded with the requested evaluation and conclusion, and pursuant to 19 CFR 351.301(c)(4), Commerce provided an opportunity for interested parties to comment and provide rebuttal factual information regarding the Treasury Letter.<sup>37</sup> On June 18, 2021, the GOC and the petitioner provided rebuttal factual information and comments regarding the Treasury Letter.<sup>38</sup> On July 9, 2021, Commerce supplemented the record with further information relating to the Chinese economy derived from the International Monetary Fund (IMF) and Organization for Economic Cooperation and Development (OECD).<sup>39</sup> On July 16, 2021, the GOC provided comments and rebuttal factual information regarding the IMF and OECD data.<sup>40</sup>

### **F. New Subsidy Allegations**

On May 7, 2021, the petitioner timely submitted two new subsidy allegations (NSA) with respect to the respondents: the provision of cold-rolled steel for less than adequate remuneration (LTAR) and the provision of off-the-road (OTR) tires for LTAR.<sup>41</sup> On June 8, 2021, after considering the information on the record, Commerce initiated an investigation on both alleged new programs.<sup>42</sup> On June 9, 2021, Commerce issued NSA questionnaires to the respondents and the GOC, to which we received timely responses.<sup>43</sup> On June 16, 2021, the petitioner requested

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<sup>36</sup> See Commerce's Letter to Patricia Pollard, Acting Deputy Assistant Secretary, International Monetary Policy, dated April 23, 2021 (Letter to Treasury).

<sup>37</sup> See Treasury's Letter, dated May 28, 2021 (Treasury Letter); *see also* Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Currency Undervaluation Factual Information," dated May 28, 2021.

<sup>38</sup> See GOC's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China, Case No. C-570-140: Government of China's Response to Treasury Report," dated June 18, 2021; *see also* Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Rebuttal Factual Information on the U.S. Department of the Treasury's Currency Undervaluation Assessment," dated June 18, 2021.

<sup>39</sup> See Memorandum, "International Monetary Fund and the Organization for Economic Cooperation and Development Data," dated July 9, 2021.

<sup>40</sup> See GOC's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China, Case No. C-570-140: GOC Response to IMF and OECD Data," dated July 16, 2021.

<sup>41</sup> See Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: New Subsidy Allegations," dated May 7, 2021.

<sup>42</sup> See Memorandum, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: New Subsidy Allegations," dated June 8, 2021.

<sup>43</sup> See Commerce's Letter, "Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: New Subsidy Allegation Questionnaire for the Government of China," dated June 9, 2021; *see also* Commerce's Letters, "Mobile Access Equipment and Subassemblies from the People's Republic of China: New

an extension of time to submit further NSAs, which Commerce granted.<sup>44</sup> On July 1, 2021, the petitioner timely submitted an additional NSA regarding the provision of paint and other coatings for LTAR as well as an uncreditworthiness allegation with respect to LGMG.<sup>45</sup> On July 8, 2021, the petitioner filed comments on the NSA questionnaire responses of the respondents and the GOC.<sup>46</sup> On July 14, 2021, we issued NSA supplemental questionnaires regarding the cold-rolled steel and OTR tires LTARs.<sup>47</sup> The deadlines for responses to these questionnaires are after the preliminary determination of this investigation, and consequently, we will issue a post-preliminary decision regarding these programs. Regarding the provision of paint and other coatings for LTAR and the creditworthiness of LGMG submitted by the petitioner on July 1, 2021, Commerce will issue a decision regarding whether to initiate on these allegations following this preliminary determination.

### III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2020, through December 31, 2020.

### IV. INJURY TEST

Because China is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry. On April 16, 2021, the ITC determined that there is a reasonable indication that an industry in the United States is threatened with injury by reason of imports of mobile access equipment from China.<sup>48</sup>

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Subsidy Allegation Questionnaire,” dated June 9, 2021; *see also* Dingli’s Letter, “Dingli New Subsidy Allegation Questionnaire Response: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China (C-570-140) (POI: 2020),” dated June 23, 2021; *see also* LGMG’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from China; CVD Investigation; LGMG New Subsidy Allegation Questionnaire Response,” dated June 30, 2021; *see also* GOC’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China, Case No. C-570-140: GOC’s New Subsidy Allegation Questionnaire Response,” dated June 30, 2021.

<sup>44</sup> *See* Petitioner’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Extension Request for New Subsidy Allegations,” dated June 16, 2021; *see also* Commerce’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Extension of the Deadline for New Subsidy Allegations,” dated June 16, 2021.

<sup>45</sup> *See* Petitioner’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: New Subsidy and Creditworthiness Allegations,” dated June 30, 2021.

<sup>46</sup> *See* Petitioner Rebuttal Benchmark Submission and NSA Comments.

<sup>47</sup> *See* Commerce’s Letter, “Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: New Subsidy Allegations Supplemental Questionnaire for Zhejiang Dingli Machinery Co., Ltd.,” dated July 14, 2021; *see also* Commerce’s Letter, “Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: New Subsidy Allegations Supplemental Questionnaire for LGMG,” dated July 14, 2021; *see also* Commerce’s Letter, “Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: New Subsidy Allegations Supplemental Questionnaire for the Government of China,” dated July 14, 2021.

<sup>48</sup> *See Certain Mobile Access Equipment and Subassemblies Thereof from China Determinations*, 86 FR 20196 (April 16, 2021).



## V. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations,<sup>49</sup> we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, *i.e.*, scope.<sup>50</sup> We received comments concerning the scope of the concurrent AD and CVD investigations of mobile access equipment from the following interested parties: Snorkel International, LLC., Xtreme Manufacturing, LLC., and Ahern Rentals, Inc. (collectively, Ahern Companies); Skyjack Inc. and Skyjack Equipment Inc. (collectively, Skyjack); and Dingli.<sup>51</sup> In addition, the petitioner submitted rebuttal scope comments.<sup>52</sup> We addressed the comments in the Preliminary Scope Memorandum.<sup>53</sup>

## VI. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation consists of certain mobile access equipment, which consists primarily of boom lifts, scissor lifts, and material telehandlers, and subassemblies thereof. Mobile access equipment combines a mobile (self-propelled or towed) chassis, with a lifting device (*e.g.*, scissor arms, boom assemblies) for mechanically lifting persons, tools and/or materials capable of reaching a working height of ten feet or more, and a coupler that provides an attachment point for the lifting device, in addition to other components. The scope of this investigation covers mobile access equipment and subassemblies thereof whether finished or unfinished, whether assembled or unassembled, and whether the equipment contains any additional features that provide for functions beyond the primary lifting function.

Subject merchandise includes, but is not limited to, the following subassemblies:

- scissor arm assemblies, or scissor arm sections, for connection to chassis and platform assemblies. These assemblies include: (1) pin assemblies that connect sections to form scissor arm assemblies; and (2) actuators that power the arm assemblies to extend and retract. These assemblies may or may not also include blocks that allow sliding of end sections in relation to frame and platform, hydraulic hoses, electrical cables, and/or other components;
- boom assemblies, or boom sections, for connection to the boom turntable, or to the chassis assembly, or to a platform assembly or to a lifting device. Boom assemblies include telescoping sections where the smallest section (or tube) can be nested in the next

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<sup>49</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>50</sup> See *Initiation Notice*, 86 FR at 15906.

<sup>51</sup> See Ahern Companies' Letter, "Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Comments on the Scope of the Investigation," dated April 7, 2021; *see also* Skyjack's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Submission of Scope Comments by Skyjack Inc.," dated April 9, 2021; *see also* Dingli's Letter, "Dingli Scope Comments in the Antidumping and Countervailing Duty Investigations of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (A-570-139; C-570-140)," dated April 9, 2021.

<sup>52</sup> See Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Rebuttal Scope Comments," dated April 19, 2021.

<sup>53</sup> See Memorandum, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination," dated concurrently with, and hereby adopted by, this memorandum (Preliminary Scope Memorandum).

larger section (or tube) and can slide out for extension and/or articulated sections joined by pins. These assemblies may or may not include pins, hydraulic cylinders, hydraulic hoses, electrical cables, and/or other components;

- chassis assemblies, for connection to scissor arm assemblies, or to boom assemblies, or to boom turntable assemblies. Chassis assemblies include: (1) chassis frames; and (2) frame sections. Chassis assemblies may or may not include axles, wheel end components, steering cylinders, engine assembly, transmission, drive shafts, tires and wheels, crawler tracks and wheels, fuel tank, hydraulic oil tanks, battery assemblies, and/or other components;
- boom turntable assemblies, for connection to chassis assemblies, or to boom assemblies. Boom turntable assemblies include turntable frames. Boom turntable assemblies may or may not include engine assembly, slewing rings, fuel tank, hydraulic oil tank, battery assemblies, counterweights, hoods (enclosures), and/or other components.

Importation of any of these subassemblies, whether assembled or unassembled, constitutes unfinished mobile access equipment for purposes of this investigation.

Processing of finished and unfinished mobile access equipment and subassemblies such as trimming, cutting, grinding, notching, punching, slitting, drilling, welding, joining, bolting, bending, beveling, riveting, minor fabrication, galvanizing, painting, coating, finishing, assembly, or any other processing either in the country of manufacture of the in-scope product or in a third country does not remove the product from the scope. Inclusion of other components not identified as comprising the finished or unfinished mobile access equipment does not remove the product from the scope.

The scope excludes forklifts, vertical mast lifts, mobile self-propelled cranes and motor vehicles that incorporate a scissor arm assembly or boom assembly. Forklifts are material handling vehicles with a working attachment, usually a fork, lifted along a vertical guide rail with the operator seated or standing on the chassis behind the vertical mast. Vertical mast lifts are person and material lifting vehicles with a working attachment, usually a platform, lifted along a vertical guide rail with an operator standing on the platform. Mobile self-propelled cranes are material handling vehicles with a boom attachment for lifting loads of tools or materials that are suspended on ropes, cables, and/or chains, and which contain winches mounted on or near the base of the boom with ropes, cables, and/or chains managed along the boom structure. The scope also excludes motor vehicles (defined as a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line pursuant to 49 U.S.C. § 30102(a)(7)) that incorporate a scissor arm assembly or boom assembly. The scope further excludes vehicles driven or drawn by mechanical power operated only on a rail line that incorporate a scissor arm assembly or boom assembly. The scope also excludes: (1) rail line vehicles, defined as vehicles with hi-rail gear or track wheels, and a fixed (non-telescopic) main boom, which perform operations on rail lines, such as laying rails, setting ties, or other rail maintenance jobs; and (2) certain rail line vehicle subassemblies, defined as chassis subassemblies and boom turntable subassemblies for rail line vehicles with a fixed (non-telescopic) main boom.

Certain mobile access equipment subject to this investigation is typically classifiable under subheadings 8427.10.8020, 8427.10.8030, 8427.10.8070, 8427.10.8095, 8427.20.8020, 8427.20.8090, 8427.90.0020 and 8427.90.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Parts of certain mobile access equipment are typically classifiable under subheading 8431.20.0000 of the HTSUS. While the HTSUS subheadings are provided for convenience and customs purposes only, the written description of the merchandise under investigation is dispositive.

## **VII. DIVERSIFICATION OF CHINA'S ECONOMY**

In evaluating the specificity factors for domestic subsidies, pursuant to section 771(5A)(D)(iii) of the Act, Commerce must take into account the extent of diversification of economic activities within the jurisdiction of the authority providing the subsidy. According to the Statement of Administrative Action,<sup>54</sup> the additional criteria of the extent of diversification of economic activities (and length of time during which the subsidy program in question has been in operation) serve to inform the application of, rather than supersede or substitute for, the enumerated specificity factors.

To determine the extent of diversification of economic activities within a given jurisdiction, Commerce will normally consider publicly available data and information from expert third party sources, including such information as provided by interested parties in a proceeding. Available and reliable information sources necessarily vary from case to case. For this proceeding, Commerce has relied on data found in the National Bureau of Statistics of China's *China Statistical Yearbook*. Accordingly, on April 23, 2021, Commerce placed the following excerpts from the National Bureau of Statistics of China's *China Statistical Yearbook* on the record of this investigation: Index Page; Table 14-7: Main Indicators on Economic Benefit of State-owned and State-holding Industrial Enterprise by Industrial Sector; and Table 14-11: Main Indicators on Economic Benefit of Private Industrial Enterprise by Industrial Sector.<sup>55</sup> This information reflects a wide diversification of economic activities in China. The industrial sector in China alone is comprised of 37 listed industries and economic activities, indicating the diversification of China's economy. We provided an opportunity for the GOC to contest this determination and did not receive any additional information.

## **VIII. USE OF FACTS OTHERWISE AVAILABLE AND APPLICATION OF ADVERSE INFERENCES**

In a CVD proceeding, Commerce requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, Commerce may rely on adverse facts available (AFA) to preliminarily find that a financial

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<sup>54</sup> See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. R. Doc. No. 103-316 103rd Congress, 2nd Session, Volume I, 911, 931.

<sup>55</sup> See Memorandum, "Countervailing Duty Investigation of Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Economic Diversification Memorandum," dated April 23, 2021 (Economic Diversification Memorandum).

contribution exists under the alleged program and/or that the program is specific.<sup>56</sup> However, where possible, Commerce will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit, to the extent that those records are useable and verifiable.

Section 776(a) of the Act provides that Commerce, subject to section 782(d) of the Act, shall select from the "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person withholds information that has been requested; 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; significantly impedes a proceeding; or provides information that cannot be verified as provided by section 782(i) of the Act.

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.

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from 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. In doing so, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>57</sup> 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 CVD investigation, a previous administrative review, or other information placed on the record.<sup>58</sup>

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than 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>59</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation, the determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>60</sup>

Finally, under section 776(d) of the Act, when using an adverse inference when selecting from the facts otherwise available, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same

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<sup>56</sup> See, e.g., *Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013), and accompanying Issues and Decision Memorandum (IDM) at Comment 3.

<sup>57</sup> See section 776(b)(1)(B) of the Act.

<sup>58</sup> See 19 CFR 351.308(c).

<sup>59</sup> See 19 CFR 351.308(d).

<sup>60</sup> See SAA, H.R. Doc. 103-316, vol 1 (1994) at 870.

or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use.<sup>61</sup> When selecting from the facts otherwise available with an adverse inference, 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>62</sup> For purposes of this preliminary determination, as explained below, we are relying in part on facts otherwise available and, as appropriate, applying AFA to the programs as outlined below.

#### **A. Application of AFA: Non-Responsive Companies**

As noted above, Commerce issued Q&V questionnaires to all 19 companies identified in the Petition via FedEx.<sup>63</sup> We confirmed that 14 of the 19 Q&V questionnaires issued via FedEx were delivered.<sup>64</sup> Seven companies both received Q&V questionnaires via FedEx and provided timely responses. There are seven remaining companies of the 14 that received the Q&V questionnaire that did not respond to our request for information: Jinan Zhongtian International Trading, Zhongshan Shiliwang Machinery Co., LTD, Yantai Empire Industry and Trade, Shandong Lede Machinery, Shandong Huifeng Auto Fittings, Jinan Zhongtang Mechanical Equipment, and Lingong Group Jinan Heavy Machinery (Mobile Elevating Work Platforms). With respect to Lingong Group Jinan Heavy Machinery (Mobile Elevating Work Platforms), the name of this company is similar to LGMG’s name, but we have no definitive information on the record whether they are part of the same company. Therefore, for this preliminary determination, we are treating Lingong Group Jinan Heavy Machinery (Mobile Elevating Work Platforms) as a separate entity that did not reply to our Q&V questionnaire. However, we will seek further information regarding Lingong Group Jinan Heavy Machinery (Mobile Elevating Work Platforms)’s relationship with LGMG.

We preliminarily determine that the non-responsive companies withheld necessary information that was requested of them, failed to provide information within the deadlines established, and significantly impeded this proceeding. Thus, Commerce will rely on facts otherwise available in making our preliminary determination with respect to these companies, pursuant to sections 776(a)(2)(A)-(C) of the Act.<sup>65</sup> 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.

Using AFA, we find the non-responsive companies used and benefited from all programs at issue

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<sup>61</sup> See section 776(d)(1) of the Act.

<sup>62</sup> See section 776(d)(3) of the Act.

<sup>63</sup> See Q&V Questionnaire.

<sup>64</sup> See Delivery Confirmation Memorandum.

<sup>65</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.

in this investigation other than the currency undervaluation program. For the programs upon which we initiated an investigation that were used by the cooperating mandatory respondents and where the GOC provided partial or no response, we have found those programs to be specific and to provide a financial contribution on the basis of facts otherwise available and AFA, as described in more detail below. Further, for the Export Buyer's Credits Program, we have found this program to be specific, to provide a financial contribution and to provide a benefit on the basis of facts otherwise available and AFA, as described in more detail below.

For the remaining non-used programs that we initiated upon, the GOC did not respond to our CVD questionnaire on these programs.<sup>66</sup> The GOC directed Commerce to refer to the respondent's questionnaire responses or declined to answer some or all of the questions because, in the GOC's "understanding," the questions and relevant appendices were not applicable because the mandatory respondents did not use the program.<sup>67</sup> The initial questionnaire that Commerce issued included this instruction to the GOC, under the heading "Program Specific Questions":

For each program, provide full and complete responses regardless of whether the companies under investigation or their "cross-owned" companies, as defined in Section III, applied for, used, or benefited from that program during the POI.<sup>68</sup>

By not responding to our requests for information regarding these programs, the GOC withheld information that was requested of it, failed to provide information within the deadlines established, and significantly impeded this proceeding. It also failed to cooperate by not acting to the best of its ability to respond to our requests for information. Therefore, in accordance with sections 776(a)(2)(A)-(C) and 776(b) of the Act, we find that these programs constitute financial contributions and meet the specificity requirements of the Act.<sup>69</sup>

For the subsidies that were self-reported by the respondents, we issued a supplemental questionnaire to the GOC, and the GOC did not provide a response regarding these programs.<sup>70</sup> Therefore, as described in more detail below in the section "Application of AFA: Other Subsidies," for this preliminary determination we are applying AFA to find financial contribution and specificity for these self-reported programs.

Accordingly, we are including in the determination of the AFA rate for the non-responsive companies all programs that we initiated upon (aside from currency undervaluation) and the self-reported programs.<sup>71</sup> We selected an AFA rate for each program based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's practice, and we summed them to determine the AFA rate applied to the non-responsive companies. Commerce

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<sup>66</sup> See e.g., GOC IQR at 119 and 342.

<sup>67</sup> *Id.*

<sup>68</sup> See Initial Questionnaire at Section II, "Questions for the Government of the People's Republic of China."

<sup>69</sup> See Petition Volume III at 19-24, 35-36, 45-50, 73-75, 79-94, and 98-106 and the exhibits cited therein.

<sup>70</sup> See GOCSQR at 10-11.

<sup>71</sup> See Appendix.

has previously found countervailable these or similar programs.<sup>72</sup> 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 below.

### *Selection of the AFA Rate*

It is our practice in CVD proceedings to determine an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.<sup>73</sup> When selecting AFA rates, section 776(d) of the Act provides that we may use a countervailable subsidy rate determined for the same or a similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates.<sup>74</sup> Accordingly, when selecting AFA rates, if we have cooperating respondents, as there are in this investigation, we first determine if there is an identical program in the instant investigation and use the highest calculated rate for the identical program. If there is no identical program for which we calculated a subsidy rate above zero for a cooperating respondent in the investigation, we then determine whether an identical program was used in another CVD proceeding involving the same country and apply the highest calculated rate for the identical program (excluding *de minimis* rates).<sup>75</sup> If no such rate exists, we then

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<sup>72</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) (*High Pressure Steel Cylinders*); see also *Aluminum Wire and Cable from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 58137 (October 30, 2019); *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016); *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011) (*Citric Acid and Citrate Salts*); *Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions Final*); *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from China Amended Final*); and *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>73</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 PDM at “X: Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA: Chalco Ruimin and Chalco-SWA”; see also *Aluminum Extrusions Final*, 76 FR 18521, and accompanying IDM at “VI. Use of Facts Otherwise Available and Adverse Inferences: Application of Adverse Inferences: Non-Cooperative Companies”; see also *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM at “Application of Facts Available, Including the Application of Adverse Inferences.”

<sup>74</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 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-74 (Fed. Cir. 2014) (*Essar Steel*) (upholding “hierarchical methodology for selecting an AFA rate”).

<sup>75</sup> For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People’s Republic of China: Final Affirmative*

determine whether there is a similar/comparable program (based on the treatment of the benefit) in any CVD proceeding involving the same country, and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we 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>76</sup>

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

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that we "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."<sup>77</sup> No legislative history accompanied this particular provision. Accordingly, we are left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

The Act anticipates a two-step process for determining an appropriate 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>78</sup>

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, we seek to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures "that the party does not

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*Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

<sup>76</sup> See *Shrimp from China* IDM at 13-14.

<sup>77</sup> See section 776(d)(2) of the Act.

<sup>78</sup> This differs from antidumping 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.



obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>79</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 margin.”<sup>80</sup> It is pursuant to this knowledge and experience that we have implemented our AFA hierarchy in CVD cases to select an appropriate AFA rate.<sup>81</sup>

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

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

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

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<sup>79</sup> See SAA at 870; see also *Essar Steel*, 678 at 1276 (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (*De Cecco*) (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.”)).

<sup>80</sup> See *De Cecco*, 216 F.3d at 1032.

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

However, if there is no identical program match within the investigation, or if the rate is zero, then we will shift to the second step of its investigation hierarchy, and either apply the highest non-*de minimis* rate calculated for a cooperating company in another 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.

Finally, if no such rate exists, under the third step of Commerce's investigation hierarchy, we apply the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.<sup>82</sup>

In all three steps of Commerce's AFA investigation hierarchy, if we 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 adverse facts available hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), we strike a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.<sup>83</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," we may decide that given the unique and unusual facts on the record, the use of the highest rate within that step is not appropriate.

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

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<sup>82</sup> In an investigation, unlike in an administrative review, Commerce is just beginning to develop an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

<sup>83</sup> It is significant that all interested parties, since at least 2007, that choose not to provide requested information have notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. See, e.g., *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying IDM at 2, (October 17, 2007) ("As AFA in the instant case, {Commerce} is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/producer in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed ..."). Therefore, when an interested party is making a decision of whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may, under its hierarchy, apply the highest rate as AFA.

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

1. Policy Loans to the Mobile Access Equipment Industry
2. Provision of Diesel Engines for LTAR
3. Provision of Lithium-Ion Batteries for LTAR
4. Provision of Hot-Rolled Steel Sheet and Plate for LTAR
5. Provision of Steel Bars for LTAR
6. Provision of Steel Beams for LTAR
7. Provision of Hollow Structural Shapes for LTAR
8. Provision of Electricity for LTAR
9. Provision of Land-Use Rights for LTAR to the Mobile Access Equipment Industry
10. Provision of International Ocean Shipping Services for LTAR.

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

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

- Income Tax Reductions for High-and New-Technology Enterprises
- Enterprise Income Tax Law, Research and Development Program.

The standard income tax rate for corporations in China in effect during the POI was 25 percent.<sup>84</sup> Thus, the highest possible benefit for income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on this program. Consistent with Commerce's practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and value-added tax (VAT) exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.<sup>85</sup>

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

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<sup>84</sup> See e.g., GOCIQR at 343.

<sup>85</sup> See, e.g., *Aluminum Extrusions Final IDM* at "Application of Adverse Inferences: Non-Cooperative Companies."

1. Provision of Land-Use Rights in Industrial and Other Special Economic Zones
2. Provision of Land-Use Rights to State-Owned Enterprises
3. Provision of Galvanized Steel for LTAR
4. Provision of Wire Rod for LTAR
5. Government Directed Debt Restructuring in the Mobile Access Equipment Industry
6. Export Loans from Chinese State-Owned Banks
7. Export Seller's Credit from State-Owned Banks
8. Foreign Trade Development Fund Grants
9. Export Assistance Grants
10. Interest Payment Subsidies
11. Subsidies for the Development of Famous Brands and Chinese World Top Brands
12. State Key Technology Fund Grants
13. Grants for Retiring Outdated Capacity and Industrial Restructuring
14. Grants for Energy Conservation and Emission Reduction
15. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Procured Equipment
16. Import Tariff and VAT Exemptions on Imported Equipment in Encouraged Industries.

For this preliminary determination, we were similarly able to match all of the subsidies that were self-reported by the mandatory respondents and/or its cross-owned affiliates for which we did not calculate a rate in the instant investigation to similar programs from other China CVD proceedings, for purposes of including these programs in the AFA rate applicable to the non-cooperating companies. A full list of such self-reported subsidies is contained in the Appendix.<sup>86</sup>

Based on the methodology described above, we preliminarily determine the AFA net countervailable subsidy rate for the non-cooperating companies to be 435.06 percent *ad valorem*. The appendix contains a chart summarizing our calculation of this rate.

### *Corroboration of AFA Rate*

Section 776(c)(1) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>87</sup> The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.<sup>88</sup>

Commerce will, to the extent practicable, examine the reliability and relevance of the

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<sup>86</sup> With respect to the mandatory respondents' self-reported subsidies, we have combined programs that had identical or nearly identical names, and which were received in the same year.

<sup>87</sup> See SAA at 870.

<sup>88</sup> *Id.*

information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.<sup>89</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>90</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>91</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, we have reviewed the information concerning Chinese subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this investigation. The relevance of these rates is that they are actual calculated subsidy rates for Chinese programs, from which the non-responsive companies could actually receive a benefit. Due to the lack of participation by these companies and the resulting lack of record information concerning these programs, we have corroborated the rates we selected to use as AFA to the extent practicable pursuant to section 776(c)(1) for this preliminary determination.

## **B. Application of Facts Available and AFA: Export Buyer’s Credits**

In the initial questionnaire, we requested that the respondents report all types of financing provided by the China Ex-Im Bank as part of the Export Buyer’s Credit program analysis.<sup>92</sup> Dingli and LGMG both reported that none of its customers used this program, and to support this claim each provided customer declarations or “non-use certificates” demonstrating its U.S. customers did not use this program.<sup>93</sup> We issued supplemental questionnaires to the respondents requesting further information regarding their U.S. customers, including information on all of their traditional and non-traditional financing, as well as a loan template for the information.<sup>94</sup> We received a complete response from LGMG;<sup>95</sup> however, Dingli did not provide certain information regarding its non-traditional financing, as requested in the its questionnaire responses.<sup>96</sup>

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<sup>89</sup> *Id.* at 869-870.

<sup>90</sup> See section 776(d) of the Act.

<sup>91</sup> See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

<sup>92</sup> See Initial Questionnaire at 45-46.

<sup>93</sup> See Dingli IQR at 29-31 and Exhibits B-21a-d; see also LGMGIQR at Exhibit I-37.

<sup>94</sup> See Dingli EBCSQ; see also LGMGEBCSQ.

<sup>95</sup> See LGMGEBCSQ.

<sup>96</sup> See Dingli EBCSQ at 1-2.

We also requested information regarding this program from the GOC. Specifically, in the initial questionnaire, we requested that the GOC provide original and translated copies of laws, regulations or other governing documents for this program.<sup>97</sup> This request included the 2013 *Administrative Measures* revisions (2013 Revisions) to the Export Buyer's Credit program; however, the GOC did not provide the 2013 amendment to these laws.<sup>98</sup> In a supplemental questionnaire, we provided the GOC with another opportunity to provide this information,<sup>99</sup> and the GOC again failed to provide the information requested stating that it was unable because such information is not public.<sup>100</sup>

Instead, the GOC provided the *Administrative Measures of Export Buyer's Credit of the Export-Import Bank of China (Administrative Measures)* and *Detailed Implementation Rules Governing Export Buyer's Credit of the Export-Import Bank of China (Implementing Rules)*, and according to the GOC, in accordance with the requirements set forth in these documents, the Chinese exporter should be aware of the buyer's receipt of loans and should be involved in the loan evaluation proceeding and in the post-lending loan management.<sup>101</sup> The GOC argued that the Chinese exporter is in a position to verify and confirm the existence of any sales contracts that were supported by the Export Buyer's Credit program. Specifically, the GOC explained that in accordance with the *Rules*: (1) the China Ex-Im Bank must investigate and verify the performance capability of the Chinese exporters in its loan evaluation and approval proceeding; (2) in making decisions on loan approval, the China Ex-Im Bank also pays great attention to the credit level of the exporters; and (3) for post-lending management, for securing loan recovery, the China Ex-Im Bank may do necessary supervision and inspection of the loan usage, contacting the Chinese exporter after the issuance of loans to confirm the funds are properly used.<sup>102</sup> However, the GOC stated that the 2013 revisions to the *Administrative Measures of Export Buyer's Credits of the Ex-Im Bank*, and Commerce's request for a list of all partner/correspondent banks involved in disbursement of funds under the Export Buyer's Credit program is not available or applicable,<sup>103</sup> because none of the mandatory respondents' U.S. customers obtained export buyer's credits during the POR.<sup>104</sup>

Information obtained in a prior CVD proceeding indicates that the GOC revised the *Administrative Measures* regarding this program in 2013.<sup>105</sup> This information indicates that under the 2013 revisions, the China Ex-Im Bank may disburse export buyer's credits directly or through third-party partner and/or correspondent banks and that the threshold for potential loans is no longer 2 million U.S. dollars (USD).<sup>106</sup> Because of the complicated structure of loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary.

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<sup>97</sup> See Initial Questionnaire at 45-46.

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

<sup>99</sup> See GOCSQ2 at 5.

<sup>100</sup> See GOCSQR2 at 11-14.

<sup>101</sup> See GOCIQR at Exhibit B-21.1 and B-21.3.

<sup>102</sup> *Id.*

<sup>103</sup> See GOCIQR. at 332; see also GOCSQR2 at 11.

<sup>104</sup> *Id.*

<sup>105</sup> See *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017), and accompanying IDM at 11-14.

<sup>106</sup> *Id.*

As Commerce found in a remand redetermination issued in the *Clearon* litigation, if the program continues to be limited to 2 million USD contracts between a mandatory respondent and its customers, this is “an important limitation to the universe of potential loans under the program and can assist us in targeting our verification of non-use. However, if the program is no longer limited to 2 million USD contracts, this increases the difficulty of verifying loans without any such parameters. Therefore, by refusing to provide the requested information, and instead providing unverifiable assurances that other rules regarding the program remained in effect, the GOC impeded Commerce’s understanding of how this program operates and how it can be verified.”<sup>107</sup> Furthermore, we stated in this same remand redetermination that, “{g}iven the complicated structure of loan disbursements which can involve various banks for this program, Commerce’s complete understanding of how this program is administered is necessary to verify claims of non-use. Thus, the GOC’s refusal to provide the 2013 revisions, which provide internal guidelines for how this program is administered by the China Ex-Im Bank, as well as other requested information, such as key information and documentation pertaining to the application and approval process, interest rates, and partner/correspondent banks, impeded Commerce’s ability to conduct its investigation of this program and to verify the claims of non-use by {the respondent’s} customers.”<sup>108</sup>

Furthermore, in order to verify non-use of the program as provided in the non-use certificates submitted by the respondents, Commerce would require knowing the names of the intermediary partner/correspondent banks. As Commerce stated in the *Clearon* remand redetermination:

{I}t would be their names, not the name China Ex-Im Bank, that would appear in the subledgers of the U.S. customers if they received the credits. As explained recently in the investigation of aluminum sheet:

Record evidence indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank. Specifically, the record information indicates that customers can open loan accounts for disbursements through this program with other banks, whereby the funds are first sent to... the importer’s account, which could be at the China Ex-Im Bank or other banks, and that these funds are then sent to the exporter’s bank account.

In other words, there will not necessarily be an account in the name China Ex-Im Bank in the books and records (*e.g.*, subledger, tax return, bank statements) of the U.S. customer. Thus, if we cannot verify claims of non-use at the GOC, having a list of the correspondent banks is critical for us to perform verification at the U.S. customers.<sup>109</sup>

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<sup>107</sup> See *Clearon Corp. v. United States*, 474 F. Supp. 3d 1339, 1347 (CIT 2020) (quoting from Commerce remand redetermination) (“*Clearon*”).

<sup>108</sup> See Final Results of Remand Redetermination Pursuant to Court Remand, *Clearon Corp. v. United States* (May 16, 2019) at 17.

<sup>109</sup> *Id.* (citing *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 IDM at 30 (internal quotations and citations omitted))

In its initial and supplemental questionnaire responses, the GOC refused to provide requested information, including all laws, regulations or governing documents or a list of partner/correspondent banks, which is necessary for Commerce to understand how the program operates and which is thus also necessary for Commerce to be able to verify claims of non-usage.<sup>110</sup> Absent this information, we have no assurance of our ability to differentiate ordinary commercial lending from GOC-supported credit in the books and records of the respondents' U.S. customers, or to differentiate disbursements of funds to the respondents themselves pursuant to ordinary lending from disbursements pursuant to GOC-supported credit.

Therefore, by withholding information concerning the operation of this program, the GOC has impeded not only Commerce's ability to determine whether the provision of the credits constitutes a financial contribution and whether such credits are specific, but also Commerce's ability to reach a verifiable conclusion regarding usage of the program. Pursuant to sections 776(a)(2)(A) and (a)(2)(C) of the Act, when an interested party withholds information requested by Commerce and/or significantly impedes a proceeding, Commerce uses facts otherwise available to reach a determination. Because the GOC withheld the requested information described above, thereby impeding this proceeding, we preliminarily determine that the use of facts available is appropriate. Furthermore, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding information that was within its control, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted as set forth below.

#### *Financial Contribution and Specificity*

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 Ex-Im Bank, provide loans at preferential rates for the purchase of exported goods from China.<sup>111</sup> In addition, the program was alleged by the petitioner as a possible export subsidy.<sup>112</sup> Finally, Commerce has found this program to be an export subsidy in the past.<sup>113</sup>

For these reasons, we preliminarily determine, as AFA, that this program constitutes a financial contribution pursuant to section 771(5)(D) of the Act and is specific within the meaning of section 771(5A)(B) of the Act.

#### *Benefit*

Regarding benefit, it continues to be Commerce's position that the GOC is the only party that can answer questions about the internal administration of this program and that non-use certificates cannot replace the cooperation of the GOC. The GOC's refusal to provide the 2013

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<sup>110</sup> See GOCIQR at 332; see also GOCSQR2 at 10-14.

<sup>111</sup> See GOCIQR at 330-339.

<sup>112</sup> See Petition Volume III at 104-106 and Exhibits III-119 – III-121.

<sup>113</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.



revisions to the *Administrative Measures*, which provide internal guidelines for how this program is administered by the China Ex-Im Bank and a list of partner/correspondent banks that are used to disperse funds through this program, constitutes withholding necessary information and impeded our ability to analyze the program's operation or determine how the program could be properly verified. Thus, the GOC's failure to provide the requested information further undermines our ability to verify the respondents' claims of non-use.

Nonetheless, we recognize that the U.S. Court of International Trade (CIT) has directed Commerce in numerous decisions to consider whether any available information provided by respondents may be sufficient to fill the gap of missing record information in considering claims of non-use for the Export Buyer's Credit program. As a result, we issued supplemental questionnaires to each mandatory respondent and its U.S. customers requesting additional information regarding its financing activities.

For LGMG, we received a complete response to Commerce's supplemental questionnaire on behalf of LGMG's sole affiliated U.S. customer. As explained above, Commerce reaffirms that it requires information from the GOC in order to fully understand the mechanics of this program, which would provide Commerce with a reliable framework for verifying company information. However, after carefully considering the record, we find that LGMG provided information which can be used, for purposes of facts available, in determining whether LGMG used this program. On this basis, we preliminarily find that LGMG did not use the program, despite the lack of cooperation from the GOC, which is otherwise necessary to verify non-usage.

In contrast, for Dingli, we did not receive a complete response to Commerce's supplemental questionnaire. In our supplemental questionnaire on this program, we asked Dingli to report "all loans/financing to each of your U.S. importers/customers that were received and/or outstanding during the POI," and explicitly indicated that such reporting should include non-traditional forms of financing.<sup>114</sup> Notwithstanding this clear instruction, Dingli did not complete the loan template or provide any additional information regarding certain non-traditional forms of financing that one of its U.S. customers received because it originated from "non-banking institutions."<sup>115</sup> In other words, Dingli unilaterally determined what forms of financing were (and were not) relevant to Commerce's assessment. Without this information and considering that the GOC also failed to provide necessary information regarding this program, we cannot determine whether Dingli's U.S. customers used the Export Buyer's Credit program. Accordingly, we find that necessary information is missing from the record, that Dingli withheld information requested of it and significantly impeded the proceeding, within the meaning of sections 776(a)(1), (2)(A) and (2)(C) of the Act. Additionally, in accordance with section 776(b) of the Act, we find that Dingli (like the GOC) failed to act to the best of its ability in providing the requested information by withholding requested information based on its own assessment of what Commerce needed for its analysis. Therefore, as AFA, and in light of the failure of both the GOC and Dingli to cooperate, we find that Dingli used and benefited from this program, despite its claims that its U.S. customers did not obtain export buyer's credits from the China Ex-Im Bank during the POI.<sup>116</sup>

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<sup>114</sup> See Dingli EBCSQ at 4,

<sup>115</sup> See Dingli EBCSQR.

<sup>116</sup> See Dingli IQR at 25-26; *see also* Dingli EBCSQR; and Petition Volume III at 101-102 and 104-106.

### **C. Application of AFA: Provision of Inputs and Ocean Shipping Services for LTAR: Suppliers of Inputs and Ocean Shipping Services are “Authorities”**

We are investigating the provision of ten inputs for LTAR: diesel engines; lithium-ion batteries; hot-rolled steel sheet and plate; galvanized steel; wire rod; steel bars; steel beams; steel channels; steel angles; and hollow structural shapes. In addition, we are investigating the provision of ocean shipping services for LTAR. For each alleged program, we requested information from the GOC regarding the specific companies that produced the input products that Dingli and LGMG, and their respective cross-owned companies, purchased during the POI, as well as their ocean shipping service providers. Specifically, we sought information from the GOC that would allow us to determine whether the producers are “authorities” within the meaning of section 771(B) of the Act.<sup>117</sup>

In its initial questionnaire response, the GOC provided details regarding the ownership of multiple producers/suppliers, including state-owned corporations, publicly listed corporations, and corporations owned by private individuals.<sup>118</sup> The GOC reported that some providers of the inputs/services purchased by the LGMG and Dingli are majority-owned by the government. As explained in the Public Bodies Memorandum, majority government-owned enterprises in China possess, exercise, or are vested with governmental authority.<sup>119</sup> As such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities, which the GOC reported to be majority-owned by the government, constitute “authorities” within the meaning of section 771(5)(B) of the Act and that Dingli and LGMG received a financial contribution from them in the form of the provision of a good from such entities, pursuant to section 771(5)(D)(iii) of the Act.

However, in the initial questionnaire, we also asked the GOC to provide information regarding the role of Chinese Communist Party (CCP) officials in the companies that provided inputs/services to the respondent, including those for which the GOC did not report that the entities were majority-owned by the GOC.<sup>120</sup> Specifically, we asked the GOC, “{p}lease coordinate immediately with the company respondents to obtain a complete list of each company’s {input or ocean shipping service} suppliers.”<sup>121</sup> Furthermore we asked the GOC to: (1) provide information about the involvement of the CCP in any input supplier or ocean

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<sup>117</sup> See Initial Questionnaire at 5-44 and 60-64.

<sup>118</sup> See GOCIQR at Exhibits A-5.1, A-5.2, A-6.1, A-6.2, A-7.1, A-7.2, A-8.1, A-8.2, A-9.1, A-9.2, A-10.1, A-10.2, A-11.1, A-11.2, A-12.1, A-12.2, A-13.1, A-13.2, A-14.1, A-14.2, A-15.2, and A-15.3.

<sup>119</sup> See Memorandum, “Countervailing Duty Investigation of Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Placing Documents on the Record,” dated April 23, 2021 (Public Bodies Memorandum) at “Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People’s Republic of China: An Analysis of Public Bodies in the People’s Republic of China in Accordance with the WTO Appellate Body’s Findings in WTO DS379” and “The Relevance of the Chinese Communist Party for the Limited Purpose of Determining Whether Particular Enterprises Should Be Considered to Be ‘Public Bodies’ Within the Context of a Countervailing Duty Investigation.”

<sup>120</sup> See Initial Questionnaire at 5-44.

<sup>121</sup> *Id.* at 5, 8, 12, 15, 19, 22, 26, 29, 32, 36, and 39-40.

shipping service provider identified by Dingli and LGMG, including whether individuals in management positions are CCP members, in order to evaluate whether the input suppliers or ocean shipping service provider that supplied the respondents are “authorities” with the meaning of section 771(5)(B) of the Act; and (2) identify any owners, members of the board of directors, or managers of the input suppliers or ocean shipping service provider who were government or CCP officials during the POR.<sup>122</sup>

While the GOC provided a long narrative explanation of the role of the CCP, when asked to identify any owners, members of the board of directors, or managers of the input suppliers and ocean shipping service providers who were government or CCP officials during the POR, the GOC explained that there is “no central informational database to search for the requested information.”<sup>123</sup> The GOC concluded its response to this question by stating “{i}f the Department insists on the necessity of this information, the Department should collect this information through the respondents, via their suppliers directly.”<sup>124</sup> In *Citric Acid 2012 AR*, we found that the GOC was able to obtain the information requested independently from the companies involved, and that statements from companies, rather than from the GOC or CCP themselves, were not sufficient for these purposes.<sup>125</sup> Therefore, we find that the GOC failed to provide the information requested of it for the non-majority-owned input suppliers and ocean shipping service providers of the respondents.

By failing to respond to the questionnaire, the GOC withheld information requested of it regarding the CCP’s role in the ownership and management of Dingli and LGMG’s input producers and ocean shipping service providers. Record evidence demonstrates that the CCP exerts significant control over economic activities in China.<sup>126</sup> Record evidence also demonstrates that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.<sup>127</sup> With respect to the reportedly non-majority government-owned input producers and ocean shipping service providers that supplied the respondents during the POI, while the GOC provided website screenshots of the business registrations, the GOC failed to provide other relevant documentation specifically requested by Commerce, such as company by-laws, annual reports, tax registration documents, and articles of association.<sup>128</sup> Thus, we find, as we have in prior CVD proceedings and continue to do so in this investigation,<sup>129</sup> that the information requested regarding the role of CCP officials and CCP committees in the management and operations of the respondents input suppliers and ocean shipping service providers is necessary to our determination of whether these producers are “authorities” within the meaning of section 771(5)(B) of the Act.

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<sup>122</sup> *Id.* at 60-64.

<sup>123</sup> *See, e.g.*, GOCIQR at 47.

<sup>124</sup> *Id. e.g.*, at 42.

<sup>125</sup> *See Citric Acid and Certain Citrate Salts [from the People’s Republic of China]: Final Results of Countervailing Duty Administrative Review; 2012, 79 FR 78799 (December 31, 2014) (Citric Acid 2012 AR)*, and accompanying IDM at Comment 5.

<sup>126</sup> *See* Public Bodies Memorandum and sources cited therein.

<sup>127</sup> *Id.* at 35-36 and sources cited therein.

<sup>128</sup> *See* GOCIQR at Exhibits A-5.1, A-5.2, A-6.1, A-6.2, A-7.1, A-7.2, A-8.1, A-8.2, A-9.1, A-9.2, A-10.1, A-10.2, A-11.1, A-11.2, A-12.1, A-12.2, A-13.1, A-13.2, A-14.1, A-14.2, A-15.2, and A-15.3.

<sup>129</sup> *See, e.g.*, *Citric Acid 2012 AR* IDM at Comment 5.

Therefore, we find that the GOC withheld necessary information that was requested of it and that Commerce must rely on facts available in conducting its analysis of the producers that supplied the respondents with these inputs and ocean shipping services during the POI.<sup>130</sup> As a result of the GOC's failure to provide the necessary information, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, we determine that the GOC withheld information, and that an adverse inference is warranted in the application of facts available, in accordance with sections 776(a)(2)(A) and 776(b) of the Act.<sup>131</sup> In drawing an adverse inference, we find that CCP officials are present in each of the respondents' input suppliers and ocean shipping service providers as individual owners, managers and members of the boards of directors, and that this gives the CCP, as the government, meaningful control over the companies and their resources.<sup>132</sup> As explained in the Public Bodies Memorandum, an entity with significant CCP presence on its board or in management or in party committees may be controlled, such that it possesses, exercises, or is vested with governmental authority.<sup>133</sup> Therefore, as AFA, we preliminarily find that the non-majority government-owned domestic producers that supplied Dingli and LGMG with diesel engines; lithium-ion batteries; hot-rolled steel sheet and plate; galvanized steel; wire rod; steel bars; steel beams; steel channels; steel angles; hollow structural shapes; and ocean shipping services during the POI are "authorities" within the meaning of section 771(5)(B) of the Act.

#### **D. Application of AFA: Provision of Inputs and Ocean Shipping Services for LTAR: Whether Certain Markets Are Distorted**

In order to determine the appropriate benchmarks with which to measure the benefit from the provision of inputs at LTAR under 19 CFR 351.511, Commerce asked the GOC several questions concerning the structure of the input and ocean shipping service industries.<sup>134</sup> Specifically, Commerce requested that the GOC provide the following information for the inputs and ocean shipping services:<sup>135</sup>

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

<sup>130</sup> See sections 776(a)(1) and 776(a)(2)(A) of the Act.

<sup>131</sup> See section 776(b) of the Act.

<sup>132</sup> See Public Bodies Memorandum.

<sup>133</sup> See, e.g., Public Bodies Memorandum at WTO DS379 at 33-36, 38.

<sup>134</sup> See Initial Questionnaire at 5-44.

<sup>135</sup> *Id.* at 6, 10, 13, 17, 20, 24, 27, 30, 34, 37, and 40.

- vi. If the share of total volume and/or value of production that is accounted for by the companies identified in paragraph “e”, above, is less than 50 percent, please provide the following information:
  - a. The percentage of total volume and value of domestic production that is accounted for by companies in which the Government maintains some, but not a majority, ownership interest or some, but not a controlling, management interest, either directly or through other Government entities.
  - b. A list of the companies that meet the criteria under sub-paragraph “i”, above.
  - c. A detailed explanation of how it was determined that the government has less than a majority ownership or less than a controlling interest in such companies, including identification of the information sources relied upon to make this assessment.
- vii. A discussion of what laws, plans or policies address the pricing of {input or ocean shipping service}, the levels of production of {input or ocean shipping service}, the importation or exportation of {input or ocean shipping service}, or the development of {input or ocean shipping service} capacity. Please state which, if any, central and subcentral level industrial policies pertain to the {input or ocean shipping service} industry.

Commerce requested such information to determine whether the GOC is the predominant provider of these inputs and ocean shipping services in China and whether its presence in the market distorts all transaction prices.

In response, the GOC provided only the total volume and value of imports of the inputs and repeatedly stated that it does not have the other industry data that we requested.<sup>136</sup> In addition, regarding ocean shipping services in particular, we requested information regarding Chinese-flagged carriers that compose the domestically-owned industry of ocean shipping services.<sup>137</sup> In response to our supplemental questionnaire, the GOC stated that it “does not keep records of the requested data for these inputs, nor does it keep records on the classifications that include these inputs” and that Commerce’s request was “too broad” regarding Chinese-flagged carriers.<sup>138</sup>

Because the GOC provided none of the requested industry data, Commerce is unable to determine the number of input producers or ocean shipping service providers in operation during the POI, the percentage of input producers or ocean shipping service providers in which the GOC maintained ownership interest, the share of input production and ocean shipping service market control that is represented by GOC-affiliated producers, and the share of domestic consumption represented by domestic production versus imports or, for ocean shipping services, the percentage of the Chinese outbound market controlled by Chinese-flagged carriers. In sum, the GOC provided import data related to the inputs, but did not provide any industry statistics necessary for Commerce to analyze whether there is any market distortion for the inputs or ocean shipping services. Furthermore, the GOC did not supplement its initial filings when presented

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<sup>136</sup> See GOCIQR at 44, 75, 106, 145, 177, 208 and 239.

<sup>137</sup> See GOCSQ2 at 4.

<sup>138</sup> See GOCSQR at 7; see also GOCSQR2 at 7-8.

with a second opportunity to do so given broader criteria, including for product categories for which the GOC recently provided data such as the steel industry.<sup>139</sup>

In past proceedings, the GOC has demonstrated that it has the ability, through the State Statistical Bureau or other sources (*e.g.*, industry associations), to report data concerning the production of a wide variety of inputs and services.<sup>140</sup> This information is necessary for Commerce to assess the distortion in the input markets by comparing production by majority-GOC controlled entities, entities in which the GOC claims it does not maintain a majority interest, and imported inputs or foreign-flagged carriers operating in Chinese ports. Furthermore, we note that the GOC has previously provided, and Commerce has verified, information from other GOC-maintained databases concerning the value and volume of production by enterprises producing input products.<sup>141</sup> Specifically, Commerce has verified the operation of the GOC's "Enterprise Credit Information Publicity System," which requires that the administrative authorities release detailed information of enterprises and other entities and which is intended to bring clarity to companies registered in China.<sup>142</sup> Based on this experience, we are aware that this system is a national-level internal portal that holds certain information regarding any China registered company. Among other information, each company must upload its annual report, make public whether it is still operating, and update any changes in ownership. The GOC has stated that all companies operating within China maintain a profile in the system, regardless of whether they are private or a state-owned enterprise.<sup>143</sup> Therefore, we preliminarily find that information related to the operation and ownership of companies within the input industries and ocean shipping service industry is in fact available to the GOC. In total, the GOC has access to information regarding both the production and the producers of the input products and ocean shipping service providers necessary to determine whether their respective markets are distorted.

Therefore, we preliminarily determine that the GOC, having failed to provide such data, has withheld necessary information that was requested of it and significantly impeded this proceeding, such that the use of facts available is warranted, pursuant to sections 776(a)(1), (2)(A) and (2)(C) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information, and

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<sup>139</sup> See *e.g.*, *Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 68848 (October 30, 2020), and accompanying PDM at 13.

<sup>140</sup> See, *e.g.*, *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 79 FR 33174 (June 10, 2014), and accompanying PDM at 14-15, unchanged in *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014).

<sup>141</sup> See, *e.g.*, *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review: 2013*, 80 FR 77318 (December 14, 2015), and accompanying IDM at Comment 2.

<sup>142</sup> See *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016) (*SSSS from China Prelim*), and accompanying PDM at 21-22, unchanged in *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017), and accompanying IDM.

<sup>143</sup> See *SSSS from China Prelim* PDM at 21-22; see also, *e.g.*, *GOCIQR* at 24-25.

thus, the application of AFA pursuant to section 776(b) of the Act is warranted. For these reasons and based on the record evidence discussed above, we preliminarily determine, as AFA, that the domestic markets for the input products and ocean shipping are distorted through the intervention of the GOC,<sup>144</sup> and we are, therefore, relying on an external benchmarks for determining the benefit from the provision of the inputs for LTAR, in accordance with 19 CFR 351.511(a)(2)(ii).

#### **E. Application of AFA: Provision of Inputs for LTAR: Specificity**

For purposes of Commerce's *de facto* specificity analysis, we asked the GOC to provide a list of industries in China that purchase the inputs detailed above directly, and to provide the amounts (volume and value) purchased by each of the industries.<sup>145</sup> Specifically, our questionnaire asked the GOC to provide lists of the industries in China that purchase the input products directly, using consistent levels of industrial classification, and to:

Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use the resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.<sup>146</sup>

The GOC did not provide this information, nor did it explain the efforts it made to compile this information.<sup>147</sup> Instead, the GOC stated that it “does not maintain the requested data.”<sup>148</sup> Consequently, Commerce requested that the GOC provide the information using data for the classification that includes the input.<sup>149</sup> The GOC responded again by stating that the “GOC does not keep records of the requested data for these inputs, nor does it keep records on the classifications that include these inputs.”<sup>150</sup> In addition, the GOC asserted that the inputs “are purchased by the mobile access equipment industry and all other industries” without further evidence of its claim.<sup>151</sup>

The response submitted by the GOC is insufficient because it does not report the actual Chinese industries that purchased these inputs, the volume and value of each industry's respective purchases for the POI, and the prior two years, as requested, and which is necessary for our *de facto* specificity analysis. Therefore, we lack the required information to conduct a *de facto* specificity analysis. Consequently, we preliminarily determine, in accordance with sections 776(a)(1), (2)(A), and (2)(C) of the Act, that necessary information is not available on the record,

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<sup>144</sup> See Petition Volume III at 24-73 and exhibits cited therein.

<sup>145</sup> See Initial Questionnaire at 7, 10, 14, 17, 21, 24, 27-28, 31, 34, and 38.

<sup>146</sup> *Id.*

<sup>147</sup> See GOC IQR at 47, 78, 109, 148, 180, 211, 242, and 274.

<sup>148</sup> *Id.*

<sup>149</sup> See GOCSQ at 5.

<sup>150</sup> See GOCSQR at 7.

<sup>151</sup> *Id.*

that the GOC withheld information that was requested of it, and that the GOC significantly impeded this proceeding. Thus, we are relying on “facts available” in making our preliminary specificity determination with respect to these input LTAR programs.

Moreover, by refusing to provide the requested, necessary information, including when given the opportunity to provide information at broader levels of classification determined by the GOC itself or to provide information from other sources (*e.g.*, industry associations),<sup>152</sup> we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we preliminarily determine that an adverse inference is warranted in selecting from among the facts available pursuant to section 776(b) of the Act. In drawing an adverse inference from among the facts available, we find that the GOC is providing the inputs for LTAR to a limited number of industries or enterprises,<sup>153</sup> and, hence, that the subsidies under this program are *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

#### **F. Application of AFA: Provision of Ocean Shipping Services for LTAR: Specificity**

For purposes of Commerce’s *de facto* specificity analysis, we asked the GOC to provide a list of industries in China that purchase ocean shipping services directly, and to provide the amounts (volume and value) purchased by these industries.<sup>154</sup> Specifically, our questionnaire asked the GOC to provide lists of the industries in China that purchase ocean shipping directly, using consistent levels of industrial classification, and to:

“Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use whatever resource or classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.”<sup>155</sup>

In addition, we asked the GOC to answer several questions related to the traded goods sector, and the purchasers of ocean shipping services, that are necessary for Commerce to provide a full analysis of specificity pursuant to 19 CFR 351.502(c).<sup>156</sup> We requested that the GOC provide information regarding the volume and values of international ocean shipping accounted for by the mobile access equipment industry, the traded goods sector as defined under 19 CFR 351.502(c), and the whole of the international ocean shipping service industry.<sup>157</sup> Furthermore, we asked the GOC to define whether there are other purchasers of international ocean shipping services besides the traded goods sector and to provide data for these purchasers if any exist.<sup>158</sup>

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<sup>152</sup> See GOCSQ at 5. Commerce did not specifically request information kept or maintained by the GOC itself.

<sup>153</sup> See Petition Volume III at 24-73 and exhibits cited therein.

<sup>154</sup> See Initial Questionnaire at 41-42.

<sup>155</sup> See Initial Questionnaire at 41-42.

<sup>156</sup> *Id.* at 63-64.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*



In response to our questions, the GOC provided the total volume and value of all imports and exports from China and for all product categories at the broadest levels, including mobile access equipment.<sup>159</sup> However, the GOC did not provide the information necessary to determine whether the provision of ocean shipping services is specific to the traded goods sector. Specifically, the GOC did not provide information regarding the purchasers of ocean shipping services, instead referring to generalized customs data for all products as collected by China Customs.<sup>160</sup> In response to multiple questions, the GOC stated, without evidence or support, that the traded goods sector, which is defined as “enterprises that buy or sell goods internationally” under 19 CFR 351.502(c), is composed of an unknowable number of enterprises and industries and that a specificity analysis is thus irrelevant and contrary to law.<sup>161</sup> Consequently, the GOC did not answer the questions. Specifically, the GOC did not provide responses for the percentage of ocean shipping services accounted for by the traded goods sector, whether there are other industries that purchase ocean shipping services, and whether other industries might be considered part of the traded goods sector.<sup>162</sup>

In our supplemental questionnaire regarding the ocean shipping program, we also requested further information on the industries and sectors that comprise the traded goods sector within China, the ocean shipping service industry, and the volume and value of purchases of ocean shipping services accounted for by the traded goods sector in China.<sup>163</sup> In particular, we requested that the GOC provide explanation on how China Customs collects information, provide data for the ports that are accessible by ocean-going ships as separable from its overall import and export numbers, and the volume and value accounted for by ocean-going ships within ports that are accessible by ocean-going ships.<sup>164</sup> In addition, we requested that the GOC provide information regarding the total number of entities and enterprises in China, the number of those that import and export, and, of the importers and exporters, the number that do so via ocean freight.

In response to our supplemental questionnaire, the GOC provided inadequate responses. Regarding how China Customs collects information and the ways in which it collects information, the GOC stated that such data and explanation is “is not relevant to any finding regarding this program.”<sup>165</sup> The GOC likewise stated that information regarding which ports are accessible by ocean-going ships was “not relevant to any finding regarding this program.”<sup>166</sup> However, such data would allow Commerce to calculate the volume and value of the ocean shipping service industry and, by comparison with the volumes and values separately attributable to non-ocean going ships within ocean-accessible ports, determine a volume and value for the traded goods sector *vis-à-vis* the non-traded goods sector. Thus, such information is in fact necessary for Commerce to assess the specificity of the program. Furthermore, considering that

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<sup>159</sup> See GOC IQR at Exhibit A-15.4.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 314-315.

<sup>162</sup> *Id.* at 317.

<sup>163</sup> See GOCSQ2 at 3-5.

<sup>164</sup> See GOCSQ2 at 3.

<sup>165</sup> See GOCSQR2 at 2.

<sup>166</sup> *Id.* at 2.

the GOC collects data from its ports via customs declaration information,<sup>167</sup> such information is reasonably available to the GOC.

The GOC also stated that it does not keep data on ports accessible by ocean-going ships.<sup>168</sup> However, the GOC also said that the “majority of Chinese international freight is comprised of goods that are bought or sold internationally,” but international freight may “include a small portion of postal or express shipping of personal items.”<sup>169</sup> Thus, the GOC acknowledges that it is aware of other possible purchasers of ocean shipping services. Commerce asked the GOC to explain whether any volumes and values may be attributable to other sources, which includes such volumes and values that the GOC acknowledges may exist.<sup>170</sup> Without a thorough explanation from the GOC of how Commerce might interpret port data to differentiate ocean-going shipments of goods from smaller portions of non-commercial freight such as postal or express shipping of personal items, Commerce could not assess whether certain shipments may be attributable to the non-traded goods sector even when provided appropriate port information. Thus, the GOC’s explanation is necessary to differentiate the two.

Regarding the non-traded goods sector, the GOC argues that *all* industries and enterprises can buy or sell goods internationally.<sup>171</sup> However, Commerce did not ask whether all industries and enterprises in China *can* buy or sell goods internationally, but instead whether there are industries or enterprises that do not actually do so. Aside from not answering the question posed, the GOC also provides no evidence for its apparent claim that the traded goods sector is comprised of the entire Chinese economy. In response to the questions regarding the number of entities or enterprises that exist in China, export or import, and use ocean shipping services, the GOC provided no data. However, by the GOC’s admission, it maintains its customs data through the submissions of importers and exporters and, as discussed in the section “Application of AFA: Provision of Inputs and Ocean Shipping Services for LTAR: Whether Certain Markets Are Distorted,” the GOC maintains data on all registered companies in China through the “Enterprise Credit Information Publicity System.”<sup>172</sup> Consequently, the GOC has access to the requested information.

Therefore, we lack the required information to conduct a *de facto* specificity analysis regarding this program. Consequently, we preliminarily determine, in accordance with sections 776(a)(1), (2)(A), and (2)(C) of the Act, that necessary information is not available on the record, that the GOC withheld information that was requested of it, and that the GOC significantly impeded this proceeding. Thus, we are relying on “facts available” in making our preliminary specificity determination with respect to the provision of ocean shipping services for LTAR.

The GOC did not respond, including when provided additional opportunities to comply, with Commerce’s requests for information regarding but not limited to the total number of Chinese legal entities that import and/or export; a breakdown the industries and sectors that are included

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<sup>167</sup> See GOCSQR2 at 1-2.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* at 7.

<sup>170</sup> See GOCSQ2 at 3.

<sup>171</sup> See GOCSQR2 at 6.

<sup>172</sup> See SSSS from China Prelim.

in the ocean shipping industry; and further explanation regarding China Customs' practices. By refusing to provide the requested, necessary information that we find was reasonably available to the GOC, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we preliminarily determine that an adverse inference is warranted in selecting from among the facts available pursuant to section 776(b) of the Act.

In drawing an adverse inference from among the facts available, we find that the GOC is providing ocean shipping services for LTAR and, hence, that the subsidies under this program are *de facto* specific pursuant to section 771(5A)(D)(iii) of the Act to the traded goods sector.<sup>173</sup> Despite the GOC's failure to cooperate, the limited facts on the record support this specificity finding. First, the Economic Diversification Memorandum lists industries within China and includes industries that we can reasonably infer (adversely to the GOC) do not buy or sell goods internationally, including hotels, real estate, leasing and business services, services to households, and education, among others.<sup>174</sup> Second, by the GOC's own acknowledgment, most international freight is shipped via ocean-going ships and international freight is comprised primarily of traded goods (with only a "small portion of postal or express shipping of personal items").<sup>175</sup> As such, we find the provision of ocean shipping, based on the facts available with an adverse inference, to be *de facto* specific pursuant to section 771(5A)(D)(iii).

### **G. Application of AFA: Provision of Electricity for LTAR**

We are 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.<sup>176</sup> 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 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 on electricity price adjustments. Specifically, we requested, *inter alia*: Provincial Price Proposals for each province in which the mandatory respondents or any company "cross-owned" with those respondents is located for applicable tariff schedules that were in effect during the POR; all original NDRC Electricity Price Adjustment Notice(s) that were in effect during the POR; 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

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<sup>173</sup> Section 771(5A) of the Act provides that when determining whether an enterprise of industry receives a disproportionately large amount of a subsidy, the phrase "enterprise or industry" includes a group of such enterprises or industries. Additionally, 19 CFR 351.502(c) clarifies that the traded goods sector may constitute such a group.

<sup>174</sup> See Economic Diversification Memorandum.

<sup>175</sup> See GOCSQR2 at 7.

<sup>176</sup> See GOCIQR at 4-16.

NDRC and the provinces, grids and power companies with respect to the creation of all tariff schedules that were applicable to the POR; 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>177</sup> We requested this information in order 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 POR.

In its initial questionnaire response, the GOC reported that the NDRC has no authority to make any change to the adjusted electricity prices and that the provinces have the authority to set their own prices, under the Notice of NDRC on *Lowering Coal-Fired Electricity On-Grid Price and General Industrial and Commercial Electricity Price* (Notice 3105).<sup>178</sup> According to the GOC, the creation of this new structure has eliminated the need for Provincial Price Proposals that had previously been used by the NDRC to set prices for each province.<sup>179</sup> However Notice 3105 explicitly directs provinces to reduce prices and to report the enactment of those changes to the NDRC. Specifically, Article 2 of Notice 3105 stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour.<sup>180</sup> The Appendix to Notice 3105 indicates that this average price adjustment applies to all provinces and at varying amounts.<sup>181</sup> NDRC Notice 3105 also directs additional price reductions, and stipulates, at Articles II and X, that local price authorities shall implement in time the price reductions included in its Annex and report resulting prices to the NDRC.<sup>182</sup>

Notice 3105 does not explicitly stipulate that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions, as the GOC states to be the case.<sup>183</sup> Rather, the notice indicates that the NDRC continues to play a seminal role in setting and adjusting electricity prices, by mandating average price adjustment targets with which the provinces are obligated to comply in setting their own specific prices.<sup>184</sup> The notice does not explicitly eliminate Provincial Price Proposals and does not define distinctions in price setting roles between national and provincial pricing authorities.

In addition, in Notice FGJG (2020) 258, which applies to the POI, the NDRC requires “{i}n order to implement the decision-making and deployment of the CPC Central Committee and the State Council, coordinate epidemic prevention and control and economic and social development, support enterprises to resume work and production, and tide over the difficulties together” that “{f}rom February 1, 2020 to June 30, 2020, when the power grid enterprises calculate and collect the electricity charges of the above-mentioned power users (including those who have participated in the market transaction), the electricity charges are settled according to

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<sup>177</sup> See Initial Questionnaire at Section II, Electricity Appendix.

<sup>178</sup> See GOCIQR at 4-7 and Exhibit A-1.1.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at Exhibit A-1.1.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

95 {percent} of the original price level,” among other measures.<sup>185</sup> In addition, Notice FGJG (2020) 994 provides similarly from July 1, 2020, through December 31, 2020.<sup>186</sup> Thus, the notices do not indicate that the provinces act independently of the NDRC. Instead, the provinces are directed to follow the NDRC’s direction and given direct instructions on the prices they are allowed to collect.

As explained above, the GOC’s response does not constitute a full explanation regarding the roles and nature of cooperation between the NDRC and provinces in deriving electricity price adjustments. In fact, the information provided by the GOC indicates that despite its claim that the responsibility for setting prices within each province has moved from the NDRC to the provincial governments, the NDRC continues to play a major role in setting and adjusting prices. Consequently, we preliminarily determine, in accordance with sections 776(a)(1), (2)(A), and (2)(C) of the Act, that information necessary to our analysis of financial contribution and specificity is not available on the record, that the GOC withheld information requested by Commerce, and that the GOC significantly impeded this proceeding. Thus, we must rely on “facts available” in making our preliminary determination with respect to this program.<sup>187</sup> Moreover, we preliminarily determine, in accordance with section 776(b) of the Act, that the GOC failed to cooperate to the best of its ability to comply with our repeated requests for information. As a result, an adverse inference is warranted in the application of facts available.<sup>188</sup> In applying AFA, 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)(D)(iii)(I) of the Act because GOC officials, following central and provincial policy directives, administer discounted rates to a limited group of preferred enterprises or industries. The GOC failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments. Therefore, we are also relying on AFA in selecting the benchmark for determining the existence and amount of the benefit. The benchmark rates we selected are derived from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. We have relied upon electricity usage and rates paid by the companies under investigation to calculate POI benefits attributable to the mandatory respondents. For details regarding the remainder of the analysis, see “Provision of Electricity for LTAR” section below

#### **H. Application of AFA: Provision of Land-Use Rights to the Mobile Access Equipment Industry for LTAR**

Our review of the GOC’s initial questionnaire response shows that the GOC did not respond fully to certain sections of the questionnaire regarding these programs.<sup>189</sup> Specifically, we asked the GOC to identify all instances in which it provided land or land-use rights to the mandatory

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<sup>185</sup> *Id.* at Exhibit A-1.7

<sup>186</sup> *Id.*

<sup>187</sup> See section 776(a) of the Act.

<sup>188</sup> *Id.*

<sup>189</sup> See GOC IQR at 16-22

respondents during the AUL.<sup>190</sup> Rather than responding directly to this question, the GOC instead referred us to the respondents' questionnaire responses.<sup>191</sup> Similarly, we asked the GOC to identify the instances in which land or land-use rights were provided in industrial and other economic zones.<sup>192</sup> In response to these questions, the GOC again directed us to the respondents' questionnaire responses.<sup>193</sup>

In a supplemental questionnaire, Commerce requested further information, including *all* relevant central, provincial, city, and county government laws and regulations under which the land-use agreements and certificates obtained by the respondents were issued with explicit focus on those of the specific authorities identified by the respondents in their initial questionnaire responses.<sup>194</sup> In addition, we requested that the GOC provide explanation regarding the basis upon which the land or land-use rights were provided (*i.e.*, status or activity) to the mandatory respondents.<sup>195</sup>

In response, the GOC referred back to the prior national laws related to land-use rights that it provided in its initial questionnaire response but did not provide the local laws and regulations specifically affecting the local authorities identified by the respondents in their respective initial questionnaire responses as directly involved in the provision of land-use rights.<sup>196</sup> In addition, regarding the firms' status or activity, the GOC provided a nondefinitive response, stating only that it "believes" these land or land-use rights provisions were not contingent upon the firms' status or activity.<sup>197</sup>

Thus, the GOC did not provide all information necessary for us to properly analyze the financial contribution and specificity of the program. The basis by which land-use rights were obtained and the local land laws and regulations governing the authorities from whom the respondents directly obtained land-use rights are crucial for our analysis to determine whether an alleged program constitutes a financial contribution and is specific. Furthermore, given that Commerce has found the provision of land and land-use rights to be countervailable in previous Chinese CVD proceedings on the basis of status/activity,<sup>198</sup> we find unpersuasive the GOC's response that it "believes," that none of the land-use rights reported by respondents in this investigation were not contingent upon status or activities. Moreover, the GOC provided no other evidence to demonstrate the basis for its unsubstantiated claims. Information regarding the circumstances

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<sup>190</sup> See Initial Questionnaire at 3-5..

<sup>191</sup> See GOCIQR at 17 and 20-21.

<sup>192</sup> See Initial Questionnaire at 3-5.

<sup>193</sup> See GOCIQR at 20-21.

<sup>194</sup> See GOCSQ at 4.

<sup>195</sup> *Id.*

<sup>196</sup> See GOCSQR at 5.

<sup>197</sup> *Id.*

<sup>198</sup> See *Wood Mouldings and Millwork Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 35900 (June 12, 2020), and accompanying PDM at 38, unchanged in *Wood Mouldings and Millwork Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 67 (January 4, 2021); see also *Certain Corrosion Inhibitors from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*; 85 FR 41960 (July 13, 2020), and accompanying PDM at 41-42, unchanged in *Certain Corrosion Inhibitors from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 7537 (January 29, 2021).

under which the respondents obtained land-use rights has been provided and verified in previous China proceedings.<sup>199</sup> Thus, we preliminarily find that the information requested, but not provided, was available to the GOC.

Consequently, we preliminarily determine that the necessary information to determine financial contribution and specificity is not on the record of this investigation and that the GOC has withheld requested information, and, thus, that we must rely on “facts otherwise available” in issuing our preliminary determination regarding this program, pursuant to section 776(a)(1) and (2)(A) of the Act. Moreover, because the GOC failed to provide information it is able to provide, including local laws and regulations governing the authorities identified by the respondents as providing land-use rights, we preliminarily find that the GOC did not act to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOC’s provision of land-use rights 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)(D)(iii)(I) of the Act because the actual recipients of the land-use rights are limited to mobile access equipment producers.<sup>200</sup>

### **I. Application of AFA: Policy Loans to the Mobile Access Industry**

In the initial questionnaire, we asked the GOC to provide all relevant portions of the national, provincial, and municipal 5-year plans pertaining to the mobile access industry.<sup>201</sup> We also asked the GOC to “provide a complete copy of each national industrial plan/policy that includes the mobile access equipment industry.”<sup>202</sup> In addition, we asked the GOC to “provide a complete copy of the mobile access equipment industrial plan/policy for each of the provinces and municipalities in which the respondent companies and their cross-owned companies are registered.”<sup>203</sup> Lastly, we asked the GOC to provide the Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation (No. 40 (2005)) (Decision 40) and the Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue).<sup>204</sup>

In response, the GOC provided some of the requested documents and information, such as the Industrial Catalogue and national 5-year plans, but omitted provincial/municipal 5-year plans and industrial plans or policies pertaining to the mobile access equipment industry that we requested.<sup>205</sup> In particular, the GOC stated that the GOC has never released “any national

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<sup>199</sup> See, e.g., *See Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 72 FR 71360, 71363 (December 17, 2007), and accompanying PDM at 10 (“we examined these companies’ land-use rights agreements and discussed the agreements with the relevant government authorities”), unchanged in *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 40480 (July 15, 2008).).

<sup>200</sup> See Petition Volume III at 16-19.

<sup>201</sup> See Initial Questionnaire at 44-45.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> See GOCQR at 325-328.

industrial plan/policy specific to the mobile access equipment industry,” including to the request for information regarding provincial/municipal industrial plans and policies.<sup>206</sup>

Consequently, we issued supplemental questions requesting the omitted plans and information for provincial/municipal industrial plans and policies as well as requesting all plans that are relevant to the mobile access equipment industry, even if there is no plan specific to the mobile access equipment industry itself.<sup>207</sup> In addition, we requested the Made in China 2025 Initiative, a definition of the “high-end equipment” industry as described in the 13th 5-year plan, and clarification on whether any category of the Industrial Catalogue included the mobile access equipment industry.

In response, the GOC did not provide the Made in China 2025 Initiative and stated that “the Made in China 2025 Initiative does not include the mobile access equipment industry” without evidence to demonstrate such a claim.<sup>208</sup> By contrast, record evidence from the Petition does indicate that the mobile access equipment industry may be included within the Made in China 2025 Initiative because mobile access equipment producers are involved in “smart manufacturing.”<sup>209</sup> Furthermore, Commerce cannot analyze whether the mobile access equipment industry is included within the Made in China 2025 Initiative if the GOC does not provide any documentation for Commerce to evaluate its claims.

In addition, regarding the “high-end equipment” language of the 13th 5-year plan, the GOC stated that it “understands that the ‘high-end equipment’ industry does not include mobile access equipment industry” without further explanation.<sup>210</sup> However, in our question to the GOC, we explicitly requested that “{i}f the GOC claims that the mobile access equipment industry is not high-end, please explain how the GOC differentiates ‘high-end equipment’ industries, and provide any relevant lists, policies, or plans that categorize ‘high-end equipment’ industries.”<sup>211</sup> Thus, the GOC did not respond to the question and withheld evidence necessary for Commerce to determine whether the mobile access equipment industry could be considered “high-end equipment” and, thus, benefit from preferential financing available to encouraged industries.

Therefore, we preliminarily determine that necessary information is not available on the record and that the GOC has withheld information that was requested of it, and, thus, that Commerce must rely on “facts available” in making our preliminary determination in accordance with sections 776(a)(1) and (2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the selecting from among the facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the policy loans to the mobile access equipment industry program constitute a financial contribution within the meaning of section 771(5)(D) of the Act. In doing so, we find that the loans provided by Chinese banks reflect significant government intervention in the banking

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<sup>206</sup> *Id.* at 326.

<sup>207</sup> *See* GOCSQ at 6.

<sup>208</sup> *See* GOCSQR at 9.

<sup>209</sup> *See* Petition Volume III at Exhibits III-5, III-6, and III-19

<sup>210</sup> *See* GOCSQR at 10.

<sup>211</sup> *See* GOCSQ at 5.



sector and do not reflect rates that would be found in a functioning market, as described in *CFS from China*.<sup>212</sup> We rely upon the analysis undertaken in *CFS from China* to further conclude that national and local government control over the SOCBs render the loans a government financial contribution.<sup>213</sup> We updated our analysis from *CFS from China* in the Financial System Analysis Memorandum.<sup>214</sup> In addition, we find that the program is specific within the meaning of section 771(5A)(D)(i) of the Act because we determine, as AFA, that the program is *de jure* limited to certain industries involved in smart manufacturing and the production of “high-end” equipment, as provided in the Made in China 2025 Initiative and the 13th 5-year Plan.

## **J. Application of AFA: Other Subsidies**

Dingli and LGMG reported receiving benefits under certain “Other Subsidies” during the POR and over the average useful life (AUL) period.<sup>215</sup> We requested information from the GOC regarding these other subsidies (consisting of grants) in the initial questionnaire.<sup>216</sup> The GOC did not provide a response and instead stated that it would not reply because “Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures dictates that investigations may not be initiated on the basis of ‘simple assertion, unsubstantiated by relevant evidence.’”<sup>217</sup> We issued a supplemental questionnaire requesting that, for each of these programs, the GOC provide a full Standard Questions Appendix Response, which includes the information necessary to determine whether each program is specific and constitutes a financial contribution.<sup>218</sup> In addition, we requested that, for each program, the GOC provide a Grant Programs Appendix response, indicate the amount approved, date of approval, amount disbursed, and date(s) of disbursement.<sup>219</sup> The GOC did not provide a complete response regarding any of these self-reported grant programs.<sup>220</sup> Rather, the GOC stated an answer to this question would not be appropriate.”<sup>221</sup>

In order to conduct the analysis of whether a program is specific and constitutes a financial contribution under sections 771(5A) and 771(5)(D) of the Act, respectively, it is essential that the government provides a complete response to the questions that are contained in the Standard Questions Appendix to enable Commerce to conduct statutory analyses to determine if an alleged program is countervailable. To that end, government cooperation is essential because the government has sole access to the information required for a complete analysis of specificity and financial contribution with respect to government subsidy programs. By failing to provide complete responses to the Standard Questions Appendices as requested, we find that the record is missing necessary information because the GOC withheld necessary information and

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<sup>212</sup> See *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*), and accompanying IDM at Comment 10.

<sup>213</sup> *Id.*

<sup>214</sup> See Memorandum, “Countervailing Duty Investigation of Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Analysis of China’s Financial System,” dated April 23, 2020.

<sup>215</sup> See Dingli IQR at Exhibit F; see also LGMGIQR at Exhibit I-36.

<sup>216</sup> See Initial Questionnaire at 49; see also GOCSQ at 6-7.

<sup>217</sup> See GOCIQR at 382.

<sup>218</sup> See GOCSQ at 6-7.

<sup>219</sup> *Id.*

<sup>220</sup> See GOCSQR at 10-11.

<sup>221</sup> *Id.*

significantly impeded this investigation within the meaning of section 776(a)(1), (2)(A), and (2)(C) of the Act and also failed to cooperate by not acting to the best of its ability to comply with our requests for information within the meaning of section 776(b) of the Act. Based on application of AFA regarding these programs, we preliminarily determine that the self-reported grants listed in the “Other Subsidies” section below constitute a financial contribution under section 771(5)(D)(i) of the Act, and are specific, within the meaning of section 771(5A) of the Act.<sup>222</sup> Where such subsidies appear to be contingent upon export performance, we have found these subsidies to be specific within the meaning of section 771(5A)(B) of the Act.

## **IX. SUBSIDIES VALUATION**

### **A. Allocation Period**

Commerce normally allocates the benefits from non-recurring subsidies over the AUL of renewable physical assets used in the production of subject merchandise.<sup>223</sup> We find the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System.<sup>224</sup> We notified the respondents of the AUL in the initial questionnaire and requested data accordingly.<sup>225</sup> No party in this proceeding disputed this allocation period.

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

### **B. Attribution of Subsidies**

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of

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<sup>222</sup> See Dingli IQR at Exhibit F; *see also* LGMGIQR at Exhibit I-36.

<sup>223</sup> See 19 CFR 351.524(b).

<sup>224</sup> See U.S. Internal Revenue Service Publication 946 (2015), “How to Depreciate Property” at Table B-2: Table of Class Lives and Recovery Periods.

<sup>225</sup> See Initial Questionnaire at 2 and 87.

Commerce's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *Preamble* to Commerce's regulations further clarifies Commerce's cross-ownership standard is met where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits)... Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.<sup>226</sup>

Thus, Commerce's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The CIT upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>227</sup>

### *LGMG*

As discussed above, we selected LGMG as a mandatory respondent. LGMG, a producer of subject merchandise, provided responses for itself and its parent, holding company Linyi Lingong Machinery Group Co., Ltd. (LGMG Group). We preliminarily find that these companies are cross-owned within the definition of 19 CFR 351.525(b)(6)(vi).<sup>228</sup> We have provided a full analysis in the LGMG Calculation Memorandum.<sup>229</sup> We are attributing any subsidies received by LGMG to its own sales, pursuant to 19 CFR 351.525(b)(6)(i). Pursuant to 19 CFR 351.525(b)(6)(iii), we are attributing any subsidies provided to LGMG Group to the consolidated sales of LGMG Group and its subsidiary.

### *Dingli*

As discussed above, we selected Dingli as a mandatory respondent. Dingli, a producer of subject merchandise, provided responses for itself; Zhejiang Green Power Machinery Co., Ltd. (Green Power), a wholly-owned subsidiary that transferred subsidies to Dingli during the AUL period; and Zhejiang Shengda Fenghe Automotive Equipment Co., Ltd. (Shengda Fenghe), a de-registered company that transferred subsidies to Dingli during the AUL period. We preliminarily find that these companies are cross-owned within the definition of 19 CFR 351.525(b)(6)(vi).<sup>230</sup>

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<sup>226</sup> See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998).

<sup>227</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>228</sup> See LGMG Affiliation Response at 3-4.

<sup>229</sup> See Memorandum, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Preliminary Determination Calculations for Lingong Group Jinan Heavy Machinery Co., Ltd.," dated July 26, 2021 (LGMG Calculation Memorandum).

<sup>230</sup> See Dingli Affiliation Response at 3-4.

We have provided a full analysis in the Dingli Calculation Memorandum.<sup>231</sup> We are attributing any subsidies received by Dingli to its own sales, pursuant to 19 CFR 351.525(b)(6)(i). Pursuant to 19 CFR 351.525(b)(v), we are attributing any subsidies provided to Green Power and Shengda Fenghe to the products sold by the recipient of the transferred subsidies, Dingli.

### **C. Denominators**

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export sales (where the program is determined to be countervailable as an export subsidy) or total sales (where the program is determined to be countervailable as a domestic subsidy). The denominators we used to calculate the countervailable subsidy rate for the various subsidy programs described below are explained in further detail in the preliminary calculation memoranda prepared for these preliminary results.<sup>232</sup>

## **X. INTEREST RATE BENCHMARKS, DISCOUNT RATES, INPUT, ELECTRICITY, AND LAND BENCHMARKS**

We are examining loans received by the respondents from Chinese policy banks and state-owned commercial banks (SOCBs). We are also examining non-recurring, allocable subsidies.<sup>233</sup> The derivation of the benchmark interest rates and discount rates used to measure the benefit from these subsidies are discussed below.

### **A. Loan Benchmark and Discount Rates**

#### *1. Short-Term RMB-Denominated Loans*

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, Commerce uses comparable commercial loans reported by the company as a benchmark.<sup>234</sup> If the firm did not have any comparable commercial loans during the period, Commerce's regulations provide that we “may use a national average interest rate for comparable commercial loans.”<sup>235</sup>

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS from China*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.<sup>236</sup> In an analysis memorandum dated

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<sup>231</sup> See Memorandum, “Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Preliminary Determination Calculations for Zhejiang Dingli Machinery Co., Ltd.,” dated July 26, 2021 (Dingli Calculation Memorandum).

<sup>232</sup> See LGMG Calculation Memorandum; *see also* Dingli Calculation Memorandum.

<sup>233</sup> See 19 CFR 351.524(b)(1).

<sup>234</sup> See 19 CFR 351.505(a)(3)(i).

<sup>235</sup> See 19 CFR 351.505(a)(3)(ii).

<sup>236</sup> See *CFS from China* IDM at Comment 10.

July 21, 2017, Commerce conducted a re-assessment of the lending system in China.<sup>237</sup> Based on this re-assessment, Commerce has concluded that, despite reforms to date, the GOC's role in the system continues to fundamentally distort lending practices in China in terms of risk pricing and resource allocation, precluding the use of interest rates in China for CVD benchmarking or discount rate purposes. Consequently, we preliminarily find that any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(3)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, we are selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with Commerce's practice.<sup>238</sup>

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China* and later updated in *Thermal Paper from China*.<sup>239</sup> Under that methodology, we first determine which countries are similar to China in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from China*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, China fell in the lower-middle income category.<sup>240</sup> Beginning in 2010, however, China was classified in the upper-middle income category and remained there from 2011 to 2019.<sup>241</sup> Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2019.<sup>242</sup> This is consistent with Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.<sup>243</sup>

After Commerce identifies the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in the interest rate formation, the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators. In each of the years from 2003-2009 and 2011-2019, the results of the regression analysis reflected the expected, common-sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest

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<sup>237</sup> See Financial System Analysis Memorandum.

<sup>238</sup> See, e.g., *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*; 2015, 82 FR 46754 (October 6, 2017), and accompanying PDM at 21, unchanged in *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2015, 83 FR 16055 (April 13, 2018).

<sup>239</sup> See *CFS from the China* IDM at Comment 10; see also *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*), and accompanying IDM at 8-10.

<sup>240</sup> See World Bank Country Classification at <http://data.worldbank.org/about/country-and-lending-groups> (World Bank Country Classification).

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying IDM at "VII. Subsidies Valuation: Benchmarks and Discount Rates," unchanged in *Shrimp from China*.

rates.<sup>244</sup> For 2010, however, the regression does not yield that outcome for China's income group.<sup>245</sup> This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from China* to compute the benchmarks for the years from 2001-2009 and 2011-2019. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the IMF, and they are included in that agency's *International Financial Statistics (IFS)*. With the exceptions noted below, we used the interest and inflation rates reported in the *IFS* for the countries identified as "upper middle income" by the World Bank for 2010-2029 and "lower middle income" for 2001 – 2009.<sup>246</sup> First, we did not include those economies that Commerce considered to be non-market economies for antidumping duty purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to *IFS* for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year that we calculated a short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.<sup>247</sup> Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.<sup>248</sup>

## 2. Long-Term RMB-Denominated Loans

The lending rates reported in the *IFS* represent short-and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, Commerce developed an adjustment to the short-and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.<sup>249</sup>

In *Citric Acid from China Final*, this methodology was revised by switching from a long-term markup based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where 'n'

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<sup>244</sup> See Memorandum, "Countervailing Duty Investigation of Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Loan Interest Rate Benchmarks," dated April 23, 2021 (Loan Interest Benchmark Memorandum). The Loan Interest Benchmark Memorandum included data up to 2017, and the petitioner provided updated data to 2019 used in prior Commerce investigations. See Petitioner Benchmark Submission at Exhibits 17 and 18. 2020 benchmark information is not yet available, and, consequently, we have relied on 2019 data.

<sup>245</sup> See Loan Interest Benchmark Memorandum; see also Petitioner Benchmark Submission at Exhibits 17 and 18.

<sup>246</sup> See Loan Interest Benchmark Memorandum; see also Petitioner Benchmark Submission at Exhibits 17 and 18.

<sup>247</sup> See Loan Interest Benchmark Memorandum; see also Petitioner Benchmark Submission at Exhibits 17 and 18.

<sup>248</sup> See Loan Interest Benchmark Memorandum; see also Petitioner Benchmark Submission at Exhibits 17 and 18.

<sup>249</sup> See *Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008), and accompanying IDM at 8.

equals or approximates the number of years of the term of the loan in question.<sup>250</sup> Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.<sup>251</sup>

### 3. *Foreign Currency-Denominated Loans*

To calculate benchmark interest rates for foreign currency-denominated loans, we are following the methodology developed over a number of successive Chinese proceedings. For USD short-term loans, we used as a benchmark the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Likewise, for any short-term loans denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

For any long-term foreign currency-denominated loans, we added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where ‘n’ equals or approximates the number of years of the term of the loan in question.<sup>252</sup>

### 4. *Discount Rates*

Consistent with 19 CFR 351.524(d)(3)(i)(A), we are using as the discount rate the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.<sup>253</sup>

## **B. Provision of Inputs and Ocean Freight for LTAR**

The basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR is set forth in 19 CFR 351.511(a)(2). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (Tier 1); (2) world market prices that would be available to purchasers in the country under investigation (Tier 2); or (3) an assessment of whether the government price is consistent with market principles (Tier 3).

In order to determine the appropriate benchmark with which to measure the benefits of inputs provided at LTAR under 19 CFR 351.511, we asked the GOC several questions concerning the structure of the input industries. As described in the section “Application of AFA: Provision of Inputs for LTAR: Whether Certain Markets Are Distorted,” the GOC did not cooperate with our

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<sup>250</sup> See *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from China Final*), and accompanying IDM at Comment 14.

<sup>251</sup> See Loan Interest Benchmark Memorandum for the resulting inflation adjusted benchmark lending rates; *see also* Petitioner Benchmark Submission at Exhibits 17 and 18.

<sup>252</sup> See Loan Interest Benchmark Memorandum; *see also* Petitioner Benchmark Submission at Exhibits 17 and 18.

<sup>253</sup> See Loan Interest Benchmark Memorandum; *see also* Petitioner Benchmark Submission at Exhibits 17 and 18.

requests for information. Consequently, we preliminarily determine that all input markets are distorted and, therefore we cannot rely on any Tier 1 prices, including imports, pursuant to 19 CFR 351.511(a)(2)(i). Therefore, according to the hierarchy and pursuant to 19 CFR 351.511(a)(2)(ii), we move to Tier 2 world market prices for calculating all programs involving the provision of inputs for LTAR. The selection of the external benchmarks and the adjustments made to arrive at “delivered” prices are described below.

### 1. Diesel Engines

As discussed in the section “Application of AFA: Provision of Inputs for LTAR: Whether Certain Markets Are Distorted,” we preliminarily find that the market for diesel engines in China is distorted and cannot be used to calculate a Tier 1 benchmark pursuant to 19 CFR 351.511(a)(2)(i). We received two submissions of Tier 2 diesel engine benchmarks: (1) 6-digit United Nations (UN) Comtrade data of world exports to the rest of the world excluding China in USD per kilogram<sup>254</sup> and (2) 10-digit USA Trade Online data of U.S. exports to the rest of the world excluding China in USD per unit.<sup>255</sup>

Regarding the UN Comtrade data, we note that the data is provided in kilograms.<sup>256</sup> However, record evidence indicates that engines are sold on a unit basis, and there is no explanation in the data of how engines reported on a unit basis were converted into kilograms for reporting purposes.<sup>257</sup> Consequently, without further explanation of how the UN Comtrade data was rendered in kilograms, Commerce finds the data unreliable for the purposes of this investigation. In addition, record evidence indicates that diesel engine prices are not necessarily correlated with weight and that a multitude of factors, including performance (*e.g.*, power) and fuel efficiency, are relevant in price determination.<sup>258</sup> Thus, even if diesel engines were sold on a weight basis, other factors would still impact the appropriate value. Additionally, the UN Comtrade data are reported at the 6-digit HTS level. As such, these data may include engines covering a range of power levels, including higher-power engines that are not used in subject merchandise because they are of greater size and horsepower, and we have no reliable way to identify and remove higher-power engines from the data set.<sup>259</sup>

In contrast, the USA Trade Online data are already reported in units and, thus, reflect the basis on which diesel engines are customarily sold without the need for conversion. Moreover, the data present engine exports at the 10-digit HTS level. As such, Commerce is able to reliably remove diesel engines that are not used in the subject merchandise (*i.e.*, Commerce can accurately remove the data for engine exports above 149.2 kilowatts (kW)).<sup>260</sup> With this information removed, the benchmark is comparable to engines used in the production of subject merchandise and, pursuant to 19 CFR 351.511(a)(2)(iv), with the addition of delivery charges and import duties, reflects the price that a producer of subject merchandise would pay if it imported the product. While the USA Trade Online data reflect only that of U.S. exports to the

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<sup>254</sup> See LGMG Benchmark Submission at Exhibit 1; *see also* Dingli Benchmark Submission at Exhibit 16.

<sup>255</sup> See Petitioner Benchmark Submission at Exhibit 5.

<sup>256</sup> See LGMG Benchmark Submission at Exhibit 1; *see also* Dingli Benchmark Submission at Exhibit 16.

<sup>257</sup> See Petitioner Rebuttal Benchmark Submission at Exhibits 1 and 2; *see also* Dingli IQR at Exhibit A-5a.

<sup>258</sup> See Petitioner Benchmark Submission at Exhibits 7.a and 7.b.

<sup>259</sup> See Dingli Rebuttal Benchmark Submission at 2-4 and Exhibits 1-3; *see also* Dingli IQR at Exhibit A-5a.

<sup>260</sup> See Petitioner Benchmark Submission at Exhibit 5.



world, and as such do not provide the same country coverage as UN Comtrade data, we find it preferable to the UN Comtrade data because it is reported on the same basis as which diesel engines are sold, is more specific in HTS number, and can be altered to reflect the diesel engines used in subject merchandise.

In addition, while Commerce will normally average world market prices pursuant to 19 CFR 351.511(a)(2)(ii) to the extent practicable, we find that averaging is not practicable here in light of the issues identified above regarding the UN Comtrade data. Moreover, because the benchmarks are provided in different units, Commerce would require a conversion factor to convert the USD per kilogram UN Comtrade data into USD per piece. No benchmark submission provided an industry standard for such a conversion and, in the absence of one, Commerce has no other information beyond each company's business proprietary purchasing history (which, if relied upon, yields variable and inconsistent conversion rates). Without a standard conversion factor, Commerce would need to average the respondents' benefit calculated with an inappropriate measurement of volume, kilogram, with the benefit as calculated in units to arrive at an averaged benefit. However, as stated above, engines are not sold in kilograms and prices do not necessarily scale with kilograms. Consequently, a benefit calculated in kilograms would not be useful to average with a benefit calculated in units. Thus, for this reason as well, we find that we are unable to use the UN Comtrade data for benchmarking purposes. Pursuant to 19 CFR 351.511(a)(2)(iv), in order to create delivered prices, we added freight charges as described below, VAT, and import duties applicable to the input in order to calculate a price that the respondent company would have paid on the world market.

## *2. Lithium-Ion Batteries*

As discussed in the section "Application of AFA: Provision of Inputs for LTAR: Whether Certain Markets Are Distorted," we preliminarily find that the market for lithium-ion batteries in China is distorted and therefore no Tier 1 benchmark pursuant to 19 CFR 351.511.(a)(2)(i) can be used. For Tier 2 benchmarks, the petitioner, Dingli, and LGMG each submitted information from the same dataset: UN Comtrade world price data for HTS number 8507.60.<sup>261</sup> Consequently, we used the UN Comtrade data in calculating the benchmark. Pursuant to 19 CFR 351.511(a)(2)(iv), in order to create delivered prices, we added hazardous freight charges as described below, VAT, and import duties applicable to the input in order to calculate a price that the respondent company would have paid on the world market.

## *3. Steel Inputs*

As discussed in the section "Application of AFA: Provision of Inputs for LTAR: Whether Certain Markets Are Distorted," we preliminarily find that the markets for hot-rolled steel sheet and plate; steel bars; steel beams; steel channels; steel angles; and hollow structural shapes are distorted. For Tier 2 benchmarks, the petitioner and LGMG submitted UN Comtrade world price data.<sup>262</sup> Dingli submitted benchmark information from four sources: Steelguru India, Steelguru, Metal Expert, the Indian Ministry of Steel, and the Engineering Export Promotion Council of

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<sup>261</sup> See Petitioner Benchmark Submission at Exhibit 1; *see also* Dingli Benchmark Submission at Exhibit 16; and LGMG Benchmark Submission at Exhibit 1.

<sup>262</sup> See Petitioner Benchmark Submission at Exhibit 1; *see also* LGMG Benchmark Submission at Exhibit 1.

India.<sup>263</sup> Of these datasets, the Steelguru and Indian sources are of a narrow number of countries that are self-selected without any explanatory criteria.<sup>264</sup> Consequently, the submitted data are less inclusive and consist solely of several self-selected countries, which is less reliable than broader UN Comtrade data for the same HTS subheadings. In addition, while the Metal Expert data includes a broader scope of countries across the range of its covered products, the country-coverage is not as robust for the specific steel inputs at issue in this investigation (including prices from at most three countries).<sup>265</sup> Moreover, the Metal Expert data is, unlike the UN Comtrade data, provided without product descriptions or clear delineations between the different steel inputs at issue in this investigation.<sup>266</sup> Consequently, Commerce selected the UN Comtrade data as more appropriate for calculating the benchmarks for the above steel inputs in accordance with 19 CFR 351.511(a)(2)(ii). We relied upon the petitioner's version of the UN Comtrade data, including their selection of HTS subheadings, for all products except hot-rolled steel sheet and plate because the petitioner provided explanation and reasoning for its various selections.<sup>267</sup>

We have separated the benchmarks for hot-rolled steel sheet and hot-rolled steel plate. HTS subheadings provided by the petitioner and LGMG differentiate the products into two, separate HTS groupings: (1) sheet HTS subheadings are 7208.10, 7208.26, 7208.27, 7208.38, 7208.39; and (2) plate HTS subheadings are 7208.25, 7208.36, 7208.37.<sup>268</sup> Commerce notes that in this instance based on the benchmark information for both plate and sheet, we can accurately remove non-relevant codes to create input-specific benchmarks for sheet and plate rather than relying on an average across the two.

Finally, pursuant to 19 CFR 351.511(a)(2)(iv), in order to create delivered prices, we added freight charges as described below, VAT, and import duties applicable to the inputs in order to calculate a price that the respondent company would have paid on the world market.

#### 4. *Ocean Freight*

The petitioner and Dingli submitted ocean freight data, which we are using both for purposes of adding delivery charges to the benchmarks for the provision of inputs for LTAR (pursuant to 19 CFR 351.511(a)(2)(iv)) and as a Tier 2 benchmark for the provision of ocean shipping services for LTAR (pursuant to 19 CFR 351.511(a)(2)(ii)).<sup>269</sup> The petitioner's benchmark submission consists of ocean shipping data from New York City, New York and Norfolk, Virginia to the Port of Shanghai.<sup>270</sup> Dingli's benchmark submission consists of ocean shipping data from Drewry and Freightos, including data for China to the rest of the world and from multiple foreign

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<sup>263</sup> See Dingli Benchmark Submission at Exhibits 1-7 and 11-15.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.* at Exhibit 13. For example, the data includes 10 countries for "HRC," which is presumably hot-rolled coil and not at issue in this preliminary determination. There are, by contrast, only three countries for "HR Strip" and one for "Beam."

<sup>266</sup> *Id.* at Exhibit 13. For example, the data includes "Beam" and "I-Beam" without differentiating criteria.

<sup>267</sup> See Petitioner Benchmark Submission at 2-4 and Exhibits 1-4.

<sup>268</sup> See LGMG Rebuttal Benchmark Submission at Exhibit 1; *see also* Petitioner Benchmark Submission at Exhibit 1. The data submitted by the petitioner appears to contain an issue in its summary by not providing an option for "China" in the reporting fields, which Commerce typically removes from the calculation. By contrast, LGMG's summary provides and subtracts the relevant Chinese imports.

<sup>269</sup> See Petitioner Benchmark Submission at Exhibit 8; *see also* Dingli Benchmark Submission at Exhibits 17 and 18.

<sup>270</sup> See Petitioner Benchmark Submission at Exhibit 8.

ports to Shanghai.<sup>271</sup>

i. Ocean Freight Delivered Costs for Inputs Benchmark

For the purposes of calculating delivered benchmark costs under 19 CFR 351.511(a)(2)(iv), we look to ocean shipping prices that would reflect prices available to the respondents for the input arriving in China from the world market. Consequently, the data from China to the rest of the world is inappropriate for selecting an ocean freight benchmark because it does not represent shipments coming into China. However, we preliminarily find that the data provided by both the petitioner and Dingli for inbound shipments to Shanghai are appropriate. Therefore, we have averaged the prices of the Drewry, Freightos, New York to Shanghai, and Norfolk to Shanghai shipments.

In addition to the dataset, the petitioner submitted information indicating that lithium-ion batteries are treated as hazardous and, therefore, subject to different shipping rates.<sup>272</sup> The benchmark information provided by Dingli does not account for hazardous cargo.<sup>273</sup> Consequently, for lithium-ion batteries, we used the petitioner's data for shipments from New York City and Norfolk to Shanghai.

ii. International Ocean Shipping Services Benchmark

As discussed in the section “Application of AFA: Provision of Inputs and Ocean Shipping Services for LTAR: Whether Certain Markets Are Distorted,” we preliminarily find that the market for ocean shipping services in China is distorted. Therefore, domestic prices in China for international ocean shipping services cannot be used as a tier-one benchmark. When tier-one benchmarks are unavailable, Commerce will use a tier-two benchmark, a world market price that would be available to purchasers in the country in question, within the meaning of 19 CFR 351.511(a)(2)(ii). We preliminarily find that both the petitioner's benchmark and the Dingli benchmark for shipments to Shanghai are useable world market prices pursuant to 19 CFR 351.511(a)(2)(ii). Consistent with 19 CFR 351.511(a)(2)(ii), we, thus, used the average of these amounts for the calculation of the international ocean shipping services benchmark.

5. *Inland Freight*

Dingli reported inland freight costs in its initial questionnaire response. Commerce used an average of these prices to adjust the input benchmarks for its inland freight costs to arrive at delivered prices.<sup>274</sup> LGMG reported not purchasing inland freight shipping during the POI,<sup>275</sup> but the petitioner submitted benchmark calculations for LGMG's specific inland freight costs using data from the World Bank's *Doing Business Report*.<sup>276</sup> Consequently, Commerce used the petitioner's calculation of LGMG's inland freight costs because it is the only inland freight

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<sup>271</sup> See Dingli Benchmark Submission at Exhibits 17 and 18.

<sup>272</sup> See Petitioner Benchmark Submission at Exhibit 10.b.

<sup>273</sup> See Dingli Benchmark Submission at Exhibits 17 and 18.

<sup>274</sup> See Dingli Calculation Memorandum.

<sup>275</sup> See LGMGIQR at 19.

<sup>276</sup> See Petitioner Benchmark Submission at Exhibits 12.a and 12.b.

source on the record of this investigation for LGMG.

### C. Provision of Electricity for LTAR

As discussed above in the section, “Use of Facts Otherwise Available and Application of Adverse Inferences,” we are relying on AFA to select the highest electricity rates that are on the record of this investigation as our benchmark for measuring the adequacy of remuneration.<sup>277</sup>

### D. Provision of Land-Use Rights for LTAR to Mobile Access Equipment Producers

As explained in detail in previous investigations, we cannot rely on the use of Tier 1 or Tier 2 benchmarks to assess the benefits from the provision of land for LTAR in China. Specifically, in *Sacks from China*, we determined that “Chinese land prices are distorted by the significant government role in the market,” and hence, no usable Tier 1 benchmarks exist.<sup>278</sup> Furthermore, we found that Tier 2 benchmarks (world market prices that would be available to purchasers in China) are not appropriate.<sup>279</sup>

On October 2, 2018, Commerce completed a memorandum analyzing developments in China’s land market since 2007.<sup>280</sup> The Land Benchmark Analysis was prepared to assess the continued application of Commerce’s land for LTAR benchmark methodology, as established in 2007 in *Sacks from China*.<sup>281</sup> As discussed in the Land Benchmark Analysis, although reforms in China’s land markets have improved the use-rights of some landholders, such improvements have not been comprehensive, and reforms have been implemented on an *ad hoc* basis.<sup>282</sup> The reforms to date have not addressed the fundamental institutional factors that underlie the Chinese government’s monopoly control over land-use, which precludes landholders from putting their land to its best use and realizing the market value of their landholdings.<sup>283</sup> The GOC still owns all land in China, and exercises direct control over the sale of land-use rights and land pricing in the primary market and indirect control in the secondary market.<sup>284</sup>

As a result, and consistent with our methodology established in *Sacks from China*, we determine that we cannot use domestic Chinese land prices for benchmarking purposes. We also determine

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<sup>277</sup> See GOC IQR at Exhibit A-1.11.

<sup>278</sup> See, e.g., *Laminated Woven Sacks from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007) (*Sacks from China*), unchanged in *Laminated Woven Sacks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Woven Sacks from China Final*), and accompanying IDM at 18.

<sup>279</sup> *Id.*

<sup>280</sup> See Memorandum, “Countervailing Duty Investigation of Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Land Analysis Memo,” dated April 23, 2021 (containing a memorandum titled “Benchmark Analysis of the Government Provision of Land-Use Rights in China for Countervailing Duty Purposes,” dated October 2, 2018) (Land Benchmark Analysis).

<sup>281</sup> *Id.* at 2.

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

that because land is generally not simultaneously available to an in-country purchaser while located and sold out-of-country on the world market, we cannot use Tier 2 world prices as a benchmark for land-use rights. Finally, because land prices in China are not established consistent with market principles, and they reflect the government's control and allocation of land-use on an administrative basis, we will continue to use land-use prices outside of China, consistent with our practice, as a Tier 3 benchmark for purposes of calculating a benefit for this program.

We placed on the record benchmark information to value land from "Asian Marketview Reports" by CB Richard Ellis (CBRE) for Thailand for 2010.<sup>285</sup> We used this benchmark in the CVD investigations of *Solar Cells from China* and *IMTDCs from China*.<sup>286</sup> We initially selected this information in the *Sacks from China* investigation after considering a number of factors, including national income levels, population density, and producers' perceptions that Thailand is a reasonable alternative to China as a location for Asian production.<sup>287</sup> We find that the benchmark continues to be suitable for these preliminary results, and we relied on it for our calculation of benefits to LGMG and Dingli from their land purchases. We will continue to examine benchmark prices on a case-by-case basis and will consider the extent to which proposed benchmarks represent prices in a comparable setting (*e.g.*, a country proximate to China; the country's level of economic development, *etc.*).

## **XI. ANALYSIS OF PROGRAMS**

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

### **B. Programs Preliminarily Determined to be Countervailable**

#### **1. *Income Tax Reductions for High – and New-Technology Enterprises***

This program is established according to Article 28 of Enterprise Income Tax Law of the People's Republic of China and Article 93 of the Implementation Regulations for the Enterprise Income Tax Law of the People's Republic of China, effective on January 1, 2008, to support and encourage development of high and new technology enterprises.<sup>288</sup> The State Administration of

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<sup>285</sup> See Memorandum, "Countervailing Duty Investigation of Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Asian Marketview Report," dated April 23, 2021 (containing "Asian Marketview Report" pricing data).

<sup>286</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China*), and accompanying IDM at 6 and Comment 11; see also *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 21316 (April 11, 2016) (*IMTDCs from China*), and accompanying PDM at 13.

<sup>287</sup> The complete history of our reliance on this benchmark is discussed in the above-referenced *Solar Cells from China* IDM. In that discussion, we reviewed our analysis from the *Sacks from China* investigation and concluded the CBRE data remained a valid land benchmark.

<sup>288</sup> See GOCIQR at 343 and Exhibits D-1 and D-2.

Taxation (SAT) and its local branches are responsible for the administration of this program.<sup>289</sup> Article 28 states that high-tech enterprises to which the State gives key support are given the reduced enterprise income tax rate of 15 percent.<sup>290</sup>

Thus, the amount of the assistance provided is determined solely by the established criteria found in the Enterprise Income Tax Law of China and the Implementing Regulations of the Enterprise Income Tax Law of China.<sup>291</sup> The benefit is a reduction in the tax rate of 10 percent; *i.e.*, the preferential income tax rate under this program is 15 percent, whereas the normal income tax rate for enterprises in China is 25 percent.<sup>292</sup>

Dingli and LGMG reported use of the program.<sup>293</sup> We preliminarily determine that this program provides a financial contribution in the form of revenue forgone by the Chinese government, pursuant to section 771(5)(D)(ii) of the Act. We also preliminarily determine that this program confers a benefit in the amount of the tax savings, pursuant to 19 CFR 351.509(a)(1). Finally, we preliminarily determine that this program is specific under section 771(5A)(D)(i) of the Act because the recipients are limited by law to certain enterprises (*i.e.*, firms designated as high – and new-technology enterprises). To determine the net countervailable subsidy rate for Dingli and LGMG, we divided the benefits received by each company by the appropriate sales denominator, as described in the “Subsidies Valuation” section. We then added these rates together to preliminarily determine a net countervailable subsidy rate of 2.44 percent *ad valorem* for Dingli and 0.94 for LGMG.

## *2. Income Tax Deduction for Research and Development Expenses Under the Enterprise Income Tax Law*

This program was established to encourage enterprises to make more efforts in research and development (R&D) activities.<sup>294</sup> According to Article 30 of the Enterprise Income Tax Law of the People’s Republic of China, and Article 95 of the Implementing Regulations of the Enterprise Income Tax Law of the People’s Republic China, the expenses born by the enterprise incurred in the work of researching and developing new technologies, products or techniques can be accounted for at 150 percent of the actual accrued amount of total expenses, thereby reducing the enterprise’s actual income tax payable.<sup>295</sup> The only criterion governing the eligibility for this program is that the expenses born and to be accounted for on a 150 percent basis by the enterprise should be incurred in the work of R&D.<sup>296</sup>

Dingli and LGMG reported use of this program.<sup>297</sup> We preliminarily determine that this program provides a financial contribution in the form of revenue forgone by the Chinese government, pursuant to section 771(5)(D)(ii) of the Act. We also preliminarily determine that this program

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<sup>289</sup> *Id.* at 356.

<sup>290</sup> *Id.* at Exhibit D-1.

<sup>291</sup> *Id.* at D-1 and D-2.

<sup>292</sup> *Id.*

<sup>293</sup> *See* Dingli IQR at 37.

<sup>294</sup> *See* GOCIQR at 354.

<sup>295</sup> *Id.* at Exhibits D-1 and D-2.

<sup>296</sup> *Id.* at 361.

<sup>297</sup> *See* Dingli IQR at 41; *see also* LGMGIQR at Exhibit I-6.

is specific under section 771(5A)(D)(i) of the Act because the recipients are limited by law to certain enterprises (*i.e.*, firms engaged in R&D activities in high and new technology fields). To calculate the benefit from this program to Dingli and LGMG, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated the amount of tax the respondents would have paid absent the tax deductions at the tax rate that would otherwise apply (*i.e.*, 15 percent as allowed under the program, Income Tax Reductions for High – and New – Technology Enterprises, discussed above). The benefit is thus equal to 15 percent of Dingli and LGMG’s deduction, which is 75 percent of its R&D expenses. We then divided the tax savings by the appropriate total sales denominator for Dingli and LGMG. On this basis, we calculated a net countervailable subsidy rate for Dingli of 0.51 percent *ad valorem* and for LGMG of 0.29 percent *ad valorem*.

### 3. *Export Buyer’s Credits*

Commerce is examining whether the GOC provides preferential financing to exporters by offering local and foreign currency loans to overseas borrowers through the China Ex-Im Bank. For the reasons explained in the “Application of Facts Available and AFA: Export Buyer’s Credits” section, we preliminarily determine that the GOC’s provision of export buyer’s credits confers a financial contribution within the meaning of section 771(5)(D) of the Act, and specific because the credits are contingent upon export performance, in accordance with sections 771(5A)(A) and (B) of the Act.

Regarding benefit, given the provision of non-use certificates and a complete response from LGMG to Commerce’s supplemental questionnaire regarding the export buyer’s credit program, we preliminarily determine that LGMG did not use the program. However, as AFA, we preliminarily determine that Dingli used this program and that it confers a benefit to Dingli, pursuant to section 771(5)(E) of the Act. For Dingli, we preliminarily determine a countervailable subsidy rate of 10.54 percent *ad valorem*, a rate calculated for a similar program in another CVD proceeding involving imports from China.<sup>298</sup>

### 4. *Policy Loans to the Mobile Access Equipment Industry*

As explained above under “Use of Facts Otherwise Available and Adverse Inferences,” we determine, as AFA, that loans under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act and that this program is specific to mobile access equipment producers pursuant to section 771(5A)(D)(iii)(I) of the Act.

LGMG, its parent LGMG Group, and Dingli reported loans from SOCBs for which they made interest payments during the POI.<sup>299</sup> The loans provide a benefit pursuant to 19 CFR 351.505(a)(1) equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.<sup>300</sup> Based on this comparison, we preliminarily determine that preferential policy loans were provided to the respondents and

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<sup>298</sup> See *Coated Paper from China Amended Final*.

<sup>299</sup> See LGMGIQR at Exhibit I-26 for LGMG’s loans, and Exhibit II-13 for the Lingong Group; *see also* Dingli IQR at Exhibit B-17.

<sup>300</sup> See Loan Interest Benchmark Memorandum; *see also* Petitioner Benchmark Submission at Exhibits 17 and 18.

that a benefit exists in the amount of the difference between the benchmark prices and prices paid by the respondents.<sup>301</sup> We calculated LGMG and Dingli's program rates by dividing the amount of the benefit by each company's total sales denominator. On this basis, we preliminarily determine a countervailable subsidy rate of 0.42 percent *ad valorem* for LGMG and 0.08 percent *ad valorem* for Dingli.

#### 5. Provision of Lithium-Ion Batteries for LTAR

Dingli and LGMG reported use of this program.<sup>302</sup> In this investigation, the GOC reported that certain producers of lithium-ion batteries purchased by the respondents are majority-owned by the government.<sup>303</sup> As explained in the Public Bodies Memorandum, majority government-owned enterprises in China possess, exercise, or are vested with governmental authority.<sup>304</sup> As such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute "authorities" within the meaning of section 771(5)(B) of the Act and that the respondents received financial contributions from them in the form of the purchase of a good within the meaning of section 771(5)(D)(iii) of the Act. Further, for the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we determine as AFA that the non-majority GOC owned producers of lithium-ion batteries purchased by the respondents are "authorities," and, as such, that their provision of lithium-ion batteries constitutes a financial contribution under section 771(5)(D)(iii) of the Act. As explained above in the "Provision of Inputs for LTAR: Specificity," we requested information from the GOC regarding the lithium-ion batteries industry to confirm whether the program is specific, pursuant to section 771(5A) of the Act; however, the GOC refused to provide the necessary information.<sup>305</sup> Therefore, we preliminarily find, based on AFA, that the GOC is providing lithium-ion batteries for LTAR to a limited number of industries or enterprises, and, hence, that the subsidies under this program are *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

A benefit is conferred to the extent that lithium-ion batteries are being provided for LTAR. As discussed above under the "Interest Rate Benchmarks, Discount Rates, Input, Electricity, And Land Benchmarks" section, because we find that the Chinese market lithium-ion batteries was distorted by government involvement, we are selecting external benchmark prices, *i.e.*, Tier 2 or world market prices, consistent with 19 CFR 351.511(a)(2)(ii). Accordingly, as discussed in the section "Steel Inputs" we are using data as published by UN Comtrade. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under Tier 2, we will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices, we included, as appropriate, any ocean freight and inland freight that would be incurred to deliver the inputs to the respondents' production facilities, including hazardous freight charges as

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<sup>301</sup> See 19 CFR 351.505(a).

<sup>302</sup> See Dingli SQR at Exhibit S6; *see also* LGMGIQR at Exhibit I-17.

<sup>303</sup> See GOCIQR at Exhibit A-6.1.

<sup>304</sup> See Public Bodies Memorandum.

<sup>305</sup> See GOCSQR at 8.



discussed in the section “Lithium-Ion Batteries.” We then added the appropriate import duties and VAT applicable to the imports of lithium-ion batteries into China, as provided by the GOC. In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We then compared these monthly benchmark prices to the respondents’ reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that lithium ion batteries were provided to the respondents for LTAR and that a benefit exists in the amount of the difference between the benchmark prices and prices paid by the respondents.<sup>306</sup> We calculated LGMG and Dingli’s program rates by dividing the amount of the benefit by each company’s total sales denominator. On this basis, we preliminarily determine a countervailable subsidy rate of 0.69 percent *ad valorem* for LGMG and 1.70 percent *ad valorem* for Dingli.

#### 6. Provision of Hot-Rolled Steel Sheet and Plate for LTAR

Dingli and LGMG reported use of this program.<sup>307</sup> In this investigation, the GOC reported that certain producers of hot-rolled steel sheet and plate purchased by the respondents are majority-owned by the government.<sup>308</sup> As explained in the Public Bodies Memorandum, majority government-owned enterprises in China possess, exercise, or are vested with governmental authority.<sup>309</sup> As such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that the respondents received financial contributions from them in the form of the purchase of a good within the meaning of section 771(5)(D)(iii) of the Act. Further, for the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we determine as AFA that the non-majority GOC owned producers of hot-rolled steel sheet and plate purchased by the respondents are “authorities,” and, as such, that their provision of hot-rolled steel sheet and plate constitutes a financial contribution under section 771(5)(D)(iii) of the Act. As explained above in the “Provision of Inputs for LTAR: Specificity,” we requested information from the GOC regarding the hot-rolled steel sheet and plate industry to confirm whether the program is specific, pursuant to section 771(5A) of the Act; however, the GOC refused to provide the necessary information.<sup>310</sup> Therefore, we preliminarily find, based on AFA, that the GOC is providing hot-rolled steel sheet and plate for LTAR to a limited number of industries or enterprises, and, hence, that the subsidies under this program are *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

A benefit is conferred to the extent that hot-rolled steel sheet and plate is being provided for LTAR. As discussed above under the “Interest Rate Benchmarks, Discount Rates, Input, Electricity, And Land Benchmarks” section, because we find that the Chinese market for hot-

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<sup>306</sup> See 19 CFR 351.511(a).

<sup>307</sup> See Dingli SQR at Exhibit S6; see also LGMGSQR at Exhibit S1-1.

<sup>308</sup> See GOCIQR at Exhibit A-7.1.

<sup>309</sup> See Public Bodies Memorandum.

<sup>310</sup> See GOCSQR at 8.

rolled steel sheet and plate was distorted by government involvement, we are selecting external benchmark prices, *i.e.*, Tier 2 or world market prices, consistent with 19 CFR 351.511(a)(2)(ii). Accordingly, as discussed in the section “Steel Inputs” we are splitting our hot-rolled steel sheet and plate benchmark in two parts for steel sheet and steel plate and using data as published by UN Comtrade. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under Tier 2, we will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices, we included, as appropriate, any ocean freight and inland freight that would be incurred to deliver the inputs to the respondents’ production facilities. We then added the appropriate import duties and VAT applicable to the imports of hot-rolled steel sheet and plate into China, as provided by the GOC. In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We then compared these monthly benchmark prices to the respondents’ reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that hot-rolled steel sheet and plate was provided to the respondents for LTAR and that a benefit exists in the amount of the difference between the benchmark prices and prices paid by the respondents.<sup>311</sup> We calculated LGMG and Dingli’s program rates by dividing the amount of the benefit by each company’s total sales denominator. On this basis, we preliminarily determine a countervailable subsidy rate of 0.11 percent *ad valorem* for LGMG and 0.96 percent *ad valorem* for Dingli.

#### 7. Provision of Steel Bars for LTAR

Dingli and LGMG reported use of this program.<sup>312</sup> In this investigation, the GOC reported that certain producers of steel bars purchased by the respondents are majority-owned by the government.<sup>313</sup> As explained in the Public Bodies Memorandum, majority government-owned enterprises in China possess, exercise, or are vested with governmental authority.<sup>314</sup> As such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that the respondents received financial contributions from them in the form of the purchase of a good within the meaning of section 771(5)(D)(iii) of the Act. Further, for the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we determine as AFA that the non-majority GOC owned producers of steel bars purchased by the respondents are “authorities,” and, as such, that their provision of steel bars constitutes a financial contribution under section 771(5)(D)(iii) of the Act. As explained above in the “Provision of Inputs for LTAR: Specificity,” we requested information from the GOC regarding the steel bars industry to confirm whether the program is specific, pursuant to section 771(5A) of the Act; however, the GOC refused to provide the necessary information.<sup>315</sup> Therefore, we preliminarily find, based on

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<sup>311</sup> See 19 CFR 351.511(a).

<sup>312</sup> See Dingli SQR at Exhibit S6; *see also* LGMGIQR at Exhibit I-19.

<sup>313</sup> See GOCIQR at Exhibit A-10.1.

<sup>314</sup> See Public Bodies Memorandum.

<sup>315</sup> See GOCSQR at 8.

AFA, that the GOC is providing steel bars for LTAR to a limited number of industries or enterprises, and, hence, that the subsidies under this program are *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

A benefit is conferred to the extent that steel bars are being provided for LTAR. As discussed above under the “Interest Rate Benchmarks, Discount Rates, Input, Electricity, And Land Benchmarks” section, because we find that the Chinese market steel bars was distorted by government involvement, we are selecting external benchmark prices, *i.e.*, Tier 2 or world market prices, consistent with 19 CFR 351.511(a)(2)(ii). Accordingly, as discussed in the section “Steel Inputs” we are using data as published by UN Comtrade. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under Tier 2, we will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices, we included, as appropriate, any ocean freight and inland freight that would be incurred to deliver the inputs to the respondents’ production facilities. We then added the appropriate import duties and VAT applicable to the imports of steel bars into China, as provided by the GOC. In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We then compared these monthly benchmark prices to the respondents’ reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that steel bars were provided to the respondents for LTAR and that a benefit exists in the amount of the difference between the benchmark prices and prices paid by the respondents.<sup>316</sup> We calculated LGMG and Dingli’s program rates by dividing the amount of the benefit by each company’s total sales denominator. On this basis, we preliminarily determine a countervailable subsidy rate of 0.03 percent *ad valorem* for Dingli. We preliminarily determine that subsidies provided to LGMG under this program did not provide a measurable benefit.

#### 8. Provision of Steel Beams for LTAR

Dingli and LGMG reported use of this program.<sup>317</sup> In this investigation, the GOC reported that certain producers of steel beams purchased by the respondents are majority-owned by the government.<sup>318</sup> As explained in the Public Bodies Memorandum, majority government-owned enterprises in China possess, exercise, or are vested with governmental authority.<sup>319</sup> As such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that the respondents received financial contributions from them in the form of the purchase of a good within the meaning of section 771(5)(D)(iii) of the Act. Further, for the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we determine as

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<sup>316</sup> See 19 CFR 351.511(a).

<sup>317</sup> See Dingli SQR at Exhibit S6; *see also* LGMG at Exhibit I-19.

<sup>318</sup> See GOCIQR at Exhibit A-11.1.

<sup>319</sup> See Public Bodies Memorandum.

AFA that the non-majority GOC owned producers of steel beams purchased by the respondents are “authorities,” and, as such, that their provision of steel beams constitutes a financial contribution under section 771(5)(D)(iii) of the Act. As explained above in the “Provision of Inputs for LTAR: Specificity”, we requested information from the GOC regarding the steel beams industry to confirm whether the program is specific, pursuant to section 771(5A) of the Act; however, the GOC refused to provide the necessary information.<sup>320</sup> Therefore, we preliminarily find, based on AFA, that the GOC is providing steel beams for LTAR to a limited number of industries or enterprises, and, hence, that the subsidies under this program are *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

A benefit is conferred to the extent that steel beams are being provided for LTAR. As discussed above under the “Interest Rate Benchmarks, Discount Rates, Input, Electricity, And Land Benchmarks” section, because we find that the Chinese market steel beams was distorted by government involvement, we are selecting external benchmark prices, *i.e.*, Tier 2 or world market prices, consistent with 19 CFR 351.511(a)(2)(ii). Accordingly, as discussed in the section “Steel Inputs” we are using data as published by UN Comtrade. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under Tier 2, we will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices, we included, as appropriate, any ocean freight and inland freight that would be incurred to deliver the inputs to the respondents’ production facilities. We then added the appropriate import duties and VAT applicable to the imports of steel beams into China, as provided by the GOC. In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We then compared these monthly benchmark prices to the respondents’ reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that steel beams were provided to the respondents for LTAR and that a benefit exists in the amount of the difference between the benchmark prices and prices paid by the respondents.<sup>321</sup> We calculated LGMG and Dingli’s program rates by dividing the amount of the benefit by each company’s total sales denominator. On this basis, we preliminarily determine a countervailable subsidy rate of 0.02 percent *ad valorem* for Dingli. We preliminarily determine that subsidies provided to LGMG under this program did not provide a measurable benefit.

#### 9. Provision of Hollow Structural Shapes for LTAR

Dingli and LGMG reported use of this program.<sup>322</sup> In this investigation, the GOC reported that certain producers of hollow structural shapes purchased by the respondents are majority-owned by the government.<sup>323</sup> As explained in the Public Bodies Memorandum, majority government-owned enterprises in China possess, exercise, or are vested with governmental authority.<sup>324</sup> As

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<sup>320</sup> See GOCSQR at 8.

<sup>321</sup> See 19 CFR 351.511(a).

<sup>322</sup> See Dingli SQR at Exhibit S6; *see also* LGMGSQR at Exhibit S1-2.

<sup>323</sup> See GOCIQR at Exhibit A-14.1.

<sup>324</sup> See Public Bodies Memorandum.

such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that the respondents received financial contributions from them in the form of the purchase of a good within the meaning of section 771(5)(D)(iii) of the Act. Further, for the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we determine as AFA that the non-majority GOC owned producers of hollow structural shapes purchased by the respondents are “authorities,” and, as such, that their provision of hollow structural shapes constitutes a financial contribution under section 771(5)(D)(iii) of the Act. As explained above in the “Provision of Inputs for LTAR: Specificity,” we requested information from the GOC regarding the hollow structural shapes industry to confirm whether the program is specific, pursuant to section 771(5A) of the Act; however, the GOC refused to provide the necessary information.<sup>325</sup> Therefore, we preliminarily find, based on AFA, that the GOC is providing hollow structural shapes for LTAR to a limited number of industries or enterprises, and, hence, that the subsidies under this program are *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

A benefit is conferred to the extent that hollow structural shapes are being provided for LTAR. As discussed above under the “Interest Rate Benchmarks, Discount Rates, Input, Electricity, And Land Benchmarks” section, because we find that the Chinese market for hollow structural shapes was distorted by government involvement, we are selecting external benchmark prices, *i.e.*, Tier 2 or world market prices, consistent with 19 CFR 351.511(a)(2)(ii). Accordingly, as discussed in the section “Steel Inputs” we are using data as published by UN Comtrade. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under Tier 2, we will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices, we included, as appropriate, any ocean freight and inland freight that would be incurred to deliver the inputs to the respondents’ production facilities. We then added the appropriate import duties and VAT applicable to the imports of hollow structural shapes into China, as provided by the GOC. In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We then compared these monthly benchmark prices to the respondents’ reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that hollow structural shapes were provided to the respondents for LTAR and that a benefit exists in the amount of the difference between the benchmark prices and prices paid by the respondents.<sup>326</sup> We calculated LGMG and Dingli’s program rates by dividing the amount of the benefit by each company’s total sales denominator. On this basis, we preliminarily determine a countervailable subsidy rate of 0.50 percent *ad valorem* for LGMG and 4.51 percent *ad valorem* for Dingli.

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<sup>325</sup> See GOCSQR at 8.

<sup>326</sup> See 19 CFR 351.511(a).

## 10. *Provision of Electricity for LTAR*

Dingli and LGMG reported use of this program.<sup>327</sup> For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the GOC’s provision of electricity in part on AFA. We preliminarily determine that the GOC’s provision of electricity confers a financial contribution in the form of a provision of a good or service under section 771(5)(D)(iii) of the Act and is specific under section 771(5A)(D) of the Act.

To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the respondents’ reported consumption volumes and rates paid. Consistent with Commerce practice, we compared the rates paid by the respondents to the benchmark rates, which, as discussed below, are the highest rates charged in China during the POR. Specifically, to calculate the electricity benchmark, in accordance with 19 CFR 351.511(a)(2), we selected the highest rates in China for the user category of the respondents (*e.g.*, “large industrial users”) for the non-seasonal general, peak, normal, and valley ranges, as provided in the electricity tariff schedules submitted by the GOC.<sup>328</sup> This benchmark reflects an adverse inference, which we drew as a result of the GOC’s failure to cooperate by not acting to the best of its ability to provide requested information about its provision of electricity in this review.<sup>329</sup> We made separate comparisons by price category (*e.g.*, great industry peak, basic electricity, *etc.*). We multiplied the difference between the benchmark and the price paid by the consumption amount reported for that month and price category. We then calculated the total benefit during the POR for the respondents by summing the difference between the benchmark prices and the prices paid by each company.

We calculated the respondents’ program rates by dividing the amount of benefit by each company’s total sales denominator during the POR. On this basis, we preliminarily determine a countervailable subsidy rate of 0.05 percent *ad valorem* for LGMG and 0.08 percent *ad valorem* for Dingli.

## 11. *Provision of Land-Use Rights to the Mobile Access Equipment Industry for LTAR*

LGMG and Dingli reported use of this program.<sup>330</sup> For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the GOC’s provision of land in part on AFA. For these preliminary results, we determine that LGMG and Dingli received a countervailable subsidy through land-use rights provided for LTAR. Specifically, we find that the land-use rights that the companies obtained constitute a financial contribution and are specific, as discussed above in the “Use of

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<sup>327</sup> See Dingli SQR at Exhibit S4; *see also* LGMGIQR at Exhibit I-11.

<sup>328</sup> See *Carbon and Alloy Steel Threaded Rod from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Investigation and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 36578 (July 29, 2019), and accompanying PDM at 38.

<sup>329</sup> See “Application of AFA: Provision of Electricity for LTAR” section, above; *see also* *Changzhou Trina Solar et al. v. United States*, CIT No. 17-00198 (CIT 2018), stating that “assuming a countervailable subsidy exists, Commerce acted in accordance with the law in using the highest of all provincial rates on the record to calculate the benchmark” for this program.

<sup>330</sup> See Dingli SQR at Exhibit S5; *see also* LGMG at Exhibit I-13.

Facts Otherwise Available and Adverse Inferences” section. Specifically, Commerce determines as AFA that the provision of land to the respondents constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, and is also specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

To calculate the benefit, we first multiplied the Thailand industrial land benchmarks discussed above under the “Land Benchmark” section, by the total area of land that LGMG and Dingli reported receiving during the relevant period. We then subtracted the price paid for each tract to derive the total unallocated benefit. Because land is related to the respondents’ capital structure, we treated the amount of the unallocated benefit as a non-recurring subsidy, pursuant to 19 CFR 351.524(c)(2)(iii). We thus conducted the “0.5 percent test,” as instructed by 19 CFR 351.524(b)(2), for the year of the relevant land-use agreement by dividing the total unallocated benefit for each tract by the appropriate sales denominator. As a result, we found that the benefits were greater than 0.5 percent of relevant sales and, therefore, allocated the benefits to the POI over the applicable land-use rights period (*e.g.*, 50 years for purchased land) and determined the amounts attributable to the POI.

We calculated the respondents’ program subsidy rates by dividing the amount of the benefit by each company’s total sales denominator during the POI. On this basis, we derived a preliminary subsidy rate of 0.04 percent *ad valorem* for LGMG and 0.49 percent *ad valorem* for Dingli.

## 12. *Provision of International Ocean Shipping Services for LTAR*

Dingli reported use of this program.<sup>331</sup> In this investigation, the GOC reported that certain providers of ocean shipping services purchased by the respondents are majority-owned by the government.<sup>332</sup> As explained in the Public Bodies Memorandum, majority government-owned enterprises in China possess, exercise, or are vested with governmental authority.<sup>333</sup> As such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that the respondents received financial contributions from them in the form of the purchase of a good within the meaning of section 771(5)(D)(iii) of the Act. Further, for the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we determine as AFA that the non-majority GOC owned providers of ocean shipping services purchased by the respondents are “authorities,” and, as such, that their provision of ocean shipping services constitutes a financial contribution under section 771(5)(D)(iii) of the Act. As explained above in the “AFA: Provision of Ocean Shipping Services for LTAR: Specificity,” we requested information from the GOC regarding the ocean shipping service industry to confirm whether the program is specific, pursuant to section 771(5A) of the Act; however, the GOC refused to provide the necessary information.<sup>334</sup> Therefore, we preliminarily find, based on AFA, that the GOC is providing ocean shipping services for LTAR, and that the subsidies under this program

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<sup>331</sup> See Dingli SQR at Exhibit S7.

<sup>332</sup> See GOCIQR at Exhibit A-15.1.

<sup>333</sup> See Public Bodies Memorandum.

<sup>334</sup> See GOCSQR2 at 1-10.

are *de facto* specific pursuant to section 771(5A)(D)(iii) of the Act.

A benefit is conferred to the extent that ocean shipping services are being provided for LTAR. As discussed above under the “Interest Rate Benchmarks, Discount Rates, Input, Electricity, And Land Benchmarks” section, because we find that the Chinese ocean shipping services was distorted by government involvement, we are selecting external benchmark prices, *i.e.*, Tier 2 or world market prices, consistent with 19 CFR 351.511(a)(2)(ii). Accordingly, as discussed in the section “Ocean Freight” we are using an average of data from multiple sources provided by the petitioner and Dingli.

Based on this comparison, we preliminarily determine that ocean shipping services were provided to the respondents for LTAR and that a benefit exists in the amount of the difference between the benchmark prices and prices paid by the respondents.<sup>335</sup> We calculated LGMG and Dingli’s program rates by dividing the amount of the benefit by each company’s total sales of subject merchandise to the United States pursuant 351.525(b)(4) and (5). On this basis, we preliminarily determine a countervailable subsidy rate of 0.01 percent *ad valorem* for Dingli. We preliminarily determine non-use for LGMG.<sup>336</sup>

### 13. Other Subsidy Programs

Both respondents reported that they received various other grants from the GOC during the AUL.<sup>337</sup> For the reasons explained in the “Application of AFA: Other Subsidies” section above, we are basing our preliminary determination regarding these grants on AFA, in part. Therefore, we determine that the following grants confer a financial contribution as a direct transfer of funds under section 771(5)(D)(i) of the Act, and are specific either under section 771(5A)(B) or 771(5A)(D) of the Act (as appropriate, depending on whether the respondent reported the grant as export-related or as a domestic subsidy). We find that the respondents received non-recurring grants during the POR or AUL period.<sup>338</sup>

To calculate the benefits received under these programs, we followed the methodology described in 19 CFR 351.524. In accordance with 19 CFR 351.524(b)(2), we determine whether to allocate the non-recurring benefit from these grants over the AUL by dividing the approved grant amount by the company’s total sales in the year of approval. If the approved amount is less than 0.5 percent of the company’s total sales, we expensed the amounts received under the grants in the respective years received. To calculate the *ad valorem* subsidy rate for these grants, we divided the benefit allocable to the POI by the respondents’ appropriate total sales denominator. Based on the methodology outlined above, we calculated net countervailable *ad valorem* subsidy rates for LGMG of 1.05 percent and for Dingli of 2.06 percent for these grants.<sup>339</sup>

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<sup>335</sup> See 19 CFR 351.511(a).

<sup>336</sup> See LGMG Calculation Memorandum.

<sup>337</sup> See LGMGIQR at Exhibit I-36; *see also* Dingli IQR at Exhibit F.

<sup>338</sup> See LGMG Calculation Memorandum; *see also* Dingli Calculation Memorandum.

<sup>339</sup> See LGMG Calculation Memorandum; *see also* Dingli Calculation Memorandum.



**C. Programs Preliminarily Determined to Be Not Used**

1. Provision of Galvanized Steel for LTAR
2. Provision of Wire Rod for LTAR
3. Government Directed Debt Restructuring in the Mobile Access Equipment Industry
4. Export Loans from Chinese State-Owned Banks
5. Export Seller's Credit from State-Owned Banks
6. Foreign Trade Development Fund Grants
7. Export Assistance Grants
8. Interest Payment Subsidies
9. Subsidies for the Development of Famous Brands and Chinese World Top Brands
10. State Key Technology Fund Grants
11. Grants for Retiring Outdated Capacity and Industrial Restructuring
12. Grants for Energy Conservation and Emission Reduction
13. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Procured Equipment
14. Import Tariff and VAT Exemptions on Imported Equipment in Encouraged Industries

**D. Programs Preliminarily Determined Not to Provide a Measurable Benefit**

1. Provision of Diesel Engines for LTAR

LGMG reported use of this program; Dingli reported that it imported all of the diesel engines it purchased during the POI.<sup>340</sup> In this investigation, the GOC reported that certain producers of diesel engines purchased by the respondents are majority-owned by the government.<sup>341</sup> As explained in the Public Bodies Memorandum, majority government-owned enterprises in China possess, exercise, or are vested with governmental authority.<sup>342</sup> As such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that the respondents received financial contributions from them in the form of the purchase of a good within the meaning of section 771(5)(D)(iii) of the Act. Further, for the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we determine as AFA that the non-majority GOC owned producers of diesel engines purchased by the respondents are “authorities,” and, as such, that their provision of diesel engines constitutes a financial contribution under section 771(5)(D)(iii) of the Act. As explained above in the “Provision of Inputs for LTAR: Specificity,” we requested information from the GOC regarding the diesel engines industry to confirm whether the program is specific, pursuant to section 771(5A) of the

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<sup>340</sup> See LGMGSQR3 at Exhibit S3-5; *see also* Dingli SQR at Exhibit S6; and Dingli Rebuttal Benchmark Submission at 2.

<sup>341</sup> See GOCIQR at Exhibit A-5.1.

<sup>342</sup> See Public Bodies Memorandum.

Act; however, the GOC refused to provide the necessary information.<sup>343</sup> Therefore, we preliminarily find, based on AFA, that the GOC is providing diesel engines for LTAR to a limited number of industries or enterprises, and, hence, that the subsidies under this program are *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

A benefit is conferred to the extent that diesel engines are being provided for LTAR. As discussed above under the “Interest Rate Benchmarks, Discount Rates, Input, Electricity, And Land Benchmarks” section, because we find that the Chinese market for diesel engines was distorted by government involvement, we are selecting external benchmark prices, *i.e.*, Tier 2 or world market prices, consistent with 19 CFR 351.511(a)(2)(ii). Accordingly, as discussed in the section “Diesel Engines” we are using data as published by USA Trade Online, which we have modified to more appropriately match diesel engines used in the production of subject merchandise. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under Tier 2, we will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices, we included, as appropriate, any ocean freight and inland freight that would be incurred to deliver the inputs to the respondents’ production facilities. We then added the appropriate import duties and VAT applicable to the imports of diesel engines into China, as provided by the GOC. In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We then compared these monthly benchmark prices to the respondents’ reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that diesel engines were provided to the respondents for LTAR and that a benefit exists in the amount of the difference between the benchmark prices and prices paid by the respondents.<sup>344</sup> We calculated LGMG’s program rate by dividing the amount of the benefit by each company’s total sales denominator. On this basis, we preliminarily determine that subsidies provided to LGMG under this program did not provide a measurable benefit.

2. Provision of Steel Channels for LTAR
3. Provision of Steel Angles for LTAR

In addition, both Dingli and LGMG reported receiving benefits under various programs that did not confer a measurable benefit.<sup>345</sup> Based on the record evidence, we preliminarily determine that the benefits from these programs result in rates that are less than 0.005 percent *ad valorem* when attributed to the appropriate respondent’s applicable sales and, therefore, provide no measurable benefit in the POI.

#### **E. Programs Preliminarily Determined to Not Provide a Countervailable Benefit During the POI**

1. Currency Undervaluation

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<sup>343</sup> See GOCSQR at 8.

<sup>344</sup> See 19 CFR 351.511(a).

<sup>345</sup> See LGMGIQR at Exhibit I-36; *see also* Dingli IQR at Exhibit F.

Commerce's analysis regarding the benefit calculation for this program 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. 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. 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).<sup>346</sup> On May 28, 2021, we received Treasury's analysis on currency undervaluation.<sup>347</sup> While Treasury determined that the RMB was undervalued during the POI, it also found that this undervaluation was not the result of government action on the exchange rate in 2020.<sup>348</sup> Treasury's assessment was made using a multilaterally consistent model assessing external imbalances and exchange rate misalignments. In addition to considering net sales of foreign exchange reserves in the subject country and other macroeconomic and policy variables, the model evaluated the extent of a foreign currency's undervaluation *vis-à-vis* the USD and assessed the degree to which that may have occurred because of government intervention. Therefore, in accordance with 19 CFR 351.528(a)(2), we preliminarily find that the RMB's undervaluation did not provide a benefit to producers/exporters of mobile access equipment during the POI. As a result, we did not analyze the financial contribution or specificity of this program for the purposes of this preliminary determination.

## XII. RECOMMENDATION

Based on our analysis, we recommend adopting the preliminary determination described above. If this recommendation is accepted, we will publish the preliminary determination in the *Federal Register*.

☒

Agree

☐

Disagree

7/26/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

<sup>346</sup> See Treasury Letter.

<sup>347</sup> See Treasury Letter.

<sup>348</sup> *Id.*

## Appendix

Program	Subsidy Rate
Preferential Lending	
Government Directed Debt Restructuring in the Mobile Access Equipment Industry	10.54% <sup>349</sup>
Policy Loans to the Mobile Access Equipment Industry	0.43% <sup>350</sup>
Capital Injections and Other Payments from the State Capital Operating Budget	10.54% <sup>351</sup>
Export Loans from Chinese State-Owned Banks	10.54% <sup>352</sup>
Export Seller’s Credit	4.25% <sup>353</sup>
Export Buyer’s Credit	10.54% <sup>354</sup>
Export Credit Insurance <sup>355</sup>	
Export Credit Insurance	1.27%
Grants <sup>356</sup>	
Foreign Trade Development Fund Grants	1.27%
Export Assistance Grants	1.27%
Interest Payment Subsidies	1.27%
Subsidies for the Development of Famous Brands and Chinese World Top Brands	1.27%
State Key Technology Fund Grants	1.27%
Grants for Retiring Outdated Capacity and Industrial Restructuring	1.27%
Grants for Energy Conservation and Emission Reduction	1.27%
Income Tax Programs <sup>357</sup>	
Income Tax Reductions for High and New Technology Enterprises	25.00%
Enterprise Income Tax Law, Research and Development Program	
Indirect Tax Programs	
Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Procured Equipment <sup>358</sup>	9.71%
Import Tariff and VAT Exemptions on Imported Equipment in Encouraged Industries <sup>359</sup>	9.71%

<sup>349</sup> See *Coated Paper from China Amended Final*.

<sup>350</sup> *Id.*

<sup>351</sup> *Id.*

<sup>352</sup> *Id.*

<sup>353</sup> See *Citric Acid and Citrate Salts*.

<sup>354</sup> See *Coated Paper from China Amended Final*.

<sup>355</sup> See *High Pressure Steel Cylinders*.

<sup>356</sup> *Id.*

<sup>357</sup> See GOC IQR at 343, indicating the standard income tax rate.

<sup>358</sup> See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final*, 80 FR 68843 (November 6, 2015).

<sup>359</sup> *Id.*

<b>Provision of Goods/Services for Less Than Adequate Remuneration</b>	
Provision of Land-Use Rights to the Mobile Access Equipment Industry for LTAR <sup>360</sup>	0.49%
Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR <sup>361</sup>	13.36%
Provision of Land-Use Rights to State-Owned Enterprises for LTAR <sup>362</sup>	13.36%
Provision of Electricity for LTAR	0.08%
Provision of Diesel Engines for LTAR <sup>363</sup>	9.17%
Provision of Lithium-Ion Batteries for LTAR	1.70%
Provision of Hot-Rolled Steel Sheet and Plate for LTAR	0.96%
Provision of Galvanized Steel for LTAR <sup>364</sup>	9.17%
Provision of Wire Rod for LTAR <sup>365</sup>	9.17%
Provision of Steel Bars for LTAR	0.03%
Provision of Steel Beams for LTAR	0.02%
Provision of Steel Channels for LTAR <sup>366</sup>	9.17%
Provision of Steel Angles for LTAR <sup>367</sup>	9.17%
Provision of Hollow Structural Shapes for LTAR	4.51%
Provision of International Ocean Shipping Services for LTAR	0.01%
<b>Certain Other Subsidy Programs<sup>368</sup></b>	<b>253.27%</b>
<b>Total</b>	<b>435.06%</b>

<sup>360</sup> Includes the provision of land-use rights to the mobile access equipment industry, to industrial and other SEZs, and to SOEs.

<sup>361</sup> See *Woven Sacks from China Final*.

<sup>362</sup> *Id.*

<sup>363</sup> See *Steel Threaded Rod from China Final*.

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

<sup>366</sup> *Id.*

<sup>367</sup> *Id.*

<sup>368</sup> See *High Pressure Steel Cylinders* for all rates of 1.27%; see also Memorandum, “Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Non-Responsive Companies Calculation,” dated concurrently with, and hereby adopted by, this memorandum.