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Investigation

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May 30, 2023

MEMORANDUM TO: Lisa W. Wang
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 Gas Powered Pressure
Washers from the People's Republic of China

I. SUMMARY

The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to the producers and/or exporters of gas powered pressure washers (pressure washers) 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 (CVD) law to China.

II. BACKGROUND

A. Initiation and Scope Comments

On December 30, 2022, the FNA Group, Inc. (the petitioner) filed a petition with Commerce seeking the imposition of CVDs on imports of pressure washers from China.¹ On January 19, 2023, Commerce initiated a CVD investigation on pressure washers from China.²

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation.³ On February 8, 2023, Northern Tool + Equipment, Inc. (NTE) submitted

¹ See Petitioner's Letter, "Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam," dated December 30, 2022 (Petition), at Volumes I and III.

² See Checklist, "Countervailing Duty Investigation Initiation Checklist: Gas Powered Pressure Washers from the People's Republic of China," dated January 19, 2023; see also *Gas Powered Pressure Washers from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 88 FR 4812 (January 25, 2023) (*Initiation Notice*).

³ See *Initiation Notice*, 88 FR at 4813.



scope comments.⁴ On February 21, 2023, the petitioner submitted a response to the scope comments.⁵

B. Respondent Selection

In the “Respondent Selection” section of the *Initiation Notice*, Commerce stated that it intended to select mandatory respondents using data collected via quantity and value (Q&V) questionnaires.⁶ On January 20, 2023, Commerce issued the Q&V questionnaire via FedEx to 27 producers and/or exporters of subject merchandise identified in the Petition.⁷ Between February 2 and 9, 2023, Commerce received timely Q&V response from nine of the companies that received the Q&V questionnaire.⁸

On February 22, 2023, based on the Q&V questionnaire responses received, Commerce selected Chongqing Dajiang Power Equipment Co., Ltd. (CDPE) and Jiangsu Jianghuai Engine Co., Ltd.’s (JD Power) as the mandatory respondents in this investigation.⁹

C. Case History

On February 23, 2023, Commerce issued the initial questionnaire to the Government of China (GOC) and instructed the GOC to forward the questionnaire to the mandatory respondents.¹⁰ On March 13, 2023, JD Power timely responded to the affiliated companies portion of the initial questionnaire.¹¹ On April 11 and 12, 2023, respectively, the GOC and JD Power timely

⁴ See NTE’s Letter, “Scope Comments of Northern Tool + Equipment Co.,” dated February 8, 2023.

⁵ See Petitioner’s Letter, “Response to Scope Comments,” dated February 21, 2023.

⁶ See *Initiation Notice*, 88 FR at 4815.

⁷ See Commerce’s Letter, “Quantity and Value Questionnaire,” dated January 20, 2023 (Q&V Questionnaire).

⁸ See CDPE’s Letter, “CDPE’s Q&V Questionnaire Response,” dated February 2, 2023; Techtronic Industries Co., Ltd. and Techtronic Industries (Dongguan) Co., Ltd.’s (TTi Group) Letter, “TTi Quantity and Value Questionnaire Response,” dated February 2, 2023; Zhejiang Danau Machine Co., Ltd.’s Letter, “Danau’s Quantity and Value Questionnaire Response,” dated February 2, 2023; JD Power’s Letter, “JD Power’s Quantity and Value Questionnaire Response,” dated February 2, 2023; Sumec Hardware and Tools Co., Ltd.’s Letter, “Sumec’s Quantity and Value Questionnaire Response,” dated February 2, 2023; Sumec Co., Ltd.’s Letter, “SUMECO CO.’s Quantity and Value Questionnaire Response,” dated February 2, 2023; Zhejiang Yaofeng Power Technology Co.’s Letter, “Response to Quantity and Value Questionnaire,” dated February 2, 2023; Chongqing Rato Technology Co., Ltd.’s Letter, “Quantity and Value Questionnaire Response,” dated February 9, 2023; and Memorandum, “Quantity and Value Questionnaires: Delivery Confirmation,” dated February 14, 2023 (Q&V Delivery Memorandum). Commerce did not receive a response to the Q&V questionnaire from the following companies which received it or refused to accept delivery of it: (1) Ningbo Jugang Machinery Manufacturing Co., Ltd.; (2) China GTL Tools Group, Ltd.; (3) Taizhou Newland Machinery Co., Ltd.; (4) Powerful Machinery & Electronics Technology Developing Co., Ltd.; (5) Zhejiang Lingben Machinery & Electronics Co., Ltd.; (6) Taizhou Bison Machinery Co., Ltd.; (7) Zhejiang Anlu Cleaning Machinery Co., Ltd.; (8) Senci Electric Machinery Co., Ltd.; (9) Zhejiang Xinchang Bigyao Power Tool Co., Ltd.; (10) Maxworld Home Co., Ltd.; (11) Pinghu Biyi Cleaning Equipment Co., Ltd.; (12) Zhejiang Constant Power Machinery Co., Ltd.; (13) Loncin Motor Co., Ltd.; (14) Taizhou Longfa Machinery Co., Ltd.; and (15) Zhejiang Zhinanche Cleaning Equipment Co., Ltd. See Memorandum, “Clarification of Quantity & Value Questionnaire Submission,” dated February 21, 2023 (Clarification Memorandum).

⁹ See Memorandum, “Respondent Selection,” dated February 22, 2023.

¹⁰ See Commerce’s Letter, “Countervailing Duty Initial Questionnaire,” dated February 23, 2023 (Initial Questionnaire).

¹¹ See JD Power’s Letter, “Affiliated Companies Questionnaire Response,” dated March 13, 2023 (JD Power Affiliation Response).

responded to the initial questionnaire.¹² From March through May 2023, Commerce issued supplemental questionnaires to JD Power and the GOC regarding their questionnaire responses,¹³ and we received timely responses.¹⁴ The petitioner submitted comments regarding JD Power's questionnaire responses on March 20 and April 10 and 27, 2023.¹⁵

CDPE failed to respond to the initial questionnaire, including the affiliation portion due March 9, 2023.¹⁶ On March 7, 2023, TTi Group informed Commerce of its intention to not participate in the investigation.¹⁷ On March 23, 2023, the petitioner requested that Commerce select a replacement respondent for CDPE.¹⁸ However, Commerce did not select any further respondents.

On May 5, 2023, Commerce submitted information for benchmarking purposes and requested comments from interested parties.¹⁹ On May 9, 2023, the petitioner submitted pre-preliminary determination comments and comments regarding Commerce's benchmark information.²⁰ On May 10, 2023, JD Power submitted comments regarding Commerce's benchmark information.²¹ On May 11, 2023, the petitioner submitted rebuttal comments regarding JD Power's benchmark comments.²²

On May 8, 2023, the petitioner alleged critical circumstances exist with respect to imports of pressure washers from China, pursuant to section 703(e) of the Act.²³ On May 10, 2023, Commerce issued a request for Q&V data to JD Power pursuant to the critical circumstances

¹² See GOC's Letter, "Section II Countervailing Duty Initial Questionnaire," dated April 11, 2023 (GOC IQR); *see also* JD Power's Letter, "JD Power's Initial Questionnaire Response," dated April 12, 2023 (JD Power IQR).

¹³ See Commerce's Letters, "Supplemental Questionnaire Regarding Affiliation Initial Questionnaire," dated March 16, 2023; "Second Supplemental Questionnaire Regarding Affiliation Questionnaire Response," dated March 24, 2023; "First Supplemental Questionnaire," dated April 14, 2023 (GOC SQ1); Commerce's Letter, "Second Supplemental Questionnaire," dated April 17, 2023; "Supplemental Questionnaire," dated April 20, 2023; "Third Supplemental Questionnaire," dated May 3, 2023 (GOC SQ3); and "Second Supplemental Questionnaire," dated May 5, 2023.

¹⁴ See JD Power's Letters, "Affiliated Companies Supplemental Questionnaire Response," dated March 22, 2023; "Affiliated Companies 2nd Supplemental Questionnaire Response," dated April 4, 2023; "Supplemental Questionnaire Response," dated May 2, 2023 (JD Power SQR1); and "JD Power's Second Supplemental Questionnaire Response," dated May 11, 2023 (JD Power SQR2); *see also* GOC's Letters, "Section II Countervailing Duty Second Supplemental Questionnaire Response," dated April 24, 2023; "Section II Countervailing Duty First Supplemental Questionnaire Response," dated April 27, 2023 (GOC SQR1); and "Section II Countervailing Duty Third Supplemental Questionnaire Response," dated May 15, 2023 (GOC SQR3).

¹⁵ See Petitioner's Letters, "Comments on JD Power Affiliated Companies Questionnaire Response," dated March 20, 2023; "Comments on JD Power 1st and 2nd Supplemental Affiliated Companies Questionnaire Responses," dated April 10, 2023; and "Comments on JD Power Initial CVD Questionnaire Response," dated April 27, 2023.

¹⁶ See Initial Questionnaire at 5.

¹⁷ See TTi Group's Letter, "TTi's Intent Not to Participate," dated March 7, 2023.

¹⁸ See Petitioner's Letter, "Request for Replacement Respondent Selection," dated March 23, 2023.

¹⁹ See Memorandum, "Benchmark Exhibits," dated May 5, 2023 (Benchmark Memorandum).

²⁰ See Petitioner's Letter, "Pre-Preliminary Results Comments and Response to Benchmark Exhibits," dated May 9, 2023.

²¹ See JD Power's Letter, "Response to Benchmark Exhibits," dated May 10, 2023.

²² See Petitioner's Letter, "Rebuttal to JD Power's Comments on Benchmark Exhibits," dated May 11, 2023.

²³ See Petitioner's Letter, "Allegation of Critical Circumstances," dated May 8, 2023 (Critical Circumstances Allegation).

allegation.²⁴ On May 17, 2023, JD Power provided the requested Q&V data.²⁵ On May 18, 2023, JD Power submitted rebuttal information regarding the petitioner's critical circumstances allegation.²⁶

D. Postponement of Preliminary Determination

On March 14, 2023, Commerce postponed the deadline for the preliminary determination until May 30, 2023, in accordance with section 703(c)(1)(B) of the Act.²⁷

E. Period of Investigation

The period of investigation (POI) is January 1, 2021, through December 31, 2021.

F. Alignment

On April 24, 2023, the petitioner requested that Commerce align the date of the CVD final determination with that of the companion AD final determination.²⁸ Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioner's request, we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of pressure washers from China. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is scheduled to be issued no later than October 11, 2023, unless postponed.

III. SCOPE OF THE INVESTIGATION

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

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,²⁹ we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, *i.e.*, scope.³⁰ We received comments concerning the scope of the concurrent AD and CVD investigations of pressure washers, and we will address them in the preliminary determinations of the AD investigations.

²⁴ See Commerce's Letter, "Request for Monthly Quantity and Value Shipment Data," dated May 10, 2023.

²⁵ See JD Power's Letter, "Response to the Department's Request for Shipment Data," dated May 17, 2023 (JD Power Critical Circumstances Data).

²⁶ See JD Power's Letter, "Response to Petitioner's Allegation of Critical Circumstances," dated May 18, 2023 (Critical Circumstances Rebuttal Comments).

²⁷ See *Gas Powered Pressure Washers from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 88 FR 15672 (March 14, 2023).

²⁸ See Petitioner's Letter, "Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination," dated April 24, 2023.

²⁹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³⁰ See *Initiation Notice*, 88 FR at 4813.

V. 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 February 17, 2023, the ITC published a preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of pressure washers from China.³¹

VI. DIVERSIFICATION OF CHINA’S ECONOMY

On February 24, 2023, Commerce placed on the record of this investigation the Memorandum, “The Extent of Diversification of Economic Activities in the People’s Republic of China (China) for the Purpose of Determining Specificity of a Domestic Subsidy for Countervailing Duty (CVD) Purposes,” dated September 13, 2018.³² This information reflects a wide diversification of economic activities in China across 19 industry groups.³³ 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.

VII. PRELIMINARY AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

As stated above, the petitioner submitted information alleging that, pursuant to section 703(e)(1) of the Act and 19 CFR 351.206, critical circumstances exist with respect to imports of pressure washers from China.³⁴ In accordance with 19 CFR 351.206(c)(2)(i), because the petitioner submitted a critical circumstances allegation 20 days before the scheduled date of this preliminary determination, Commerce must issue a preliminary critical circumstances determination no later than the date of the preliminary determination.

Section 703(e)(1) of the Act provides that Commerce will determine that critical circumstances exist in a CVD investigation if there is a reasonable basis to believe or suspect: (A) that “the alleged countervailable subsidy” is inconsistent with the Agreement on Subsidies and Countervailing Measures (SCM Agreement) of the World Trade Organization; and (B) that there have been massive imports of the subject merchandise over a relatively short period.

As discussed in the “Analysis of Programs” section below, we preliminarily determine that the mandatory respondents received countervailable benefits under certain programs that are contingent upon export performance. Therefore, we preliminarily determine that there is a reasonable basis to believe or suspect that there are programs in this CVD investigation that are

³¹ See *Gas Powered Pressure Washers from China and Vietnam*, 88 FR 10378 (February 17, 2023).

³² See Memorandum, “Economic Diversification Memorandum,” dated February 24, 2023.

³³ *Id.*

³⁴ See Critical Circumstances Allegation.

inconsistent with the SCM Agreement. Use of an export subsidy program is sufficient to meet the inconsistent with the SCM Agreement criterion under section 703(e)(1)(A) of the Act.³⁵

In determining whether there are “massive imports” over a “relatively short period,” pursuant to sections 703(e)(1)(B) of the Act, Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”).³⁶ Commerce’s regulations provide that, generally, imports must increase by at least 15 percent during the “comparison period” to be considered “massive.”³⁷ Pursuant to 19 CFR 351.206(h)(1)(ii), Commerce will consider seasonal trends in reviewing massive imports. In rebuttal comments to the critical circumstances allegation, JD Power noted that there was a high degree of seasonality between the fourth and first quarters for imports of pressure washers over a three-year period extending from 2020 to 2022.³⁸ Specifically, JD Power notes that pressure washers are a seasonal product used less in the winter months and, thus, orders increase in the first quarter in anticipation of the spring to fall season.³⁹ We reviewed this data and agree that seasonal trends explain a certain degree of variance in the data.

However, based on the analysis described above, for the base and comparison periods (*i.e.*, October 2022, through December 2022, and January 2023, through March 2023, respectively), with respect to the shipment data submitted by JD Power,⁴⁰ we preliminarily determine that JD Power had massive imports over a relatively short period.⁴¹ While the values of JD Power’s shipment data are business proprietary, we preliminarily determine that the increase in shipments between the base and comparison period is not explained by seasonal trends and, therefore, find that the increase in shipments constitutes massive imports. Therefore, based upon the criteria and findings for JD Power, we preliminarily determine that critical circumstances exist regarding imports of pressure washers from China pursuant to section 703(e)(1) of the Act.

³⁵ See, *e.g.*, *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43186 (August 17, 2001), unchanged in *Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products from Canada*, 67 FR 36070 (May 22, 2002); see also *Certain Quartz Surface Products from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 54841 (October 11, 2019) (*Quartz Products from Turkey Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM) at 5-7, unchanged in *Certain Quartz Surface Products from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, In Part*, 85 FR 25400 (May 1, 2020) (*Quartz Products from Turkey Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at 2-3.

³⁶ See, *e.g.*, *Polyester Textured Yarn from the People’s Republic of China: Preliminary Affirmative Determinations of Critical Circumstances in Antidumping and Countervailing Duty Investigations*, 84 FR 16840 (April 23, 2019), unchanged in *Polyester Textured Yarn from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 84 FR 63845 (November 19, 2019).

³⁷ See 19 CFR 351.206(h).

³⁸ See Critical Circumstances Rebuttal Comments at 2-4 and Attachment 1.

³⁹ *Id.* at 2-3.

⁴⁰ See JD Power Critical Circumstances Data.

⁴¹ See Memorandum, “Critical Circumstances Analysis,” dated concurrently with this memorandum (Critical Circumstances Analysis Memorandum).

Consistent with our practice,⁴² for all other exporters and producers of pressure washers from China, we compared Global Trade Atlas data for the base and comparison periods (*i.e.*, October 2022, through December 2022, and January 2023, through March 2023, respectively), excluding shipments for these time periods as reported by JD Power. Based on this data, we preliminarily determine that there were not massive imports over a relatively short period for the non-individually examined companies.⁴³ Rather, we find that the variance in shipments between the base and comparison period is explained by seasonal trends and, therefore, consistent with our practice,⁴⁴ that critical circumstances do not exist regarding all other producers and exporters.

As CDPE and the non-responsive companies have been uncooperative, we relied on adverse facts available (AFA) to preliminarily find that there are massive imports for these companies, pursuant to section 703(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i). For further information regarding CDPE and the non-responsive companies, *see* the “Use of Facts Otherwise Available and Adverse Inferences” section below. Therefore, consistent with our practice, we find that critical circumstances exist regarding all other producers and exporters.

We intend to issue a final determination concerning critical circumstances concurrent with our final determination. All interested parties will have an opportunity to address this preliminary determination in their case and rebuttal briefs submitted prior to the completion of the final determination.

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other

⁴² See, e.g., *Quartz Products from Turkey Preliminary Determination* PDM at 6, unchanged in *Quartz Products from Turkey Final Determination* IDM at 2-3; see also *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014), and accompanying IDM at 4.

⁴³ See Critical Circumstances Analysis Memorandum.

⁴⁴ See *Pentafluoroethane (R-125) from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 87 FR 1117 (January 10, 2022), and accompanying IDM at Comment 1.

information placed on the record. When selecting an AFA rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."⁴⁵ Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁴⁶ At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that, while the Act does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."⁴⁷ Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the Federal Circuit noted that the "best of its ability standard" does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.⁴⁸ The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.⁴⁹ Moreover, affirmative evidence of bad faith on the part of a respondent is not required before Commerce makes an adverse inference.⁵⁰

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained during an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."⁵¹ It is Commerce's practice to consider information to be corroborated if it has probative value.⁵² In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and

⁴⁵ See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

⁴⁶ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) (SAA), at 870.

⁴⁷ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

⁴⁸ *Id.*, 337 F.3d at 1382.

⁴⁹ *Id.*

⁵⁰ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); see also *Preamble*; and *Nippon Steel*, 337 F.3d at 1382-83.

⁵¹ See, e.g., SAA at 870.

⁵² *Id.*

relevance of the information to be used.⁵³ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.⁵⁴ Furthermore, Commerce is not required to corroborate any countervailable subsidy rate applied in a separate segment of the same proceeding.⁵⁵

Under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁵⁶

B. Application of Total AFA: CDPE and the Non-Responsive Companies

As noted above, Commerce issued Q&V questionnaires to all 27 companies identified in the Petition via FedEx.⁵⁷ We confirmed that 24 of the 27 Q&V questionnaires issued via FedEx were delivered or the recipient refused to accept delivery.⁵⁸ Nine companies both received Q&V questionnaires via FedEx and provided timely responses. The 15 remaining companies of the 24 that either received the Q&V questionnaire or declined receipt of the questionnaire did not respond to our request for information: Ningbo Jugang Machinery Manufacturing Co., Ltd.; China GTL Tools Group, Ltd.; Taizhou Newland Machinery Co., Ltd.; Powerful Machinery & Electronics Technology Developing Co., Ltd.; Zhejiang Lingben Machinery & Electronics Co., Ltd.; Taizhou Bison Machinery Co., Ltd.; Zhejiang Anlu Cleaning Machinery Co., Ltd.; Senci Electric Machinery Co., Ltd.; Zhejiang Xinchang Bigyao Power Tool Co., Ltd.; Maxworld Home Co., Ltd.; Loncin Motor Co., Ltd.; Taizhou Longfa Machinery Co., Ltd.; Zhejiang Zhinanche Cleaning Equipment Co., Ltd.; Pinghu Biyi Cleaning Equipment Co., Ltd.; and Zhejiang Constant Power Machinery Co., Ltd.⁵⁹ In addition, as noted above, CDPE did not respond to Commerce’s initial questionnaire.

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.⁶⁰ 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

⁵³ *Id.* at 869.

⁵⁴ *Id.* at 869-70.

⁵⁵ See section 776(c)(2) of the Act.

⁵⁶ See section 776(d)(3) of the Act.

⁵⁷ See Q&V Questionnaire.

⁵⁸ See Q&V Delivery Memorandum; and Clarification Memorandum.

⁵⁹ *Id.*

⁶⁰ For the derivation of the preliminary AFA subsidy rate assigned to the companies that did not respond to the Q&V questionnaire, see the appendix to this memorandum.

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 in this investigation. For the programs on which we initiated an investigation that were used by the cooperating mandatory respondent and where the GOC provided partial or no response, we have found those programs to be specific and to provide a financial contribution based on AFA, as described in more detail below. Further, for the Export Buyer's Credit program, we have found this program to be specific on the basis of export-contingency, 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 programs that we initiated on that were not used by the mandatory respondent during the POI, the GOC did not respond to our CVD questionnaire regarding these programs.⁶¹ The GOC directed Commerce to refer to the respondent's questionnaire responses or declined to answer some or all of the questions; rather, the GOC explained that, in its understanding, the questions and relevant appendices were not applicable because the mandatory respondents did not use the programs.⁶² The initial questionnaire that Commerce issued included the following 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.⁶³

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.⁶⁴

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.⁶⁵ 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 on (aside from currency undervaluation) and the self-

⁶¹ See, e.g., GOC IQR at 87-88.

⁶² *Id.*

⁶³ See Initial Questionnaire at 21.

⁶⁴ See Petition Volume III (pages 13-17, 25-29, and 35-45, and the exhibits cited therein).

⁶⁵ See GOC SQR1 at 34-35.

reported programs.⁶⁶ 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 the individual program rates to determine the AFA rate applied to the non-responsive companies. Commerce has previously found these or similar programs to be countervailable.⁶⁷ For a description of the selection of the AFA rates and our corroboration of these rates, *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.⁶⁸ 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.⁶⁹ Accordingly, when selecting AFA rates, if we have a cooperating respondent, as there is 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

⁶⁶ See Appendix.

⁶⁷ 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 from China*); *see also* *Aluminum Wire and Cable from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 58137 (October 30, 2019); *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) (*Corrosion-Resistant Steel Products from China*); *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 from China*); *Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from China*); *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from China*); and *Carbon and Alloy Steel Threaded Rod from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 8833 (February 18, 2020) (*Steel Threaded Rod from China*).

⁶⁸ See, e.g., *Common Alloy Aluminum Sheet from the People’s Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination with Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 83 FR 17651 (April 23, 2018), and accompanying PDM at “X: Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA: Chalco Ruimin and Chalco-SWA”; *see also* *Aluminum Extrusions from China* IDM at “VI. Use of Facts Otherwise Available and Adverse Inferences: Application of Adverse Inferences: Non-Cooperative Companies”; *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.”

⁶⁹ See *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM at 13; *see also* *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-74 (Fed. Cir. 2014) (upholding “hierarchical methodology for selecting an AFA rate”).

rate for the identical program (excluding *de minimis* rates).⁷⁰ If no such rate exists, we then determine whether there is a similar/comparable program (based on the treatment of the benefit) in any CVD proceeding involving the same country, and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we 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.⁷¹

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 AFA hierarchy in selecting a rate "among the facts otherwise available" in CVD cases, should the facts warrant such a selection.

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that 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."⁷² 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.⁷³

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

⁷⁰ For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

⁷¹ See *Shrimp from China* IDM at 13-14.

⁷² See section 776(d)(2) of the Act.

⁷³ This differs from AD proceedings, for which no hierarchy applies, under section 776(d)(1)(B) of the Act. Under that provision, "any dumping margin from any segment of the proceeding under the applicable antidumping order" may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

complete and accurate information in a timely manner. This ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁷⁴ 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.”⁷⁵ It is pursuant to this knowledge and experience that we have implemented our AFA hierarchy in CVD cases to select an appropriate AFA rate.⁷⁶

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 on for purposes of identifying an AFA rate for a particular program. In investigations, for example, this “pool” of rates could include the rates for the same or similar programs used in either that same investigation, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy, therefore, does not focus on identifying the highest possible rate that could be applied from among that “pool” of rates; rather, it adopts the factors identified above of inducement, relevancy to the industry and to the particular program.

Under the first step of Commerce’ 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.

⁷⁴ See SAA at 870; see also *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012) (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 “the purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate’ with Commerce’s investigation, not to impose punitive damages.”)).

⁷⁵ See *De Cecco*, 216 F.3d at 1032.

⁷⁶ 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 AFA 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 AFA 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 AFA 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 our 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.⁷⁷

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 AFA 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.⁷⁸

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.

⁷⁷ 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.

⁷⁸ 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 AFA, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. See, e.g., *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 2 ("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 the mandatory respondent 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 respondent for the following programs:

1. The GOC's Provision of Hot-Rolled Steel for Less Than Adequate Remuneration (LTAR)
2. Provision of Electricity for LTAR

Similarly, for all the programs self-reported by the mandatory respondent 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 or New Technology Enterprises
- Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law
- Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization

The standard income tax rate for corporations in China in effect during the POI was 25 percent.⁷⁹ Thus, the highest possible benefit for income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on the tax programs listed above. 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.⁸⁰

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 can match, based on program names, descriptions, and treatment of the benefit, the following programs to the same programs from other CVD proceedings involving China:

1. Export Buyer's Credit
2. The GOC's Provision of Cold-Rolled Steel for LTAR

⁷⁹ See, e.g., *Certain Corrosion Inhibitors from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2020–2021*, 88 FR 20475 (April 6, 2023) (*Corrosion Inhibitors from China*), and accompanying PDM at 19 (indicating a tax rate of 25 percent for a period of review covering 2021).

⁸⁰ See, e.g., *Aluminum Extrusions from China* IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

3. Export Loans from Chinese State-Owned Banks (Government Directed Lending)
4. Export Seller's Credit
5. Income Tax Deductions/Credits for Purchase of Special Equipment
6. Import Tariff and VAT Exemptions on Imported Equipment for Encouraged Industries
7. The State Key Technology Project Fund
8. Grants for Energy Conservation and Emission Reduction
9. Small- and Medium-Sized Enterprises (SME) Technology Innovation Fund

For this preliminary determination, we were similarly able to match all the subsidies that were self-reported by the mandatory respondent 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.⁸¹

Based on the methodology described above, we preliminarily determine the AFA net countervailable subsidy rate for the non-cooperating companies to be 206.57 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 during 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.”⁸² The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.⁸³

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.⁸⁴ 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.⁸⁵

Regarding 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

⁸¹ 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.

⁸² See SAA at 870.

⁸³ *Id.*

⁸⁴ *Id.* at 869-70.

⁸⁵ See section 776(d) of the Act.

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.⁸⁶

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 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.

In addition, as discussed above in the section "Preliminary Affirmative Determination of Critical Circumstances, in Part" above, we preliminarily find that critical circumstances exist regarding imports of pressure washers for JD Power and, thus, that critical circumstances exist within the context of this investigation. Therefore, pursuant to the Commerce's practice "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully,"⁸⁷ we preliminarily find, as AFA, that critical circumstances pursuant to section 703(e)(1) of the Act and 19 CFR 351.206 exist regarding imports from CDPE and the non-responsive companies. For further information regarding our analysis, *see* the Critical Circumstances Analysis Memorandum.

C. Application of AFA: Export Buyer's Credit

We preliminarily determine that the use of AFA is warranted in determining the countervailability of the Export Buyer's Credit program, because the GOC did not provide information needed to allow us to analyze this program fully, which we requested in our initial questionnaire.⁸⁸ Although the GOC provided some information, it was unresponsive to the majority of our requests, preventing us from analyzing the function of the program, as discussed below.

We issued multiple questions to the GOC regarding the use and operation of this program under the Export-Import Bank of China (Ex-Im Bank).⁸⁹ In response, the GOC stated that, "to the best of the GOC's knowledge, neither the respondents nor the respondents' U.S. customers applied for, used, or benefited from this alleged program during the POI. Therefore, this question is not applicable and, thus, the corresponding appendix is not applicable."⁹⁰ The GOC also stated that "the GOC has obtained the list of U.S. customers from the mandatory

⁸⁶ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

⁸⁷ See SAA at 870.

⁸⁸ See Initial Questionnaire at 30-31.

⁸⁹ *Id.*

⁹⁰ See GOC IQR at 75.

respondents. The GOC also checked with the Ex-Im Bank and confirmed that none of the U.S. customers of the mandatory respondents or its reported affiliated companies used the EBCP during the POI.”⁹¹

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)*.⁹² 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 conducted by the Ex-Im Bank.⁹³ The GOC argued that, therefore, “the Chinese exporter is in a position to confirm the existence, if any, of sales contracts that were supported by the Export Buyer's Credits of the Ex-Im Bank.”⁹⁴

Information obtained in a prior CVD proceeding indicates that the GOC revised the *Administrative Measures* regarding this program in 2013 (2013 Revisions).⁹⁵ This information provides that the Ex-Im Bank may disburse export buyer's credits directly or through third party partner and/or correspondent banks.⁹⁶ In its initial and supplemental questionnaire responses, the GOC refused to provide requested information regarding all laws, regulations or governing documents, including the 2013 Revisions, and a list of partner/correspondent banks.⁹⁷

The GOC is the only party that can answer questions about the internal administration of this program. The GOC's refusal to provide a list of partner/correspondent banks that are used to disburse funds through this program constitutes withholding necessary information and impeded Commerce's ability to analyze the program's operation or determine how the program could be properly verified.

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 (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.

⁹¹ *Id.* at 77-78.

⁹² *Id.* at Exhibits B-7.1 and B-7.3.

⁹³ *Id.* at 75.

⁹⁴ *Id.*

⁹⁵ 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.

⁹⁶ *Id.*

⁹⁷ See GOC IQR at 77; see also GOC SQR1 at 30-32.

Regarding specificity, though 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 the Ex-Im bank provides loans at preferential rates for the purchase of exported goods from China.⁹⁸ In addition, the program was alleged by the petitioner as a possible export subsidy.⁹⁹ Finally, Commerce has found this program to be an export subsidy in the past.¹⁰⁰ For these reasons, we preliminarily determine, as AFA, that this program is specific within the meaning of section 771(5A)(A) and (B) of the Act.

Regarding financial contribution, we preliminarily determine, as AFA, that the loans provided by the GOC through the Ex-Im Bank constitute a financial contribution because the Ex-Im Bank is an authority within the meaning of section 771(5)(B) of the Act and provided a financial contribution in the form a "direct transfer of funds" pursuant to section 771(5)(D)(i) of the Act.

JD Power

In its initial questionnaire response, JD Power claimed that none of its U.S. customers used this program and provided non-use certifications from some of its U.S. customers. We note at the outset that the GOC's failure to provide the requested information undermines Commerce's ability to verify JD Power's claims of non-use. Furthermore, because JD Power did not provide certifications of non-use from all of its customers, the record lacks information indicating that it did not use the program or that all of its customers are willing to cooperate in our inquiry.¹⁰¹ Therefore, as discussed above, we preliminarily find that JD Power's voluntary efforts in submitting partial non-use certifications from its customers did not overcome the record gaps caused by the GOC's non-cooperation and, as AFA, find that JD Power used and benefited from this program, despite JD Power's claims to the contrary.¹⁰² Accordingly, we did not take further steps to gather more information pertaining to the outstanding loans of JD Power's U.S. customers. As a result, we determine, as AFA, that JD Power used this program and that such credits provided a benefit pursuant to section 771(5)(E)(ii) of the Act equal to the difference between the amount the recipient paid for the export buyer's credit and the amount it would have paid on comparable commercial loans.

As discussed above in the section "Application of Total AFA: CDPE and the Non-Responsive Companies" above, under section 776(d) of the Act, Commerce may use as AFA a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had

⁹⁸ See GOC IQR at 77-80 and Exhibits B-7.1 and B-7.3.

⁹⁹ See Petition at III-31.

¹⁰⁰ 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.

¹⁰¹ *Id.*

¹⁰² See JD Power IQR at 22-23.

cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.

Following the same AFA hierarchy process as described above, we are preliminarily applying an AFA rate of 10.54 percent *ad valorem*, which was the highest rate calculated for a similar program in another CVD proceeding involving imports from China.¹⁰³ The relevance of this rate is that it is an actual calculated subsidy rate for a Chinese program with a similar type of benefit (*i.e.*, a loan program that provides a benefit pursuant to section 771(5)(E)(ii) of the Act). Due to the non-cooperation of the GOC, creating a gap in the record that was not filled by JD Power, and the resulting lack of record information concerning the Export Buyer’s Credit program, we have corroborated this AFA rate to the extent practicable pursuant to section 776(c)(1) of the Act for this preliminary determination.

D. Application of AFA: Whether Producers of Hot-Rolled Steel Are Authorities

We are investigating the countervailability of the provision of hot-rolled steel for LTAR. To this end, we requested information from the GOC regarding the specific companies that produced the hot-rolled steel that the mandatory respondents and their cross-owned companies purchased during the POI. Specifically, we sought information from the GOC that would allow us to determine whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.¹⁰⁴

In its initial questionnaire response, the GOC provided details regarding the ownership of certain producers, including government-owned corporations, publicly-listed corporations, and corporations owned by private individuals.¹⁰⁵ The GOC reported that certain providers of the hot-rolled steel purchased by JD Power are owned by the government.¹⁰⁶ As explained in the Public Bodies Memorandum, majority government-owned enterprises in China possess, exercise, or are vested with governmental authority.¹⁰⁷ 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 are owned by the government, constitute “authorities” within the meaning of section 771(5)(B) of

¹⁰³ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010).

¹⁰⁴ See Initial Questionnaire at 22, 24-25, and 44-48.

¹⁰⁵ See GOC IQR at Exhibits A-1.1 and A-1.2.

¹⁰⁶ *Id.* at Exhibit A-1.1.

¹⁰⁷ See Memoranda, “Public Bodies Analysis,” dated February 24, 2023 (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”; and “State-Invested Enterprises in China Analysis,” dated February 7, 2023, at “Update of the Public Bodies Analysis of State-Invested Enterprises in China for Countervailing Duty Purposes,” which updates Commerce’s analysis from the Public Bodies Memorandum.

the Act and that JD Power 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.

In addition, we asked the GOC in the initial questionnaire to provide information regarding the role of Chinese Communist Party (CCP) officials in the hot-rolled steel producing companies that the GOC reported were not majority-owned by the GOC. Specifically, we asked the GOC to “{p}lease coordinate immediately with the company respondents to obtain a complete list of each company’s hot-rolled steel producers, including the producers of hot-rolled steel purchased by the respondent through a supplier.”¹⁰⁸ Furthermore we asked the GOC to: (1) provide information about the involvement of the CCP in any hot-rolled steel producer, including whether individuals in management positions are CCP members, to evaluate whether the hot-rolled steel producers that supplied the respondent 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 hot-rolled steel producers who were government or CCP officials during the POI.¹⁰⁹

While the GOC provided a lengthy narrative explanation of the role of the CCP, when asked to identify any owners, members of the board of directors, or managers of the hot-rolled steel producers who were government or CCP officials during the POI, the GOC explained that there is “no central informational database to search for the requested information.”¹¹⁰ The GOC concluded its response to this question by stating “{i}f {Commerce} insists on the necessity of this information, {Commerce} should collect this information through the respondents, via their suppliers directly.”¹¹¹ In *Citric Acid from China 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.¹¹² Commerce provided the GOC an additional opportunity to provide the requested information,¹¹³ but the GOC instead repeated much of its prior response and again refused to provide complete information.¹¹⁴ Therefore, we find that the GOC failed to provide the information requested of it regarding JD Power’s hot-rolled steel producers that the GOC reported were not majority-owned by the GOC.

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 JD Power’s hot-rolled steel producers. Record evidence demonstrates that the CCP exerts significant control over economic activities in China.¹¹⁵ Additionally, record evidence 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

¹⁰⁸ See Initial Questionnaire at 22.

¹⁰⁹ *Id.* at 44-48.

¹¹⁰ See GOC IQR at 25.

¹¹¹ *Id.* at 26.

¹¹² 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 from China 2012 AR*), and accompanying IDM at Comment 5.

¹¹³ See GOC SQ1 at 4.

¹¹⁴ See GOC SQR1 at 3-17.

¹¹⁵ See Public Bodies Memorandum.

sector.¹¹⁶ With respect to JD Power’s hot-rolled steel producers that the GOC reported were not majority-owned by the GOC, while the GOC provided website screenshots of the business registrations, the GOC failed to provide other necessary documentation specifically requested by Commerce, such as company by-laws, annual reports, tax registration documents, and articles of association.¹¹⁷ Thus, we find, as we have in prior CVD proceedings,¹¹⁸ that the information requested regarding the role of CCP officials and CCP committees in the management and operations of JD Power’s hot-rolled steel producers is necessary to our determination of whether these producers are “authorities” within the meaning of section 771(5)(B) of the Act.

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 respondent with hot-rolled steel during the POI.¹¹⁹ 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.¹²⁰ In drawing an adverse inference, we find that CCP officials are present in each of JD Power’s hot-rolled steel producers that the GOC reported were not majority-owned by the GOC 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. 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.¹²¹ As AFA, we preliminarily find that the non-majority government-owned domestic hot-rolled steel producers that supplied JD Power with hot-rolled steel during the POI are “authorities” within the meaning of section 771(5)(B) of the Act and provided a financial contribution in the form of the provision of a good from such entities, pursuant to section 771(5)(D)(iii) of the Act.

E. Application of AFA: Whether the Provision of Hot-Rolled Steel Is Specific

For purposes of Commerce’s *de facto* specificity analysis, we asked the GOC to provide a list of industries in China that purchase hot-rolled steel directly, and to provide the amounts (volume and value) purchased by each of the industries.¹²² Specifically, our questionnaire asked the GOC to provide lists of the industries in China that purchase hot-rolled steel 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

¹¹⁶ *Id.* at 35-36 and sources cited therein.

¹¹⁷ See GOC IQR at 8-9.

¹¹⁸ See, e.g., *Citric Acid from China 2012 AR* IDM at Comment 5.

¹¹⁹ See sections 776(a)(1) and 776(a)(2)(A) of the Act.

¹²⁰ See section 776(b) of the Act.

¹²¹ See, e.g., Public Bodies Memorandum at WTO DS379 at 33-36, 38.

¹²² See Initial Questionnaire at 24.

classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under review are classified.¹²³

The GOC did not provide this information, nor did it explain the efforts it made to compile this information.¹²⁴ Instead, the GOC made unsupported assertions that there are a vast number of uses for the hot-rolled steel or a wide range of downstream industries.¹²⁵ In addition, the GOC argues that the National Bureau of Statistics (NBS) does not collect the requested information and that the international standard for a country's collection of the pertinent data, the United Nations' System of National Accounts, is by production and not usage.¹²⁶ However, Commerce did not require that the specificity information be provided by the NBS,¹²⁷ and the GOC previously provided information from other sources regarding consumption data for inputs.¹²⁸ Commerce gave the GOC an additional opportunity to provide information at a broader level in order to accommodate the GOC's availability of information,¹²⁹ but the GOC once again did not provide the requested information regarding the consumption of hot-rolled steel.¹³⁰ Instead, the GOC provided general information from the China Input-Output Table, which the GOC stated is from 2015 and provides general information on economic usage for entire sectors of the Chinese economy as opposed to the hot-rolled steel industry.¹³¹ In addition to lacking the requested volume and value data for hot-rolled steel, this table was provided without contextual information, such as its cover letter, footnotes, or information regarding the compiling entity; and, despite the statement from the GOC that the table is from 2015, it appears to contain data for 2012, which is nine years prior to the POI.¹³² Thus, the China Input-Output Table is not responsive to our requests for information regarding the *de facto* specificity analysis.

The response submitted by the GOC is insufficient because it does not report the actual Chinese industries that purchased hot-rolled steel or the volume and value of each industry's respective purchases for the POI, 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), 776(a)(2)(A), and 776(a)(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 these LTAR programs.

¹²³ *Id.*

¹²⁴ See GOC IQR at 32-33.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ See Initial Questionnaire at 24.

¹²⁸ See, e.g., *Cast Iron Soil Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 30913 (July 2, 2018), unchanged in *Cast Iron Soil Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 6770 (February 28, 2019). Notwithstanding Commerce's determination that the information regarding pig iron was insufficient, the GOC previously demonstrated the capacity to obtain consumption information.

¹²⁹ See GOC SQ1 at 4.

¹³⁰ See GOC SQR1 at 1.

¹³¹ *Id.* at Exhibit S-1.

¹³² *Id.*

Moreover, by refusing to provide the requested, necessary information, 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 hot-rolled for LTAR to a limited number of industries or enterprises, and, hence, that the subsidies under these programs are *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

F. Application of AFA: Whether the Chinese Market for Hot-Rolled Steel Is Distorted

To determine the appropriate benchmarks 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 hot-rolled steel industry.¹³³ Specifically, Commerce requested that the GOC provide the following information for hot-rolled steel:¹³⁴

- i) The total number of producers.
- ii) The total volume and value of Chinese domestic consumption of hot-rolled steel and the total volume and value of Chinese domestic production of hot-rolled steel.
- iii) The percentage of domestic consumption accounted for by domestic production.
- iv) The total volume and value of imports of hot-rolled steel.
- 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.
- 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 hot-rolled steel, the levels of production of hot-rolled steel, the importation or exportation of hot-rolled steel, or the development of hot-rolled steel capacity. Please state which, if any, central and sub-central level industrial policies pertain to the hot-rolled steel industry.

¹³³ See Initial Questionnaire at 22-23.

¹³⁴ *Id.*

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

In response, the GOC provided only the volume of domestic production and consumption and the total volume and value of imports of hot-rolled steel.¹³⁵ For the other questions necessary to assess government control, the GOC repeatedly stated that it does not have the other industry data that we requested.¹³⁶

Because the GOC provided none of the requested industry data, Commerce is unable to determine the number of hot-rolled steel producers in operation during the POI, the percentage of hot-rolled steel producers in which the GOC maintained ownership interest, the share of the hot-rolled steel market that is controlled by GOC-affiliated producers, and the share of domestic consumption represented by domestic production versus imports. In sum, the GOC provided import and production data related to hot-rolled steel, but did not provide any industry statistics necessary for Commerce to analyze whether there is any market distortion for hot-rolled steel. Furthermore, the GOC did not supplement its initial filings when presented 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.¹³⁷

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.¹³⁸ This information is necessary for Commerce to assess the distortion in the hot-rolled steel market by comparing production by majority-GOC controlled entities, entities in which the GOC claims it does not maintain a majority interest, and imported hot-rolled steel. 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.¹³⁹ 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.¹⁴⁰ Based on this experience, we are aware that this system is a national-level

¹³⁵ See GOC IQR at 28-29.

¹³⁶ *Id.* at 28-30.

¹³⁷ See GOC SQ1 at 1; see also GOC SQR1.

¹³⁸ 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); see also *Truck and Bus Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review in Part, and Intent To Rescind in Part*; 2020, 87 FR 12929 (March 8, 2022), and accompanying PDM at 32-34, unchanged in *Truck and Bus Tires from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review*; 2020, 87 FR 39063 (June 30, 2022).

¹³⁹ 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.

¹⁴⁰ 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*

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.¹⁴¹ Therefore, we preliminarily find that information related to the operation and ownership of companies within the hot-rolled steel industry is in fact available to the GOC. In total, the GOC has access to information regarding both the production and the producers of hot-rolled steel necessary to determine whether their respective markets are distorted.

Therefore, we preliminarily determine that necessary information is not on the record and 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), 776(2)(A), and 776(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 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 market for hot-rolled steel is distorted through the intervention of the GOC,¹⁴² and we are, therefore, relying on external benchmarks for determining the benefit from the provision of the inputs for LTAR, in accordance with 19 CFR 351.511(a)(2)(ii).

G. Application of AFA: Provision of Electricity for LTAR

We are examining whether the GOC provided electricity for LTAR. The GOC did not provide complete responses to Commerce's questions regarding the alleged provision of electricity for LTAR. These questions requested information needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act.

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 respondent or any company "cross-owned" with those respondent is located for applicable tariff schedules that were in effect during the POI; all original NDRC Electricity Price Adjustment Notice(s) that were in effect during the POI; the procedure for adjusting retail electricity tariffs and the role of the NDRC and the provincial governments in

Determination, 81 FR 46643 (July 18, 2016) (*SSSS from China*), 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.

¹⁴¹ See *SSSS from China* PDM at 21-22; see also, e.g., GOC IQR at 7.

¹⁴² See Petition at III-9 to III-12 and the exhibits cited therein.

this process; the price adjustment conferences that took place between the NDRC and the provinces, grids and power companies with respect to the creation of all tariff schedules that were applicable to the POI; the cost elements and adjustments that were discussed between the provinces and the NDRC in the price adjustment conferences; and how the NDRC determines that the provincial level price bureaus have accurately reported all relevant cost elements in their price proposals with respect to generation, transmission and distribution.¹⁴³ We requested this information to determine the process by which electricity prices and price adjustments are derived, identify entities that manage and impact price adjustment processes, and examine cost elements included in the derivation of electricity prices in effect throughout China during the POI.

In its initial questionnaire response, the GOC 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).¹⁴⁴ 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.¹⁴⁵ 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.¹⁴⁶ The Appendix to Notice 3105 indicates that this average price adjustment applies to all provinces and at varying amounts.¹⁴⁷ 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.¹⁴⁸

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.¹⁴⁹ 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.¹⁵⁰ 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, the GOC provided the *Notice of the National Development and Reform Commission on Further Deepening the Market-Oriented Reform of On-Grid Electricity Price for Coal-Fired Power Generation* (Notice 1439) from October 2021.¹⁵¹ Notice 1439 mandated that all provinces immediately “cancel” or eliminate their catalogue-listed prices for commercial and

¹⁴³ See Initial Questionnaire at section II (Electricity Appendix).

¹⁴⁴ See GOC IQR at 44-48 and Exhibit A-3.2.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at Exhibit A-3.2.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at Exhibit A-3.4.

industrial electricity,¹⁵² among multiple other provisions regarding the pricing of electricity, such as expanding the floating range of coal-fired power generation and maintenance of the current benchmark price for coal-fired power generation to the formation of new energy generation prices.¹⁵³

In supplemental questionnaires, we requested that the GOC further explain the linkages between the NDRC and the prices set by the local price bureaus both before and after the release of Notice 1439.¹⁵⁴ Specifically, for prior to October 2021, we requested that the GOC explain how the coal benchmark price is generated and how labor costs, capital expenses, transmission and distribution costs are related to electricity price adjustments released by the NDRC.¹⁵⁵ Regarding the provision of electricity after October 2021, we requested that the GOC explain any role played by the NDRC in regulating commercial and industrial electricity prices, the role of JD Power's specific electricity providers, and an explanation of how certain provisions in Notice 1439 relate to electricity prices, including further information regarding the floating range, the spot electricity market, and the base price.¹⁵⁶

The GOC provided little information in response to our supplemental questions and repeatedly responded that the catalog price for commercial and industrial electricity was abolished by Notice 1439 or that the relevant entity would be the provincial authority.¹⁵⁷ The GOC's response regarding Notice 1439 creates a gap in the record because Commerce is unable to assess how national and provincial entities may otherwise affect or manipulate electricity sales prices through the regulation of generation, transmission, or distribution prices or by regulation of electricity markets. The GOC made little attempt to explain the connection – or lack thereof – between electricity sales prices to end users, such as commercial and industrial purchasers, and, instead, shifted the responsibility for response regarding such regulation onto the provincial authorities, which are part of the GOC, despite the fact that Notice 1439 indicates that upstream markets continue to be extensively regulated by the NDRC.¹⁵⁸

In an additional set of supplemental questions, we enquired further regarding the provincial regulations affecting JD Power's electricity provider, the ownership and operation of the electricity provider, and the electricity consumers to whom the electricity provider sells.¹⁵⁹ In response, the GOC failed to provide information regarding the Jiangsu electricity market and JD Power's provider. While information regarding JD Power's electricity provider is business proprietary, the limited information provided by the GOC indicates that the provider is an authority within the meaning of section 771(5)(B) of the Act.¹⁶⁰ Moreover, because of the electricity provider's relationship with the GOC, such information requested by Commerce should be readily available to the GOC. However, in response to multiple questions, the GOC either directed Commerce to JD Power's responses or indicated that it was unable to provide the

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ See GOC SQ1 at 5-6; see also GOC SQ3 at 4-5.

¹⁵⁵ See GOC SQ1 at 5.

¹⁵⁶ *Id.*

¹⁵⁷ See GOC SQR1 at 17-28.

¹⁵⁸ See GOC IQR at Exhibit A-3.4.

¹⁵⁹ See GOC SQR3 at 4-5.

¹⁶⁰ *Id.* at Exhibit 3S-1.

requested data for the electricity provider.¹⁶¹ This type of information, such as the electricity contracts and details regarding the users of electricity who purchase from JD Power's provider, is necessary because it regards the operation of the electricity market and whether the provision of electricity is specific.

In addition, regarding a request for all laws and regulations pertinent to the electricity market in Jiangsu province, the GOC did not provide any further information and simply referred back to its prior responses, including the provincial regulation implementing Notice 1439 locally.¹⁶² However, in response to subsequent questions regarding the operation of the spot market in Jiangsu province, the GOC provided additional regulations.¹⁶³ Notwithstanding the insufficiency of the response given the exhibits provided, the provision of the additional regulation, Su FGED {2022} No. 644, indicates that there may be further laws and regulations affecting the Jiangsu electricity market which the GOC has chosen not to provide despite multiple requests from Commerce.

Consequently, we preliminarily determine, in accordance with sections 776(a)(1), 776(a)(2)(A), and 776(a)(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.¹⁶⁴

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.¹⁶⁵ Aside from our determination based upon record evidence that JD Power's electricity provider is an authority within the meaning of section 771(5)(B) of the Act, 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.

Furthermore, as AFA, we preliminarily determine that the provision of electricity is specific within the meaning of section 771(5A)(D)(iv) of the Act.¹⁶⁶ The GOC failed to provide certain requested information regarding the relationship or lack thereof between provincial tariff schedules and cost, as well as requested information regarding cooperation or lack thereof 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 review and are the highest electricity rates on the record for the applicable rate and user categories. Further, we used the benchmark rates as AFA for the entirety of the POI due to the GOC's failure to explain the regulatory system and connection between upstream electricity markets and end-user prices following the release of Notice 1439.

¹⁶¹ *Id.* at 24-25.

¹⁶² *Id.* at 1-2.

¹⁶³ *Id.* at Exhibit 3S-2.

¹⁶⁴ See section 776(a) of the Act.

¹⁶⁵ See section 776(b) of the Act.

¹⁶⁶ See *Canadian Solar, Inc. v. United States*, No. 2021-1434 (Fed. Cir. January 28, 2022) (affirming Commerce's finding, based on AFA, that the provision of electricity is regionally specific).

H. Application of AFA: Other Subsidies

JD Power and its cross-owned company reported receiving benefits under certain “Other Subsidies” during the POI and over the average useful life (AUL) period.¹⁶⁷ We requested information from the GOC regarding these grants in the initial questionnaire.¹⁶⁸ 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.’”¹⁶⁹ 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, and any other applicable appendix.¹⁷⁰ The GOC did not provide a complete response regarding any of these self-reported grant programs.¹⁷¹ Rather, the GOC stated that “an answer to this question is premature absent a direct inquiry supported by credible evidence and the initiation of a discrete investigation by {Commerce}.”¹⁷²

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 significantly impeded this administrative review within the meaning of section 776(a)(1), 776(a)(2)(A), and 776(a)(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 the application of AFA regarding these programs, we preliminarily determine that the self-reported grants listed in the “Other Subsidies” section below constitute financial contributions under section 771(5)(D)(i) of the Act, and are specific, within the meaning of section 771(5A) of the Act. 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.

¹⁶⁷ See JD Power IQR at Exhibits E-1.1.1 and E-1.2.2.

¹⁶⁸ See Initial Questionnaire at 33.

¹⁶⁹ See GOC IQR at 102-03.

¹⁷⁰ See GOC SQR1 at 8.

¹⁷¹ *Id.* at 35.

¹⁷² *Id.*

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.¹⁷³ 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.¹⁷⁴ We notified the respondents of the AUL in the initial questionnaire and requested data accordingly.¹⁷⁵ 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) provides 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 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

¹⁷³ See 19 CFR 351.524(b).

¹⁷⁴ See U.S. Internal Revenue Service Publication 946 (2015), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

¹⁷⁵ See Initial Questionnaire at 21.

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.¹⁷⁶

Thus, Commerce’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade 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.¹⁷⁷

JD Power

As discussed above, we selected JD Power as a mandatory respondent. JD Power, a producer of subject merchandise, provided responses on behalf of itself and Jiangsu Nonghua Intelligent Agriculture Technology Co., Ltd. (Jiangsu Nonghua), a parent company.¹⁷⁸ While certain details of the relationship between JD Power and Jiangsu Nonghua are business proprietary, we preliminarily determine that JD Power and Jiangsu Nonghua are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).¹⁷⁹ We are attributing subsidies received by JD Power 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 subsidies to Jiangsu Nonghua to the combined sales of JD Power and Jiangsu Nonghua, net of intercompany sales.

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 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.¹⁸⁰

X. INTEREST RATE, DISCOUNT RATE, HOT-ROLLED STEEL, AND ELECTRICITY BENCHMARKS

We examined loans received by the respondents from Chinese policy banks and state-owned commercial banks (SOCB) and non-recurring, allocable subsidies. As discussed below, we preliminarily find the provision of such loans to be not countervailable. However, for the purposes of the non-recurring, allocable subsidies, we discuss the derivation of the benchmark

¹⁷⁶ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998).

¹⁷⁷ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

¹⁷⁸ See JD Power Affiliation Response at 1.

¹⁷⁹ See Memorandum, “Preliminary Determination Calculations for Jiangsu Jianghuai Engine Co., Ltd.,” dated concurrently with this memorandum (JD Power Preliminary Calculation Memorandum).

¹⁸⁰ *Id.*

interest rates and discount rates used to measure such benefits below. In addition, we examined multiple LTAR programs that require benchmarks, which are also discussed below.

A. Interest Rates and Discount Rates

1. Short-Term Chinese Renminbi (RMB)-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, Commerce uses comparable commercial loans reported by the company as a benchmark.¹⁸¹ 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.”¹⁸²

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.¹⁸³ In an analysis memorandum dated July 21, 2017, Commerce conducted a re-assessment of the lending system in China.¹⁸⁴ 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.¹⁸⁵

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*.¹⁸⁶ 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*

¹⁸¹ See 19 CFR 351.505(a)(3)(i).

¹⁸² See 19 CFR 351.505(a)(3)(ii).

¹⁸³ See *CFS from China*, and accompanying IDM at Comment 10.

¹⁸⁴ See Memorandum, “Analysis of China’s Financial System,” dated February 24, 2023.

¹⁸⁵ 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).

¹⁸⁶ 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.

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.¹⁸⁷ Beginning in 2010, however, China was classified in the upper-middle income category and remained there from 2011 to 2020.¹⁸⁸ Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003 to 2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010 to 2020. This is consistent with Commerce’s calculation of interest rates for recent CVD proceedings involving Chinese merchandise.¹⁸⁹

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 to 2009 and 2011 to 2020, the results of the regression analysis reflected the expected, common-sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.¹⁹⁰ For 2010, however, the regression does not yield that outcome for China’s income group.¹⁹¹ 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 to 2009 and 2011 to 2020. 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 International Monetary Fund (IMF), and they are included in that agency’s *International Financial Statistics* (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as “upper middle income” by the World Bank for 2010-2020 and “lower middle income” for 2001-2009.¹⁹² First, we did not include those economies that Commerce considered to be non-market economies for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year that we calculated a short-term benchmark rate, we also excluded any countries with aberrational or

¹⁸⁷ See Memorandum, “Loan Interest Rate Benchmarks,” dated February 24, 2023 (Loan Interest Benchmark Memorandum).

¹⁸⁸ *Id.*

¹⁸⁹ See, e.g., *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying PDM at “VII. Subsidies Valuation: Benchmarks and Discount Rates,” unchanged in *Shrimp from China*.

¹⁹⁰ See Loan Interest Benchmark Memorandum.

¹⁹¹ *Id.*

¹⁹² *Id.*

negative real interest rates for the year in question.¹⁹³ Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.¹⁹⁴

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.¹⁹⁵

In *Citric Acid from China*, 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’ equals or approximates the number of years of the term of the loan in question.¹⁹⁶ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.¹⁹⁷

3. 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.¹⁹⁸

B. Provision of Inputs 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: (i) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (ii) world market prices that would be available to purchasers in the country under investigation (tier two); or (iii) an assessment of whether the government price is consistent with market principles (tier three).

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 industries for the hot-rolled steel provided to JD Power.¹⁹⁹ As discussed above in the

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ 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.

¹⁹⁶ See *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from China*), and accompanying IDM at Comment 14.

¹⁹⁷ See the Loan Interest Benchmark Memorandum for the resulting inflation adjusted benchmark lending rates.

¹⁹⁸ *Id.*

¹⁹⁹ See Initial Questionnaire at 5.

section, “Application of AFA: Whether Producers of Hot-Rolled Steel Are Authorities,” we preliminarily determine, pursuant to AFA, that JD Power’s input producers are “authorities.” Therefore, prices from these producers do not constitute market-determined prices. Below we analyze the information provided and the selection of a benchmark for each input.

Hot-Rolled Steel

As discussed above in the section “Application of AFA: Whether the Chinese Market for Hot-Rolled Steel Is Distorted,” we preliminarily determine, as AFA, that the market for hot-rolled steel in China is distorted and cannot be used to calculate a tier one benchmark pursuant to 19 CFR 351.511(a)(2)(i). However, we did not receive benchmark submissions for measuring the adequacy of remuneration under this program 30 days prior to the scheduled preliminary determination, pursuant to section 351.301(c)(3)(i) of the Act. Therefore, Commerce submitted to the record benchmark data for the provision of hot-rolled steel, including ocean freight data.²⁰⁰ While both JD Power and the petitioner submitted comments regarding our submission, we do not find that these comments substantively undermine the credibility of the data for the purposes of adequately measuring remuneration as a tier two benchmark. JD Power noted in its comments that it submitted information from Steel Business Briefing(SBB)/Platts as part of its initial questionnaire response.²⁰¹ However, we preliminarily find that the SBB/Platts data is unsuitable for use as a tier two benchmark because it consists of a very narrow dataset for a world price, containing hot-rolled steel export prices for solely the Black Sea and Turkey.²⁰² Furthermore, such data does not contain an end destination and may contain shipments to China which Commerce, as discussed above, preliminarily finds to be distorted. Thus, we find that the SBB/Platts data is not usable for measuring the adequacy of remuneration.

In addition, JD Power noted that Commerce’s submission of United Nations Comtrade (UN Comtrade) data included zero net weight and blank shipments for the volume registered in kilograms.²⁰³ Therefore, JD Power suggests that the entire dataset is unreliable. However, consistent with our practice,²⁰⁴ we preliminarily find that the underlying data is still valid, and we removed all zero and blank net weight shipments from the data. In addition, pursuant to 19 CFR 351.511(a)(2)(iv), to create delivered prices, we added freight charges, VAT, and import duties applicable to the input to calculate a price that the respondent company would have paid on the world market.

C. Provision of Electricity for LTAR

As discussed above in the section, “Application of AFA: Provision of Electricity for LTAR,” we are relying on AFA to select the highest electricity rates that are on the record of this review as our benchmark for measuring the adequacy of remuneration for this program. The GOC

²⁰⁰ See Benchmark Memorandum

²⁰¹ See JD Power Benchmark Comments at 2.

²⁰² See JD Power IQR at 14 and Exhibit A-3.

²⁰³ See JD Power Benchmark Comments at 2.

²⁰⁴ See, e.g., *Aluminum Extrusions from the People’s Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review*; 2014, 81 FR 92778 (December 20, 2016), and accompanying IDM at Comment 13; see also *Certain Glass Containers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 31141 (May 22, 2020), and accompanying IDM at Comment 15.

submitted tariff schedules for provincial electricity purchases during the POI. We are not including VAT, because a review of the benchmark submission indicates that only certain provinces explicitly include VAT while others mention multiple, other taxes without reference to VAT.²⁰⁵ Of the provinces used for the actual benchmark, none reference VAT and, consequently, Commerce preliminarily determines that these provinces do not include VAT in their tariff schedules.²⁰⁶

XI. ANALYSIS OF PROGRAMS

A. Programs Preliminarily Determined to Be Countervailable

1. The GOC's Provision of Hot-Rolled Steel for LTAR

We are examining whether the GOC or other “authorities” within China provided hot-rolled steel for LTAR. JD Power reported that it and its affiliate Jiangsu Nonghua purchased hot-rolled steel during the POI.²⁰⁷

The GOC reported that certain producers of the hot-rolled steel purchased by JD Power 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.²⁰⁸ 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 JD Power received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

As explained above in the “Use of Facts Otherwise Available and Adverse Inferences” section, for the other producers of hot-rolled steel that are non-majority government-owned, the GOC failed to provide all information requested concerning their ownership and control. Therefore, based on AFA, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that JD Power received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.²⁰⁹

As AFA, we also preliminarily determine that the provision of hot-rolled steel is specific within the meaning of section 771(5A)(D)(iii) of the Act.²¹⁰ Further, we preliminarily determine, as AFA, that the domestic market for hot-rolled steel is distorted by government involvement in the market.²¹¹ Consequently, as discussed in the “Benchmarks for the Government Provision of Inputs for LTAR” section, to determine the benefit from the provision of hot-rolled steel under

²⁰⁵ See GOC IQR at Exhibit A-3.5.

²⁰⁶ *Id.*

²⁰⁷ See JD Power IQR at 13 and Exhibit A-1; see also JD Power SQR2 at Exhibit A-9.

²⁰⁸ See Public Bodies Memorandum.

²⁰⁹ *Id.*

²¹⁰ See “Use of Facts Available and Adverse Inferences” section, *supra*.

²¹¹ *Id.*

section 771(5)(E)(iv) of the Act, we are relying on an external benchmark price, *i.e.*, tier two or world market price, consistent with 19 CFR 351.511(a)(2)(ii).

We compared the monthly benchmark prices to the purchase prices paid by JD Power for individual domestic transactions, including delivery charges and VAT. The benefit is the difference between the benchmark prices and the prices reported by JD Power. To determine the net countervailable subsidy rate for JD Power, we divided the benefits received by the appropriate sales denominator, as described in the “Subsidies Valuation” section. On this basis we preliminarily determine a net countervailable subsidy rate of 0.45 percent *ad valorem* for JD Power.

2. *Provision of Electricity for LTAR*

JD Power reported that it and its affiliate Jiangsu Nonghua used this program.²¹² 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 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 POI. 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.²¹³ 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.²¹⁴ First, we made separate comparisons by price category (*e.g.*, great industry peak, basic electricity, *etc.*). We then multiplied the difference between the benchmark and the price paid by the consumption amount reported for that month and price category. Next, we calculated the total benefit during the POI for the respondents by summing the differences 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 POI. On this basis, we preliminarily determine a countervailable subsidy rate of 0.01 percent *ad valorem* for JD Power.

²¹² See JD Power IQR at 16-17 and Exhibits A 5.1 and A 5.2; and JD Power SQR1 at Exhibit A-8.

²¹³ 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.

²¹⁴ See “Application of AFA: Provision of Electricity for LTAR” section, *supra*; 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.

3. *Export Buyer's Credit Program*

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 AFA: Export Buyer’s Credit” section, our preliminary determination regarding whether the GOC’s provision of export buyer’s credits constitutes a financial contribution, is specific, and confers a benefit is based on AFA, pursuant to sections 776(a) and (b) of the Act. As AFA, we preliminarily determine that the GOC’s provision of export buyer’s credits confers a financial contribution within the meaning of section 771(5)(D) of the Act. As AFA, we preliminarily determine that the Export Buyer’s Credit program is specific because the credits are contingent upon export performance under sections 771(5A)(A) and (B) of the Act. Additionally, as AFA, we preliminarily determine that this program confers a benefit to the mandatory respondent, pursuant to section 771(5)(E) of the Act. Furthermore, for the reasons explained in the “Application of AFA: Non-Responsive Companies” section, we determine, based on AFA, that the non-responsive companies benefited from this program during the POI within the meaning of section 771(5)(E)(ii) of the Act. For JD Power, we are preliminarily applying an AFA rate of 10.54 percent *ad valorem*, which is a rate calculated for a similar program in another CVD proceeding involving imports from China.²¹⁵

4. *Other Programs*

JD Power reported that it and its affiliate Jiangsu Nonghua received various other grants from the GOC during the AUL.²¹⁶ 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 grants confer a financial contribution as a direct transfer of funds under section 771(5)(D)(i) of the Act, and are specific under section 771(5A) of the Act. We find that the respondent received non-recurring grants during the POI or AUL period.²¹⁷

- i. Work-Based Training Subsidies
- ii. Subsidy Funds from the Yancheng City Finance Bureau to Support the Self-Owned Brand Construction Project of the Enterprise
- iii. Worker Training Subsidy
- iv. Stable Post Return
- v. Heart-Warming Chinese New Year Condolences Subsidy
- vi. Money from the Finance Bureau of Yancheng Economic Development Zone
- vii. Unemployment Insurance Fund from Yancheng Labor and Employment Center

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

²¹⁵ See *Coated Paper from China*.

²¹⁶ See JD Power IQR at Exhibits E-1.1.1 and E-1.2.2.

²¹⁷ See JD Power Preliminary Calculation Memorandum.

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 respondent's appropriate total sales denominator. Based on the methodology outlined above, we calculated net countervailable ad valorem subsidy rates for JD Power of 0.19 percent.²¹⁸

B. Programs Preliminarily Determined to Not Provide Measurable Benefits

1. Import Tariff and VAT Exemptions on Imported Equipment for Encouraged Industries

C. Programs Preliminarily Determined to Be Not Countervailable

1. Policy Loans to the Pressure Washer Industry

When examining a policy lending program, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support such objectives or goals. Where such plans or policy directives exist, it is Commerce's practice to find that a policy lending program exists that is *de jure* specific to the targeted industry (or producers that fall under that industry) within the meaning of section 771(5A)(D)(i) of the Act.²¹⁹ Once that finding is made, we rely upon the analysis undertaken in *CFS from China* to conclude that national and local government control over the SOCBs renders the loans government financial contributions.²²⁰

In reviewing this program, we solicited multiple documents, including Five-Year Plans from the GOC and the relevant provinces, the *Catalogue of Major Industries, Products, and Technologies Encouraged for Development in China*, the *State Council Decision on Promulgating the Interim Provisions on Promoting Industrial Structure* (Decision 40), the *Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue)*, and the *Made in China 2025 Action Plan*, which the GOC provided.²²¹ Our review of the record indicates that pressure washers are not referenced or otherwise explicitly included within these documents. In supplemental questionnaires, we requested information and documentation regarding certain references that may indirectly incorporate the pressure washer industry.²²² After reviewing the GOC's responses and the documentation provided, we continue to find that these indirect references do not apply to the pressure washer industry.²²³ Therefore, we preliminarily find no evidence of

²¹⁸ *Id.*

²¹⁹ See, e.g., *Certain Walk-Behind Snow Throwers 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*, 86 FR 50696 (September 10, 2021), and accompanying PDM at 42, unchanged in *Certain Walk-Behind Snow Throwers and Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 87 FR 17987 (March 29, 2022); see also *Pentafluoroethane (R-125) from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances, in Part, in the Countervailing Duty Investigation*, 86 FR 36526 (July 12, 2021), and accompanying PDM at 29, unchanged in *Pentafluoroethane (R-125) from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 87 FR 1110 (January 10, 2022).

²²⁰ See *CFS from China* IDM at Comment 8.

²²¹ See GOC IQR at Exhibits B-4.18 to B-4.23.

²²² See GOC SQ1 at 6-7; see also GOC SQ3 at 5.

²²³ See GOC SQR3 at 26-28 and exhibits cited therein.

policy lending to the pressure washer industry. We intend to continue evaluating this program and may collect additional information after the issuance of the preliminary determination.

D. Programs Preliminarily Determined to Be Not Used

1. The GOC's Provision of Cold-Rolled Steel for LTAR
2. Export Loans from Chinese State-Owned Banks (Government Directed Lending)
3. Export Seller's Credit
4. Income Tax Reduction for High or New Technology Enterprises
5. Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law
6. Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization
7. Income Tax Deductions/Credits for Purchase of Special Equipment
8. The State Key Technology Project Fund
9. Grants for Energy Conservation and Emission Reduction
10. SME Technology Innovation Fund

XII. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

☒

☐

Agree

Disagree

5/30/2023

X



Signed by: LISA WANG

Lisa W. Wang

Assistant Secretary

for Enforcement and Compliance

Appendix

Program	Subsidy Rate (percent)
Preferential Lending	
Export Buyer's Credit	10.54 ²²⁴
Export Loans from Chinese State-Owned Banks (Government Directed Lending)	10.54 ²²⁵
Export Seller's Credit	4.25 ²²⁶
Grants²²⁷	
The State Key Technology Project Fund	1.27
SME Technology Innovation Fund	1.27
Grants for Energy Conservation and Emission Reduction	1.27
Income Tax Programs²²⁸	
Income Tax Reductions for High or New Technology Enterprises	25.00
Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law	
Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization	
Indirect Tax Programs	
Income Tax Deductions/Credits for Purchase of Special Equipment ²²⁹	9.71
Import Tariff and Value-Added Tax (VAT) Exemptions on Imported Equipment for Encouraged Industries ²³⁰	9.71
Provision of Goods/Services for Less Than Adequate Remuneration	
The GOC's Provision of Hot-Rolled Steel for Less Than Adequate Remuneration	0.45
Provision of Electricity for LTAR	0.01
The GOC's Provision of Cold-Rolled Steel for Less Than Adequate Remuneration ²³¹	9.17
Other Subsidy Programs²³²	123.38
Total	206.57

²²⁴ See *Coated Paper from China*.

²²⁵ *Id.*

²²⁶ See *Citric Acid and Citrate Salts from China*.

²²⁷ See *High Pressure Steel Cylinders from China*.

²²⁸ See *Corrosion Inhibitors from China* PDM at 19.

²²⁹ See *Corrosion-Resistant Steel Products from China*.

²³⁰ *Id.*

²³¹ See *Steel Threaded Rod from China*.

²³² See *High Pressure Steel Cylinders from China* for all rates of 1.27 percent; see also Memorandum, "Non-Responsive Companies Calculation," dated concurrently with this memorandum (for individually calculated other subsidy rates).