UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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Investigation
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February 26, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of hardwood and decorative plywood in the People's Republic of China (PRC), as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On September 27, 2012, the Department received a petition concerning imports of hardwood and decorative plywood from the PRC[1] filed in proper form by the Coalition for Fair Trade of Hardwood Plywood and its individual members (collectively, Petitioners).[2] On October 24, 2012, the Department published a notice of initiation for the countervailing duty (CVD) investigation of hardwood and decorative plywood from the PRC.[3] On December 19, 2012, the Department selected three mandatory respondent companies for this investigation[4] and issued a CVD questionnaire to the Government of the PRC (GOC). The GOC and the three mandatory respondent companies filed initial questionnaire responses with the Department

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[1] See Petition for the Imposition of Antidumping and Countervailing Duties: Hardwood Plywood from the People's Republic of China, dated September 27, 2012.
[2] The members of the Coalition for Fair Trade of Hardwood Plywood are: Columbia Forest Products, Commonwealth Plywood Inc., Murphy Plywood, Roseburg Forest Products Co., States Industries Inc., and Timber Products Company.
[3] See Hardwood and Decorative Plywood From the People's Republic of China: Initiation of Countervailing Duty Investigation, 77 FR 64955 (October 24, 2012) (Initiation Notice).
[4] See "Respondent Selection" section below.

between January 14, and February 5, 2013. On February 5 and 6, 2013, the Department also issued supplemental questionnaires to the GOC and the three mandatory companies; responses to these questionnaires were received between February 12 and 13, 2013. The GOC filed pre-preliminary comments on February 19, 2013 and, on February 21, 2013, Petitioners filed a request that the Department align the final determination of this CVD investigation with the companion antidumping duty (AD) investigation.

As explained in the memorandum from the Assistant Secretary for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012.[5] Thus, all deadlines in this segment of the proceeding were tolled by two days. Based on a request for extension by Petitioners, the Department subsequently extended the deadline for this preliminary determination until February 26, 2013.[6]

B. Period of Investigation

The period of investigation (POI) is January 1, 2011, through December 31, 2011.

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our Initiation Notice for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.[7] We received numerous comments concerning the scope of the AD and CVD investigations of hardwood and decorative plywood from the PRC. Subsequently, on December 5, 2012, in response to comments the Department received from the U.S. Customs and Border Protection regarding the scope established in the Initiation Notice, the Department clarified the scope and placed this clarification on the record, and provided all interested parties an opportunity to comment.[8] We received a number of timely filed comments on the revised scope. The Department has since made a few additional clarifications to the scope issued on December 5, 2012, which have been incorporated into the scope that is included in the following section.[9]

As noted in the February 25 memorandum regarding these additional clarifications to the scope, all parties will be given another opportunity to submit comments on the scope of this investigation. Following the publication of the preliminary determination in the companion AD investigation, the Department will establish a separate briefing schedule for scope issues. Parties

[5] See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Hurricane Sandy," dated October 31, 2012.
[6] See Hardwood and Decorative Plywood From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation, 77 FR 73428 (December 10, 2012).
[7] See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997); see also Initiation Notice, 77 FR at 64956.
[8] See Memorandum to All Interested Parties regarding "Antidumping Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China," dated December 5, 2012.
[9] See Memorandum to the File regarding "Investigation of Hardwood Plywood from the People's Republic of China: Scope of the Investigation," dated February 26, 2013.

must file separate and identical documents on both the AD and CVD records for any briefs related to scope only. Additionally, the Department intends to address specific scope exclusion requests in the preliminary determination of the companion AD investigation. Any modifications to the scope that may be made in the AD preliminary determination as well as any scope exclusions made in the AD preliminary determination will be placed on the record of this CVD investigation, and parties will be afforded full opportunity to submit comments.

IV. SCOPE OF THE INVESTIGATION

The merchandise subject to this investigation is hardwood and decorative plywood. Hardwood and decorative plywood is a flat panel composed of an assembly of two or more layers or plies of wood veneers in combination with a core. The veneers, along with the core, are glued or otherwise bonded together to form a finished product. A hardwood and decorative plywood panel must have face and back veneers which are composed of one or more species of hardwoods, softwoods, or bamboo. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP-1-2009.

All hardwood and decorative plywood is included within the scope of this investigation, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1219 x 1829 mm (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches).

A "veneer" is a thin slice of wood which is rotary cut, sliced or sawed from a log, bolt or flitch. The face veneer is the exposed veneer of a hardwood and decorative plywood product which is of a superior grade than that of the back veneer, which is the other exposed veneer of the product (i.e., as opposed to the inner veneers). When the two exposed veneers are of equal grade, either one can be considered the face or back veneer. For products that are entirely composed of veneer, such as Veneer Core Platforms, the exposed veneers are to be considered the face and back veneers, in accordance with the descriptions above.

The core of hardwood and decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to veneers, particleboard, and medium-density fiberboard (MDF).

All hardwood and decorative plywood is included within the scope of this investigation regardless of whether or not the face and/or back veneers are surface coated, unless the surface coating obscures the grain, texture or markings of the wood. Examples of surface coatings which may not obscure the grain, texture or markings of the wood include, but are not limited to, ultra-violet light cured polyurethanes, oil or oil-modified or water based polyurethanes, wax, epoxy-ester finishes, and moisture-cured urethanes. Hardwood and decorative plywood that has face and/or back veneers which have an opaque surface coating which obscures the grain, texture or markings of the wood, are not included within the scope of this investigation. Examples of surface coatings which may not obscure the grain, texture or markings of wood include, but are

not limited to, paper, aluminum, high pressure laminate (HPL), MDF, medium density overlay (MDO), and phenolic film. Additionally, the face veneer of hardwood and decorative plywood may be sanded, smoothed or given a "distressed" appearance through such methods as hand-scraping or wire brushing. The face veneer may be stained.

The scope of the investigation excludes the following items: (1) structural plywood (also known as "industrial plywood" or "industrial panels") that is manufactured and stamped to meet U.S. Products Standard PS 1-09 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), including but not limited to the "bond performance" requirements set forth at paragraph 5.8.6.4 of that Standard and the performance criteria detailed at Table 4 through 10 of that Standard; (2) products which have a face and back veneer of cork; (3) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on Multilayered Wood Flooring from the People's Republic of China, Import Administration, International Trade Administration, U.S. Department of Commerce Investigation Nos. A-570-970 and C-570-971 (published December 8, 2011); (4) plywood which has a shape or design other than a flat panel.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; and 4412.99.9000.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise as set forth herein is dispositive.

V. RESPONDENT SELECTION

Section 777A(e)(1) the Act directs the Department to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if the Department determines it is not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise.

On November 19, 2012, the Department requested quantity and value (Q&V) information from 29 companies that Petitioners identified as potential exporters/producers of hardwood and

decorative plywood from the PRC and for which Petitioners provided complete address information. The Department confirmed that 28 of the 29 Q&V questionnaires that were issued were delivered. The Department also uploaded the Q&V questionnaire to IA ACCESS,[10] therefore making it available to all interested parties. Between November 29, and December 6, 2012, the Department received timely filed Q&V questionnaire responses or "no shipment" certifications from 87 exporters/producers. Of the 28 companies that received Q&V questionnaires, eight filed Q&V responses and five filed certifications stating that they had no shipments of subject merchandise during the POI. Fifteen companies did not provide a response to the Department's Q&V questionnaire.

On December 19, 2012, the Department determined that it was not practicable to examine more than three respondents in the instant investigation. Therefore, the Department selected, based on Q&V data, the three exporters/producers accounting for the largest volume of hardwood and decorative plywood exported from the PRC during the POI, which are, in alphabetical order, Linyi City Dongfang Jinxin Economic & Trade Co., Ltd (Dongfang), Linyi San Fortune Wood Co., Ltd. (San Fortune), and Shanghai Fancywood Inc. a/k/a Shanghai Senda Fancywood Industry Co. (Senda).[11]

We received requests for voluntary respondent status from six Chinese companies: Pingyi Jinnui Wood Co., Ltd. (Jinnui); Senda; Xuzhou Jiangyang Wood Industry Co., Ltd. and Xuzhou Jiangheng Wood Products Co., Ltd. (Xuzhou); San Fortune; Jiangsu Vermont Wood Products Co., Ltd. (Vermont); Xuzhou Weilin Wood Co., Ltd., and Jiang Su Dilun International Trading Co., Ltd.[12] On October 19, 2012, Jinnui withdrew its request for consideration as a voluntary respondent.[13] As stated in the Respondent Selection Memorandum, if one of the requestors for voluntary respondent status submitted a questionnaire response in accordance with section 782(a) of the Act and 19 CFR 351.204(d), the Department would evaluate the circumstances during the course of the investigation to determine whether or not to examine another respondent or respondents in addition to the three mandatory respondents. None of the companies that submitted a request for voluntary respondent status, nor any other company, submitted a voluntary questionnaire response. Consequently, there was no need to consider whether the Department could examine a voluntary respondent during the course of this investigation.

VI. INJURY TEST

Because the PRC 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 the PRC materially injure, or threaten material injury to, a U.S.

[10] IA ACCESS is the Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System.

[11] See Memorandum from Nicholas Czajkowski to Christian Marsh, "Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Respondent Selection," dated December 19, 2012 (Respondent Selection Memorandum).

[12] See Jinnui's October 18, 2012 Mandatory/Voluntary Request; Senda's October 18, 2012 Mandatory/Voluntary Request; Xuzhou's October 19, 2012 Mandatory/Voluntary Request; San Fortune's October 19, 2012 Mandatory/Voluntary Request; Vermont's October 19, 2012 Mandatory/Voluntary Request; Xuzhou Weilin Wood Co., Ltd.'s and Jiang Su Dilun International Trading Co., Ltd.'s October 26, 2012 Mandatory/Voluntary Request.

[13] See Jinnui's October 19, 2012 Withdrawal of Mandatory/Voluntary Request.

industry. On November 13, 2012, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of hardwood and decorative plywood from the PRC.[14]

VII. APPLICATION OF THE COUNTERVAILING DUTY LAW TO IMPORTS FROM THE PRC

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.[15] In CFS from the PRC, the Department found that

> . . . given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.[16]

The Department has affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.[17] Furthermore, on March 13, 2012, Public Law 112-99 was enacted which makes clear that the Department has the authority to apply the CVD law to non-market economies such as the PRC.[18] The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.[19]

Additionally, for the reasons stated in the CWP from the PRC Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of CVD investigations.[20]

VIII. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation

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[14] See Hardwood Plywood from China: Investigation Nos. 701- TA 490 and 73 l-TA-1204 (Preliminary) (November 2012); Hardwood Plywood from China, 77 FR 71017 (November 28, 2012).

[15] 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 the PRC), and accompanying Issues and Decision Memorandum (CFS from the PRC Decision Memorandum).

[16] See CFS from the PRC Decision Memorandum at Comment 6.

[17] See, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008), and accompanying Issues and Decision Memorandum (CWP from the PRC Decision Memorandum) at Comment 1.

[18] Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

[19] See Public Law 112-99, 126 Stat. 265§ 1(b).

[20] See, e.g., CWP from the PRC Decision Memorandum at Comment 2.

Range System.[21] The Department notified the respondents of the 10-year AUL in the initial questionnaire and requested data accordingly.[22] No party in this proceeding has disputed this allocation period.

Furthermore, for non-recurring subsidies, we have applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (e.g., total sales or export sales) for the same year. 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 across the AUL.

B. Attribution of Subsidies

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

C. Cross Ownership

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 another corporation in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting 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) may also result in cross-ownership. The Court of International Trade has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.[23] Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), between Senda and Shanghai Material Trading Co., Ltd. (Shanghai Material).

Senda reported that it is owned by Shanghai Material. The Department has reviewed the responses provided by these companies and, pursuant to 19 CFR 351.525(b)(6)(vi), preliminarily

[21] See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

[22] As discussed above and in accordance with the Department's practice, regardless of the AUL chosen, we will not countervail subsidies conferred before December 11, 2011, the date of the PRC's accession to the WTO. See, e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 FR 63788 (October 17, 2012), and accompanying Issues and Decision Memorandum at "Subsidies Valuation Information."

[23] See Fabrique de Fer de Charleroi v. United States, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

finds that Senda and Shanghai Material are cross-owned.[24] Senda has provided responses for Shanghai Material indicating that Shanghai Material is a trading company and that it did not receive any benefits under any of the programs under investigation during the POI. We note, however, that, based upon proprietary information contained in the separate financial statements of Senda and Shanghai Material, we intend to request additional information to determine whether there is cross-ownership between Senda and Shanghai Material and the Bailian Group,[25] and whether there are other cross-owned companies for which questionnaire responses need to be provided.

D. Denominators

When selecting an appropriate denominator for use in calculating the ad valorem subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). For a further discussion of the denominators used, see the preliminary calculation memoranda.[26]

IX. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, inter alia, 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 the Department, 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 the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. For purposes of this preliminary determination, we find it necessary to apply adverse facts available (AFA).

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[24] The Department's regulations at 19 CFR 351.525(b)(6)(vi) state that cross-ownership exists when one corporation can use or direct the assets of another corporation in essentially the same way it can use its own. Normally, however, "this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations."

[25] Senda explained that the Balian Group is a holding company that owns 48.1 percent of Shanghai Material. Senda has indicated that the Balian Group is not involved in the production or sale of subject merchandise. See Senda's January 28, 2013 Initial Questionnaire Response Part I at 2.

[26] See Memorandum regarding "Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Dongfang Preliminary Calculation Memorandum," Memorandum regarding "Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: San Fortune Preliminary Calculation Memorandum," and Memorandum regarding "Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Senda Preliminary Calculation Memorandum," dated concurrently with this memorandum (collectively, Preliminary Calculation Memoranda).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[27] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[28]

A. Application of AFA: Non-Cooperative Companies

As explained above, 15 companies, which the Department confirmed received the Q&V questionnaire, did not provide a response to the Department's Q&V questionnaire. In the Q&V questionnaire, the Department stated that if a response was not provided, the Department may find that non-responponding companies failed to cooperate by not acting to the best of their ability to comply with the request for information, and that we may use an inference that is adverse to their interests in selecting from the facts otherwise available, in accordance with section 776(b) of the Act.

The non-responsive companies are listed in the "Suspension of Liquidation" section of the accompanying Federal Register notice. As a result of these companies' failure to submit responses to the Q&V questionnaire, we find the companies to be non-cooperative. By not responding to the Department's Q&V questionnaire, these companies withheld requested information and significantly impeded this proceeding. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(1), (2)(A) and (C) of the Act, we are assigning a CVD rate for these 15 companies based on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit a response to the Department's Q&V questionnaire, these companies did not cooperate to the best of their ability in this investigation, and they withheld information necessary for the Department to conduct fully its investigation. Accordingly, we preliminarily find that AFA is warranted to ensure that these companies do not obtain a more favorable result than had they fully complied with our request for information.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[29] The

[27] See 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).
[28] See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).
[29] See, e.g., 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).

Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[30]

It is the Department's practice in CVD proceedings to select, as AFA, the highest calculated rate in any segment of the proceeding.[31] With regard to CVD investigations, we use the highest rate calculated for the same or similar program in the instant proceeding or, if not available, in other CVD proceedings from that country.[32] Thus, under this practice, for investigations involving the PRC, the Department computes the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant investigation or calculated in prior PRC CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, the Department uses the highest non-de minimis rate calculated for the same or similar program (based on treatment of the benefit) in another PRC CVD proceeding. Absent an above-de minimis subsidy rate calculated for the same or similar program, the Department applies the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies.[33]

For the income tax exemption and reduction programs, the Department applies one combined rate, which is the standard PRC income tax rate for corporations, for all such income tax programs that could potentially be used by a respondent company.[34] The standard income tax rate for corporations in the PRC during the POI was 25 percent.[35] Thus, the highest possible benefit for all income tax reduction or exemption programs combined is 25 percent.

On this basis, we preliminarily determine the AFA subsidy rate for these 15 companies to be 27.16 percent ad valorem. For a detailed discussion of the AFA rates selected for each program under investigation, see Application of Adverse Facts Memorandum.[36]

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[30] See SAA accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870.
[31] See, e.g., Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008) (LWS from the PRC), and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available"; Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 18521 (April 4, 2011) (Aluminum Extrusions from the PRC), and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies."; Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 17418 (March 26, 2012) (Steel Wire from the PRC), and accompanying Issues and Decision Memorandum (Steel Wire from the PRC Decision Memorandum) at "Use of Facts Otherwise Available and Adverse Inferences."
[32] See, e.g., Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination, 77 FR 64468 (October 22, 2012) and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available Rate"; Steel Wire from the PRC.
[33] See, e.g., Aluminum Extrusions from the PRC; Steel Wire from the PRC.
[34] See Steel Wire from the PRC Decision Memorandum at "Selection of the Adverse Facts Available Rate."
[35] Id.
[36] See Memorandum regarding, "Application of Adverse Facts Available Rates for Preliminary Determination," dated February 26, 2013 (Application of Adverse Facts Memorandum).

B. Application of AFA: Provision of Electricity for Less Than Adequate Remuneration

The GOC did not provide complete responses to the Department's questions regarding the alleged provision of electricity for less than adequate remuneration (LTAR). These questions requested information 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 with the meaning of section 771(5A) of the Act. In both the Department's original questionnaire and the February 5, 2013, supplemental questionnaire, for each province in which a respondent is located, the Department asked the GOC to provide a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories. The GOC provided no provincial-specific information in response to these questions in its initial questionnaire response.[37] The Department reiterated these questions in a supplemental questionnaire and the GOC did not provide the requested information in its supplemental questionnaire response.[38]

Consequently, we preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on facts otherwise available in making our preliminary determination pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our requests for information. In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We have also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit. The benchmark rates we have selected are derived from information from the record of the instant investigation and are the highest electricity rates on this record for the applicable rate and user categories.[39]

X. ANALYSIS OF PROGRAMS

Based upon our analysis and the responses to our questionnaires, we find the following for Dongfang, San Fortune and Senda:

[37] See the GOC's Initial Questionnaire Response (February 1, 2013) at 7.
[38] See the GOC's First Supplemental Questionnaire Response (February 12, 2013) at 1-3.
[39] See Memorandum to the File regarding "Preliminary Determination of Countervailing Duty Investigation of Hardwood and Decorative Plywood from the People's Republic of China: Benchmark Memorandum," dated concurrently with this Memorandum (Preliminary Benchmark Memorandum).

A. Programs Preliminarily Determined To Be Countervailable

1. Provision of Electricity for LTAR

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our determination regarding the government's provision of electricity, in part, on AFA.

In a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. However, where possible, the Department will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. Dongfang, San Fortune and Senda provided data on the electricity the companies consumed and the electricity rates paid during the POI.[40]

As noted above, the GOC did not provide the information requested by the Department as it pertains to the provision of electricity for LTAR program. We find that, in not providing the requested information, the GOC did not act to the best of its ability. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC pursuant to section 776(b) of the Act and determine that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act. To determine the existence and amount of any benefit from this program, we relied on the respondents' reported information on the amounts of electricity used, and the rates the respondents paid for that electricity, during the POI. We compared the rates paid by the respondents for their electricity to the highest rates that they could have paid in the PRC during the POI.

To calculate the benchmark, we selected the highest rates in the PRC for the type of user (e.g., "General Industry," "Lighting," "Base Charge/Maximum Demand") for the general, high peak, peak, normal, and valley ranges, as provided by the GOC.[41] The electricity rate benchmark chart is included in the Preliminary Benchmark Memorandum. This benchmark reflects an adverse inference, which we have drawn as a result of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.

To measure whether the respondents received a benefit under this program, we first calculated the electricity prices the respondents paid by multiplying the monthly kilowatt hours or kilovolt amperes consumed for each price category by the corresponding electricity rates charged for each price category. Next, we calculated the benchmark electricity cost by multiplying the

[40] See Dongfang's February 1, 2013 Initial Questionnaire Response Part 2 at Exhibits 5-6; see also Dongfang's February 12, 2013 Supplemental Questionnaire Response at Exhibit S-1; San Fortune's February 13, 2013 Supplemental Questionnaire Response at Exhibit SQ1-1; Senda's January 28, 2013 Initial Questionnaire Response Part 2 at Exhibits CVD 10, CVD 11.

[41] See the GOC's Supplemental Questionnaire Response (February 12, 2013) at Exhibits S-1 - S-3.

monthly consumption reported by the respondents for each price category by the highest electricity rate charged for each price category, as reflected in the electricity rate benchmark chart. To calculate the benefit for each month, we subtracted the amount paid by the respondents for electricity during each month of the POI from the monthly benchmark electricity price. We then calculated the total benefit for each company during the POI by summing the monthly benefits for each company.

Dongfang, San Fortune, and Senda all reported "efficiency adjustments" in their electricity rate charts. We have treated these efficiency adjustments as a benefit and have added the amounts of these adjustments to the total benefit for purposes of calculating the benefit for this program.

To calculate the subsidy rate pertaining to the GOC's provision of electricity for LTAR, we divided the benefit amount calculated for each respondent by the appropriate total sales denominator, as discussed in the "Subsidy Valuation Information" section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable subsidy of 0.28 percent ad valorem for Dongfang, 0.22 percent ad valorem for San Fortune, and 0.65 percent ad valorem for Senda.

B. Programs Preliminarily Determined Not to Be Used or Not to Confer a Benefit During the POI

1. Tax Exemptions and Reductions for "Productive" Foreign Invested Enterprises (FIEs)
2. Provincial Tax Exemptions and Reductions for "Productive" FIEs
3. Tax Reduction for FIEs in Designated Geographic Locations
4. Value Added Tax and Tariff Exemptions on Imported Equipment[42]

The Department has preliminarily determined that these programs were not used or did not confer a benefit to Dongfang, San Fortune, or Senda during the POI. However, as explained above at "Application of AFA: Non-Cooperative Companies," the Department is calculating an AFA rate for the non-cooperating companies in this investigation. Therefore, in calculating this AFA rate, the Department will assign an adverse rate to each of these programs based on the criteria explained in the "Application of AFA: Non-Cooperative Companies." For a detailed discussion of the AFA rates selected for each program, see Application of Adverse Facts Memorandum.

XI. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information from the GOC, Dongfang, San Fortune, and Senda.

[42] Senda reported that it had received these exemptions during the AUL. However, the exemptions received under this program were approved and received prior to the POI, and the total value of the examptions in each year was less than 0.5 percent of the appropriate sales values in the years of receipt. See the "Subsidies Valuation" section above for an explanation of the Department's 0.5 percent test. Therefore, the benefits were expensed in the year of receipt and no benefit was conferred under this program during the POI.

XII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Import Administration

26 February 2013
(Date)