C-570-046
Investigation
POI: 1/1/15 – 12/31/15
Public Document
E&C/V: AHD, JB

August 29, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: for Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Decision Memorandum for the Preliminary Determination

I. SUMMARY

The Department of Commerce (the "Department") preliminarily determines that countervailable subsidies are being provided to producers and exporters of 1-hydroxyethylidine-1, 1-diphosphonic acid ("HEDP") in the People's Republic of China ("PRC"), as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the "Act").

II. BACKGROUND

A. *Case History*

On March 31, 2016, the Department received countervailing duty ("CVD") and antidumping duty ("AD") petitions concerning HEDP from the PRC, filed in proper form by Compass Chemical International LLC ("Petitioner").[1] On April 20, 2016, the Department initiated the CVD investigation of HEDP from the PRC[2] and subsequently released U.S. Customs and Border Protection ("CBP") data for the purpose of respondent selection.[3] After receiving comments that the CBP data was not representative of imports of HEDP due to the ability of HEDP to enter the United States under several different Harmonized Tariff Schedule of the U.S. ("HTSUS")

[1] *See* Letter from Petitioner, regarding 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China, dated March 31, 2016 ("Petition").
[2] *See* "1-Hydroxyethylidene-1, 1-Diphosphonic Acid From People's Republic of China: Initiation of Countervailing Duty Investigation," 81 FR 25383 (April 28, 2016) ("Initiation").
[3] *See* Memo to the File from Andrew Devine, "Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Customs Data for Respondent Selection Purposes," (May 3, 2016).

categories,[4] the Department decided to send quantity and value ("Q&V") questionnaires to each of the 13 producers and exporters of HEDP named in the petition for purposes of respondent selection. The Department received seven responses, including two responses from companies not identified in the petition; eight parties did not respond to our request for information.[5] On June 8, 2016, the Department selected Shandong Taihe Chemicals Co., Ltd. ("Taihe Chemicals") and Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory ("Wujin Water") as the two mandatory respondents for this investigation,[6] and issued CVD questionnaires to those companies and the Government of the PRC ("GOC"). The GOC and the two mandatory respondents filed initial questionnaire responses with the Department on July 15, 2016. Between July 22, 2016 and August 11, 2016, the Department issued supplemental questionnaires to the GOC and the two mandatory respondents. The GOC and the mandatory respondents filed responses to these questionnaires between August 3, 2016 and August 17, 2016.

B. *Period of Investigation*

The period of investigation ("POI") is January 1, 2015, through December 31, 2015.

III. ALIGNMENT

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of HEDP from the PRC. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than January 10, 2017, unless postponed.

IV. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, and as noted in the *Initiation*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation*.[7] Between May 10, 2016 and June 27, 2016, we received submissions regarding scope from Petitioner and Changzhou Yao's Tongde Chemical Co., Ltd., a Chinese producer and exporter of HEDP. However, these submissions were requests to find certain products outside the scope, rather than on the scope language itself.[8] We intend to address these submissions in the corresponding antidumping duty investigation.

---

[4] *See* Petitioner's May 10, 2016 submission; Nantong Uniphos Chemical Co., Ltd.'s and Henan Qingshuiyuan Technology Co., Ltd.'s May 10, 2016 submission.

[5] *See* Memorandum from James C. Doyle, Director, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Respondent Selection," (June 8, 2016) ("Respondent Selection Memo").

[6] *See* "Respondent Selection" section, below.

[7] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); *see also* Initiation.

[8] *See* Petitioner's May 10, 2016 submission; Changzhou Yao's Tongde Chemical Co., Ltd.'s May 10, 2016 submission.

V. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation includes all grades of aqueous acidic (non-neutralized) concentrations of HEDP, also referred to as hydroxyethylidenendiphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The Chemical Abstract Service ("CAS") registry number for HEDP is 2809-21-4.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 2931.90.9043. It may also enter under HTSUS subheadings 281.19.6090 and 2931.90.9041. While HTSUS subheadings and the CAS registry number are provided for convenience and customs purposes only, the written description of the scope of this investigation is dispositive.

VI. RESPONDENT SELECTION

Section 777A(e)(1) of the Act directs the Department to calculate individual CVD subsidy rates for each known producer or exporter of the subject merchandise. However, when faced with a large number of producers or exporters, and, if the Department determines that 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 the producers and exporters accounting for the largest volume of the subject merchandise that can be reasonably examined.

As noted above, on June 8, 2016, the Department determined that it was not practicable to examine more than two respondents in the instant investigation.[9] Therefore, the Department selected, based on responses to Q&V questionnaires, the two exporters and producers accounting for the largest volume of HEDP exported from the PRC during the POI: Taihe Chemicals,[10] and Wujin Water.[11]

VII. 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. industry. On May 16, 2016, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of HEDP from the PRC.[12]

---

[9] *See* Respondent Selection Memo.

[10] Taihe Chemicals is a wholly-owned subsidiary of Shandong Taihe Water Treatment Technologies Co., Ltd. ("Taihe Technologies"), which produced the subject merchandise exported by Taihe Chemicals during the POI. Collectively, these two entities are hereinafter referred to as "Taihe Companies."

[11] *See* Respondent Selection Memo.

[12] *See* 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from China: Investigation No. 701–TA–558 and 731–TA–1316 (Preliminary); *1-Hydroxyethylidene-1, 1-Diphosphonic Acid From China; Determinations*, 81 FR 31958 (May 20, 2016).

VIII. APPLICATION OF THE CVD LAW TO IMPORTS FROM THE PRC

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.[13] 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.[14]

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.[15] Furthermore, on March 13, 2012, Public Law 112-99 was enacted which confirms that the Department has the authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as the PRC.[16] The effective date of the enacted legislation makes clear that this provision applies to this proceeding.[17]

IX. 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 9.5 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[18] The Department notified the respondents of the AUL in the initial questionnaire and requested data accordingly. 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 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.

---

[13] *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*").

[14] *Id*., at Comment 6.

[15] *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) ("*CWP from the PRC*") and accompanying Issues and Decision Memorandum ("IDM") at Comment 1.

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

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

[18] *See* U.S. Internal Revenue Service Publication 946, "How to Depreciate Property," (February 27, 2015), at Table B-2: Table of Class Lives and Recovery Periods attached as Exhibit III-2 of the Petition.

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. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

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.[19] In certain circumstances, a large minority voting interest (for example, 40 percent) may also result in cross-ownership.[20] The Court of International Trade 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.[21]

Taihe Companies

On July 15, 2016, Taihe Chemicals, a mandatory respondent, notified the Department that it is a trading company and not a producer of subject merchandise.[22] Taihe Chemicals reported that, during the POI, the subject merchandise it exported to the United States was produced exclusively by Taihe Technologies. In accordance with 19 CFR 351.525(c), we cumulated the subsidies received by Taihe Chemicals with the subsidies received by Taihe Technologies. Specifically, for each countervailable subsidy received by Taihe Technologies, we derived the benefit and calculated a program subsidy rate, and cumulated those rates with the rates calculated for subsidies received directly by Taihe Chemicals.

Wujin Water

Wujin Water responded to the questionnaire on behalf of itself and two producers of subject merchandise, Changzhou Wujin Fine Chemicals Factory Co., Ltd. and Nantong Uniphos Chemicals Co., Ltd. However, none of the three companies owns a majority voting ownership interest in either of the other companies, and there is no indication on the record that one

[19] *See, e.g., Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) ("*CVD Preamble*").
[20] *See CVD Preamble.*
[21] *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[22] *See* Taihe Companies' July 15, 2016 submission, at 4.

company can use or direct the assets of the other companies in essentially the same ways it can use its own assets.[23] Based on this information, we preliminarily determine that cross-ownership does not exist between Wujin Water and the other two reported companies pursuant to 19 CFR 351.525(b)(6)(vi). Therefore, we will attribute any subsidies received by Wujin Water to its sales pursuant to 19 CFR 351.525(b).

C. *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 programs found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator. For a further discussion of the denominators used, *see* the preliminary calculation memoranda.[24]

X. BENCHMARKS

The Department is investigating the provision of electricity to both mandatory respondents at less than adequate remuneration ("LTAR"). This process requires the derivation of benchmark electricity rates. The derivation of these rates is discussed in the "Use of Facts Otherwise Available and Adverse Inferences" section below.

XI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that the Department 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 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.[25]

---

[23] *See* Wujin Water's June 22, 2016 submission, at Exhibits CVD-1 and CVD-2.

[24] *See* Memorandum to the File, through Paul Walker, Program Manager, from Andrew Devine, International Trade Compliance Analyst, "Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China : Preliminary Calculation Memorandum for Shandong Taihe Water Technologies Co., Ltd. and Shandong Taihe Chemicals Co., Ltd.," dated concurrently with this memorandum ("Taihe Companies Calculation Memo"), and Memorandum to the File, through Paul Walker, Program Manager, from Javier Barrientos, Senior International Trade Compliance Analyst, "Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Preliminary Calculation Memo for Wujin Water," dated concurrently with this memorandum ("Wujin water Calculation Memo").

[25] On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the

Section 776(b) of the Act further provides that the Department may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available ("AFA") rate from among the possible sources of information, the Department's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[26] 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."[27]

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "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."[28] It is the Department's practice to consider information to be corroborated if it has probative value.[29] In analyzing whether information has probative value, it is the Department's practice to examine the reliability and relevance of the information to be used.[30] However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.[31]

Finally, under the new section 776(d) of the Act, the Department may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department is not required for purposes of 776(c), 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.[32]

---

applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this investigation.

[26] *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) ("*Drill Pipe from the PRC*"); *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).

[27] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 ("SAA") at 870.

[28] *See, e.g.*, SAA at 870.

[29] *See* SAA at 870.

[30] *See, e.g.*, SAA at 869.

[31] *See* SAA at 869-870.

[32] *See* section 776(d)(3) of the Act.

For purposes of this preliminary determination, we find it necessary to apply AFA with respect to the GOC's responses to questions on the alleged provision of electricity for LTAR, as described below. In addition, we find it necessary to apply AFA with respect to those companies that received our Q&V questionnaire, but did not respond.

A. *Application of AFA: Provision of Electricity for LTAR*

As discussed below under the section "Programs Preliminarily Found to be Countervailable," the Department is investigating whether the GOC provided electricity for LTAR. The GOC did not provide complete responses to the Department's questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity for LTAR 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 July 22, 2016 supplemental questionnaire, for each province in which the mandatory respondents and any "cross-owned" affiliates are 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 how 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.[33] The Department reiterated these questions in a supplemental questionnaire, and the GOC did not provide the requested information in its supplemental questionnaire response.[34]

Consequently, we preliminarily determine that the GOC 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 failed to cooperate by not acting to the best of its ability to comply with our requests for information. Specifically, 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 also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit. The benchmark rates we 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.[35]

[33] *See* the GOC's submission, dated July 15, 2016, at 4-10.
[34] *See* the GOC's submission, dated August 3, 2016, at 1-5.
[35] *See* Preliminary Calculation Memoranda.

B. *Non-Responsive Companies to the Q&V Questionnaire*

As noted above, eight companies did not respond to our request for information.[36] Accordingly, we preliminary determine that these 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, the Department 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. Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not responding to the Q&V questionnaire, these non-responsive companies did not cooperate to the best of their ability to comply with the request for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted to ensure that these non-responsive companies do not obtain a more favorable result by failing to cooperate than if they had fully complied with our request for information.

We have included all programs initiated on under investigation in the determination of the AFA rate. Although the GOC provided no information on three of four programs, we are inferring adversely from the non-responsive companies' decision not to participate in this investigation that they, in fact, use these programs.[37]

It is the Department's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[38] When selecting AFA rates, section 776(d) of the Act provides that the Department may use any countervailable subsidy rate applied for the same or similar program in a countervailable duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.[39] Accordingly, when selecting AFA rates, if we have cooperating respondents, as we do in this investigation, we first determine if there is an identical program in the investigation

[36] Hereafter referred to as the "Non-Responsive Companies."

[37] We do not have information from the GOC regarding financial contribution and specificity regarding these three programs. The GOC did not provide such information, presumably because the selected mandatory respondents reported that they did not use the programs. However, we note that we have countervailed these three programs in past proceedings.

[38] *See, e.g., Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *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 Issues and Decision Memorandum at "Application of Facts Available, Including the Application of Adverse Inferences"); *see also Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and accompanying Issues and Decision Memorandum ("Aluminum Extrusions IDM") at "Application of Adverse Inferences: Non-Cooperative Companies."

[39] *See, e.g., Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) ("*Shrimp from the PRC*"), and accompanying Issues and Decision Memorandum ("Shrimp IDM") at 13; *see also Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

and use the highest calculated rate for the identical program. If there is no identical program that resulted in a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).[40] If no such rate exists, we then determine if there is a similar or comparable program (based on the treatment of the benefit) in another 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.[41]

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The same provision states, however, that the Department need not corroborate any margin applied in a separate segment of the same proceeding. 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."[42] The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.[43]

The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[44] Furthermore, the Department 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.[45]

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department

[40] 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 Issues and Decision Memorandum at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."
[41] *See* Shrimp IDM at 13-14.
[42] *See* SAA at 870.
[43] *Id*.
[44] *Id*., at 869-870.
[45] *See* section 776(d) of the Act.

will not use information where circumstances indicate that the information is not appropriate as AFA.[46]

In determining the AFA rate we will apply to each of the non-responsive companies, we are guided by the Department's methodology detailed above. We begin by selecting, as AFA, the highest calculated program-specific above-zero rates determined for the cooperating respondents in the instant investigation. Accordingly, we are applying the highest applicable subsidy rate calculated for Taihe Companies or Wujin Water for the following program:[47]

- Provision of Electricity for LTAR.

To calculate the program rate for the following income tax reduction program on which the Department initiated an investigation, we applied an adverse inference that each of the non-responsive companies paid no income tax during the POI:

- Corporate Income Tax Law Article 33: Reduction of Taxable Income for the Revenue Derived from the Manufacture of Products that are in Line with State Industrial Policy and Involve Synergistic Utilization of Resources.

With respect to income tax programs, we apply an adverse inference that the non-responsive companies paid no income taxes during the POI. The standard corporate income tax rate in China is 25 percent. We therefore find the highest possible benefit for all income tax exemption and reduction programs combined is 25 percent (*i.e.*, the income tax programs combined provide a countervailable benefit of 25 percent.) Consistent with past practice, the 25 percent AFA rate does not apply to income tax credit and rebate, accelerated depreciation, or import tariff and value add tax exemption programs because such programs may not affect the tax rate.[48]

For all other programs not mentioned above, we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a PRC CVD investigation or administrative review. For this preliminary determination, we are able to match, based on program names, descriptions, and benefit treatments, the following programs to the same programs from other PRC CVD proceedings:

- "Famous Brands" Program;
- Value Added Tax and Tariff Exemptions for FIEs and Certain Domestic Enterprises using Imported Equipment in Encouraged Industries.

---

[46] *See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996); *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, and accompanying Issues and Decision Memorandum, at 10.

[47] We note that respondents benefited from additional programs that were reported or discovered during the course of this proceeding. For the purposes of calculating the AFA rate, however, we are only referencing those programs on which we initiated this investigation.

[48] *See, e.g., Aluminum Extrusions Final Determination* at "Application of Adverse Inferences: Non-Cooperative Companies."

Accordingly, we preliminarily determine the AFA countervailable subsidy rate is 36.33 percent *ad valorem*.[49]

The chart below summarizes the calculation of the AFA rate.

Summary	AFA Rate (percent)
Provision of Electricity for LTAR[50]	1.04
Corporate Income Tax Law Article 33: Reduction of Taxable Income for the Revenue Derived from the Manufacture of Products that are in Line with State Industrial Policy and Involve Synergistic Utilization of Resources	25.00
"Famous Brands" Program[51]	0.58
Value Added Tax and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries[52]	9.71
Total *Ad Valorem* Rate	36.33

C. *Self-Reported Grants*

As discussed in further detail in the "Programs Preliminarily Determined to Be Countervailable" section below, both mandatory respondents reported receiving benefits under grant programs not initiated on by the Department.[53] The Department requested information from the GOC regarding certain of these grants,[54] to which the GOC responded: "at this time, the GOC has decided not to challenge the countervailability of each of these programs and therefore is not providing a response to the Standard Questions Appendix."[55]

In order to conduct the analysis of whether a program is specific and 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 pertaining to specificity and financial contribution that are contained in the Standard Questions Appendix. This is because it is only the government that has access to the information required for a complete analysis of specificity and financial contribution. By affirmatively stating the GOC does not contest the countervailability of these

[49] *Id.*
[50] *See* Wujin Water Calculation Memo.
[51] *See* "Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012," 73 FR 57323 (October 2, 2008) and accompanying Issues and Decision Memorandum at "Funds for Outward Expansion of Industries in Guangdong Province."
[52] *See* "Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Affirmative Determination, and Final Critical Circumstances Determination, in Part," 80 FR 34888 (June 18, 2015) and accompanying Issues and Decision Memorandum.
[53] *See* Taihe Companies' submission, dated July 15, 2016, at 17-18 and Exhibit 9; Wujin Water's submission, dated July 15, 2016, at 16-17 and Exhibit 11.
[54] *See* The Department's Second and Third Questionnaires to the GOC, dated August 8, 2016 and August 11, 2016, respectively.
[55] *See* GOC's submission, dated August 17, 2016, at 1, 9.

programs and that it would not provide a response to the Standard Questions Appendix, the GOC did not provide a complete response to the specificity and financial contribution questions related to these grant programs. As a result, we are resorting to the use of facts available ("FA") within the meaning of section 776(a)(1) of the Act because the necessary information from the GOC concerning the manner in which this program is administered is not on the record. Based on the GOC's affirmative statement that it does not challenge the countervailability of these programs, we preliminarily determine that the GOC provided the subsidies listed in the Analysis of Programs, Self-Reported Grants section below, that these subsidies constitute a financial contribution under section 771(5)(D)(i) of the Act, and that these subsidies are specific under section 771(5A) of the Act. However, certain other grants self-reported by Taihe Companies will not be addressed in this preliminary determination, and the use of FA discussed above does not apply to them. For a full discussion on these other self-reported grants, see the "Programs the Department Will Address in a Post-Preliminary Determination" section, below.

XII. ANALYSIS OF PROGRAMS

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

A. *Programs Preliminarily Determined to Be Countervailable*

1. *Electricity for LTAR*

Both of the respondents used this program during the POI. 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 foreign producers and exporters of the merchandise under investigation and the government of the country where those producers and exporters are located. When the government fails to provide requested and necessary information concerning alleged subsidy programs, the Department, as AFA, may find 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 conferred, to the extent that those records are useable and verifiable. Taihe Companies and Wujin water provided data on the electricity the companies consumed and the electricity rates paid during the POI.[56] Therefore, the Department was able to utilize this information in calculating the extent of benefits received under the Electricity for LTAR program.

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, despite multiple requests for such information. We find that, in light of the GOC's non-response, the GOC withheld information requested by the Department as described in section 776(a)(2)(A) of the Act, and also did not act

[56] *See, e.g.*, Taihe Companies' submission, dated July 15, 2016, at Exhibits 7 and 8; Wujin Water's submission, dated July 15, 2016, at Exhibits Wujin Water 9.

to the best of its ability, as described in section 776(b) of the Act. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC, and determine that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D) 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.[57]

To calculate the benchmark, we selected the highest rates in the PRC for the type of user (*e.g.*, "General Industry," "Heavy Industry," "Base Charge/Maximum Demand") for the general, high peak, peak, normal, and valley ranges, as provided by the GOC.[58] The electricity rate benchmark chart is included in the Preliminary Benchmark Memo. This benchmark reflects an adverse inference, which we drew 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.[59]

To measure whether the mandatory 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 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.[60]

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 0.54 percent *ad valorem* for Taihe companies, and 1.04 percent *ad*

---

[57] *See*, Memorandum to the File, through Paul Walker, Program Manager, "Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Preliminary Selection of Electricity Benchmarks," ("Preliminary Benchmark Memo") dated concurrently with this memorandum.

[58] *See* the GOC's July 15, 2016 submission at Exhibit 6.

[59] *See, e.g., Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences" section; *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences" section; *Chlorinated Isocyanurates From the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences" section.

[60] *See* Taihe Companies Calculation Memo and Wujin Water Calculation Memo.

valorem for Wujin Water.[61]

2. *Income Tax Reduction for High and New Technology Enterprises*

Under Article 28.2 of the 2008 corporate tax law, the income tax a firm pays is reduced from the standard rate if an enterprise is recognized as a High and New Technology Enterprise ("HNTE").[62] The Department previously found this program to be countervailable.[63] Taihe Companies reported that they used this program.[64]

Based upon the information submitted by Taihe Companies, Taihe Technologies paid a reduced income tax rate on the tax returns filed during the POI.[65] In accordance with Article 28.2 of the tax law, they paid an income tax rate of 15 percent, instead of the standard corporate income tax rate of 25 percent.[66]

Consistent with our determination in *Warmwater Shrimp*, we preliminarily determine that this program constitutes a financial contribution in the form of revenue foregone by the GOC and confers a benefit in the amount of tax savings, as provided under sections 771(5)(D)(ii) and 771(5)(E) of the Act. We further determine that the income tax reduction afforded by this program is limited as a matter of law to certain enterprises whose products are designated as being in "high-tech fields with state support," and, hence, is *de jure* specific, under section 771(5A)(D)(i) of the Act.

We calculated the benefit as the difference between taxes Taihe Companies would have paid under the standard 25 percent tax rate and the taxes that the company actually paid under the preferential 15 percent tax rate, as reflected on the tax returns filed during the POI, as provided for under 19 CFR 351.509(a)(1) and (b)(1). We treated the tax savings as a recurring benefit consistent with 19 CFR 351.524(c)(1). We then divided the benefit by the Taihe Companies' total sales during the POI. On this basis, we preliminarily determine a countervailable subsidy of 1.20 percent *ad valorem* for Taihe Companies.

3. *Self-Reported Grant Programs*

Both respondents reported receiving various non-recurring grants during the POI and throughout the AUL period. On July 15, 2016, Taihe Companies reported the following self-reported programs[67]:

a. College Students Probations Subsidy

---

[61] *Id.*
[62] *See* GOC's August 17, 2016 submission, at Exhibit S2-2.
[63] *See, e.g., Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) ("*Warmwater Shrimp*") and accompanying Issues and Decision Memorandum at 25.
[64] *See* Taihe Companies Initial Questionnaire Response, dated July 15, 2016 at 17.
[65] *Id.*
[66] *Id.*
[67] *Id.*, at Exhibit 9.

b. Self Renovation
c. Scientific Subsidy
d. Export Special Funds
e. Export Credit Insurance Subsidy
f. Awarding Subsidy
g. New Plant Building Subsidy
h. R&D Subsidy
i. Export Special Subsidy
j. Patent Subsidy
k. Employees Subsidy
l. Bachelor's Subsidy
m. Intellectual Subsidy
n. Subject Subsidy

On July 15, 2016, Wujin Water reported the following self-reported programs[68]:

a. External Development Compensation
b. Security Award

As discussed in the "Use of Facts Available and Adverse Inferences" section above, the Department preliminarily determines that the GOC provided the subsidies listed above, that these subsidies constitute a financial contribution under section 771(5)(D)(i) of the Act, and that these programs are specific under section 771(5A) of the Act. The Department further preliminarily determines that these grants each confer a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504(a).

To calculate the benefit received under these programs, the Department followed the methodology described in 19 CFR 351.524. Grants under the programs listed above were received by the mandatory respondents during the POI. To calculate the *ad valorem* subsidy rate for these grants, the Department divided the benefit conferred under each of these programs by the appropriate POI sales denominator – total sales or total export sales – depending on the nature of the subsidy program.[69] Further discussion on the methodology used to calculate the *ad valorem* subsidy rate under these programs is included in the Preliminary Calculation Memoranda.

The Department preliminarily determines that certain grants under the following programs conferred a measurable benefit upon Taihe Companies during the POI:

a. College Students Probations Subsidy
b. Self Renovation
c. Scientific Subsidy
d. Export Special Funds
e. Export Credit Insurance Subsidy

[68] *See* Wujin Water's July 15, 2016 submission, at Exhibit 11.
[69] *See* Taihe Companies Calculation Memo and Wujin Water Calculation Memo.

f. Awarding Subsidy
g. New Plant Building Subsidy
h. R&D Subsidy
i. Export Special Subsidy
j. Patent Subsidy
k. Employees Subsidy

Based on the methodology outlined above, the Department preliminarily calculates a cumulative *ad valorem* subsidy rate of 0.54 percent for Taihe Companies for the programs listed above.

4. *Programs Preliminarily Determined Not to Have Conferred a Measureable Benefit or Not to Have Conferred a Benefit During the POI*

Based on the methodology outlined above, the Department finds that all of Wujin Water's self-reported grants did not confer any measureable benefit during the POI. These programs are listed below:

a. External Development Compensation
b. Security Award

Similarly, the Department finds that certain grants from the following Taihe Companies' self-reported grant programs did not confer any measureable benefit during the POI:

a. Patent Subsidy
b. Employees Subsidy
c. Bachelor's Subsidy
d. Intellectual Subsidy

B. *Programs Preliminarily Determined Not to Be Used During the POI*

The Department preliminarily determines that the following programs were not used by Taihe Companies or Wujin water during the POI:

1. "Famous Brands" Program
2. Corporate Income Tax Law Article 33: Reduction of Taxable Income for the Revenue Derived from the Manufacture of Products that are in Line with State Industrial Policy and Involve Synergistic Utilization of Resources
3. Value Added Tax and Tariff Exemptions for FIEs and Certain Domestic Enterprises using Imported Equipment in Encouraged Industries
4. Subject Subsidy

C. *Programs the Department Will Address in a Post-Preliminary Determination*

As noted above, both mandatory respondents self-reported receiving certain grants during the POI and throughout the AUL. However, Taihe Companies submitted its last questionnaire

response regarding self-reported grant programs on August 24, 2016.[70] There are a total of 41 unique grants Taihe Companies reported. In response to a supplemental questionnaire, the GOC stated it is not challenging 14 of these programs. However, for the additional programs for which Taihe Companies provided a response on August 24, the Department has not yet issued a supplemental questionnaire to the GOC, as is our practice. Therefore, the Department will address these programs in a post-preliminary determination after the Department has an opportunity to solicit more information from the GOC and Taihe Companies. The Department intends to address the following programs in the post-preliminary determination:

1. Export Special Subsidy
2. International Market Development Fund
3. Patent Subsidy
4. College Students Probation Subsidy
5. Market Development for Small and Medium Enterprises ("SMEs")
6. New and Important Industry Development Special Subsidy
7. Special Fund for Service Industry Development
8. Enterprise Important Technology Subsidy
9. First Technology Innovation Subsidy for SMEs
10. Superior Training Subsidy
11. Technology Progress Award
12. Independent Items Innovation Fund
13. Export Industry Development Fund
14. Export Credit Insurance Subsidy
15. Scientific Technology Development Special Fund
16. Patent Development Fund
17. International Market Development Fund for SMEs
18. Financial Credit Insurance Subsidy
19. Zaozhuang Human Resource Subsidy
20. Subsidy for SMEs
21. International Market Subsidy
22. Planned Special Item Subsidy
23. Technology Subsidy
24. Financial Subsidy
25. Innovation Fund for SMEs
26. Subsidy
27. Subsidy for Private Enterprise
28. Technology Bureau Subsidy
29. Export Trading Award

The Department notes that some of these programs have similar names to other programs on this list, or to other programs addressed in the "Self-Reported Grants" section above. Because the Department has not had the opportunity to fully examine these programs, it is impossible to determine whether these are grants under the same programs previously addressed, or distinct

[70] *See* Taihe Companies' August 24, 2016 submission.

subsidies programs. As such, the Department will also address these questions in a post-preliminary determination.

XIII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the factual information submitted by the GOC, Taihe Companies, and Wujin Water.

XIV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

29 AUGUST 2016
Date