



C-570-052
Investigation
Public Document
E&C/V: JMN/MR

April 17, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Determination: Countervailing Duty Investigation of Certain
Hardwood Plywood Products from the People's Republic of China

I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain hardwood plywood products (hardwood plywood) from the People's Republic of China (PRC), as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (Act).

II. BACKGROUND

A. Initiation and Case History

On November 18, 2016, the Department received a countervailing duty (CVD) and antidumping duty (AD) petition concerning imports of hardwood plywood from the PRC, filed in proper form by the Coalition for Fair Trade in Hardwood Plywood (Petitioners).¹ On December 8, 2016, the Department initiated the CVD investigation of hardwood plywood from the PRC.² The initial allegations and supplements to the Petition are described in the CVD Initiation Checklist.³

¹ See "Certain Hardwood Plywood Products from the People's Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties," dated November 18, 2016 (Petition). Petitioners consist of Columbia Forest Products, Commonwealth Plywood Inc., Murphy Plywood, Roseburg Forest Products Co., States Industries, Inc., and Timber Products Company.

² See *Certain Hardwood Plywood Products from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 81 FR 91131 (December 16, 2016) (*CVD Initiation*) and the accompanying CVD Initiation Checklist.

³ See Countervailing Duty Investigation Initiation Checklist: Certain Hardwood Plywood Products from the People's Republic of China (CVD Initiation Checklist), dated December 8, 2016.



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. In the *CVD Initiation*, the Department stated that it intended to select respondents based on responses to quantity and value (Q&V) questionnaires because the HTSUS numbers the subject merchandise would enter under are basket categories containing many products unrelated to hardwood plywood, and the reported entry data contain differing units of quantity.

Therefore, on December 9, 2016, the Department issued Q&V questionnaires to 121 producers/exporters of merchandise under consideration identified by Petitioners, with complete contact information, in the Petition, and also posted the Q&V questionnaire, along with filing instructions, on the Enforcement and Compliance website, as indicated in the *CVD Initiation Federal Register Notice*.⁴ From among the 83 Q&V questionnaires timely received, and as explained in the Department's Respondent Selection Memorandum, the Department selected Linyi Sanfortune Wood Co., Ltd. (Sanfortune) and Shandong Dongfang Bayley Wood Co., Ltd. (Bayley Wood) as mandatory respondents.⁵ Consistent with section 777A(e)(2)(A)(ii) of the Act, Sanfortune and Bayley Wood accounted for the largest volume of exports of the merchandise under consideration during the POI.

On January 17, 2017, the Department issued a CVD questionnaire to the Government of the PRC (GOC) and the mandatory respondents.⁶ On January 31, 2017, Sanfortune and Bayley Wood filed their affiliation questionnaire responses.⁷ Petitioners filed comments on these responses from both respondents on February 14, 2017.⁸ On February 21, 2017, Bayley Wood submitted rebuttal comments to Petitioners' comments.⁹ On March 2, 2017, Sanfortune, as well as Bayley Wood and its self-identified affiliated producer of subject merchandise, Linyi Yinhe Panel Factory (Yinhe Panel) (collectively referred to as Bayley Wood), filed responses to the

⁴ See *CVD Initiation*,

⁵ See "Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Respondent Selection," dated January 13, 2017 (Respondent Selection Memorandum).

⁶ See "Countervailing Duty Questionnaire from the Department to Ms. Liu Fang, First Secretary, Embassy of the People's Republic of China, Washington, D.C.," dated January 17, 2017 (Primary Questionnaire).

⁷ See Letter from Sanfortune, "Hardwood Plywood Products from the People's Republic of China – Part I – Identifying Affiliates," dated January 31, 2017 (Sanfortune AQR) and Letter from Bayley Wood, "Hardwood Plywood Products from the People's Republic of China – Part I – Identifying Affiliates," dated January 31, 2017 (Bayley Wood AQR).

⁸ See Letters from Petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Comments on Bayley Wood's Section III Response - Part I - Identifying Affiliates," and "Certain Hardwood Plywood Products from the People's Republic of China: Comments on Sanfortune's Section III Response - Part 1 - Identifying Affiliates," dated February 14, 2017.

⁹ See Letter from Bayley Wood, "Hardwood Plywood Products from the People's Republic of China: Rebuttal in Response to Petitioner Comments on Section III Response - Part I - Identifying Affiliates," dated February 21, 2017 (Bayley Wood's February 21 Rebuttal).

Department's primary CVD questionnaire.¹⁰ On March 6, 2017, the GOC filed its response to the primary CVD questionnaire.¹¹

In addition to the questionnaire responses that were filed, interested parties filed several additional supplemental questionnaire responses, as well as comments and rebuttals related to those, and previous, responses. On March 3, 2017, Petitioners filed comments regarding Bayley Wood's AQR, requesting that the Department require Bayley Wood to file several additional full questionnaire responses for companies identified by Bayley Wood as affiliates.¹² The next day, Bayley Wood filed an objection to Petitioners' request, as well as providing clarifying new factual information.¹³ On March 15, 2017, Petitioners submitted comments with respect to the Bayley Wood PQR and Yinhe Panel PQR, as well as the Sanfortune PQR.¹⁴ At the request of the Department,¹⁵ Bayley Wood filed its first supplemental questionnaire response on March 16, 2017.¹⁶ Also at the request of the Department,¹⁷ on April 3, 2017, both the GOC and Sanfortune submitted their first supplemental questionnaire responses.¹⁸

On March 20, 2017, Petitioners filed additional comments on Bayley Wood's previous questionnaire responses, providing new factual information and an allegation that Bayley Wood was not forthcoming in identifying the full scope of its affiliation with other companies in the

¹⁰ See Letter from Sanfortune, "Hardwood Plywood Products from the People's Republic of China: Section III Response – Part II," dated March 2, 2017 (Sanfortune PQR); Letter from Bayley Wood, "Hardwood Plywood Products from the People's Republic of China: Section III Response – Part II," dated March 2, 2017 (Bayley Wood PQR); and Letter from Yinhe Panel, "Hardwood Plywood Products from the People's Republic of China: Section III Response – Part II" dated March 2, 2017 (Yinhe Panel PQR), respectively.

¹¹ See Letter from the GOC, "Certain Hardwood Products from the People's Republic of China, Case No. C-570-052: Initiation Questionnaire Response," dated March 6, 2017 (GOC IQR).

¹² See Letter from Petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Request for Questionnaire Responses from Bayley Wood's Affiliated Parties," dated March 3, 2017.

¹³ See Letter from Bayley Wood, "Hardwood Plywood Products from the People's Republic of China: Rebuttal in Response to Petitioners' Comments on Bayley Wood's Affiliated Parties," dated March 7, 2017 (Bayley Wood's March 7 Rebuttal).

¹⁴ See Letters from Petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Deficiency Comments on Bayley Wood and Linyi Panel's Initial Questionnaire Responses," dated March 15, 2017; and "Certain Hardwood Plywood Products from the People's Republic of China: Deficiency Comments on Sanfortune's Initial Questionnaire Responses," dated March 15, 2017.

¹⁵ See Letter to Bayley Wood, "Supplemental Questionnaire," dated March 8, 2017 (Bayley First Supplemental Questionnaire).

¹⁶ See Letter from Bayley Wood, "Hardwood Plywood Products from the People's Republic of China: Supplemental Questionnaire Response," dated March 16, 2017.

¹⁷ See Letter to the GOC, "First Supplemental Questionnaire," dated March 23, 2017; *see also* Letter to Sanfortune, "First Supplemental Questionnaire," dated March 20, 2017.

¹⁸ See Letter from the GOC, "Certain Hardwood Plywood Products from the People's Republic of China, Case No. C-570-052: First Supplemental Questionnaire Response," dated April 3, 2017 (GOC SQR); *see also* Letter from Sanfortune, "Hardwood Plywood Products from the People's Republic of China: Supplemental Questionnaire Response," dated April 3, 2017 (Sanfortune SQR). The Department also permitted Sanfortune to file a missing exhibit on the following day; *see* Letter from Sanfortune, "Hardwood Plywood Products from the People's Republic of China: Supplemental Questionnaire Response - Exhibit SQ1-7," dated April 4, 2017.

hardwood plywood industry.¹⁹ At the request of the Department,²⁰ on March 28, 2017, Bayley Wood filed full questionnaire responses for three companies that it had identified as affiliates in the Bayley Wood AQR.²¹ On April 3, 2017, Bayley Wood submitted a rebuttal to Petitioners' Affiliation Comments.²² Petitioners filed comments regarding the additional questionnaire responses on April 4, 2017,²³ and Bayley Wood offered rebuttal comments on April 7, 2017.²⁴ On April 10, 2017, Bayley Wood filed its second supplemental questionnaire response, and at the request of the Department,²⁵ filed a full questionnaire response for an additional affiliate.²⁶

On March 15 and 20, 2017, Petitioners timely submitted new subsidy allegations to the Department.²⁷ The GOC, a group of U.S. importers²⁸ of the subject merchandise, as well as Bayley Wood and Sanfortune, all filed comments opposing both the timing and substantive content of Petitioners' new subsidy allegations on March 27,²⁹ 28,³⁰ and 30,³¹ 2017, respectively. The Department will decide whether to initiate on these new subsidy allegations after this

¹⁹ See Letter from Petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Petitioner's Comments on Bayley's Questionnaire Responses," dated March 20, 2017 (Petitioners' Affiliation Comments).

²⁰ See Bayley First Supplemental Questionnaire.

²¹ Because the names of these affiliates are proprietary, we refer to them as Company A, Company B, and Company C. See Letters from Bayley Wood, "Hardwood Plywood Products from the People's Republic of China: Affiliated Company A – Section III Response," dated March 28, 2017 (Company A PQR); "Hardwood Plywood Products from the People's Republic of China: Affiliated Company B – Section III Response," dated March 28, 2017 (Company B PQR); and "Hardwood Plywood Products from the People's Republic of China: Affiliated Company C – Section III Response," dated March 28, 2017 (Company C PQR).

²² See Letter from Bayley Wood, "Hardwood Plywood Products from the People's Republic of China: Rebuttal to Petitioners' March 20, 2017 Comments on Bayley's Questionnaire," dated April 3, 2017 (Bayley Affiliation Rebuttal).

²³ See Letter from Petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Deficiency Comments on the Initial Questionnaire Responses of Bayley Wood and Linyi Panel's Cross-Owned Affiliates," dated April 4, 2017.

²⁴ See Letter from Bayley Wood, "Hardwood Plywood Products from the People's Republic of China: Rebuttal to Petitioners' April 4, 2017 Comments on the Initial Questionnaire Responses of Bayley's Affiliates," dated April 7, 2017.

²⁵ See Letter from the Department "Second Supplemental Questionnaire," dated April 3, 2017 (Bayley Wood Second Supplemental Questionnaire).

²⁶ See Letter from Bayley Wood, "Hardwood Plywood Products from the People's Republic of China: Second Supplemental Questionnaire Response," dated March 16, 2017; and Letter from Bayley Wood, "Hardwood Plywood Products from the People's Republic of China: Affiliated Company D – Section III Response," dated April 10, 2017 (Company D PQR).

²⁷ See Letter from Petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Initial New Subsidy Allegations," dated March 15, 2017 (First NSA Submission); "Certain Hardwood Plywood Products from the People's Republic of China: Additional New Subsidy Allegations," dated March 20, 2017 (Second NSA Submission); and "Certain Hardwood Plywood Products from the People's Republic of China: Clarification of Petitioner's Initial New Subsidy Allegations Submission," dated March 20, 2017 (Clarification Submission).

²⁸ The importers are Concannon Corp., Liberty Woods International, Inc., Northwest Hardwoods, Inc., Patriot Timber Products, Inc., Taraca Pacific, Inc., and McCorry & Company Limited (collectively, U.S. importers).

²⁹ See Letter from the GOC, "Certain Hardwood Plywood Products from the People's Republic of China, Case No. C-570-052: Response to Petitioner's New Subsidy Allegations," dated March 27, 2017.

³⁰ See Letter from U.S. importers, "Investigation of Certain Hardwood Plywood Products from the People's Republic of China - Response to Petitioners' New Subsidy Allegations," dated March 30, 2017.

³¹ See Letter from Bayley Wood and Sanfortune, "Hardwood Plywood Products from the People's Republic of China: Rebuttal to Petitioners' New Subsidy Allegations," dated March 28, 2017.

preliminary determination. Should we initiate, we will issue a new subsidy allegation questionnaire to the relevant parties. We also intend to issue a post-preliminary analysis for any programs on which we initiate.

On March 23, 2017, Petitioners alleged that critical circumstances exist with respect to imports of hardwood plywood from the PRC.³² Petitioners supplemented their critical circumstances allegation on March 30, 2017,³³ and filed an additional month of newly available import data on April 6, 2017.³⁴

On March 29, 2017 and April 10, 2017, Petitioners filed comments offering suggested courses of action for this preliminary determination.³⁵ Bayley Wood and Sanfortune rebutted these comments on April 11, 2017.³⁶ Petitioners met with officials from the Department on April 6, 2017, to discuss both their pre-preliminary comments and their new subsidy allegations.³⁷ On April 10, 2017, the Department met with counsel to Bayley Wood and Sanfortune to discuss their record comments regarding the upcoming preliminary determination.³⁸

B. Postponement of Preliminary Determination

On January 27, 2017, the Department postponed the deadline for the preliminary determination to the full 130 days permitted under sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).³⁹

C. Period of Investigation

The 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), and based on

³² See Letter from Petitioners, “Certain Hardwood Plywood Products from the People’s Republic of China: Critical Circumstances Allegation,” dated March 23, 2017 (Critical Circumstances Allegation).

³³ See Letter from Petitioners, “Certain Hardwood Plywood Products from the People’s Republic of China: Supplemental Critical Circumstances Submission,” dated March 30, 2017 (Critical Circumstances Supplement).

³⁴ See Letter from Petitioners, “Certain Hardwood Plywood Products from the People’s Republic of China: Second Supplemental Critical Circumstances Submission,” dated April 6, 2017 (Critical Circumstances Additional Data).

³⁵ See Letter from Petitioners, “Certain Hardwood Plywood Products from the People’s Republic of China: Pre-Preliminary Comments,” dated March 29, 2017; *see also* Letter from Petitioners, “Certain Hardwood Plywood Products from the People’s Republic of China: Supplemental Pre-Preliminary Comments,” dated April 10, 2017.

³⁶ See Letter from Bayley Wood and Sanfortune, “Hardwood Plywood Products from the People’s Republic of China: Rebuttal Comments to Petitioners’ April 11, 2017 Supplemental Pre-Preliminary Comments,” dated April 11, 2017 (Respondents’ Pre-Preliminary Comments).

³⁷ See Department Memorandum, “Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People’s Republic of China: Ex-Parte Meeting,” dated April 6, 2017.

³⁸ See Department Memorandum, “Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People’s Republic of China: Ex-Parte Meeting,” dated April 10, 2017.

³⁹ See *Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People’s Republic of China: Postponement of Preliminary Determination*, 82 FR 8605 (January 27, 2017).

Petitioners' request,⁴⁰ we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of hardwood plywood 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 November 7, 2017, unless postponed.⁴¹

IV. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations,⁴² we set aside a period of time in our *CVD Initiation* for parties to raise issues regarding product coverage, and we encouraged all parties to submit comments within 20 calendar days of the signature date of that notice.⁴³

We received comments concerning the scope of the AD and CVD investigations of hardwood plywood from the PRC. We have evaluated the scope comments filed by the interested parties and are issuing our preliminary decision regarding the scope of the AD and CVD investigations in conjunction with this preliminary determination. We will issue final scope decisions after considering any relevant comments submitted in case and rebuttal briefs.

V. SCOPE OF THE INVESTIGATION

The merchandise subject to this investigation is hardwood and decorative plywood, and certain veneered panels as described below. For purposes of this proceeding, hardwood and decorative plywood is defined as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core, with the face and/or back veneer made of non-coniferous wood (hardwood) or bamboo. The veneers, along with the core may be glued or otherwise bonded together. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP-1-2016 (including any revisions to that standard).

For purposes of this investigation a "veneer" is a slice of wood regardless of thickness which is cut, sliced or sawed from a log, bolt, or flitch. The face and back veneers are the outermost veneer of wood on either side of the core irrespective of additional surface coatings or covers as described below.

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 hardwood, softwood, particleboard, or medium-density fiberboard (MDF).

⁴⁰ See Petitioner's Alignment Request, dated April 13, 2017.

⁴¹ We note that the current deadline for the final AD determination is August 14, 2016, which is a Sunday. Pursuant to the Department's practice, the signature date will be the next business day, which is Monday, August 15, 2016. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

⁴² See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁴³ See *CVD Initiation*, 81 FR at 91132.

All hardwood plywood is included within the scope of this investigation regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or covers obscures the grain, textures, or markings of the wood. Examples of surface coatings and covers include, but are not limited to: ultra violet light cured polyurethanes; oil or oil-modified or water based polyurethanes; wax; epoxy-ester finishes; moisture-cured urethanes; paints; stains; paper; aluminum; high pressure laminate; MDF; medium density overlay (MDO); and phenolic film. Additionally, the face veneer of hardwood plywood may be sanded; smoothed or given a “distressed” appearance through such methods as hand-scraping or wire brushing. All hardwood plywood is included within the scope even if it is trimmed; cut-to-size; notched; punched; drilled; or has underwent other forms of minor processing.

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).

Subject merchandise also includes hardwood and decorative plywood that has been further processed in a third country, including but not limited to trimming, cutting, notching, punching, drilling, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

The scope of the investigation excludes the following items: (1) structural plywood (also known as “industrial plywood” or “industrial panels”) that is manufactured to meet U.S. Products Standard PS 1-09, PS 2-09, or PS 2-10 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), and which has both a face and a back veneer of coniferous wood; (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. *See Multilayered Wood Flooring from the People’s Republic of China*, 76 FR 76690 (December 8, 2011) (*amended final determination of sales at less than fair value and antidumping duty order*), and *Multilayered Wood Flooring from the People’s Republic of China*, 76 FR 76693 (December 8, 2011) (*countervailing duty order*), as amended by *Multilayered Wood Flooring from the People’s Republic of China: Amended Antidumping and Countervailing Duty Orders*, 77 FR 5484 (February 3, 2012); (4) multilayered wood flooring with a face veneer of bamboo or composed entirely of bamboo; (5) plywood which has a shape or design other than a flat panel, with the exception of any minor processing described above; (6) products made entirely from bamboo and adhesives (also known as “solid bamboo”); and (7) Phenolic Film Faced Plyform (PFF), also known as Phenolic Surface Film Plywood (PSF), defined as a panel with an “Exterior” or “Exposure 1” bond classification as is defined by The Engineered Wood Association, having an opaque phenolic film layer with a weight equal to or greater than 90g/m³ permanently bonded on both the face and back veneers and an opaque, moisture resistant coating applied to the edges.

Excluded from the scope of these investigations are wooden furniture goods that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of these investigations is “ready to assemble” (“RTA”) furniture. RTA furniture is defined

as furniture packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes 1) all wooden components (in finished form) required to assemble a finished unit of furniture, 2) all accessory parts (e.g., screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a finished unit of furniture, and 3) instructions providing guidance on the assembly of a finished unit of furniture.

Excluded from the scope are kitchen cabinets that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of these investigations are RTA kitchen cabinets. RTA kitchen cabinets are defined as kitchen cabinets packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes 1) all wooden components (in finished form) required to assemble a finished unit of cabinetry, 2) all accessory parts (e.g., screws, washers, dowels, nails, handles, knobs, hooks, adhesive glues) required to assemble a finished unit of cabinetry, and 3) instructions providing guidance on the assembly of a finished unit of cabinetry.

Imports of hardwood plywood are primarily entered under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 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; 4412.31.4075; 4412.31.4080; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0565; 4412.32.0570; 4412.32.2510; 4412.32.2525; 4412.32.2530; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3141; 4412.94.3161; 4412.94.3175; 4412.94.4100; 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; 4412.99.5115; and 4412.99.5710.

Imports of hardwood plywood may also enter under HTSUS subheadings 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; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.10.9000; 4412.94.5100; 4412.94.9500; and 4412.99.9500. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

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. industry. On December 30, 2016, the ITC preliminarily determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of hardwood plywood from the PRC.⁴⁴

⁴⁴ See *Hardwood Plywood from China: Investigation Nos. 701-TA-565 and 731-TA-1341 (Preliminary)*, Publication 4661, January 2017; see also *Hardwood Plywood from China*, 82 FR 2393 (January 9, 2017).

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

On October 25, 2007, the Department published its final determination in *CFS from the PRC*, where we found that:

{G}iven 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.⁴⁵

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.⁴⁶ 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 countries designated as non-market economies (NMEs) under section 771(18) of the Act, such as the PRC.⁴⁷ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.⁴⁸

VIII. PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

On March 23, 2017, Petitioners filed a timely critical circumstances allegation, pursuant to section 703(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of hardwood plywood from the PRC.⁴⁹ Petitioners provided certain U.S. import data in support of their allegation.⁵⁰ On March 30, 2017, the Department requested from Bayley Wood and Sanfortune monthly shipment data of subject merchandise to the United States for the period July 2016, through March 2017.⁵¹ On April 10, 2017, Bayley Wood and Sanfortune provided the requested information.⁵² Also on April 10, 2017, Far East American, Inc. (FEA), a Chinese producer and exporter of hardwood plywood, filed comments regarding the seasonality of shipment trends for the merchandise under consideration. In accordance with 19 CFR 351.206(c)(2)(i), because the petitioners submitted a critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department

⁴⁵ 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 IDM) at Comment 6.

⁴⁶ 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 (CWP IDM) at Comment 1.

⁴⁷ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

⁴⁸ See Public Law 112-99, 126 Stat. 265 §1(b).

⁴⁹ See Critical Circumstances Allegation, Critical Circumstances Supplement, and Critical Circumstances Additional Date.

⁵⁰ *Id.*

⁵¹ See Letters to Bayley Wood and Sanfortune from the Department, "Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Request for Monthly Quantity and Value Shipment Data," dated March 30, 2017.

⁵² See Letters from Bayley Wood and Sanfortune, re: "Monthly Shipment Data," dated April 10, 2017.

must issue a preliminary critical circumstances determination not later than the date of the preliminary determination.⁵³

Section 703(e)(1) of the Act states that if the petitioner alleges critical circumstances, the Department will determine, based on information available to it at the time, if there is a reason to believe or suspect the alleged countervailable subsidies are inconsistent with the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (the SCM Agreement) and whether there have been massive imports of the subject merchandise over a relatively short period.

In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 703(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.⁵⁴

Sanfortune

As discussed in the “Analysis of Programs” section below, the Department has preliminarily determined that Sanfortune has received countervailable benefits under three programs that are contingent upon export performance. Therefore, we preliminarily determine that there is a reasonable basis to believe or suspect that there are programs in this investigation that are inconsistent with the SCM Agreement. Use of an export subsidy program is sufficient to make an affirmative preliminary determination of critical circumstances under section 703(e)(1)(A) of the Act.⁵⁵ In determining whether there were massive imports from Sanfortune, we analyzed its respective monthly shipment data for the period of September 2016 through November 2016, compared to December 2016 through February 2017.⁵⁶ Based upon our analysis of Sanfortune’s data, we preliminarily find that its shipments did not increase by more than 15 percent during the “relatively short period.”⁵⁷ Therefore, we preliminarily determine that the requirements of section 703(e)(1)(B) of the Act have not been satisfied, and that critical circumstances do not exist for Sanfortune.

⁵³ See, *e.g.*, Policy Bulletin 98/4 Regarding Timing of Issuance of Critical Circumstances Determinations, 63 FR 55364 (October 15, 1998).

⁵⁴ See 19 CFR 351.206(h)-(i).

⁵⁵ See *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43186, 43189-90 (August 17, 2001); and *Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products from Canada*, 67 FR 36070 (May 22, 2002) (the unchanged final determination).

⁵⁶ See Department Memorandum, “Monthly Shipment Q&V Analysis for Critical Circumstances,” dated concurrently with this memorandum (Critical Circumstances Memo).

⁵⁷ *Id.*

Bayley Wood

As discussed in further detail below in the “Use of Facts Otherwise Available and Adverse Inferences” section, the Department is applying total adverse facts available (AFA) to Bayley Wood. As part of this AFA determination, we are making an adverse inference that Bayley Wood benefitted from an export subsidy program, and that it had “massive imports” over a “relatively short period.” Thus, the Department preliminarily determines that critical circumstances exist with regard to imports of the merchandise under consideration shipped by Bayley Wood, pursuant to sections 703(e) and 776(a) and (b) of the Act and 19 CFR 351.206.

Companies Not Responding to Our Q&V Questionnaire

As discussed in further detail below in the “Use of Facts Otherwise Available and Adverse Inferences” section, the Department is applying total adverse facts available (AFA) to companies that did not respond to our Q&V questionnaire. As part of this AFA determination, we are making an adverse inference that these companies benefitted from an export subsidy program, and that they had “massive imports” over a “relatively short period.” Thus, the Department preliminarily determines that critical circumstances exist with regard to imports of the merchandise under consideration shipped by these companies, pursuant to sections 703(e) and 776(a) and (b) of the Act and 19 CFR 351.206.

All-Other Exporters or Producers

With regard to whether imports of subject merchandise by the “all other” exporters or producers of hardwood plywood from the PRC were massive, we preliminarily determine that because there is evidence of the existence of countervailable subsidies that are inconsistent with the SCM Agreement, an analysis is warranted as to whether there was a massive increase in shipments by the “all other” companies, in accordance with section 703(e)(1)(B) of the Act and 19 CFR 351.206(h). Therefore, we analyzed, in accordance with 19 CFR 351.206(i), monthly shipment data for the period September 2016, through February 2017, using shipment data from the ITC dataweb.⁵⁸ Per our practice, we subtracted the shipment data reported by Sanfortune from the ITC import data. The resulting data indicate there was a massive increase in shipments, as defined by 19 CFR 351.206(h).⁵⁹ Accordingly, the Department preliminarily finds that critical circumstances exist with regard to imports of subject merchandise by “all other” exporters or producers of hardwood plywood from the PRC.

As a result of an affirmative preliminary determination of critical circumstances, in part, in accordance with section 703(e)(2)(A) of the Act, we are directing CBP to suspend liquidation, with regard to Bayley Wood, and “all other” exporters or producers of hardwood plywood, of any unliquidated entries of the merchandise under consideration from the PRC entered, or withdrawn from warehouse for consumption, 90 days prior to the date of publication of the preliminary determination in the *Federal Register*.

⁵⁸ *Id.*

⁵⁹ *Id.*

The timing of this preliminary determination precluded the Department from examining the potential issue of seasonality raised by FEA.⁶⁰ Nonetheless, the Department intends to examine FEA's arguments for the final determination. The Department will make final determinations concerning critical circumstances when we make final subsidy determinations in this investigation. All interested parties will have the opportunity to address these determinations further in case briefs.

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.⁶¹ In the January 17, 2017, questionnaire, we notified the respondents to this proceeding that the AUL period would be 10 years, on the basis of U.S. Internal Revenue Service Publication 946 (2015), "Appendix B - Table of Class Lives and Recovery Periods" (IRS Pub. 946).⁶² The 10-year period corresponds to IRS Pub. 946 asset class, "24.4 "Manufacture of Wood Products and Furniture." No parties submitted comments challenging the proposed AUL period, and we therefore preliminarily determine that a 10-year period is appropriate to allocate benefits from non-recurring subsidies.

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

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), 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) provide 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.

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

⁶⁰ See Letter with Attached Declaration from Far East American, dated April 10, 2017.

⁶¹ See 19 CFR 351.524(b).

⁶² See U.S. Internal Revenue Service Publication 946 (2013), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department’s regulations further clarifies the Department’s cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.⁶³

Thus, the Department’s regulations make clear that the agency must look at the facts presented in each case to determine whether cross-ownership exists. The U.S. Court of International Trade (CIT) 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 way it could use its own subsidy benefits.⁶⁴

Sanfortune

As discussed above, we selected Sanfortune as a mandatory respondent. The company identified itself as a Chinese producer and exporter of the merchandise under consideration during the POI and responded to the Department’s original and supplemental questionnaires. While Sanfortune reported that it was affiliated with certain companies,⁶⁵ none of these companies meet the attribution criteria specified in 19 CFR 351.525(b). Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Sanfortune to its own sales.

Bayley Wood

As discussed above, we selected Bayley Wood as a mandatory respondent. The company identified itself as a privately-owned Chinese producer and exporter of plywood of various thicknesses, with face and back veneers of different wood species.⁶⁶ In addition, in its AQR, Bayley Wood identified its affiliate, Yinhe Panel, as an affiliated seller of subject merchandise;⁶⁷ in its PQR, Yinhe Panel identified itself as a sole proprietorship selling plywood of various thicknesses, with face and back veneers of different wood species, in the domestic Chinese market.⁶⁸ However as discussed in further detail below in the “Use of Facts Otherwise Available and Adverse Inferences” section, the Department is applying total AFA to Bayley Wood. Thus,

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

⁶⁴ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁶⁵ See Sanfortune AQR.

⁶⁶ See Bayley Wood PQR.

⁶⁷ See Bayley Wood AQR.

⁶⁸ See Yinhe Panel PQR at 1-2.

for this preliminary determination, the application of total AFA for Bayley Wood also includes Yinhe Panel, with which we find it to be cross-owned.

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). Where the program has been found to be contingent upon export activities, we used the recipient's total export sales as the denominator. All sales used in our net subsidy rate calculations are net of intra-company sales. For a further discussion of the denominators used, *see* the Sanfortune Preliminary Calculation Memorandum.⁶⁹

X. BENCHMARKS AND INTEREST RATES

The Department is investigating loans received by Sanfortune and from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies received by both mandatory respondents.⁷⁰ The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

A. Renminbi-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company as a benchmark.⁷¹ If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans."⁷²

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS from the PRC*, loans provided by PRC banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.⁷³ Because of this, any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because

⁶⁹ *See* Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Determination Calculations for Linyi Sanfortune Wood Co., Ltd., dated April 17, 2017 (Sanfortune Preliminary Calculation Memorandum).

⁷⁰ *See* 19 CFR 351.524(b)(1).

⁷¹ *See* 19 CFR 351.505(a)(3)(i).

⁷² *See* 19 CFR 351.505(a)(3)(ii).

⁷³ *See* CFS IDM at Comment 10.

of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.⁷⁴

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *CFS from the PRC* and later updated in *Thermal Paper from the PRC*.⁷⁵ Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from the PRC*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, the PRC fell in the lower-middle income category.⁷⁶ Beginning in 2010, however, the PRC was classified in the upper-middle income category and remained there from 2011 to 2014.⁷⁷ Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2014. This is consistent with the Department's calculation of interest rates for recent CVD proceedings involving PRC merchandise.⁷⁸ After the Department identifies the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation, the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators.

In each of the years from 2003-2009 and 2011-2014, the results of the regression analysis reflected the expected, common-sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.⁷⁹ For 2010, however, the regression does not yield that outcome for the PRC's income group.⁸⁰ This

⁷⁴ See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: *Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Lumber from Canada*), and accompanying Issues and Decision Memorandum at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

⁷⁵ See CFS IDM at Comment 10; see also *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying Issues and Decision Memorandum (Thermal Paper IDM) at 8-10.

⁷⁶ See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups> ("World Bank Country Classification"); see also Sanfortune Preliminary Calculation Memorandum; and the Interest Rate Benchmark Memorandum, dated April 17, 2017 (Interest Rate Benchmark Memorandum).

⁷⁷ See World Bank Country Classification.

⁷⁸ See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying Preliminary Decision Memorandum at "Benchmarks and Discount Rates" (unchanged in *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*)).

⁷⁹ See Interest Rate Benchmark Memorandum.

⁸⁰ *Id.*

contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009 and 2011-2014. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund (IMF), and they are included in that agency's International Financial Statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010-2014 and "lower middle income" for 2001-2009.⁸¹ First, we did not include those economies that the Department considered to be NMEs for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we remove any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.⁸² Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.⁸³

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.⁸⁴

In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where "n" equals or approximates the number of years of the term of the loan in question.⁸⁵ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁸⁶

The resulting inflation-adjusted benchmark lending rates are provided in the Sanfortune Preliminary Calculation Memorandum.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See, e.g., Thermal Paper IDM at 10.

⁸⁵ See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying Issues and Decision Memorandum (Citric Acid IDM) at Comment 14.

⁸⁶ See Interest Rate Benchmark Memorandum.

B. Foreign Currency-Denominated Loans

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

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question. The resulting inflation-adjusted benchmark lending rates are provided in our Interest Rate Benchmark Memorandum.⁸⁷

C. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the GOC provided non-recurring subsidies.⁸⁸ The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the Sanfortune Preliminary Calculation Memorandum.

D. Provision of Land-Use Rights for LTAR Benchmark

As explained in detail in previous investigations, the Department cannot rely on the use of the so-called “tier one” and “tier two” benchmarks described above to assess the benefits from the provision of land for LTAR in the PRC. Specifically, in *Sacks from the PRC*, the Department determined that “Chinese land prices are distorted by the significant government role in the market,” and hence, no usable “tier one” benchmarks exist.⁸⁹ Furthermore, the Department also found that “tier two” benchmarks (world market prices that would be available to purchasers in the PRC) are not appropriate.⁹⁰ Accordingly, consistent with Department’s past practice, we are relying on the use of so called “tier three” benchmarks for purposes of calculating a benefit for this program.

For this investigation, we are placing on the record benchmark information to value land from

⁸⁷ *Id.*

⁸⁸ See Sanfortune Preliminary Calculation Memorandum; see also Interest Rate Benchmark Memorandum.

⁸⁹ See, e.g., *Laminated Woven Sacks from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007) (unchanged in *Sacks from the PRC*).

⁹⁰ *Id.*

“Asian Marketview Reports” by CB Richard Ellis (“CBRE”) for Thailand for 2010,⁹¹ which was also relied upon in calculating land benchmarks in the CVD investigations of *Solar Cells from the PRC* and *ITDCs from the PRC*.⁹² We initially selected this information in the *Sacks from the PRC* investigation after considering a number of factors, including national income levels, population density, and producer’s perceptions that Thailand is a reasonable alternative to the PRC as a location for Asian production.⁹³ We find that these benchmarks are suitable for this preliminary determination, adjusted accordingly for inflation, to account for any countervailable land received by Sanfortune during the AUL of this investigation.⁹⁴

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.⁹⁵

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) 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

⁹¹ See Memorandum to the File, from Matthew Renkey, Senior International Trade Compliance Analyst, Office V, AD/CVD Operations, re: “Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People’s Republic of China: Asian Marketview Report,” dated concurrently with this memorandum.

⁹² See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from the PRC*), and accompanying Issues and Decision Memorandum (Solar Cells IDM), at 6 and Comment 11; *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People’s Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 21316 (April 11, 2016) (*ITDCs from the PRC*), and accompanying Issues and Decision Memorandum at 13.

⁹³ The complete history of our reliance on this benchmark is discussed in the above-referenced Solar Cells IDM. In that discussion, we reviewed our analysis from the *Sacks from the PRC* investigation and concluded the CBRE data remained a valid land benchmark.

⁹⁴ See Sanfortune Preliminary Calculation Memorandum.

⁹⁵ On June 29, 2015, the Trade Preferences Extension Act of 2015, 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 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). Accordingly, the amendments apply to this investigation.

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."⁹⁶ 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."⁹⁷

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."⁹⁸ It is the Department's practice to consider information to be corroborated if it has probative value.⁹⁹ 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.¹⁰⁰ However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.¹⁰¹

Finally, under 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.¹⁰²

For purposes of this preliminary determination, we are applying AFA in the circumstances outlined below.

A. Application of AFA: Non-Responsive Companies to the Q&V Questionnaire

As noted in the "Initiation and Case History" section above, the Department issued 121 Q&V questionnaires to companies with complete contact information identified in the Petition.¹⁰³ We issued all Q&V questionnaires *via* Federal Express, and confirmed that 73 of the questionnaires

⁹⁶ 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).

⁹⁷ 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.

⁹⁸ See, e.g., SAA at 870.

⁹⁹ See SAA at 870.

¹⁰⁰ See, e.g., SAA at 869.

¹⁰¹ See SAA at 869-870.

¹⁰² See section 776(d)(3) of the Act.

¹⁰³ See Respondent Selection Memorandum at 1.

were delivered, while 48 were undeliverable.¹⁰⁴ Of the 73 companies that we confirmed had questionnaires delivered to them, only 11 timely and properly responded to our request for information. Thus, 62 companies that we confirmed had questionnaires delivered to them did not respond to our request for information. Accordingly, we preliminarily determine that the 62 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, each of these companies did not cooperate to the best of their ability to comply with the requests for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted to ensure that these companies (the “non-responsive companies”) do not obtain a more favorable result by failing to cooperate than if they had fully complied with our requests for information.

We have included all programs upon which the Department initiated in this investigation to determine the AFA rate, as well as other programs that were reported by the respondents. We are adversely inferring from the non-responsive companies’ decision not to participate in this investigation that they, in fact, used these programs during the POI.

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.¹⁰⁵ 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.¹⁰⁶ 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 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

¹⁰⁴ *Id.* at 1-2.

¹⁰⁵ *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.”

¹⁰⁶ *See, e.g., 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”).

country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).¹⁰⁷ If no such rate exists, we then determine if there is a similar/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.¹⁰⁸

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 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."¹⁰⁹ The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.¹¹⁰

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.¹¹¹ 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.¹¹²

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 will not use information where circumstances indicate that the information is not appropriate as AFA.¹¹³

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

¹⁰⁷ 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."

¹⁰⁸ See Shrimp IDM at 13-14.

¹⁰⁹ See SAA at 870.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 869-870.

¹¹² See section 776(d) of the Act.

¹¹³ See, e.g., *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

in the instant investigation. Accordingly, we are applying the highest applicable subsidy rate calculated for Sanfortune for the following programs:

- Policy Loans to the Hardwood Plywood Industry
- Provision of Electricity for Less than Adequate Remuneration (LTAR)
- Provision of Land-Use Rights for LTAR
- Enterprise Innovation Loan Interest Grant
- Foreign Trade Regional Coordination Development Promotion Fund
- Linyi Mart Development Special Fund
- Forest Certification Pilot Special Fund

To calculate the program rate for the following income tax reduction programs 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:

- Income Tax Reductions under Article 28 of the Enterprise Income Tax
- Tax Offsets for Research and Development under the Enterprise Income Tax
- Preferential Income Tax Policy for Enterprises in the Northeast Region
- Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
- Income Tax Benefits for Foreign Invested Enterprises Based on Geographic Locations
- Local Income Tax Exemption and Reduction Programs for “Productive” Foreign-Invested Enterprises
- Tax Offsets for Research and Development by Foreign-Invested Enterprises
- Income Tax Reductions for Export-Oriented Foreign-Invested Enterprises

The standard income tax rate for corporations in the PRC in effect during the POI was 25 percent.¹¹⁴ Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the eight programs, combined, provide a 25 percent benefit). Consistent with past practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.¹¹⁵

For all other programs not mentioned above,¹¹⁶ 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 or similar programs from other PRC CVD proceedings:

¹¹⁴ See CVD Initiation Checklist at 20.

¹¹⁵ See, *e.g.*, Aluminum Extrusions IDM at “Application of Adverse Inferences: Non-Cooperative Companies.”

¹¹⁶ The final seven program in the list below were self-reported by Sanfortune. Otherwise, these are the remainder of the program from the *CVD Initiation*.

- Provision of Water for Less than Adequate Remuneration¹¹⁷
- Provision of Land to SOEs by the GOC for Less than Adequate Remuneration¹¹⁸
- Preferential Loans for State-Owned Enterprises¹¹⁹
- Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program¹²⁰
- Interest Loan Subsidies for the Forestry Industry¹²¹
- Foreign Trade Development Fund Grants
- Export Assistance Grants
- Export Interest Subsidies
- Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands
- Funds for Outward Expansion of Industries in Guangdong Province
- Provincial Fund for Fiscal and Technological Innovation
- State Key Technology Renovation Fund
- Shandong Province’s Special Fund for the Establishment of Key Enterprise Technology Centers
- Shandong Province’s Environmental Protection Industry Research and Development Funds
- Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
- Waste Water Treatment Subsidies
- Technology to Improve Trade Research and Development Fund
- Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment¹²²
- Value-Added Tax and Import Duty Exemptions for Use of Imported Equipment
- Value-Added Tax Rebate Exemptions on Foreign Invested Enterprise Purchases of Chinese-Made Equipment
- Export Performance Award¹²³
- Special Municipal Encouragement Fund for Foreign Trade Development
- 2009 Special Promotion Fund for Foreign Trade Steady Growth

¹¹⁷ See *Certain Uncoated Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 81 FR 3110 (January 20, 2016) (*Uncoated Paper 2016*) and IDM.

¹¹⁸ See *ITDCs from the PRC*.

¹¹⁹ Consistent with recent investigations, we are using a single AFA rate for “Government Policy Lending” and “Preferential Loans to SOEs,” because an analysis of these two allegations in this investigation reveals that they would apply to the same loans provided by SOCBs. See, e.g., *Grain-Oriented Electrical Steel from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 59221 (October 1, 2014), and accompanying Issues and Decision Memorandum (GOES IDM) at 7; see also *Coated Paper Investigation Amended Final* and accompanying MEM at “Revised Net Subsidy Rate for the Gold Companies” (regarding “Preferential Lending to the Coated Paper Industry”).

¹²⁰ See *Aluminum Extrusions from the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 77325 (December 14, 2015), and accompanying Issues and Decision Memorandum.

¹²¹ See *Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People’s Republic of China: Final Affirmative Determination*, 82 FR 14872 (March 23, 2017) and accompanying Issues and Decision Memorandum (*HEDP*) for this and the following 12 grant programs.

¹²² See *HEDP* for this and the following two tax credit/rebate programs.

¹²³ See *HEDP* for this and the following six grant programs.

- Finance Contribution Award
- Special Fund for Export Credit Insurance Premium
- Patent Application Award
- Enterprise Technical Transformation Fixed Assets Investment Award

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for each of the non-responsive companies to be 111.09 percent *ad valorem*. The Appendix contains a chart summarizing our calculation of this rate.

B. Application of AFA: Bayley Wood

As explained above, in this investigation, we are examining whether the producers/exporters of the subject merchandise are cross-owned with one another, and with their input suppliers, as outlined in 19 CFR 351.525(b)(6).

Bayley Wood's Failure to Disclose Company D

As discussed below, we find that the application of AFA in determining a subsidy rate for Bayley Wood is warranted because of Bayley Wood's failure to identify Company D, a company which should have been reported as an affiliate, in its questionnaire responses. As discussed below, by failing to identify Company D as an affiliate until much later in the investigation, Bayley Wood deprived the Department of the opportunity to examine cross-ownership between the companies.

In the Department's initial questionnaire we requested that Bayley Wood report *all* affiliated and cross-owned companies within the meaning of the relevant statutory and regulatory provisions.¹²⁴ Bayley Wood initially reported that it was majority-owned by Person B, and that it was partially-owned by Person A.¹²⁵ Bayley Wood further reported that Persons A and B are husband and wife, respectively, and that Person C is the father of Person B (and father-in-law of Person A).¹²⁶ Bayley Wood additionally reported that it was affiliated and cross-owned with Linyi Yinhe Panel Factory (Yinhe Panel) (wholly-owned by Person B) via shareholding, and/or common management, and thus would provide full questionnaire responses on behalf of itself and Yinhe Panel.¹²⁷

Bayley Wood also initially reported three additional affiliated companies via shareholding, and/or common management:¹²⁸ Company A (produces and sells machinery used in the production of subject merchandise) (partially-owned by Person A (who is also a partial owner of

¹²⁴ See Primary Questionnaire at Section I.

¹²⁵ See Bayley Wood AQR.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ See Bayley Wood AQR. The names of certain companies and individuals relevant to this discussion are business proprietary information (BPI) and are referenced herein in a public manner. For the actual names of these parties, see the BPI version of the memorandum "Business Proprietary Information Referenced in the Preliminary Decision Memorandum," dated concurrently with this document (BPI Memo).

Bayley Wood) and majority-owned by Person C),¹²⁹ Company B (not yet in operation during the POI),¹³⁰ and Company C (forestry products company, selling logs) (partially-owned by Person A).¹³¹ However, Bayley Wood argued that these affiliated companies were not cross-owned with Bayley Wood under the definition provided in the Department's regulations,¹³² and that, furthermore, even if the companies were cross-owned, no subsidies received by those companies would be considered attributable to Bayley Wood, pursuant to 19 CFR 351.525(b)(6)(ii)-(v).¹³³ Nonetheless, based on the affiliation chart submitted in Bayley Wood's AQR, which showed familial relationships throughout several companies, and the nature of those companies' operations, we asked for, and Bayley Wood submitted, a response to the Primary Questionnaire for each of these three affiliates on March 28, 2017.¹³⁴

Only when submitting a full response for Company A on March 28, 2017, did Bayley Wood report a previously undisclosed affiliate (Company D) (wholly-owned by Person C), that manufactures an input used in hardwood plywood production. According to Bayley Wood, it did not previously disclose Company D (nor identify it as an affiliate) because of Bayley Wood's belief that there was no basis to find affiliation between Person C and Persons A and B within the meaning of section 771(33) of the Act.¹³⁵ Nonetheless, the Department requested that Company D respond to the Primary Questionnaire.¹³⁶ Company D submitted its questionnaire response on April 10, 2017, one week prior to this preliminary determination.¹³⁷ For the reasons discussed below, we find that we cannot examine the questionnaire response of Company D due to the repeated failures of Bayley Wood to cooperate with this investigation.

We find that Bayley Wood has withheld necessary information that was requested of it, failed to provide information within the deadlines established, and significantly impeded this proceeding by not fully disclosing its affiliate relationship and cross-ownership with Company D. By doing so, Bayley Wood has undermined the Department's ability to fully investigate the universe of cross-owned companies that may have subsidies attributable to Bayley Wood. Thus, the Department will rely on facts otherwise available in making our preliminary determination with respect to Bayley Wood, 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 failing to identify Company D as an affiliate until much later in the investigation, Bayley Wood deprived the Department of the opportunity to examine cross-ownership between the companies. Accordingly, we find that Bayley Wood did not cooperate to the best of its ability to comply with the requests for information in this investigation.

Bayley Wood argues that it did not have to identify Company D because there was no applicable affiliate relationship within the meaning of section 771(33) of the Act. We disagree. In issuing

¹²⁹ See Company A PQR at 2.

¹³⁰ See Company B PQR at 2.

¹³¹ See Company C PQR at 2.

¹³² See 19 CFR 351.525(b)(6)(vi); *see also* Bayley Wood AQR at 6. and Bayley Wood's March 7 Rebuttal.

¹³³ See Bayley Wood's March 7 Rebuttal at 2.

¹³⁴ See Company A PQR, Company B PQR, and Company C PQR.

¹³⁵ See Bayley Wood's March 7 Rebuttal at 4-5.

¹³⁶ See Bayley Wood Second Supplemental Questionnaire.

¹³⁷ See Company D PQR.

our questionnaire to the mandatory respondents, we specifically instructed each respondent to report those companies with which it is affiliated and cross-owned.¹³⁸ We do not find merit to Bayley Wood’s argument that the affiliation provision of the Act is obviated because there are no familial ties.

As an initial matter, section 771(33)(A) of the Act states that “members of a family” are persons that “shall be considered to be ‘affiliated’ or ‘affiliated persons.’” Members of a family include “brothers and sisters (whether by half or full blood), spouse” and “lineal descendants.” The term “lineal descendants” unambiguously refers, at the very least, to parents and their children, such as the relationship between Person C and Person B. Additionally, here, we read “half or full blood” as one means to define whether a person is part of a family, and that, considering the facts on a case-by-case basis, marriage does not cut family ties for the purposes of our affiliation analysis.¹³⁹ As early as February 21, 2017, Bayley Wood identified Person B as the daughter of Person C, but claimed she belonged to a different family (*i.e.*, her husband’s family) per “Chinese tradition.”¹⁴⁰ Despite the statute’s inclusion of “lineal descendants,” Bayley Wood references Chinese tradition as a means of obviating the affiliation provision of the Act, holding to its argument that a parent-child relationship ceases upon the child’s marriage.¹⁴¹ Bayley Wood provides no citation, traditional or legal, in support of this premise. Thus, there is sufficient record evidence to establish that affiliation does exist among Bayley Wood, Yinhe Panel, and Company D, via a family relationship of lineal descent between the principal shareholders of those companies.

In addition to its arguments regarding affiliation under section 771(33) of the Act, Bayley Wood has stated that it was not required to provide any response related to Company D because the control among companies necessary to find cross-ownership, as defined in the Department’s regulations at 19 CFR 351.525(b)(6)(vi), does not exist.¹⁴² Additionally, Bayley Wood has noted that Company D provided no inputs or services to Bayley Wood during the POI.¹⁴³ As such, Bayley Wood sees no method by which the Department may attribute any subsidies received by Company D to Bayley Wood. We find that the regulations do not contemplate the amount of the input provided by a supplier as a gauge for whether the company should submit a response¹⁴⁴ and that these points are moot. Here, Bayley Wood substituted its judgment for the judgment of the Department and precluded the Department from analyzing and determining, in a timely manner, whether Company D met the cross-ownership or attribution criteria as defined in 19 CFR 351.525(b)(6).¹⁴⁵ Thus, because of Bayley Wood’s failure to cooperate, the Department is

¹³⁸ See Primary Questionnaire at Section I.

¹³⁹ See section 771(33)(A) of the Act.

¹⁴⁰ See Bayley Wood’s February 21 Rebuttal at 2.

¹⁴¹ See Bayley Wood’s February 21 Rebuttal at 2 and Bayley Wood’s March 7 Rebuttal at 4-5.

¹⁴² See Bayley Wood’s April 7, 2017 Rebuttal Comments at 1-3.

¹⁴³ See Company A response at 2; *see also* Bayley Wood’s Pre-Preliminary Comments at 4.

¹⁴⁴ See 19 CFR 351.525(b)(6).

¹⁴⁵ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (“*Nippon Steel*”) (The standard that a party must act to the best of its ability “assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to the Department’s inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and

unable to reach a finding on cross-ownership or attribution within the meaning of 19 CFR 351.525(b)(6). We are instead making an AFA finding because Bayley Wood did not cooperate to the best of its ability in reporting its affiliations with other companies.

In short, although Bayley Wood responded to each of the Department's questionnaires, Bayley Wood did not provide complete responses or responses in the manner and form requested by the Department, soliciting additional questionnaires from the Department, up until this preliminary determination, and, thus, inhibited the Department's ability to adequately conduct this investigation.¹⁴⁶ At a minimum, Bayley Wood has not acted to the best of its ability, and has fallen far short of the "maximum" effort required by the statute.¹⁴⁷

Bayley Wood's Failure to Disclose Additional Companies

In addition to the piecemeal manner in which information about Bayley Wood's family affiliates became available on the record, we are also making a finding that Bayley Wood obfuscated its affiliation with other companies, and that, as such, the application of AFA is also warranted with respect to this failure to fully disclose all of its affiliations as instructed in the Department's initial questionnaire.

Record evidence demonstrates that Bayley Wood has failed to disclose additional information necessary to conduct this investigation, including additional potentially affiliated and cross-owned companies. Filed on March 20, 2017, Petitioners' Affiliation Comments provide additional information that there are yet other affiliated and potentially cross-owned companies that Bayley Wood has failed to disclose, in addition to the family-owned and run companies mentioned above.¹⁴⁸ Petitioners have provided information indicating that Bayley Wood's operations, as well as those of other Chinese hardwood plywood producers, are being directed and controlled by a U.S. company, Shelter Forest International Acquisition, Inc. (SFIA, or Shelter), as discussed in further detail below.

In its submission, Petitioners placed information from the prior antidumping duty investigation involving hardwood plywood from the PRC (hereinafter referred to as Plywood I) on the record of this investigation. In Plywood I, a company named Yinhe Machinery Chemical Limited applied for, and was granted, a separate rate.¹⁴⁹ The record evidence indicates, and Bayley Wood does not dispute, that this is the same company as Company A.¹⁵⁰ This company also

(c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so"). *See also Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016), and accompanying Issues and Decision Memorandum at Comment 5.

¹⁴⁶ *See, e.g., Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017), and accompanying Issues and Decision Memorandum at 37 and 43.

¹⁴⁷ *See Nippon Steel*, 337 F.3d at 1382 ("{T}he statutory mandate that a respondent act to 'the best of its ability' requires the respondent to do the maximum it is able to do.")

¹⁴⁸ *See* Petitioners' Affiliation Comments.

¹⁴⁹ *See* Petitioners' Affiliation Comments at 6 and Exhibit 2; *see also* Bayley Affiliation Rebuttal at 4-6.

¹⁵⁰ *See, generally,* Bayley Affiliation Rebuttal.

shares the same phone and fax numbers with Bayley Wood and Yinhe Panel.¹⁵¹ In Plywood I, a U.S. company named Shelter Forest International, Inc. (SFII, or Shelter) requested that it be “collapsed” with three Chinese producers/exporters, one of which was Company A. As a basis for its collapsing argument, SFII argued that it maintained complete operational control of its Chinese plywood suppliers, claiming:

‘. . . each of these three Chinese producer-exporters are, in fact, part of Shelter's family of ‘TigerPLY mills.’ Each of these mills ha{s} concluded an agreement with Shelter that gives Shelter complete operational control over all of the mill's production and sales.’ Shelter further argued that it ‘actually coordinates the production and sales of these three mills on a day-to-day basis.’¹⁵²

In addition, SFII submitted a sworn declaration from its president providing additional details about its extensive control, direction, and coordination over its Chinese plywood mills.¹⁵³

In addition to the materials provided from the Plywood I investigation, Petitioners’ Affiliation Comments also contained internet cached copies of two Shelter promotional brochures - one of which was issued in May 2015 and one of which was issued in December 2015, for distribution in 2016.¹⁵⁴ The information contained therein indicates that the relationship between Shelter and its associated Chinese producers, including Bayley Wood, has only deepened since the Plywood I investigation. According to the 2015 promotional brochure, Shelter had expanded its sphere of influence to cover five mills as opposed to three mills in 2012, and the company has created a “vertically integrated supply chain utilizing five top tier manufacturing facilities throughout China, managing the entire supply chain from manufacturing to final delivery.”¹⁵⁵ Among its supply chain, Shelter identified “Bayley Wood” as a new TigerPLY production facility, and goes into great detail about the company’s establishment.¹⁵⁶ The catalog also identifies a supply relationship with a supplier of inputs used in the production of subject merchandise, Company C, which was identified as an affiliate of Bayley Wood by virtue of common shareholding.¹⁵⁷ Lastly, the 2016 brochure also states that, at least as early as December 2015, Person A was now also the Vice President of Production for SFIA.¹⁵⁸

Bayley Wood has attempted to refute Petitioners’ Affiliation Comments. As a foundational matter, Bayley Wood argues that the facts at issue at the time of the Plywood I investigation are not contemporaneous with the facts as they now stand. First, Bayley Wood argues that SFIA is a materially different company than the SFII that was involved in Plywood I. Bayley Wood states that, according to its understanding, there is no relationship between SFIA and SFII, that the companies operate independently of each other, and have different ownership and

¹⁵¹ See Petitioners’ Affiliation Comments at Exhibits 1 and 2, and Yinhe Panel PQR.

¹⁵² *Id.* at 7 and Exhibit 3.

¹⁵³ *Id.* at 7-8 and Exhibit 3.

¹⁵⁴ See Petitioners’ Affiliation Comments at Exhibits 5 and 6.

¹⁵⁵ *Id.* at Exhibit 5.

¹⁵⁶ See Petitioners’ Affiliation Comments at Exhibit 6.

¹⁵⁷ See Bayley Wood AQR.

¹⁵⁸ See Petitioners’ Affiliation Comments at Exhibit 6.

management.¹⁵⁹ Further, Bayley Wood argues that any agreements between Bayley Wood and Shelter are not agreements that would indicate control.¹⁶⁰ Bayley Wood concludes that any such control agreements that may have existed at the time of Plywood I would now be without any effect, as SFII was no longer a functioning entity.

Bayley Wood further contends that the 2015 and 2016 catalogs submitted by Petitioners are promotional materials that overstated or incorrectly stated the facts and should not be relied on for an affiliation analysis. According to Bayley Wood, these materials are intended solely for marketing purposes by the U.S. customer. In particular, Bayley Wood states that the illustrated history of Bayley Wood that was provided in one catalog was merely to give the impression that SFIA would have the ability to provide the subject merchandise.¹⁶¹ Bayley Wood also states that the catalog's reference to Person A as SFIA's Vice President of Production was a typographical error.¹⁶² Bayley Wood notes that neither "{Bayley Wood} or its other affiliates have any kind of business with SFII or SFII, Inc. in the current POI and thereafter,"¹⁶³ and that its relationship with SFIA is one of seller/buyer.¹⁶⁴

Based on the facts on the record of this investigation, we find that the application of AFA is warranted in finding that there is affiliation between Bayley Wood and Shelter that should have been reported to the Department along with the information provided regarding the company's other affiliates. The weight of the evidence leads us to this conclusion. Petitioners have provided ample documentation in support of their allegations, including, from Plywood I: Company A's separate rate application, Shelter's collapsing request, and two promotional brochures from Shelter. Notably, Shelter's collapsing request contains an affidavit from Mr. Ryan Loe, who identifies himself as the president of SFII, detailing his company's relationship with its Chinese suppliers. In contrast, Bayley Wood has provided little record evidence in support of its rebuttal to Petitioners' comments. The only relevant exhibits provided are two company registrations from the Oregon Secretary of State Corporation Division, purporting to show that SFII and SFIA were two different companies with no affiliations.¹⁶⁵ Whatever business transition and/or change of name took place is not relevant to the analysis of whether, during this POI, SFIA materially directed and controlled operations of certain Chinese hardwood plywood producers/exporters, including Bayley Wood. In response to the Department's questionnaires, Bayley Wood was required to report all of its affiliates and cross-ownership relationships.

As noted above, Bayley Wood submitted the two companies' business registrations with the state of Oregon.¹⁶⁶ Upon closer scrutiny, we do not find this information availing, based upon a full examination of the business registration documents that are publicly available from the Oregon

¹⁵⁹ See Bayley Affiliation Rebuttal at 4-5.

¹⁶⁰ *Id.* at 8-9.

¹⁶¹ *Id.* at 7.

¹⁶² *Id.* at 9.

¹⁶³ *Id.* at 5.

¹⁶⁴ See Bayley Affiliation Rebuttal at 8-9.

¹⁶⁵ See Bayley Affiliation Rebuttal at Exhibits 1 and 2.

¹⁶⁶ See Bayley Affiliation Rebuttal at 4-5 and Exhibits 1 and 2.

Secretary of State.¹⁶⁷ What the corporate registrations provided by Bayley Wood fail to provide is the attachments available on the Oregon Secretary of State's website, which make clear that in 2011, prior to Plywood I, Mr. Loe was listed as president of SFII.¹⁶⁸ As such, the record evidence that Bayley Wood references in support of its argument, is, in its full context, contrary to Bayley Wood's statements that SFII and SFIA were in no way associated with each other. Besides being listed as president in the business registration documents of both entities, Mr. Loe's affidavit from Plywood I,¹⁶⁹ and his current identification as president in Shelter's promotional materials,¹⁷⁰ make it clear that the companies are operating as one and the same. Again, Bayley Wood has not provided the Department with information necessary to this investigation and, by excluding available information, has not acted to the best of its ability.

Furthermore, we are not persuaded by Bayley Wood's unsubstantiated argument that Shelter's naming of Person A as a Vice President in its company was the result of a mere typographical mistake.¹⁷¹ Nor are we persuaded that Shelter's 2012, 2015, and 2016 brochures are materially unreliable, given the detailed descriptions of not only the extent of the company's operations, but also its personnel and products. Record evidence demonstrates a contrary conclusion.¹⁷² The fact that Shelter's 2012 company brochure (originally submitted in Plywood I and placed on the current record), and which Bayley Wood would argue pertains to a completely different company, contains the same company phone number as the 2015 a 2016 brochures, mentions several of the same executives and managers, and continually references the TigerPLY brand and its associated mills.¹⁷³

Given that the Department has been precluded from investigating the affiliation between Shelter and Bayley Wood, it follows that we have not been able to address the issue of cross-ownership between these and any other entities that may fall under Shelter's umbrella.

In addressing this situation, we find that the *CVD Preamble*¹⁷⁴ to our regulations clarifies our cross-ownership standards as they would be applied in this investigation. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits)...Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between the two corporations or through common ownership of two (or more) corporations. In certain circumstances, a

¹⁶⁷ See the memorandum "Shelter International Corporate Documents," dated concurrently with this document.

¹⁶⁸ *Id.*

¹⁶⁹ See Petitioners' Affiliation Comments at Exhibit 3.

¹⁷⁰ *Id.* at Exhibits 5 and 6.

¹⁷¹ See Bayley Affiliation Rebuttal at 9.

¹⁷² See Petitioners' Affiliation Comments at Exhibits 3, 5 and 6.

¹⁷³ *Id.*

¹⁷⁴ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65378 (November 25, 1998) (*CVD Preamble*)

large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.¹⁷⁵

The key to our analysis, here, is the factor of control. As we have already noted, we do not consider there to be any substantial difference in the operations of SFII and SFIA. Thus, where Mr. Loe in his 2012 affidavit states that “it was critical to our business plan to begin to assume complete control over production and distribution of our hardwood plywood products,”¹⁷⁶ we find exactly the type of “control” and merging of interests contemplated in the Department’s regulations and in the *CVD Preamble*. Thus, our regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists, and provided two illustrative examples of other situations aside from majority ownership where cross-ownership may exist. Taken as a whole, the preponderance of facts in this investigation indicates that Shelter exerts material control over the day-to-day operations of not only Bayley Wood, but potentially as many as four other Chinese producers/exporters of hardwood plywood,¹⁷⁷ as well as an input supplier identified by Bayley Wood as its affiliate. Information about any of these other four producers/exporters is absent from the record of this investigation. While the Department could make conjectures about these four producers/exporters, there is nothing on the record for the Department to investigate pursuant to its authority under the Act.

In sum, all of the above leads the Department to conclude that the application of facts available is warranted for Bayley Wood, pursuant to sections 776(a)(2)(A)-(C) of the Act. Based on a failure to provide complete information requested by the Department about all of its affiliates, Bayley Wood has hindered the Department’s investigation by not disclosing the full extent of its affiliations, by not providing such information in a timely manner, and by significantly impeding a full examination of its and its affiliates’ operations. Bayley Wood had several opportunities to reveal the extent and nature of its related parties and has failed to do so, and should not be provided additional chances to remedy these serious failings. Moreover, we preliminarily determine that Bayley Wood failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that Bayley Wood benefited from the each of the programs listed in Part A. above.¹⁷⁸

C. Application of AFA: Provision of Electricity for LTAR

GOC

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 constituted a financial contribution within the meaning of section 771(5)(D) of the

¹⁷⁵ See *CVD Preamble*, 63 FR at 65401.

¹⁷⁶ See Petitioners’ Affiliation Comments at Exhibit 3.

¹⁷⁷ See Petitioners’ Affiliation Comments at Exhibits 3, 5, and 6.

¹⁷⁸ See Appendix.

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 March 23, 2017, 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.¹⁷⁹ The Department reiterated these questions in a supplemental questionnaire and the GOC did not provide the requested information in its supplemental questionnaire response.¹⁸⁰

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. 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 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.¹⁸¹ For details regarding the remainder of our analysis, *see* the "Provision of Electricity for LTAR" section.

D. Application of AFA: Provision of Land-Use Rights for LTAR

GOC

Our review of the GOC's initial and supplemental questionnaire responses shows that the GOC did not respond fully to certain sections regarding this program. Specifically, we asked the GOC to identify all instances in which it provided land or land-use rights to the mandatory respondents during the AUL.¹⁸² Rather than responding directly to this question, the GOC instead referred the Department to the respondents' questionnaire responses.¹⁸³ Similarly, in response to our request to explain the basis upon which the land or land-use rights were provided (*i.e.*, status or

¹⁷⁹ *See* the GOC's IQR, at 23-34.

¹⁸⁰ *See* the GOC's SQR, at 1-7.

¹⁸¹ *See* Sanfortune Preliminary Calculation Memorandum.

¹⁸² *See* the GOC's IQR at 27.

¹⁸³ *Id.*

activity) to the mandatory respondents, the GOC's response was not definitive, stating only that it "believes" these land or land-use rights provisions were not contingent upon the firm's status or activity.¹⁸⁴

The information requested regarding the provision of land and land-use rights to the mandatory respondents and the basis for which they were provided is crucial for our analysis to determine whether an alleged program is a financial contribution and specific. This type of information has been provided and verified in previous investigations.¹⁸⁵ Thus, we preliminarily find that the information requested, but not provided, was available to the GOC.

Further, the GOC's statement that it "believes" the provision of land or land-use rights is not contingent upon status or activities,¹⁸⁶ without providing any supporting evidence to corroborate this statement, is concerning. As in prior investigations, the Department finds unpersuasive the GOC's response that it "believes" that none of the land-use rights reported by respondents in this investigation were not contingent upon status or activities; moreover, the GOC provided no other evidence to demonstrate the basis for its "belief."¹⁸⁷

Given that the GOC has provided information regarding the provision of land and land-use rights in previous proceedings, we preliminarily determine that the GOC has the necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in issuing its preliminary determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, because the GOC failed to provide information it is able to provide, we preliminarily find that the GOC did not act to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of land-use rights constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act.

For details regarding the remainder of our analysis for this program, see the "Provision of Land for LTAR" section below.

¹⁸⁴ *Id.*

¹⁸⁵ See *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum.

¹⁸⁶ See the GOC's IQR at 27.

¹⁸⁷ See, e.g., *Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Determination*, 81 FR 43577 (July 5, 2016), and accompanying Preliminary Decision Memorandum at 12-14, unchanged in *Truck and Bus Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 8606 January 27, 2017.

E. Application of AFA: Provision of “Other Subsidies” as Specific

GOC

While Sanfortune self-reported receiving “Other Subsidies” in its PQR, the GOC stated in the GOC IQR with regard to “Other Subsidies” that:

The Department has requested information on numerous programs in this investigation. The responding companies and the GOC have cooperated to the best of their ability to provide the information requested. The GOC further notes that Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures dictates that investigations may not be initiated on the basis of ‘simple assertion, unsubstantiated by relevant evidence.’ Sufficient evidence with regard to the existence, amount, and nature of a subsidy must be presented for the Department to initiate the investigation of another program, consistent with Article 11.2(iii). The GOC believes, therefore, that an answer to this question is premature absent a more direct inquiry supported by credible evidence and the initiation of a discrete investigation by the Department.¹⁸⁸

We issued a supplemental questionnaire to the GOC requesting full responses regarding Sanfortune’s initially-reported “Other Subsidies.” In its response, the GOC did not provide the requested information regarding these subsidy programs, stating:

The GOC understands that Sanfortune reported some additional programs as “other subsidies.” For purposes of gathering the necessary information to respond regarding these “Other Subsidy” programs used by the respondents as required in this questionnaire, the GOC issued information collection questionnaires, sent e-mails and made telephone calls to the local government. However, given the time limitation and the complexity of the hierarchy and number of the local governments involved, the GOC was unable to collect the necessary information to provide a full response to the standard appendices for these programs.¹⁸⁹

Based upon the above, we preliminarily determine that necessary information to determine whether these initially-reported “Other Subsidies” are specific is not available on the record and that the GOC has withheld information that was requested of it, and, thus, that the Department must rely on “facts available” in making our preliminary determination in accordance with sections 776(a)(1) and 776(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 request for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOC’s provision of these initially-reported “Other Subsidies” is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act and constitute a financial contribution pursuant to section 771(5)(D) of the Act.

¹⁸⁸ See GOC IQR at 29.

¹⁸⁹ See GOC SQR at 14.

XII. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined to Be Countervailable

1. Policy Loans to the Hardwood Plywood Industry

Petitioner alleges that policy banks and SOCBs in the PRC make loans to plywood producers at preferential terms as a matter of government policy.¹⁹⁰ The Department has countervailed policy lending programs in previous investigations.¹⁹¹ We find that Sanfortune used this program during the POI¹⁹² and find, based on AFA, that Bayley Wood used this program during the POI, as well.

In response to our questionnaire, Sanfortune identified several loans that it received from SOCBs.¹⁹³ Based on our review of the record, we preliminarily determine that loans received by the plywood industry from SOCBs were made pursuant to government directives. We determine that the GOC, through its directives, has policies in place encouraging the use of loans to encourage and support the growth of favored industries, including those using timber, which would include the hardwood plywood industry. For instance, the Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation (No. 40 (2005)) (Decision 40) states in its preamble that “{a}ll relevant administrative departments shall speed up the formulation and amendment of policies on public finance, taxation, credit, land, import and export, etc., effectively intensify the coordination and cooperation with industrial policies, and further improve and promote the policy system on industrial structure adjustment” with respect to the listed industrial categories.¹⁹⁴ In Chapter II “Directions and Key Points of Industrial Structure Adjustment,” Article 4, Decision 40 additionally states that “We shall develop materials forests, timber forest bases in light of local circumstances, and *raise the rate of comprehensive utilization of timbers*” (emphasis added).¹⁹⁵ Additionally, Chapter 8 (Industrial Optimization) of the “National Economic and Social Development Twelfth Five Year Plan of Shandong Province” indicates that the industry under consideration falls within “Section I Upgrading and Development of Traditional Industries” category.¹⁹⁶ Section I includes the building materials industry, and it is axiomatic that plywood is a building material.

Based on the record information described above, we preliminarily determine that the GOC has a

¹⁹⁰ See CVD Initiation Checklist at 11.

¹⁹¹ See, e.g., *Drawn Stainless Steel Sinks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013) and accompanying Issues and Decision Memorandum (Steel Sinks IDM) at 24-25.

¹⁹² See Sanfortune PQR at 14-15.

¹⁹³ *Id.* at Exhibit 7 and Sanfortune SQR at Exhibit SQ1-5.

¹⁹⁴ See GOC IQR at Exhibit B-10.

¹⁹⁵ *Id.*

¹⁹⁶ See GOC SQR at Exhibit S-10.

policy in place to encourage the development and production of hardwood through policy lending. The loans to hardwood plywood producers from policy banks and SOCBs in the PRC constitute financial contributions from “authorities” within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.¹⁹⁷ Finally, we determine that the loans are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of the GOC’s policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the plywood industry.

To calculate the benefit from this program, we used the benchmarks discussed under the “Subsidy Valuation Information” section.¹⁹⁸ On this basis, we preliminarily determine a subsidy rate of 3.56 percent *ad valorem* for Sanfortune.

2. 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 GOC’s provision of electricity for LTAR, in part, on AFA. Therefore, we determine that the GOC’s provision of electricity confers a financial contribution as a provision of a good under section 771(5)(D)(iii) of the Act and is specific under section 771(5A)(D) of the Act. We find that Sanfortune used this program during the POI¹⁹⁹ and find, based on AFA, that Bayley Wood used this program during the POI, as well.

For determining the existence and amount of any benefit under this program, we selected the highest non-seasonal provincial rates in the PRC for each electricity category (*e.g.*, “large industry,” “general industry and commerce”) and “base charge” (either maximum demand or transformer capacity) used by the respondent. Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a category.

Consistent with our approach in *Wind Towers from the PRC*,²⁰⁰ we first calculated the respondents’ variable electricity costs by multiplying the monthly kilowatt hours (kWh) consumed at each price category (*e.g.*, peak, normal, and valley, where appropriate) by the corresponding electricity rates paid by the respondent during each month of the POI.²⁰¹ Next, we calculated the benchmark variable electricity costs by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity costs paid by the respondent during the POI from the monthly benchmark variable electricity costs.

To measure whether Sanfortune received a benefit with regard to its base rate (*i.e.*, either maximum demand or transformer capacity charge), we first multiplied the monthly base rate

¹⁹⁷ See section 771(5)(E)(ii) of the Act.

¹⁹⁸ See 19 CFR 351.505(c).

¹⁹⁹ See Sanfortune PQR at 21-23.

²⁰⁰ See *Utility Scale Wind Towers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from the PRC*), and accompanying IDM (*Wind Towers IDM*).

²⁰¹ See *Wind Towers IDM* at 21-22.

charged to the companies by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the company's consumption quantities by the highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by the company during the POI from the benchmark base rate costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from the respondent's variable electricity payments and base rate payments.²⁰²

To calculate the net subsidy rate attributable to Sanfortune, we divided the benefit by total POI sales of respondent producers as described in the "Subsidies Valuation Information" section above. On this basis, we preliminarily determine that Sanfortune received a countervailable subsidy rate of 0.72 percent *ad valorem*.

3. Provision of Land-Use Rights by the GOC for Less than Adequate Remuneration

As discussed above in the "Use of Facts Otherwise Available and Adverse Inferences" section, we are finding, as AFA, that the GOC's provision of land tracts to Sanfortune is specific within the meaning of section 771(5A) of the Act given the GOC's failure to provide requested information. Additionally, because the GOC provided no information regarding the entities that provided land-use rights to Sanfortune, we preliminarily determine as AFA that these entities are authorities and that the provision of land-use rights to Sanfortune constitutes a financial contribution.

For this preliminary determination, we find, as AFA, that the GOC has policies in place to provide land to producers in the hardwood plywood industry for LTAR. We also find, as AFA, that the land was provided to Sanfortune by the GOC, and constitutes a financial contribution. Sanfortune received its land-use rights for LTAR, constituting a financial contribution under section 771(5)(D)(iii) of the Act. This subsidy is specific under sections 771(5A)(D)(i) and (iii)(I) of the Act because preferential land-use rights at LTAR are provided to a limited number of industries or enterprises.

To determine the benefit pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we first multiplied the Thailand industrial land benchmarks discussed above under the "Benchmarks and Interest Rates" section, by the total land areas of the land-use rights held by of Sanfortune. We then subtracted the net price actually paid for the land to derive the total unallocated benefit. We next conducted the "0.5 percent test" provided for under 19 CFR 351.524(b)(2) for the year(s) of the relevant land-rights agreement by dividing the total unallocated benefit by the appropriate sales denominator. As a result, we found that the benefits were greater than 0.5 percent of relevant sales and, therefore, allocated the benefits to the POI. We allocated the total benefit amounts across the terms of the land-use agreements, using the standard allocation formula of 19 CFR 351.524(d), and determined the amounts attributable to the POI. We divided this amount by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section.²⁰³ On this basis, we preliminarily determine a subsidy rate of 5.24 percent

²⁰² See Sanfortune Preliminary Calculation Memorandum.

²⁰³ See Sanfortune Preliminary Calculation Memorandum.

ad valorem for Sanfortune.

4. Grant Programs

Sanfortune self-reported that it received the following four grants either in the POI or AUL period. For the reasons explained in the “Application of AFA: Provision of “Other Subsidies” as Specific” section above, we are basing our determination regarding the following grants provided by the GOC to Sanfortune, in part, on AFA. Therefore, we determine that the following grants confer a financial contribution as a direct transfer of funds under section 771(5)(D)(i) of the Act, and are specific either under section 771(5A)(B) or 771(5A)(D) of the Act (as appropriate, depending on whether Sanfortune reported the grant as export-related or as a domestic subsidy). We find that Sanfortune received the following non-recurring grants during the POI or AUL period, and identified the first grant in the list below as a domestic subsidy, and the remaining three as export-related.²⁰⁴

- a. **Enterprise Innovation Loan Interest Grant**
- b. **Foreign Trade Regional Coordination Development Promotion Fund**
- c. **Linvi Mart Development Special Fund**
- d. **Forest Certification Pilot Special Fund**

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 Sanfortune during the POI or during the AUL period. To calculate the *ad valorem* subsidy rate for these grants, the Department divided the benefit conferred under each of these programs by the appropriate sales denominator, depending on the nature of the subsidy program.²⁰⁵ Further discussion on the methodology used to calculate the *ad valorem* subsidy rate under these programs is included in the Sanfortune Preliminary Calculation Memorandum. Based on the methodology outlined above, the Department preliminarily calculates a cumulative *ad valorem* subsidy rate of 0.37 percent for Sanfortune for the programs listed above.

B. Programs Preliminarily Determined to Be Not Used by, or Not to Confer a Measurable Benefit to, Sanfortune

1. Provision of Water for Less than Adequate Remuneration
2. Provision of Land to SOEs by the GOC for Less than Adequate Remuneration
3. Preferential Loans for State-Owned Enterprises
4. Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
5. Interest Loan Subsidies for the Forestry Industry
6. Foreign Trade Development Fund Grants
7. Export Assistance Grants
8. Export Interest Subsidies
9. Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands
10. Funds for Outward Expansion of Industries in Guangdong Province

²⁰⁴ See Sanfortune SQR at Exhibits SQ1-11 and SQ1-12.

²⁰⁵ *Id.*

11. Provincial Fund for Fiscal and Technological Innovation
12. State Key Technology Renovation Fund
13. Shandong Province's Special Fund for the Establishment of Key Enterprise Technology Centers
14. Shandong Province's Environmental Protection Industry Research and Development Funds
15. Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
16. Waste Water Treatment Subsidies
17. Technology to Improve Trade Research and Development Fund
18. Income Tax Reductions under Article 28 of the Enterprise Income Tax
19. Tax Offsets for Research and Development under the Enterprise Income Tax
20. Preferential Income Tax Policy for Enterprises in the Northeast Region
21. Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
22. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment
23. Income Tax Benefits for Foreign Invested Enterprises Based on Geographic Locations
24. Local Income Tax Exemption and Reduction Programs for "Productive" Foreign-Invested Enterprises
25. Tax Offsets for Research and Development by Foreign-Invested Enterprises
26. Income Tax Reductions for Export-Oriented Foreign-Invested Enterprises
27. Value-Added Tax and Import Duty Exemptions for Use of Imported Equipment
28. Value-Added Tax Rebate Exemptions on Foreign Invested Enterprise Purchases of Chinese-Made Equipment
29. Export Performance Award
30. Special Municipal Encouragement Fund for Foreign Trade Development
31. 2009 Special Promotion Fund for Foreign Trade Steady Growth
32. Finance Contribution Award
33. Special Fund for Export Credit Insurance Premium
34. Patent Application Award
35. Enterprise Technical Transformation Fixed Assets Investment Award

XIII. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

XIV. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.²⁰⁶ Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.²⁰⁷

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.²⁰⁸ This summary should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.²⁰⁹ Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue N.W., Washington, D.C. 20230, at a time and location to be determined. Prior to the date of the hearing, the Department will contact all parties that submitted case or rebuttal briefs to determine if they wish to participate in the hearing. The Department will then distribute a hearing schedule to the parties prior to the hearing and only those parties listed on the schedule may present issues raised in their briefs.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.²¹⁰ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,²¹¹ on the due dates established above.

XV. VERIFICATION

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

²⁰⁶ See 19 CFR 351.224(b).

²⁰⁷ See 19 CFR 351.309(c)(1)(i) and (d)(1).

²⁰⁸ See 19 CFR 351.309(c)(2) and (d)(2).

²⁰⁹ See 19 CFR 351.310(c).

²¹⁰ See 19 CFR 351.303(b)(2)(i).

²¹¹ See 19 CFR 351.303(b)(1).

XVI. CONCLUSION

We recommend that you approve the preliminary findings described above.



Agree

Disagree

4/17/2017

X *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

APPENDIX

AFA Rate Calculation

	Program Name	AFA Rate	Source
1.	Policy Loans to the Hardwood Plywood Industry	3.56%	Calculated – Sanfortune
2.	Preferential Loans to SOEs		Calculated – Sanfortune
3.	Provision of Electricity for LTAR	0.72%	Calculated – Sanfortune
4.	Provision of Land-Use Rights for LTAR	5.24%	Calculated – Sanfortune
5.	Enterprise Innovation Loan Interest Grant	0.08%	Calculated – Sanfortune
6.	Foreign Trade Regional Coordination Development Promotion Fund	0.18%	Calculated – Sanfortune
7.	Linyi Mart Development Special Fund	0.08%	Calculated – Sanfortune
8.	Forest Certification Pilot Special Fund	0.03%	Calculated – Sanfortune
9.	Provision of Water for LTAR	20.06%	Highest Rate for Similar Program Based on Benefit Type
10.	Provision of Land to SOEs by the GOC for Less than Adequate Remuneration	13.36%	Highest Rate for Similar Program Based on Benefit Type
11.	Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program	2.05%	Highest Rate for Similar Program Based on Benefit Type
12.	Interest Loan Subsidies for the Forestry Industry	0.58%	Highest Rate for Similar Program Based on Benefit Type
13.	Foreign Trade Development Fund Grants	0.58%	Highest Rate for Similar Program Based on Benefit Type
14.	Export Assistance Grants	0.58%	Highest Rate for Similar Program Based on Benefit Type
15.	Export Interest Subsidies	0.58%	Highest Rate for Similar Program Based on Benefit Type
16.	Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands	0.58%	Highest Rate for Similar Program Based on Benefit Type
17.	Funds for Outward Expansion of Industries in Guangdong Province	0.58%	Highest Rate for Similar Program Based on Benefit Type
18.	Provincial Fund for Fiscal and Technological Innovation	0.58%	Highest Rate for Similar Program Based on Benefit Type

19.	State Key Technology Renovation Fund	0.58%	Highest Rate for Similar Program Based on Benefit Type
20.	Shandong Province's Special Fund for the Establishment of Key Enterprise Technology Centers	0.58%	Highest Rate for Similar Program Based on Benefit Type
21.	Shandong Province's Environmental Protection Industry Research and Development Funds	0.58%	Highest Rate for Similar Program Based on Benefit Type
22.	Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises	0.58%	Highest Rate for Similar Program Based on Benefit Type
23.	Waste Water Treatment Subsidies	0.58%	Highest Rate for Similar Program Based on Benefit Type
24.	Technology to Improve Trade Research and Development Fund	0.58%	Highest Rate for Similar Program Based on Benefit Type
25.	Income Tax Reductions under Article 28 of the Enterprise Income Tax	25.00%	Highest Rate for Similar Program Based on Benefit Type
26.	Tax Offsets for Research and Development under the Enterprise Income Tax		Highest Rate for Similar Program Based on Benefit Type
27.	Preferential Income Tax Policy for Enterprises in the Northeast Region		Highest Rate for Similar Program Based on Benefit Type
28.	Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China		Highest Rate for Similar Program Based on Benefit Type
29.	Income Tax Benefits for Foreign Invested Enterprises Based on Geographic Locations		Highest Rate for Similar Program Based on Benefit Type
30.	Local Income Tax Exemption and Reduction Programs for "Productive" Foreign-Invested Enterprises		Highest Rate for Similar Program Based on Benefit Type
31.	Tax Offsets for Research and Development by Foreign-Invested Enterprises		Highest Rate for Similar Program Based on Benefit Type
32.	Income Tax Reductions for Export-Oriented Foreign-Invested Enterprises		Highest Rate for Similar Program Based on Benefit Type
33.	Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment	9.71%	Highest Rate for Similar Program Based on Benefit Type

34.	Value-Added Tax and Import Duty Exemptions for Use of Imported Equipment	9.71%	Highest Rate for Similar Program Based on Benefit Type
35.	Value-Added Tax Rebate Exemptions on Foreign Invested Enterprise Purchases of Chinese-Made Equipment	9.71%	Highest Rate for Similar Program Based on Benefit Type
36.	Export Performance Award	0.58%	Highest Rate for Similar Program Based on Benefit Type
37.	Special Municipal Encouragement Fund for Foreign Trade Development	0.58%	Highest Rate for Similar Program Based on Benefit Type
38.	2009 Special Promotion Fund for Foreign Trade Steady Growth	0.58%	Highest Rate for Similar Program Based on Benefit Type
39.	Finance Contribution Award	0.58%	Highest Rate for Similar Program Based on Benefit Type
40.	Special Fund for Export Credit Insurance Premium	0.58%	Highest Rate for Similar Program Based on Benefit Type
41.	Patent Application Award	0.58%	Highest Rate for Similar Program Based on Benefit Type
42.	Enterprise Technical Transformation Fixed Assets Investment Award	0.58%	Highest Rate for Similar Program Based on Benefit Type

Total AFA Rate:

111.09%