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

C-570-065
Investigation
Public Document
E&C/V: JMN

January 16, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Stainless Steel Flanges from the People's Republic of China

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I. SUMMARY

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

II. BACKGROUND

A. Initiation and Case History

On August 16, 2017, Commerce received a countervailing duty (CVD) and antidumping duty (AD) petition concerning imports of flanges from China, filed in proper form by the Coalition of American Flange Producers and its individual members, Maass Flange Corporation and Core Pipe Inc. (the petitioners).[1] On September 5, 2017, Commerce initiated the CVD investigation of

[1] *See* Letter from the petitioners, "Stainless Steel Flanges from the People's Republic of China and India: Petitions for the Imposition of Antidumping and Countervailing Duties," dated August 16, 2017 (Petition).

flanges from China.[2] The initial allegations and supplements to the Petition are described in the CVD Initiation Checklist.[3]

We stated in the *CVD Initiation* that, if appropriate, we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation during the period of investigation (POI).[4] Section 777A(e)(1) of the Act directs Commerce to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if Commerce determines it is therefore not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give Commerce discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise that can reasonably be examined.

On August 31, 2017, we released CBP data to parties under the Administrative Protective Order (APO).[5] On September 14, 2017, the petitioners filed comments on the CBP data.[6] No other party submitted comments. Based on our analysis of the CBP data, and taking the petitioners' comments into consideration, we determined that the CBP data are an appropriate basis on which to select respondents for individual examination in this investigation.[7] As outlined in the First Respondent Selection Memorandum, based upon the CBP data, Commerce selected Both Well (Jiangyan) Steel Fittings Co., Ltd. (Both Well) and Hydro Fluid Controls Ltd. (HFC) as mandatory respondents.[8] Consistent with section 777A(e)(2)(A)(ii) of the Act, Both Well and HFC accounted for the largest import volumes of the subject merchandise under consideration during the POI. Accordingly, on October 4, 2017, Commerce issued a CVD questionnaire to the Government of China (GOC).[9]

Initial responses to the affiliation portion of Commerce's initial CVD questionnaire were due from Both Well and HFC no later than October 18, 2017. On October 10, 2017, HFC argued that as a trading company located in Hong Kong, it should not be required to submit a response to the initial CVD questionnaire per Commerce's established practice.[10] In response, Commerce

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[2] *See Stainless Steel Flanges from India and the People's Republic of China: Initiation of Countervailing Duty Investigations*, 82 FR 42654 (September 11, 2017) (*CVD Initiation*) and the accompanying CVD Initiation Checklist, dated September 5, 2017.
[3] *See* CVD Initiation Checklist.
[4] *See CVD Initiation*, 82 FR at 42657.
[5] *See* Commerce Memorandum, "Stainless Steel Flanges from the PRC: U.S. Customs Data for Respondent Selection," dated August 31, 2017.
[6] *See* Letter from the petitioners, "Stainless Steel Flanges from the People's Republic of China: Petitioners' Comments on Respondent Selection," dated September 14, 2017.
[7] *See* Commerce Memorandum, "Countervailing Duty Investigation of Stainless Steel Flanges from the People's Republic of China: Respondent Selection," dated October 3, 2017 (First Respondent Selection Memorandum).
[8] *Id.*
[9] *See* Letter from Commerce, "Countervailing Duty Investigation of Stainless Steel Flanges from the People's Republic of China: Countervailing Duty Questionnaire," dated October 4, 2017.
[10] *See* Letter from HFC, "Certain Stainless Steel Flanges from the People's Republic of China: Response to Selection as Mandatory Respondent of Hydro-Fluid Controls Limited," dated October 10, 2017.

informed HFC that it was required to respond fully to the initial CVD questionnaire.[11] HFC submitted no further documents in response to the initial CVD questionnaire. On October 19, 2017, Both Well informed Commerce that it would not participate in this investigation, and would therefore not provide a response to Commerce's initial CVD questionnaire.[12]

Because the companies initially selected as mandatory respondents did not respond to the initial CVD questionnaire, on November 6, 2017, Commerce selected two additional companies, Jiangyin Shengda Brite Line Kasugai Flange Co., Ltd. (Brite Line) and Qingdao I-Flow Co., Ltd. (I-Flow), as mandatory respondents.[13] Another full questionnaire was issued to the GOC, this time directing Brite Line and I-Flow to provide responses to Section III of the questionnaire.[14] Neither Brite Line nor I-Flow responded to the questionnaire. Additionally, the GOC has not responded to our questionnaire.

On September 29, 2017, the petitioners timely submitted new subsidy allegations to Commerce.[15] Commerce initiated on these new subsidy allegations on January 11, 2018.[16]

On January 3, 2018, the petitioners filed comments offering suggested courses of action for this preliminary determination.[17]

B. Postponement of Preliminary Determination

On September 11, 2017, Commerce 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).[18]

C. Period of Investigation

The POI is January 1, 2016, through December 31, 2016.

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[11] *See* Letter from Commerce to HFC, dated October 12, 2017.
[12] *See* Letter from Both Well, "Countervailing Duty Investigation of Certain Stainless Steel Flanges from the People's Republic of China: Withdrawal from Active Participation," dated October 19, 2017.
[13] *See* Commerce Memorandum, "Countervailing Duty Investigation of Stainless Steel Flanges from the People's Republic of China: Additional Mandatory Respondent Selection," dated November 6, 2017.
[14] *See* Letter from Commerce, "Countervailing Duty Investigation of Stainless Steel Flanges from the People's Republic of China: Countervailing Duty Questionnaire," dated November 6, 2017.
[15] *See* Letter from Petitioners, "Stainless Steel Flanges from the People's Republic of China: Petitioners' New Subsidy Allegations," dated September 29, 2017.
[16] *See* Commerce Memorandum, "Countervailing Duty Investigation of Stainless Steel Flanges from the People's Republic of China: New Subsidy Allegations," dated January 11, 2018.
[17] *See* Letter from the petitioners, "Stainless Steel Flanges from the People's Republic of China: Petitioners' Pre-Preliminary Determination Comments," dated January 3, 2018.
[18] *See Stainless Steel Flanges from India and the People's Republic of China: Postponement of Preliminary Determinations of Countervailing Duty Investigations*, 82 FR 49786 (October 27, 2017).

III. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations,[19] 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.[20] No parties commented on the scope of this investigation.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain forged stainless steel flanges, whether unfinished, semi-finished, or finished (certain forged stainless steel flanges). Certain forged stainless steel flanges are generally manufactured to, but not limited to, the material specification of ASTM/ASME A/SA182 or comparable domestic or foreign specifications. Certain forged stainless steel flanges are made in various grades such as, but not limited to, 304, 304L, 316, and 316L (or combinations thereof). The term "stainless steel" used in this scope refers to an alloy steel containing, by actual weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements.

Unfinished stainless steel flanges possess the approximate shape of finished stainless steel flanges and have not yet been machined to final specification after the initial forging or like operations. These machining processes may include, but are not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing. Semi-finished stainless steel flanges are unfinished stainless steel flanges that have undergone some machining processes.

The scope includes six general types of flanges. They are: (1) weld neck, generally used in butt-weld line connection; (2) threaded, generally used for threaded line connections; (3) slip-on, generally used to slide over pipe; (4) lap joint, generally used with stub-ends/butt-weld line connections; (5) socket weld, generally used to fit pipe into a machine recession; and (6) blind, generally used to seal off a line. The sizes and descriptions of the flanges within the scope include all pressure classes of ASME B16.5 and range from one-half inch to twenty-four inches nominal pipe size. Specifically excluded from the scope of these orders are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A351.

The country of origin for certain forged stainless steel flanges, whether unfinished, semi-finished, or finished is the country where the flange was forged. Subject merchandise includes stainless steel flanges as defined above that have been further processed in a third country. The processing includes, but is not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing, and/or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the stainless steel flanges.

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[19] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).
[20] *See CVD Initiation*, 81 FR at 91132.

Merchandise subject to the investigation is typically imported under headings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings and ASTM specifications are provided for convenience and customs purposes, the written description of the scope is dispositive.

V. INJURY TEST

Because China is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry. On September 29, 2017, 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 flanges from China.[21]

VI. APPLICATION OF THE CVD LAW TO IMPORTS FROM CHINA

On October 25, 2007, Commerce published its final determination in *CFS from China*, 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.[22]

Commerce affirmed its decision to apply the CVD law to China in numerous subsequent determinations.[23] Furthermore, on March 13, 2012, Public Law 112-99 was enacted which makes clear that Commerce 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 China.[24] The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.[25]

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an

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[21] *See Stainless Steel Flanges from China and India: Investigation Nos. 701-TA-585-586 and 731-TA-1383-1384 (Preliminary)*, Publication 4734, October 2017; *see also Stainless Steel Flanges from China and India*, 82 FR 46831 (October 6, 2017).
[22] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*), and accompanying Issues and Decision Memorandum (CFS IDM) at Comment 6.
[23] *See*, *e.g.*, *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying Issues and Decision Memorandum at Comment 1.
[24] Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.
[25] *See* Public Law 112-99, 126 Stat. 265 §1(b).

interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.[26]

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce'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 Commerce with complete and accurate information in a timely manner."[27] Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[28]

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "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."[29] It is Commerce's practice to consider information to be corroborated if it has probative value.[30] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.[31] However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.[32]

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[26] 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, Commerce 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.

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

[28] *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.

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

[30] *See* SAA at 870.

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

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

Finally, under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 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.[33]

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

Application of AFA: Both Well, HFC, Brite Line, I-Flow, and the GOC

As discussed in the "Initiation and Case History" section above, Both Well and HFC were initially selected as mandatory respondents in this investigation, but neither company has provided a response to the initial CVD questionnaire. Subsequently, Brite Line and I-Flow were selected as mandatory respondents, but they too failed to provide any response to the initial CVD questionnaire. In addition, the GOC has not participated in this investigation, having not responded to Commerce's initial CVD questionnaire. Therefore, we preliminarily find that each of these companies, and the GOC, withheld information that had been requested and failed to provide information within the deadlines established. By not responding to the initial CVD questionnaire, each of these respondents significantly impeded this proceeding. Thus, in reaching a preliminary determination, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act, we based the CVD rates for these companies and our findings regarding specificity and financial contribution by the GOC on facts otherwise available.

Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by Both Well, HFC, Brite Line, I-Flow, and the GOC not responding to the initial CVD questionnaire, each of these companies and the GOC 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") and the GOC do not obtain a more favorable result by failing to cooperate than if they had fully complied with our requests for information.

Commerce is, therefore, finding all programs in this proceeding to be countervailable—that is, they provide a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act, confer a benefit within the meaning of sections 771(5)(B) and (E) of the Act, and are specific within the meaning of section 771(5A) of the Act. We are, therefore, including these programs in the determination of the AFA rate.[34] Therefore, we selected an AFA rate for each of these programs and included them in the determination of the AFA rate applied to Both Well, HFC, Brite Line, and I-Flow. Commerce has previously countervailed these programs.[35]

[33] *See* section 776(d)(3) of the Act.
[34] *See* Appendix.
[35] *See infra* notes 47-53.

Additionally, we find that current record information provides additional bases to infer, as AFA, that these programs constitute financial contributions and meet the specificity requirements of the Act.[36]

We have included all programs upon which Commerce initiated in this investigation to determine the AFA rate. 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 Commerce'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.[37] When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any countervailable subsidy rate applied for the same or similar program in a countervailing 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.[38] Accordingly, when selecting AFA rates, if we have no cooperating respondents, as is the case in this investigation, we look outside the current investigation to other CVD proceedings involving products from the same country (i.e., China). We first determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).[39] 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.[40]

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[36] See CVD Initiation Checklist; *see also* New Subsidy Allegations Memorandum.

[37] *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."

[38] *See*, *e.g.*, *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) and accompanying Issues and Decision Memorandum (Shrimp IDM) at 13-14; *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").

[39] 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."

[40] *See* Shrimp IDM at 13-14.

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[41] The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.[42]

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.[43] Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[44]

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.[45]

In the absence of record evidence concerning the non-responsive companies' usage of the subsidy programs at issue due to their decision not to participate in the investigation, Commerce has reviewed the information concerning Chinese subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this case. The relevance of these rates is that they are actual calculated CVD rates for Chinese programs, from which the non-responsive companies could actually receive a benefit. Due to the lack of participation by these companies and the resulting lack of record information concerning these programs, Commerce has corroborated the rates it selected to use as AFA to the extent practicable for this preliminary determination.

In determining the AFA rate we will apply to each of the non-responsive companies, we are guided by Commerce's methodology detailed above. We begin by calculating the program rate for the following income tax reduction programs on which Commerce initiated an investigation; we applied an adverse inference that each of the non-responsive companies referenced above paid no income tax during the POI:

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[41] *See* SAA at 870.
[42] *Id*.
[43] *Id*. at 869-870.
[44] *See* section 776(d) of the Act.
[45] *See*, *e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

- Income Tax Reductions under Article 28 of the Enterprise Income Tax
- Tax Offsets for Research and Development under the EIT
- Tax Benefits for Enterprises in the Northeast Region
- Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
- Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
- Income Tax Benefits for Foreign-Invested Enterprises Based on Geographic Locations
- Local Income Tax Exemption and Reduction Programs for "Productive" Foreign-Invested Enterprises
- Tax Refunds for Reinvestment of Foreign-Invested Enterprise Profits in Export-Oriented Enterprises

The standard income tax rate for corporations in China in effect during the POI was 25 percent.[46] 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.[47]

For all other programs not mentioned above, we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a China 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 China CVD proceedings:

- Provision of Electricity for LTAR[48]
- Provision of Water for LTAR[49]
- Provision of Stainless Steel Billets for LTAR[50]
- Provision of Stainless Steel Bar for LTAR[51]
- Provision of Land-Use Rights for LTAR[52]

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[46] *See* CVD Initiation Checklist at 20.
[47] *See*, *e.g.*, Aluminum Extrusions IDM at "Application of Adverse Inferences: Non-Cooperative Companies."
[48] *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 accompanying Issues and Decision Memorandum.
[49] *Id.*
[50] *See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 68858 (November 19, 2014) and accompanying Issues and Decision Memorandum at 6.
[51] *Id.*
[52] *See Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 53473 (November 16, 2017).

- Provision of Land to State-Owned Enterprises for LTAR[53]
- Policy Loans to the Flange Industry[54]
- Preferential Loans for SOEs[55]
- Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program[56]
- Foreign Trade Development Fund Grants[57]
- Support Fund for the Development of Foreign Trade[58]
- Export Assistance Grants[59]
- Export Interest Subsidies[60]
- Subsidies for Development of "Famous Brands" and China World Top Brands[61]
- Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands[62]
- Funds for Outward Expansion of Industries in Guangdong Province[63]
- Provincial Fund for Fiscal and Technological Innovation[64]
- State Key Technology Renovation Fund[65]
- Shandong Province's Special Fund for the Establishment of Key Enterprise Technology Centers[66]
- Shandong Province's Environmental Protection Industry Research and Development Funds[67]
- Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises[68]

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53 *See Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008).
54 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").
55 *Id.*
56 *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.
57 *See Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 56560 (September 22, 2014), and accompanying Issues and Decision Memorandum at 13-14 ("Special Fund for Energy Saving Technology").
58 *Id.*
59 *Id.*
60 *Id.*
61 *Id.*
62 *Id.*
63 *Id.*
64 *Id.*
65 *Id.*
66 *Id.*
67 *Id.*
68 *Id.*

- Value-Added Tax and Import Duty Exemptions for Use of Imported Equipment[69]
- Value-Added Tax Rebate Exemptions on Foreign Invested Enterprise Purchases of Chinese-Made Equipment[70]

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for each of the non-responsive companies to be 174.73 percent *ad valorem*. The Appendix contains a chart summarizing our calculation of this rate.

VIII. CALCULATION OF THE ALL-OTHERS RATE

Section 703(d)(1)(A)(ii) of the Act states that if Commerce limits its investigation to particular respondents in accordance with section 777A(e)(2)(B) of the Act, Commerce will determine a single estimated country-wide subsidy rate applicable to all exporters and producers. Section 705(c)(5)(A)(i) of the Act states that the all-others rate shall be an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any rates that are zero or *de minimis* or any rates determined entirely on facts available. Section 705(c)(5)(A)(ii) of the Act, however, provides that, if the countervailable subsidy rates established for all individually examined exporters/producers are *de minimis* or based entirely under section 776 of the Act, Commerce may use any reasonable method to establish an all-others rate for exporters/producers that were not individually-examined, including averaging the weighted-average countervailable subsidy rates determined for the individually-examined exporters and producers.

In this investigation, all rates for individually investigated respondents are based entirely on facts available pursuant to section 776 of the Act. Accordingly, we are using "any reasonable method" to establish the all-others rate. We find that it is reasonable to rely on the rate established for the non-responsive company respondents as the all-others rate, particularly as there is no other information on the record that can be used to determine an all-others rate. Commerce has taken this approach to calculating the all-others rate in other CVD investigations.[71]

IX. 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.

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[69] *See New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010) ("C. VAT and Import Duty Exemptions on Imported Material"), unchanged in *New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011).
[70] *Id.*
[71] *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 at Comment 1.

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 Commerce makes its final determination.

X. PUBLIC COMMENT

Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than 50 days after the publication of the preliminary determination in the *Federal Register*, 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.[72]

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.[73] 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 Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time, within 30 days after the date of publication of the preliminary determination in the *Federal Register*.[74] 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, Commerce 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, Commerce will contact all parties that submitted case or rebuttal briefs to determine if they wish to participate in the hearing. Commerce 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.[75] Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,[76] on the due dates established above.

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[72] *See* 19 CFR 351.309(c)(1)(i) and (d)(1).
[73] *See* 19 CFR 351.309(c)(2) and (d)(2).
[74] *See* 19 CFR 351.310(c).
[75] *See* 19 CFR 351.303(b)(2)(i).
[76] *See* 19 CFR 351.303(b)(1).

XI. CONCLUSION

We recommend that you approve the preliminary findings described above.

☒ ☐

____________ ____________
Agree Disagree

1/16/2018

X ______________________________

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

APPENDIX

AFA Rate Calculation

	Program Name	AFA Rate	Source
1.	Provision of Electricity for LTAR	20.06%	Highest Rate for Similar Program Based on Benefit Type
2.	Provision of Water for LTAR	20.06%	Highest Rate for Similar Program Based on Benefit Type
3.	Provision of Stainless Steel Billets for LTAR	15.48%	Highest Rate for Similar Program Based on Benefit Type
4.	Provision of Stainless Steel Bar for LTAR	15.48%	Highest Rate for Similar Program Based on Benefit Type
5.	Provision of Land-Use Rights for LTAR	5.24%	Highest Rate for Similar Program Based on Benefit Type
6.	Provision of Land to State-Owned Enterprises for LTAR	13.36%	Highest Rate for Similar Program Based on Benefit Type
7.	Policy Loans to the Flange Industry		
8.	Preferential Loans for SOEs	10.54%	Highest Rate for Similar Program Based on Benefit Type
9.	Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program	2.05%	Highest Rate for Similar Program Based on Benefit Type
10.	Foreign Trade Development Fund Grants	0.58%	Highest Rate for Similar Program Based on Benefit Type
11.	Support Fund for the Development of Foreign Trade	0.58%	Highest Rate for Similar Program Based on Benefit Type
12.	Export Assistance Grants	0.58%	Highest Rate for Similar Program Based on Benefit Type
13.	Export Interest Subsidies	0.58%	Highest Rate for Similar Program Based on Benefit Type
14.	Subsidies for Development of "Famous Brands" and China World Top Brands	0.58%	Highest Rate for Similar Program Based on Benefit Type

15.	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
16.	Funds for Outward Expansion of Industries in Guangdong Province	0.58%	Highest Rate for Similar Program Based on Benefit Type
17.	Provincial Fund for Fiscal and Technological Innovation	0.58%	Highest Rate for Similar Program Based on Benefit Type
18.	State Key Technology Renovation Fund	0.58%	Highest Rate for Similar Program Based on Benefit Type
19.	Shandong Province's Special Fund for the Establishment of Key Enterprise Technology Centers	0.58%	Highest Rate for Similar Program Based on Benefit Type
20.	Shandong Province's Environmental Protection Industry Research and Development Funds	0.58%	Highest Rate for Similar Program Based on Benefit Type
21.	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
22.	Income Tax Reductions under Article 28 of the Enterprise Income Tax	25.00%	Highest Rate for Similar Program Based on Benefit Type
23.	Tax Offsets for Research and Development under the Enterprise Income Tax		Highest Rate for Similar Program Based on Benefit Type
24.	Tax Benefits for Enterprises in the Northeast Region		Highest Rate for Similar Program Based on Benefit Type
25.	Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China		Highest Rate for Similar Program Based on Benefit Type
26.	Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment		Highest Rate for Similar Program Based on Benefit Type
27.	Income Tax Benefits for Foreign-Invested Enterprises Based on Geographic Locations		Highest Rate for Similar Program Based on Benefit Type
28.	Local Income Tax Exemption and Reduction Programs for "Productive" Foreign-Invested Enterprises		Highest Rate for Similar Program Based on Benefit Type
29.	Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises		Highest Rate for Similar Program Based on Benefit Type

30.	Export Seller's Credit	10.54%	Highest Rate for Similar Program Based on Benefit Type
31.	Export Buyer's Credit	10.54%	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

Total AFA Rate: **174.73%**