



C-570-076
Investigation
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May 29, 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: Scot Fullerton
Director, Office VI
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Countervailing Duty Investigation of Certain Plastic Decorative
Ribbon from the People's Republic of China

I. Summary

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

II. Background

A. Initiation and Case History

On December 27, 2017, Commerce received petitions from Berwick Offray, LLC (the petitioner) seeking the imposition of antidumping duty (AD) and countervailing duties (CVD) on ribbon from China.¹ Supplements to the petitions and our offer to hold consultations with the Government of China (GOC) are described in the *Initiation Notice* and accompanying Initiation

¹ See Letter from the petitioner, "Certain Plastic Decorative Ribbon from the People's Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties," (December 27, 2017).

Checklist.² On January 16, 2018, Commerce initiated a CVD investigation of ribbon from China.³

We stated in the *Initiation Notice* that, if respondent selection became necessary, we intended to base our selection of mandatory respondents on the United States Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheading listed in the scope of the investigation. On January 18, 2018, Commerce released the CBP entry data under administrative protective order.⁴

No interested parties submitted respondent-selection comments. On February 1, 2018, we selected Joynice Gifts & Crafts Co., Ltd. (Joynice), Santa's Collection Shaoxing Co., Ltd. (Santa's Collection), and Seng San Enterprises Co., Ltd. (Seng San) as mandatory respondents.⁵ We issued our CVD questionnaire to the GOC and mandatory respondents, seeking information regarding the alleged subsidies on February 2, 2018.⁶ We received timely questionnaire and supplemental questionnaire responses from Joynice,⁷ Seng San,⁸ and the GOI.⁹ We received a timely questionnaire response from Santa's Collection.¹⁰ However, on April 19, 2018, after its

² See Memorandum, "Countervailing Duty Investigation Initiation Checklist: Certain Plastic Decorative Ribbon from the People's Republic of China," dated January 16, 2018 (CVD Initiation Checklist); see also *Certain Plastic Decorative Ribbon from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 83 FR 3114 (January 23, 2018) (*Initiation Notice*).

³ See *Initiation Notice*.

⁴ See Memorandum, "Certain Plastic Decorative Ribbon from the People's Republic of China Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection," dated January 18, 2018.

⁵ See Memorandum, "Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China: Respondent Selection Memo," dated February 1, 2018 (Respondent Selection Memo).

⁶ See Letter from Commerce, "Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China: Countervailing Duty Questionnaire," dated February 2, 2018 (Initial Questionnaire).

⁷ See Letter from Joynice, "Certain Plastic Decorative Ribbons from China; C-570-076; Affiliated Party Response and Correction of Clerical Error in Spelling of Name," dated February 14, 2018 (Joynice Affiliation Response); Letter from Joynice, "Plastic Decorative Ribbons from PRC ('Decorative Ribbons'); C-570-076; Response to Section III of the Department's Initial Questionnaire," dated March 19, 2018 (Joynice IQR); and Letter from Joynice, "Plastic Decorative Ribbons from PRC ('Decorative Ribbons'); C-570-076; Response to the Department's Supplemental Questionnaire," dated April 19, 2018 (Joynice SQR).

⁸ See Letter from Seng San, "Certain Plastic Decorative Ribbon from the People's Republic of China – Seng San Section III Affiliation Response," dated February 23, 2018 (Seng San Affiliation Response); Letter from Seng San, "Certain Plastic Decorative Ribbon from the People's Republic of China – Seng San Section III Questionnaire," dated March 19, 2018 (Seng San IQR); and Letter from Seng San, "Certain Plastic Decorative Ribbon from the People's Republic of China – Seng San Section III Supplemental Questionnaire Response," dated April 23, 2018 (Seng San SQR).

⁹ See Letter from the GOC, "GOC Initial CVD Questionnaire Response: Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China (C-570-076)," dated March 22, 2018 (GQR); Letter from the GOC, "GOC First Supplemental Response: Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China (C-570-076)," dated April 19, 2018 (GSQR); and Letter from the GOC, "GOC First Supplemental Response – Response to EXIM Bank Questions: Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China (C-570-076)," dated April 23, 2018 (GSQR2).

¹⁰ See Letter from Santa's Collection, "Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China: Section III Affiliated Companies Response," dated February 23, 2018 (Santa's Collection Affiliation Response); and Letter from Santa's Collection, "Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China: Section III Response," dated March 19, 2018 (Santa's Collection Sec III Response).

receipt of the supplemental questionnaire, Santa's Collection filed a notice of non-participation in this investigation.¹¹

B. Postponement of Preliminary Determination

On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20, 2018, through January 22, 2018.¹²

Additionally, on March 12, 2018, based on a request from the petitioner, Commerce postponed the deadline for the preliminary determination until May 29, 2018, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(e).¹³

C. Period of Investigation

The period of investigation (POI) is January 1, 2016, through December 31, 2016. This period corresponds to the most recently completed calendar year in accordance with 19 CFR 351.204(b)(2).

III. Scope Comments

In accordance with the Preamble to Commerce's regulations, and as noted in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation.¹⁴

We received several comments and rebuttal comments concerning the scope of the AD and CVD investigations of ribbon from China.¹⁵ We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations concurrent with the preliminary determination of the companion AD investigation, which is currently due no later than July 30, 2018, unless postponed. The preliminary scope decision will be placed on the record of both the AD and CVD investigations, and interested parties will have the opportunity to comment prior to the final CVD determination.

¹¹ See Letter from Santa's Collection "Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China: Notice of Non-Participation in Investigation," dated April 19, 2018.

¹² See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018 (All deadlines in this segment of the proceeding have been extended by three days).

¹³ See *Certain Plastic Decorative Ribbon from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 83 FR 10677 (March 12, 2018).

¹⁴ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (Preamble); see also *Initiation Notice*, 83 FR at 3114.

¹⁵ See Letter from Greenbrier International, Inc. and IKEA Supply AG, "Certain Plastic Decorative Ribbon from the People's Republic of China: Scope Comments," dated February 8, 2018; Letter from IG Design Group Americas Inc., "Certain Plastic Decorative Ribbon from the People's Republic of China: Scope Comments," dated February 8, 2018; Letter from Impact Innovations, Inc., "Certain Plastic Decorative Ribbon from the People's Republic of China: Scope Comments," dated February 8, 2018; Letter from Santa's Collection, "Certain Plastic Decorative Ribbon from the People's Republic of China: Scope Comments," dated February 8, 2018; Letter from Target Corporation, "Certain Plastic Decorative Ribbon from the People's Republic of China: Target Corporation's Scope Comments," dated February 8, 2018; Letter from Impact Innovations, Inc. "Certain Plastic Decorative Ribbon from the People's Republic of China: Rebuttal Scope Comments," dated March 6, 2018; and Letter from the petitioner, "Certain Plastic Decorative Ribbon from the People's Republic of China: Scope Rebuttal Comments," dated March 6, 2018.

IV. Scope of the Investigation

The merchandise covered by this investigation is certain plastic decorative ribbon having a width (measured at the narrowest span of the ribbon) of less than or equal to four (4) inches in actual measurement, including but not limited to ribbon wound onto itself; a spool, a core or a tube (with or without flanges); attached to a card or strip; wound into a keg- or egg-shaped configuration; made into bows, bow-like items, or other shapes or configurations; and whether or not packaged or labeled for retail sale. The subject merchandise is typically made of substrates of polypropylene, but may be made in whole or in part of any type of plastic, including without limitation, plastic derived from petroleum products and plastic derived from cellulose products. Unless the context otherwise clearly indicates, the word “ribbon” used in the singular includes the plural and the plural “ribbons” includes the singular.

The subject merchandise includes ribbons comprised of one or more layers of substrates made, in whole or in part, of plastics adhered to each other, regardless of the method used to adhere the layers together, including without limitation, ribbons comprised of layers of substrates adhered to each other through a lamination process. Subject merchandise also includes ribbons comprised of (a) one or more layers of substrates made, in whole or in part, of plastics adhered to (b) one or more layers of substrates made, in whole or in part, of non-plastic materials, including, without limitation, substrates made, in whole or in part, of fabric.

The ribbons subject to this investigation may be of any color or combination of colors (including without limitation, ribbons that are transparent, translucent or opaque) and may or may not bear words or images, including without limitation, those of a holiday motif. The subject merchandise includes ribbons with embellishments and/or treatments, including, without limitation, ribbons that are printed, hot-stamped, coated, laminated, flocked, crimped, die-cut, embossed (or that otherwise have impressed designs, images, words or patterns), and ribbons with holographic, metallic, glitter or iridescent finishes.

Subject merchandise includes “pull-bows” an assemblage of ribbons connected to one another, folded flat, and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage, and “pre-notched” bows, an assemblage of notched ribbon loops arranged one inside the other with the notches in alignment and affixed to each other where notched, and which the end user forms into a bow by separating and spreading the loops circularly around the notches, which form the center of the bow. Subject merchandise includes ribbons that are packaged with non-subject merchandise, including ensembles that include ribbons and other products, such as gift wrap, gift bags, gift tags and/or other gift packaging products. The ribbons are covered by the scope of this investigation; the “other products” (*i.e.*, the other, non-subject merchandise included in the ensemble) are not covered by the scope of this investigation.

Excluded from the scope of this investigation are the following: (1) ribbons formed exclusively by weaving plastic threads together; (2) ribbons that have metal wire in, on, or along the entirety of each of the longitudinal edges of the ribbon; (3) ribbons with an adhesive coating covering the entire span between the longitudinal edges of the ribbon for the entire length of the ribbon; (4) ribbon formed into a bow without a tab or other means for attaching the bow to an object using adhesives, where the bow has: (a) an outer layer that is either flocked or made of fabric, and (b) a flexible metal wire at the base that is suitable for attaching the bow to a Christmas tree or other object by twist-tying; (5) elastic ribbons, meaning ribbons that elongate when stretched and

return to their original dimension when the stretching load is removed; (6) ribbons affixed as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non-subject merchandise; (7) ribbons that are (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where the ribbon comprises a book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a “belly band” around a pair of pajamas, a pair of socks or a blanket; (8) imitation raffia made of plastics having a thickness not more than one (1) mil when measured in an unfolded/untwisted state; and (9) ribbons in the form of bows having a diameter of less than seven-eighths (7/8) of an inch, or having a diameter of more than 16 inches, based on actual measurement. For purposes of this exclusion, the diameter of a bow is equal to the diameter of the smallest circular ring through which the bow will pass without compressing the bow.

Further, excluded from the scope of the antidumping duty investigation are any products covered by the existing antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from the People's Republic of China (China). *See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates*, 73 FR 66595 (November 10, 2008).

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3920.20.0015 and 3926.40.0010. Merchandise covered by this investigation also may enter under subheadings 3920.10.0000; 3920.20.0055; 3920.30.0000; 3920.43.5000; 3920.49.0000; 3920.62.0050; 3920.62.0090; 3920.69.0000; 3921.90.1100; 3921.90.1500; 3921.90.1910; 3921.90.1950; 3921.90.4010; 3921.90.4090; 3926.90.9996; 5404.90.0000; 9505.90.4000; 4601.99.9000; 4602.90.0000; 5609.00.3000; 5609.00.4000; and 6307.90.9889. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioner's request,¹⁶ we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of certain plastic decorative ribbon from the People's Republic of China. 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 October 15, 2018, unless postponed.¹⁷

V. Respondent Selection

Section 777A(e)(1) of the Act directs Commerce to calculate individual countervailable subsidy rates for each known producer/exporter of the of the subject merchandise. The CVD petition

¹⁶ See Letter from the petitioner, “Certain Plastic Decorative Ribbon from the People's Republic of China: Request to Align the Countervailing Duty Final Determination with the Antidumping Duty Final Determination,” dated May 4, 2018.

¹⁷ See *Plastic Decorative Ribbon from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 83 FR 13256 (March 28, 2018).

named 51 exporters and/or producers of subject merchandise, and the CBP entry data identified 600 potential exporters and/or producers of subject merchandise during the POI. Given the large number of producers/exporters of plastic decorative ribbon from China, Commerce found that it would not be practicable to examine each known producer and/or exporter of subject merchandise in this investigation, consistent with section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2).¹⁸ Based on the available resources and the analysis of the CBP data placed on the record, we selected Joynice, Seng San, and Santa's Collection as the three largest publicly identifiable producers/exporters of the subject merchandise by value for individual examination as mandatory respondents in this investigation.¹⁹

VI. Injury Test

Because China is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry. On February 16, 2018, the ITC determined that there is reasonable indication that an industry in the United States is materially injured by reason of imports of plastic decorative ribbon from China.²⁰

VII. 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.²¹

Commerce affirmed its decision to apply the CVD law to China in numerous subsequent determinations.²² 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.²³ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.²⁴

¹⁸ See Respondent Selection Memo.

¹⁹ *Id.*

²⁰ See *Plastic Decorative Ribbon from China: Investigation Nos. 701-TA-592 and 731-TA-1400 (Preliminary)*, Publication 4763, February 2018; see also *Plastic Decorative Ribbon from China: Determinations*, 83 FR 7077 (February 16, 2018).

²¹ 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 at Comment 6.

²² 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) (*CWSP from China*), and accompanying Issues and Decision Memorandum at Comment 1.

²³ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

²⁴ See Public Law 112-99, 126 Stat. 265 §1(b).

VIII. DIVERSIFICATION OF CHINA'S ECONOMY

Concurrently with this decision memorandum, Commerce is placing the following excerpts from the *China Statistical Yearbook* from the National Bureau of Statistics of China on the record of this investigation:²⁵ Index Page; Table 14-7: Main Indicators on Economic Benefit of State-owned and State-holding Industrial Enterprise by Industrial Sector; Table 14-11: Main Indicators on Economic Benefit of Private Industrial Enterprise by Industrial Sector. This information reflects a wide diversification of economic activities in China. The industrial sector in China alone is comprised of 37 listed industries and economic activities, indicating the diversification of China's economy.

IX. Subsidies Valuation

A. Allocation Period

Commerce 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.²⁶ Commerce finds the AUL in this proceeding to be 11 years, pursuant to 19 CFR 351.524(d)(1) and the U.S. Internal Revenue Service 946 (2016), "Appendix B – Table of Class Lives and Recovery Periods" (IRS Pub. 946).²⁷ The 11-year period corresponds to IRS Pub. 946 asset class, under "30.2 Manufacture of Finished Plastic Products." Commerce notified the respondents of this 11-year AUL in the initial CVD questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

Accordingly, 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 across the AUL.

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) 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 another

²⁵ See Memorandum, "Additional Documents Memorandum," dated concurrently with this memorandum.

²⁶ See 19 CFR 351.524(b).

²⁷ See U.S. Internal Revenue Service Publication 946 (2016), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

corporation(s) in essentially the same ways it can use its own assets. This section of Commerce's regulations states that this standard will normally be met where there is a majority of voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to Commerce's regulations further clarifies Commerce's cross-ownership standard. 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.²⁸

Thus, Commerce's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.²⁹

Joynice

Joynice responded to Commerce's questionnaire on behalf of itself, reporting that it did not have any affiliated companies involved or engaged in the sale, purchase, marketing, and production of subject merchandise.³⁰ Our examination of Joynice's questionnaire responses as well as third-party information, such as the GOC's National Enterprise Credit Information Publicity System (ECIPS), disclosed no unreported affiliates involved or engaged in the sale, purchase, or production of subject merchandise. Therefore, we will attribute subsidies received by Joynice to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

Seng San

Seng San responded to Commerce's questionnaire on behalf of itself and its wholly owned Chinese producer, Xin Seng San Handicraft (ShenZhen) Co., Ltd. (Xin Seng San). Seng San reported that it had no other affiliated companies involved or engaged in the sale, purchase, or production of subject merchandise.³¹ Our examination of Seng San's questionnaire responses and ECIPS disclosed no information to the contrary. Therefore, we will attribute subsidies received by Xin Seng San to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce 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

²⁸ See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

²⁹ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-04 (CIT 2001).

³⁰ See generally Joynice Affiliation Response, Joynice Sec III Response, and Joynice SQR.

³¹ See generally Seng San Affiliation Response, Seng San Sec III Response, and Seng San SQR.

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 detailed explanation of the denominators used, *see* the preliminary calculations memoranda.³²

X. Benchmarks

A. Short-Term and Long-Term Loans and Discount Rates

There are no allegations of countervailable lending under investigation and no non-recurring subsidies requiring the use of discount rates for allocation purposes. Thus, we have not calculated benchmark interest rates or discount rates for this preliminary determination.

B. Government Provision of Petrochemical Inputs for Less Than Adequate Remuneration Benchmarks

As discussed in further detail below, the Joynice and Seng San reported purchasing several different types of petrochemicals, including polypropylene (PP), polyethylene (PE), polyester, polyethylene terephthalate (PET) film, and polyvinyl chloride (PVC). We have determined benchmarks for these inputs in accordance with 19 CFR 351.511. Section 351.511(a)(2) of Commerce’s regulations set forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration (LTAR). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports, or actual sales from competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As discussed in the section titled “Provision of Petrochemical Inputs for LTAR,” we are relying on “tier two” (world market) prices for calculating benchmarks for the government provision of petrochemical inputs.

We received data submissions from the petitioner to consider using as “tier one” or “tier two” benchmarks for PP, PE, polyester, and PET film. The petitioner submitted data from the UN Comtrade Database (Comtrade) specific to several tariff numbers covering these inputs.³³ Specifically, the petitioner submitted pricing data for HTS subheadings 3901.10 (PE with a specific gravity of less than 0.94), 3901.20 (PE with a specific gravity of 0.94 or more), 3902.10 (PP), 3907.50 (polyester), and 3920.62 (PET film) as potential benchmarks for petrochemical inputs. The data submission includes both global imports into China (tier one) and global exports to all countries except China (tier two). The submission calculates average unit values

³² See Memorandum, “Joynice Gifts & Crafts Co., Ltd. Preliminary Calculation Memorandum,” dated concurrently with this memorandum (Joynice Prelim Calc Memo); *see also* Memorandum, “Seng San Enterprises Co., Ltd./Xin Seng San Handicraft (ShenZhen) Co., Ltd. Preliminary Calculation Memorandum,” dated concurrently with this memorandum (Seng San Prelim Calc Memo).

³³ See Letter from the petitioner “Certain Plastic Decorative Ribbon from the People’s Republic of China: Submission of Benchmark Information,” dated April 16, 2018, at Exhibit 1 (Petitioner Benchmark Submission).

(AUVs) separately for each subheading after excluding data for countries where either quantity or value is missing. The petitioner also provided pricing data for use as potential benchmarks for ocean freight rates from a variety of world ports to Shanghai between January 2016 and December 2016, as reported by Maersk Line.³⁴

Additionally, because no party provided data to consider using as a benchmark for PVC, we are adding Comtrade data to the record concurrently with this preliminary determination for subheading 3904.22.00 (“Poly (vinyl chloride), not mixed with any other substances; plasticized”).

As explained below, we have determined that external benchmarks are required in measuring the benefit from the provision of petrochemical inputs.³⁵ To calculate the external benchmarks for PP, PE, polyester, and PET film, we are relying on the AUVs placed on the record by the petitioner for global exports to all countries except China. No other party submitted benchmark data for these inputs. To calculate the external benchmark for PVC, we are relying on the AUVs that we have placed on the record ourselves for global exports to all countries except China.³⁶

With respect to ocean freight expenses, the petitioner submitted ocean freight data sourced from Maersk Line for 2016. Where information from Maersk Line was not available, the petitioner used the deep-sea freight transport producer price index sourced from the U.S. Federal Reserve to calculate the freight rate. For our preliminary calculations, we are relying on the ocean freight data submitted by the petitioner, which is contemporaneous with our POI. No other party submitted ocean freight data.

Regarding inland freight, both participating company-respondents reported incurring no freight expenses on their purchases of petrochemicals.³⁷ However, to demonstrate the per metric ton freight expense for transporting a closely related input from the nearest seaport to its factory, Joynice inquired with a freight company and reported an approximate per metric ton freight expense.³⁸ Likewise, Seng San reported a per metric ton freight rate solicited from a logistics company for shipment from the nearest port to Xin Seng San (the factory).

XI. Use of Facts Otherwise Available and Adverse Inferences

A. Legal Standard

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

³⁴ *Id.* at Exhibit 2.

³⁵ See *Countervailing Duty Investigation of Certain Aluminum Foil from the People’s Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018), and accompanying Issues and Decision Memorandum at 5.

³⁶ See Seng San Prelim Calc Memo, at Attachment II.

³⁷ See Joynice IQR, at 18; *see also* Seng San IQR, at 19-20.

³⁸ See Joynice IQR, at 18.

impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.³⁹

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other 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."⁴⁰ 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."⁴¹

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 non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.⁴²

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

B. Application of Total AFA: Non-Responsive Company

As discussed in the "Initiation and Case History" section above, Santa's Collection was selected as a mandatory respondent in this investigation, but the company failed to provide a response to

³⁹ 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, dated June 29, 2015. The 2015 law does not specify dates of applications for those amendments. On August 6, 2015, Commerce published an interpretive rule, in which it announced the applicability dates for each amendment of the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this review.

⁴⁰ *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).

⁴¹ *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.

⁴² *See* section 776(d)(3) of the Act.

Commerce's Section III supplemental questionnaire and instead submitted a notice of non-participation.⁴³ Therefore, we preliminarily find that Santa's Collection withheld information that had been requested and failed to provide information within the deadlines established. By not responding to the Section III supplemental questionnaire and filing a notice of non-participation, Santa's Collection 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 rate for this company 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 failing to respond to Commerce's Section III supplemental questionnaire and not further participating in this investigation, Santa's Collection did not cooperate to the best of its ability to comply with the requests for information in this investigation. Accordingly, we preliminarily determine that use of AFA is warranted.

As facts otherwise available with an adverse inference, Commerce is finding all programs in this proceeding to be countervailable with respect to Santa's Collection – 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 for Santa's Collection.⁴⁴ We selected an AFA rate for each of these programs and included them in the determination of the AFA rate applied to Santa's Collection. Commerce has previously countervailed these programs.⁴⁵

Selection of the AFA Rate

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.⁴⁶ When selecting AFA rates, section 776(d) of the Act provides that

⁴³ See Letter from Santa's Collection, "Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China: Notice of Non-Participation in Investigation," dated April 19, 2018.

⁴⁴ See AFA Appendix.

⁴⁵ See *infra* notes 51 through 57.

⁴⁶ See, e.g., *Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination with Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 83 FR 17651 (April 23, 2018), and accompanying Preliminary Decision Memorandum at "X: Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA: Chalco Ruimin and Chalco-SWA"; see also *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions PRC Final*), and accompanying Issues and Decision Memorandum at "VI. Use of Facts Otherwise Available and Adverse Inferences: Application of Adverse Inferences: Non-Cooperative Companies"; see also *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").

Commerce may use a countervailable subsidy rate applied for the same or a 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.⁴⁷

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 country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).⁴⁸ 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.⁴⁹

In applying AFA to Santa's Collection, we applied the methodology detailed above. We begin by selecting, as AFA, the highest calculated program-specific above-zero rates determined for the cooperating respondents in the instant investigation. Accordingly, we are applying the highest applicable subsidy rate calculated for the cooperating respondents for the following programs:

- Government Provision of Petrochemical Inputs for LTAR
- Government Provision of Electricity for LTAR

In applying an AFA rate for the following income tax reduction programs on which Commerce initiated an investigation, we are drawing an adverse inference that Santa's Collection paid no Chinese income tax during the POI:

- Preferential Income Tax Reductions for High and New Technology Enterprises (HNTes)
- Preferential Deduction of Research and Development Expenses for HNTes
- Preferential Income Tax Policies for Enterprises in Specific Regions, Provinces, or Designated Areas – Northeast Region
- Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China

⁴⁷ See also *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from the PRC*), and accompanying Issues and Decision Memorandum (*Shrimp IDM*) at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

⁴⁸ 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."

⁴⁹ *Shrimp from the PRC IDM*, at 13-14.

- Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
- Income Tax Benefits for Foreign Invested Enterprises (FIEs) Based on Geographical Locations
- Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
- Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises

The standard income tax rate for corporations in China in effect during the POI was 25 percent.⁵⁰ 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.⁵¹

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

Same programs:

- Export Seller’s Credits
- Provision of Land Use Rights for LTAR
- Provision of Land to SOEs for LTAR
- Provision of Water for LTAR
- Foreign Trade Development Fund Grants
- Export Assistance Grants
- Export Interest Subsidies
- Subsidies for Development of “Famous Brands” and “China World Top Brands”
- Sub-Central Government Subsidies for Development of “Famous Brands” and “China World Top Brands”
- Provincial Fund for Fiscal and Technological Innovation
- State Key Technology Renovation Fund
- Shandong Province’s Environmental Protection Industry Research and Development Funds

⁵⁰ See CVD Initiation Checklist, at 8.

⁵¹ See, *e.g.*, *Aluminum Extrusions PRC Final Issues and Decision Memorandum*, at “Application of Adverse Inferences: Non-Cooperative Companies.”

Similar program:

- Export Buyer's Credits⁵²
- Funds for Outward Expansion of Industries in Guangdong Province

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for Santa's Collection to be 94.67 percent *ad valorem*. The Appendix contains a chart summarizing our calculation of this rate.

Corroboration of AFA Rate

Section 776(c)(1) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained 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."⁵³ The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.⁵⁴

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.⁵⁵ 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.⁵⁶

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.⁵⁷

⁵² See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from China Investigation Amended Final*) and accompanying Ministerial Error Memorandum at "Revised Net Subsidy Rate for the Gold Companies" (regarding "Preferential Lending to the Coated Paper Industry").

⁵³ See SAA at 870.

⁵⁴ *Id.*

⁵⁵ *Id.* at 869-870.

⁵⁶ See section 776(d) of the Act.

⁵⁷ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

Commerce has reviewed the information concerning China subsidy programs in this and other proceedings. 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 subsidy programs in China, from which Santa's Collection could actually receive a benefit. Thus, we are applying subsidy rates, which were calculated in this investigation or previous Chinese CVD investigations or administrative reviews. Therefore, we have corroborated pursuant to section 776(c)(1) of the Act to the extent practicable for purposes of this investigation.

D. Application of AFA: Export Buyer's Credits

Government of China

Commerce preliminarily determines that use of AFA is warranted in determining the countervailability of the Export Buyer's Credits program because the GOC did not provide the requested information needed to allow Commerce to fully analyze this program. We preliminarily find, as AFA, that under this program the GOC bestowed a financial contribution pursuant to section 771(5)(D) of the Act, there was a benefit pursuant to section 771(5)(E) of the Act, and that the program is specific pursuant to section 771(5A) of the Act. In our initial CVD questionnaire, we requested that the GOC provide the information requested in the Standard Questions Appendix "with regard to all types of financing provided by the China Export/Import Bank (ExIm) under the Buyer Credit Facility."⁵⁸ The Standard Questions Appendix requested various information that Commerce requires in order to analyze the specificity and financial contribution of this program, including the following: translated copies of the laws and regulations pertaining to the program, a description of the agencies and types of records maintained for administration of the program, a description of the program and the program application process, program eligibility criteria, and program use data. Rather than respond to the questions in the Standard Questions Appendix, the GOC stated it had confirmed none of the respondents' identified U.S. customers "used the alleged program during the POI. Therefore, the relevant appendix is not applicable."⁵⁹

In our initial CVD questionnaire, we noted that "{a}ccording to officials from the Export-Import Bank of China (EIBC), the *Administrative Measures of Export Buyer's Credit of EIBC* relating to this program were revised in 2013,"⁶⁰ and asked that the GOC submit the 2013 revisions to the administrative measures. In its response, the GOC failed to provide the 2013 revisions.⁶¹ We, therefore, again requested that the GOC provide the 2013 revisions.⁶² In the same supplemental questionnaire, we also repeated a request for a list of partner/correspondent banks involved in the program. Despite having nearly three weeks to respond to our two supplemental questions concerning the program (including more than a week of additional time Commerce granted at the GOC's request), the GOC claimed— in a one-page response — that our questions were "not

⁵⁸ See Initial Questionnaire, at Section II, part II, at 5.

⁵⁹ See GQR, at 6.

⁶⁰ See Initial Questionnaire, at Section II, page 5-6.

⁶¹ See GQR, at 7.

⁶² See Letter from Commerce, "Certain Plastic Decorative Ribbon from the People's Republic of China: Supplemental Questionnaire," dated April 4, 2018 (GOC Supp Ques).

applicable” because none of the respondents’ U.S. customers used the program (as indicated by not using partner/correspondent banks).⁶³ However, this response failed to provide Commerce with necessary information to determine whether respondents used this program. Through its deficient responses to Commerce’s initial and supplemental questionnaires, the GOC has withheld necessary information, including any information concerning the 2013 program revisions, thereby impeding Commerce’s ability to analyze the program’s operation or to determine how the program could be properly verified. The GOC is the only party that can answer questions about the internal administration of this program, and thus, absent the requested information, the GOC’s and respondent companies’ claims of non-use of this program are not verifiable.

Pursuant to sections 776(a)(2)(A) and (2)(C) of the Act, when an interested party withholds information requested by Commerce and significantly impedes a proceeding, Commerce uses facts otherwise available. We find that the use of facts otherwise available is appropriate in light of the GOC’s refusal to provide the 2013 revisions. Furthermore, pursuant to section 776(b) of the Act, we find that the GOC has failed to cooperate by not acting to the best of its ability because it failed to provide necessary information based on its own analysis of whether the questions were applicable, notwithstanding Commerce’s request for the information. Accordingly, the application of AFA is warranted.

Based on the AFA rate selection hierarchy described above, for this program we are using an AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in the *Coated Paper from China Investigation Amended Final* proceeding, as the rate for these companies.⁶⁴

E. Application of AFA for the Provision of Petrochemical Inputs for LTAR

Government of China – Whether Certain Petrochemical Producers are “Authorities”

As discussed below under “Programs Found to Be Countervailable,” Commerce examined whether the GOC provided petrochemical inputs to the respondents for less than adequate remuneration (LTAR). We asked the GOC to provide information regarding the specific companies that produced petrochemicals which the respondents purchased during the POI.⁶⁵ Specifically, we sought information from the GOC that would enable us to analyze whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.⁶⁶ In prior CVD proceedings involving China, Commerce has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an “authority” within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input was for LTAR.⁶⁷

⁶³ See GSQR2, at 1.

⁶⁴ See *Coated Paper from China Investigation Amended Final* (revised rate for “Preferential Lending to the Coated Paper Industry” program).

⁶⁵ See GQR, at 27.

⁶⁶ *Id.*

⁶⁷ See e.g., *Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying Issues and Decision Memorandum at “Provision of

In Commerce's initial CVD questionnaire, we requested that the GOC provide certain information pertaining to all enterprises that produced petrochemicals purchased by the respondents during the POI.⁶⁸ In response to the initial CVD questionnaire, the GOC stated explicitly that it was providing information concerning producers listed by Joynice "only," despite the fact that Seng San also reported purchasing petrochemicals during the POI. The GOC did not explain why it chose to restrict its response to Joynice's producers "only."⁶⁹ For Joynice's petrochemical producers, the GOC provided what it termed "basic registration information" and "ownership structure."⁷⁰ The GOC did not complete the "Input Producers Appendix" for any of the producers, nor did the GOC identify which companies are state-owned or controlled. Instead, the GOC informed Commerce that the information included in Exhibit 11 "constitutes a sufficient demonstration of the ownership status and changes (if any) of all the related input producers during the POR."⁷¹ However, the information included in Exhibit 11 (print outs from the ECIPS system) provide little of the information Commerce requested. For example, the prints outs do not include articles of incorporation, capital verification reports, articles of groupings, company by-laws, or articles of association, all of which Commerce requested. Moreover, while our questionnaire requested that the GOC "trace ownership back to the ultimate individual or state owners," the ECIPS documents only provide information concerning immediate owners. The vast majority of the documents in Exhibit 11 are untranslated.⁷²

Finally, the GOC provided no specific information concerning the role of Chinese Communist Party (CCP) officials or committees in exercising control over the producers as requested in our initial questionnaire.⁷³ Rather, the GOC asserted its belief that our questions were irrelevant.⁷⁴ The GOC argued that "{e}ven if an owner, a director, or a manager of a supplier company is a member or representative of these three organizations, this does not make the management and business operation of the company in which he/she serves subject to any intervention of the GOC."⁷⁵ The information we requested regarding the role of CCP officials in the management and operations of these producers is necessary for our determination as to whether these

Wire Rod for Less Than Adequate Remuneration;" *see also* *CWSP from China* and accompanying Issues and Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration."

⁶⁸ *See* Initial Questionnaire, at Section II, "Questions Regarding the Producers of Petrochemicals."

⁶⁹ In a supplemental questionnaire response, the GOC provided information regarding the producers of the PVC purchased by Seng San (one of the petrochemical inputs purchases by Seng San). *See* Letter from the GOC, "GOC Third Supplemental Response: Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China (C-570-076)," dated May 21, 2018 (GSQR3) at Exhibits SQ-2, SQ-3, and SQ-4. However, this information suffers from the identical deficiencies as the information provided for Joynice's producers, outlined below (*e.g.*, basic registration information and untranslated ECIPS printouts; incomplete responses to the Input Producers Appendix; no information concerning the specific role of the CCP committees in the operation of the producers; etc.). Further, in the same supplemental questionnaire response, the GOC also purports to submit information concerning the producers of the PVC purchased by Joynice, which is inconsistent with Joynice's response because Joynice reported no PVC purchases.

⁷⁰ *See* GQR, at 21 and Exhibits 10 and 11.

⁷¹ *Id.* at 22.

⁷² *Id.* at Exhibit 11.

⁷³ *See* Initial Questionnaire, at 11.

⁷⁴ *See* GQR, at 27.

⁷⁵ *Id.* at 12.

producers are “authorities” within the meaning of section 771(5)(B) of the Act. Further, by not providing the requested information the GOC has precluded Commerce from examining whether any input producer is an “authority” within the meaning of section 771(5)(B) of the Act. Further, the GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. The GOC’s responses in prior CVD proceedings involving the PRC demonstrate that it is, in fact, able to access information similar to what we requested.⁷⁶ Additionally, pursuant to section 782(c) of the Act, if the GOC could not provide any of the requested information, it should have promptly explained to Commerce what attempts it undertook to obtain this information and proposed alternative forms of providing the information.⁷⁷

Accordingly, because Commerce did not receive information on the identity of these producers, there is insufficient information on the record to determine whether these producers are “authorities.” We preliminarily find that the GOC significantly impeded the proceeding by not providing information Commerce requested for its analysis of whether the producers of Joynice’s and Seng San’s petrochemical purchases are authorities under section 771(5)(B) of the Act, and that the GOC has withheld necessary information that was requested of it and, thus, that Commerce must rely on “facts otherwise available” in issuing its preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act. Moreover, we preliminarily find that by deciding on its own what it considers to be “sufficient information” and, therefore, not providing Commerce with complete responses, the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that AFA is warranted pursuant to section 776(b) of the Act. As AFA, we are preliminarily finding that all petrochemical producers reported by Joynice and Seng San are “authorities” within the meaning of section 771(5)(B) of the Act.

F. Application of AFA: Provision of Electricity for LTAR

Government of China

The GOC did not provide complete responses to Commerce’s questions regarding the alleged provision of electricity for LTAR. These questions requested information needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act.⁷⁸

⁷⁶ See, e.g., *High Pressure Steel Cylinders from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying Issues and Decision Memorandum at 13.

⁷⁷ Section 782(c)(1) of the Act states, “if an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.”

⁷⁸ See Initial Questionnaire, at 27-28.

In order for Commerce to analyze the financial contribution and specificity of this program, we requested that the GOC provide information regarding the roles of provinces, the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC in electricity price adjustments.⁷⁹ Specifically, Commerce requested, *inter alia*: Provincial Price Proposals for each province in which mandatory respondents or any company “cross-owned” with those respondents is located for applicable tariff schedules that were in effect during the POI; all original NDRC Electricity Price Adjustment Notice(s) that were in effect during the POI; the procedure for adjusting retail electricity tariffs and the role of the NDRC and the provincial governments in this process; the price adjustment conferences that took place between the NDRC and the provinces, grids and power companies with respect to the creation of all tariff schedules that were applicable to the POI; the cost elements and adjustments that were discussed between the provinces and the NDRC in the price adjustment conferences; and how the NDRC determines that the provincial level price bureaus have accurately reported all relevant cost elements in their price proposals with respect to generation, transmission, and distribution.⁸⁰ Commerce requested this information in order to determine the process by which electricity prices and price adjustments are derived, to identify entities that manage and impact price adjustment processes, and to examine cost elements included in the derivation of electricity prices in effect throughout China during the POI.

In its initial questionnaire response, the GOC stated that, as of the issuance of the “NDRC Notification on Lowering the On-Grid Price of Coal-Fired Electricity and Electricity for Industrial and Commercial-Use {2015 No. 748},” and “NDRC Notification on Lowering the On-Grid Price of Coal-Fired Electricity and Electricity for General Industrial and Commercial-Use {2015 No. 3015},”⁸¹ the NDRC no longer reviews electricity pricing schedules submitted to it by the provinces. Therefore, according to the GOC, Provincial Price Proposals no longer exist and did not exist during the POI. Furthermore, the GOC also stated that, as a result of Notice 748, provincial price departments develop and establish grid and electricity sales prices.⁸² Consequently, according to the GOC, the NDRC no longer has any involvement in price setting, which are set autonomously at the provincial level.

Notice 748 is based upon consultations between the NDRC and the National Energy Administration.⁸³ Article 1 contained therein stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour.⁸⁴ Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts. Article 2 indicates that the “price space” formed due to this price reduction “{s}hall be mainly used to lower the sales price of electricity for industrial and commercial use.”⁸⁵ Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity.⁸⁶ Articles 6 and 7, respectively, indicate that provincial pricing authorities “{s}hall make and

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *See* GQR, at 40.

⁸² *Id.* at 40-41.

⁸³ *Id.* at Exhibit 20.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

distribute the on-grid price of electricity and specific plans of the price adjustment in accordance with the average standard of price adjustment in Annex 1 and submit filings to the National Development and Reform Commission,” and that the “{a}forementioned electricity price adjustment shall be enforced since April 20th, 2015.”⁸⁷ Lastly, Article 10 directs that, “Administrative departments at all levels in charge of pricing shall guarantee the implementation of the price adjustment.”⁸⁸

NDRC Notice 3015, also based upon consultations between the NDRC and the National Energy Administration, directs additional price reductions, and stipulations at Articles II and X, that local price authorities shall implement in time the price reductions included in its Annex and report resulting prices to NDRC.⁸⁹ Consequently, both Notice 748 and Notice 3015 explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Neither Notice 748 nor Notice 3015 explicitly stipulates that relevant provisional pricing authorities determine and issue electricity prices within their own jurisdictions, as the GOC states to be the case.⁹⁰ Instead, both notices indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices, by mandating average price adjustment targets with which the provinces are obligated to comply in setting their own specific prices.⁹¹

With respect to price derivation at the provincial level, Commerce requested information regarding the procedure for adjusting retail electricity tariffs and the role of the NDRC and the provincial governments in this process. Specifically, Commerce asked how increases in cost elements led to retail price increases, the derivations of those cost increases, how cost increases were calculated, and how cost increases impacted final prices.⁹² The GOC stated that the “NDRC establishes the specific formulas, including the variable factors that need to be considered by the provincial pricing authority in the calculation of the change of electricity sales prices.”⁹³ Furthermore, after the provincial authorities make specific calculations based on the formula set by the NDRC, the “calculation result is filed with the NDRC to ensure that the price adjustment follows the established principles.”⁹⁴ In reference to a specific electricity price adjustment that took place on January 1, 2016, the GOC stated that “the adjusted price was calculated by the provincial authority following the formula provided for in the Appendix of NDRC 2015-3169”⁹⁵ However, the GOC failed to explain, in detail, how the pricing values indicated in the Appendix were derived, including the specific factors or information relied upon by the NDRC. Commerce additionally requested that the GOC identify the sources of the pricing factors and provide translated copies of the relevant documentation.⁹⁶ The GOC failed to provide any documentation in response to the request.⁹⁷

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at Exhibit 21.

⁹⁰ *Id.*

⁹¹ *See, e.g.,* Notice 748 Article 10 and Notice 3015 Articles II and X.

⁹² *See* Initial Questionnaire, at 27.

⁹³ *See* GQR, at 41.

⁹⁴ *Id.*

⁹⁵ *Id.* at 42.

⁹⁶ *See* Letter from Commerce, “Certain Plastic Decorative Ribbon from the People’s Republic of China: Supplemental Questionnaire,” dated May 9, 2018 (GOC Third Supp Ques).

⁹⁷ *See* GSQR3, at 22-23.

Commerce additionally requested that the GOC explain, for each province in which a respondent or cross-owned company is located, how increases in labor costs, capital expenses, and transmission and distribution costs are factored into Price Proposals, and how cost element increases and final price increases were allocated across the province and across tariff end-user categories.⁹⁸ The GOC failed to provide a complete response to this request. The GOC reiterated that there were “no provincial pricing proposals used for or relevant to the POI prices.”⁹⁹ Further, the GOC stated that “in the January 1, 2016, electricity price adjustment, the only cost element considered is electricity coal prices, which are derived from some third party sources, and are transparent to both the provincial price agencies and the NDRC . . . {In} the adjustment that took effect in the middle of 2016, no cost element was considered.”¹⁰⁰ Lastly, the GOC stated that because the electricity price adjustment is calculated based on the specific data from each province, “the electricity price changes are not ‘allocated’ across the provinces . . . {instead} the final price adjustments . . . are allocated across tariff end-user categories by usage amount for each category.”¹⁰¹

As explained above, the GOC failed to fully explain the roles and nature of the cooperation between the NDRC and provinces in deriving electricity price adjustments. The information provided by the GOC indicates that despite its claim that the responsibility for setting prices within each province has moved from the NDRC to the provincial governments, the NDRC continues to play a major role in setting and adjusting prices. Furthermore, the GOC failed to explain the derivation of prices by the provinces themselves. Consequently, we preliminarily determine that the GOC withheld information that was requested of it, and, which was necessary for our analysis of financial contribution and specificity. Thus, Commerce must rely on “facts available” in making our preliminary determination.¹⁰² Moreover, we preliminarily determine that by failing to explain the roles and nature of the cooperation between the NDRC and provinces in deriving electricity price adjustments, as well as the derivation of electricity prices by the provincial governments, the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. We also note that the GOC neither asked for additional time to gather and provide such information, nor did it express difficulty in complying with our request. Consequently, an adverse inference is warranted in the application of facts available.¹⁰³ 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. The GOC failed to provide certain requested information regarding the relationship between provincial tariff schedules and cost, as well as requested information regarding cooperation in price setting practices between the NDRC and provincial governments. Therefore, we are also drawing an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.¹⁰⁴ The benchmark rates were selected from the record of this investigation and as AFA are the highest electricity rates on

⁹⁸ See Initial Questionnaire, at 28.

⁹⁹ See GQR, at 43.

¹⁰⁰ *Id.* at 44.

¹⁰¹ *Id.* at 43-44.

¹⁰² See section 776(a)(2)(A) of the Act.

¹⁰³ See section 776(b) of the Act.

¹⁰⁴ See section 776(b)(4) of the Act.

the record for the applicable rate and user categories. For details regarding the remainder of our analysis, *see* “Provision of Electricity for LTAR” section.

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. Export Buyer’s Credit

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, our preliminary determination regarding the GOC’s provision of export buyer’s credit is based on AFA. As AFA, we determine that the GOC’s provision of export buyer’s credit confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. Furthermore, we determine on the basis of AFA that Joynice and Seng San benefitted from this program during the POI within the meaning of section 771(5)(E) of the Act. On this basis, consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate of 10.54 percent *ad valorem* for Joynice and Seng San, a rate calculated for a similar program in another CVD proceeding involving imports from China.¹⁰⁵

2. Government Provision of Petrochemical Inputs for LTAR

Commerce is examining whether the GOC or other “authorities” within China provided Joynice or Seng San with petrochemical inputs for LTAR. Joynice reported that it purchased PP, PE, polyester, and PET during the POI. Seng San reported that it purchased PVC, PP, and PET film.

Financial Contribution

As discussed above in the section “Use of Facts Otherwise Available and Adverse Inferences,” we find that the GOC’s refusal to provide certain information regarding the producers of petrochemicals provided to the respondents warrants the use of AFA. As AFA, we find that these producers are “authorities” within the meaning of section 771(5)(B)(i) of the Act that provided financial contributions to the respondents in the form of petrochemicals for LTAR.

Specificity

In response to our initial questionnaire, the GOC listed several industries as users of petrochemicals. In particular, the GOC identified various plastic film products, packaging, fiber and woven products, pipes, bottles, and intermediate plastic products, among others. Because the list of users identified by the GOC is limited in number, we find the provision of petrochemicals for LTAR to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

¹⁰⁵ *See Coated Paper from China Investigation Amended Final*, and accompanying Issues and Decision Memorandum, at “Revised Net Subsidy Rate for the Gold Companies” (discussing revised subsidy rate for “Preferential Lending to the Coated Paper Industry”).

Market Distortion

- In its initial CVD questionnaire response, the GOC indicated that stated-owned or controlled companies were responsible for 83.90 percent to 89.56 percent of the domestic production of PP and various forms of PE during the POI, and for nearly 60 percent of the domestic production of PVC.¹⁰⁶ The GOC stated it had no information concerning state-owned or controlled production of PET.¹⁰⁷ While the GOC reported import penetration for certain petrochemicals,¹⁰⁸ it failed to provide any support for the figures it provided, citing the confidentiality concerns of the industry association from which it obtained the data.¹⁰⁹ Without documentation supporting the reported figures concerning import penetration, Commerce cannot rely on the reported levels of import penetration. In any case, the GOC maintains a clear majority ownership in domestic production. In addition, the five-year plans provided by the GOC for the petrochemical industry as well as information included in the Petition demonstrate the GOC's control over the petrochemical industry in China. For example, the petition includes the following information:
 - An ITC report that discusses the GOC's classification of "petroleum and petrochemicals" as a "strategic industry" and the determination of the State-owned Assets Supervision and Administration Commission (SASAC), an agency of the State Council, to keep the "oil and petrochemicals" industry under SASAC influence (*i.e.*, at least a 50 percent government equity stake in every firm).¹¹⁰
 - A report of the Organization of Economic Cooperation and Development reaching similar conclusions as the ITC report regarding the State Council's policy towards "petrochemicals."¹¹¹
 - A news article referring to SASAC's announcement that it will "maintain the absolute control" over the "petroleum and chemical" industry.¹¹²

¹⁰⁶ See GQR, at 13-15 (The GOC did not provide the percentage of domestic consumption of PET from companies in which the GOC maintains a majority or controlling ownership or management interest).

¹⁰⁷ *Id.* at 15.

¹⁰⁸ *Id.* at 16 (data for PP and PE indicating import penetration of nearly 40 percent, and data indicating import penetration of less than one percent for PET), and GSQR3, at 2 (data for PVC indicating import penetration of approximately 5 percent). The GOC stated the source of the information is the "Annual Analysis Report for Petrochem Market" of the China Petroleum and Chemical Industry Federation. See also GQR, at 12 and GSQR3, at 1.

¹⁰⁹ See GSQR, at 1. The GOC stated the industry association is "forbidden from making copies of or providing copies to third parties. The GOC considers the {association} a reliable source of such data provided."

¹¹⁰ See Letter from the petitioner, "Petition for the Imposition of Countervailing Duties Pursuant to Section 701 of the Tariff Act of 1930, As Amended: Volume III," dated December 27, 2017 (Petition Volume III), at 18-19 and Exhibit III-15.

¹¹¹ See Petition Volume III, at 19-20 and Exhibit III-17.

¹¹² *Id.* at 18-19 and Exhibit III-16.

According to the five-year plan of the central government for petrochemicals, petrochemicals is an important “pillar industry” of the national economy.¹¹³ The plan calls for an “increase in policy support” strengthening the “links between fiscal and taxation, finance, trade, and other policies and industrial policies, implement policies for the integration of bank enterprise matchmaking and production, and increase financing support for key enterprises and key projects. Utilize the existing special funds channels (special projects, funds, etc.) to continue supporting industrial upgrading and technological transformation.”¹¹⁴

For these reasons, we preliminarily determine that the GOC is heavily involved in the petrochemical industry and that this level of government involvement in the sector creates a distortion in the market. This distortion prevents Commerce from selecting an internal benchmark price, *i.e.*, “tier one” or market prices within China. Accordingly, Commerce is selecting external benchmark prices, *i.e.*, “tier two” or world market prices, for our LTAR analysis consistent with Commerce’s regulations.¹¹⁵

Benefit

In order to determine the existence and amount of any benefit conferred by the producers to the respondent companies pursuant to section 771(5)(E)(iv) of the Act, we followed the methodology described in 19 CFR 351.511(a)(2) to identify a suitable benchmark for each petrochemical the respondents reported. Commerce’s regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. The potential benchmarks listed in the regulation, in order of preference are: (1) market prices from actual transactions within the country under investigation for the government-provided good (*e.g.*, actual sales, actual imports, or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) prices consistent with market principles based on an assessment by Commerce of the government-set price (tier three).

As discussed above, because Commerce is finding that the Chinese market for petrochemicals is distorted by government involvement, we are selecting external benchmark prices, *i.e.*, “tier two” world market prices, consistent with 19 CFR 351.511(a)(2)(ii) and the CVD preamble. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under “tier two,” Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices, we included ocean freight and inland freight that would be incurred to deliver inputs to the respondents’ production facilities. We then added to the benchmark prices the appropriate import duties applicable to imports of each petrochemical into China, as

¹¹³ See GSQR, at Exhibit SQ-1-1 (p.1 of the English part of the exhibit).

¹¹⁴ *Id.*

¹¹⁵ See 19 CFR 351.511.

provided by the GOC.¹¹⁶ Additionally, we added the appropriate VAT of 17 percent to benchmark prices.¹¹⁷

We compared these monthly benchmark prices to the purchase prices reported by Joynice and Seng San for individual transactions, including VAT and delivery charges. Based on this comparison, we preliminarily determine that a benefit exists for Joynice and Seng San in the amount of the difference between the benchmark prices and the prices Joynice and Seng San paid, respectively. We divided the total benefits by the appropriate sales denominator, as discussed in the “Subsidies Valuation Information” section.

For the reasons discussed above, we have calculated a subsidy rate of 3.48 percent *ad valorem* for Joynice for the provision of petrochemical inputs for LTAR.¹¹⁸ For Seng San, we have calculated a subsidy rate of 1.04 percent *ad valorem* for the provision of petrochemical inputs for LTAR.¹¹⁹

3. Government 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 preliminary determination regarding the GOC’s provision of electricity for LTAR on facts otherwise available with an adverse inference. As AFA, we preliminarily 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.

In order to determine the existence and amount of any benefit under this program, we selected the highest non-seasonal provincial rates in China 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 China*, 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 applicable) by the corresponding electricity rates paid by the respondent during each month of the POI.¹²⁰ 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.

¹¹⁶ Consistent with *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014) (*Citric Acid from China; 2011 Review*), we have utilized the Most Favored Nation import duty rate because it reflects the general tariff rate applicable to world trade. See *Citric Acid from China; 2011 Review* Issues and Decision Memorandum at 90.

¹¹⁷ See GQR, at 19.

¹¹⁸ See Joynice Prelim Calc Memo, at Attachment II.

¹¹⁹ See Seng San Prelim Calc Memo, at Attachment II.

¹²⁰ See *Utility Scale Wind Towers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) and accompany Issues and Decision Memorandum at 21-22.

To measure whether Joynice 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 charged to Joynice by the corresponding quantity. Next, we calculated the benchmark base rate cost by multiplying Joynice'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 companies 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 Joynice's variable electricity payments and base rate payments.¹²¹ We followed the same methodology for Seng San.

To calculate the net subsidy rates attributable to Joynice and Seng San, we divided the benefit by the appropriate sales denominator, as described in the "Subsidies Valuation" section above. On this basis, we preliminarily determine that Joynice received a net countervailable subsidy rate of 0.25 percent *ad valorem* for Joynice and 1.23 percent for Seng San from the GOC's provision of electricity for LTAR.

¹²¹ See Joynice Prelim Calc Memo.

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

1. Export Seller's Credit
2. Preferential Income Tax Reductions for High and New Technology Enterprises (HNTes)
3. Preferential Deduction of Research and Development Expenses for HNTes
4. Preferential Income Tax Policies for Enterprises in Specific Regions, Provinces, or Designated Areas – Northeast Region
5. Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
6. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
7. Income Tax Benefits for Foreign Invested Enterprises (FIEs)
8. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs
9. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises
10. Provision of Land Use Rights for LTAR
11. Provision of Land to SOEs for LTAR
12. Provision of Water for LTAR
13. Foreign Trade Development Fund Grants
14. Export Assistance Grants
15. Export Interest Subsidies
16. Subsidies for Development of "Famous Brands" and "China World Top Brands"
17. Sub-Central Government Subsidies for Development of "Famous Brands" and "China World Top Brands"
18. Funds for Outward Expansion of Industries in Guangdong Province
19. Provincial Fund for Fiscal and Technological Innovation
20. State Key Technology Renovation Fund
21. Shandong Province's Environmental Protection Industry Research and Development Funds

XIII. Calculation of the All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act state that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the "all-others" rate by weight-averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. Therefore, for the "all-others" rate, we calculated a simple average of the two responding companies' rates because complete publicly ranged sales data was unavailable. In this investigation, the only rates that are not zero or *de minimis* or based entirely on the facts available are the rates calculated for Joynice and Seng San. Consequently, we are

assigning the simple-average of the rates calculated for Joynice and Seng San (*i.e.*, 14.27 and 12.81 percent, respectively) as the “all-others” rate (*i.e.*, 13.54 percent *ad valorem*).

XIV. 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 administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance. In accordance with section 705(b)(2) of the Act, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after Commerce makes its final affirmative determination.

XV. Disclosure and Public Comment

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹²² Case briefs or other written comments for all non-scope issues 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 final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.¹²³ Commerce intends to set a separate briefing schedule pertaining to scope issues when it issues the preliminary scope memorandum in this investigation.

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.¹²⁴ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.¹²⁵ Requests should contain the party’s name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using Commerce’s electronic records system, ACCESS.¹²⁶ Electronically filed documents must be

¹²² See 19 CFR 351.224(b).

¹²³ See 19 CFR 351.309(c)-(d); *see also* 19 CFR 351.303 (for general filing requirements).

¹²⁴ See 19 CFR 351.309(c)(2) and (d)(2).

¹²⁵ See 19 CFR 351.310(c).

¹²⁶ See 19 CFR 351.303(b)(2)(i).

received successfully in their entirety by 5:00 p.m. Eastern Time,¹²⁷ on the due dates established above.

XVI. Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to Commerce's questionnaires.

XVII. Recommendation

We recommend that you approve the preliminary findings described above.

☒

Agree

☐

Disagree

5/29/2018

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

¹²⁷ See 19 CFR 351.303(b)(1).