C-570-070
Investigation
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DATE: July 2, 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: Wendy J. Frankel
Director, U.S. Customs and Border Protection Liaison Unit
Antidumping and Countervailing Duty Operations
Enforcement and Compliance

SUBJECT: Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Rubber Bands from the People's Republic of China

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I. SUMMARY

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

II. BACKGROUND

A. Initiation and Case History

On January 30, 2018, we received an antidumping (AD) and countervailing duty (CVD) petition concerning imports of rubber bands from China, filed in proper form, on behalf of Alliance Rubber Co. (the petitioner).[1] Pursuant to section 702(b)(4)(A)(ii) of the Act, we invited representatives of the Government of China (GOC) for consultations with respect to the

[1] *See* Letter from the petitioner, "Petition for the Imposition of Antidumping and Countervailing Duties: Rubber Bands from Thailand, China, and Sri Lanka," dated January 30, 2018 (Petition).

Petition.[2] On February 7, 2018, we held consultations with the GOC.[3] On February 20, 2018, we initiated the CVD investigation of rubber bands from China.[4]

On March 19, 2018, the U.S. International Trade Commission (ITC) notified Commerce of its affirmative preliminary determination that the petitioning domestic industry is threatened with material injury by reason of imports from China.[5] On March 22, 2018, the ITC published in the *Federal Register* a notice of its preliminary determination.[6]

We stated in the *Initiation Notice* that, if appropriate, we intended to base the selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for U.S. imports of rubber bands from China during the period of investigation (POI) under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.[7] Section 777A(e)(1) of the Act directs Commerce to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if Commerce determines it is therefore not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give Commerce discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise that can reasonably be examined.

On February 14, 2018, we released the CBP entry data under Administrative Protective Order and invited interested parties to submit comments on the CBP data as well as respondent selection within three business days after the publication of the initiation notice in the *Federal Register*.[8] We did not receive any comments. Subsequently, on March 15, 2018, we requested that the petitioner provide comments on the CBP data.[9] On March 19, 2018, the petitioner filed comments identifying a Chinese producer/exporter of rubber bands which was originally listed in the petition.[10]

As noted above, section 777A(e)(2)(A)(ii) of the Act gives Commerce the discretion to limit its examination to the producers/exporters accounting for the largest volume of subject merchandise that can reasonably be examined. In this investigation, we relied on value, rather than quantity,

[2] *See* Letter to the GOC, "Countervailing Duty Petition on Rubber Bands from the People's Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition," dated January 30, 2018.
[3] *See* Memorandum, "Consultations with Officials from the Government of China," dated February 8, 2018.
[4] *See Rubber Bands from Thailand, the People's Republic of China, and Sri Lanka: Initiation of Countervailing Duty Investigations*, 83 FR 8429 (February 27, 2018) (*Initiation Notice*). The initial allegations and supplements to the Petition on which Commerce initiated are described in the Initiation Checklist, dated February 20, 2018.
[5] *See* Letter from the ITC, "Notification of ITC Preliminary Determinations," dated March 19, 2018.
[6] *See Rubber Bands from China, Sri Lanka, and Thailand; Determinations*, 83 FR 12594 (March 22, 2018) (ITC Preliminary Determination); *see also* ITC publication 4770 (March 2018), Rubber Bands from China, Sri Lanka, and Thailand, Investigation Nos. 701-TA-598-600 and 731-TA-1408-1410 (Preliminary) at page 1 (ITC Publication).
[7] *See Initiation Notice*, 83 FR at 8432.
[8] *See* Memorandum, "Countervailing Duty Petition on Rubber Bands from the People's Republic of China: U.S. Customs Data for Respondent Selection," dated February 14, 2018 (CBP Data Memorandum).
[9] *See* Memorandum, "Comments on Customs and Border Protection (CBP) Entry Data," dated March 19, 2018.
[10] *See* Letter from the petitioner, "Petition for the Imposition of Antidumping and Countervailing Duties on Rubber Bands from Thailand and China - Additional Information for Respondent Selection," dated March 19, 2018.

to arrive at the largest volume because the quantities reported to CBP for rubber bands lacked uniformity (*i.e.*, entry quantities were not reported according to a standard unit of measurement) and, for most entries, no quantity was reported.[11] On March 21, 2018, we selected Graceful Imp. and Exp. Co., Ltd. (Graceful) and Moyoung Trading Co., Ltd. (Moyoung) as mandatory respondents.[12]

On March 23, 2018, we issued the initial CVD questionnaire addressed to the GOC *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[13] In the cover letter to the questionnaire, we notified the GOC that Graceful and Moyoung were selected as mandatory respondents in this investigation and stated that the GOC "is responsible for forwarding copies of this cover letter and questionnaire to these respondent companies."[14] Also, on March 23, 2013, we sent, as a courtesy, a copy of the questionnaire *via* United Parcel Service of America, Inc. (UPS) to Graceful and Moyoung because each company was *pro se*.[15] UPS delivered the questionnaire to Moyoung, but could not deliver the questionnaire to Graceful because of an incomplete/incorrect address.[16] Moyoung was identified in the petition with an address.[17] Graceful was not identified in the petition,[18] but publicly identified as a producer/exporter of rubber bands on Panjiva.com, which listed an address in China for the company.[19] On March 27, 2018, we emailed Gu Yu, First Secretary, at the Embassy of China, to learn if, as stated in the questionnaire cover letter, the GOC forwarded a copy of the questionnaire to Graceful and Moyoung.[20] Neither Mr. Yu nor any other GOC official responded to the inquiry. Graceful and Moyoung did not submit affiliation responses on April 5, 2018. Neither the mandatory respondents nor the GOC submitted a questionnaire response on April 30, 2018. We did not receive any requests for an extension of time to file a response.

On April 20, 2018, we selected Ningbo Syloon Imp & Exp Co., Ltd. (Ningbo Syloon) as an additional mandatory respondent.[21] Ningbo Syloon was not identified in the petition,[22] but

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[11] *See* CBP Data Memorandum.
[12] *See* Memorandum, "Countervailing Duty Investigation of Rubber Bands from the People's Republic of China: Respondent Selection," dated March 21, 2018 (First Respondent Selection Memorandum).
[13] *See* Letter to the GOC, "Countervailing Duty Investigation of Rubber Bands from the People's Republic of China: Countervailing Duty Questionnaire," dated March 22, 2018 (First Initial Questionnaire). The initial questionnaire was dated March 22, 2018, but not available in ACCESS until March 23, 2018.
[14] *Id*. at cover letter (page 1).
[15] *See* Memorandum, "Countervailing Duty Investigation of Rubber Bands from the People's Republic of China: Delivery Status of Initial Questionnaire," dated April 20, 2018 (First Delivery Status Memorandum) at Attachment A.
[16] *Id*. at Attachments B and C.
[17] *See* Petition at Volume I, Exhibit GEN-2; and Letter from the petitioner, "Petition for the Imposition of Antidumping and Countervailing Duties on Rubber Bands from Thailand, China, and Sri Lanka – Responses to Supplemental Questionnaires," dated February 8, 2018 (General Issues Supplement) at 3.
[18] *Id*.
[19] *See* First Respondent Selection Memorandum at Attachment 2.
[20] *See* First Delivery Status Memorandum at Attachment D.
[21] *See* Memorandum, "Countervailing Duty Investigation of Rubber Bands from the People's Republic of China: Additional Respondent Selection," dated April 20, 2018 (Second Respondent Selection Memorandum).
[22] *See* Petition at Volume I, Exhibit GEN-2; and General Issues Supplement at 3.

publicly identified as a Chinese producer/exporter of rubber bands on the internet, in particular, the company's website.[23]

On April 23, 2018, we issued a questionnaire addressed to the GOC *via* ACCESS, in which we notified the GOC that Ningbo Syloon was selected as an additional mandatory respondent.[24] In the cover letter to the questionnaire, we notified the GOC that it "is responsible for forwarding copies of this cover letter and questionnaire to Ningbo Syloon."[25] Also on April 23, 2018, we sent, as a courtesy, a copy of the questionnaire *via* UPS to Ningbo Syloon because the company was *pro se*.[26] UPS delivered the questionnaire to Ningbo Syloon on April 27, 2018.[27] Ningbo Syloon did not submit an affiliation response on May 7, 2018. Neither Ningbo Syloon nor the GOC submitted an initial questionnaire response on May 30, 2018. We did not receive a request from Ningbo Syloon for an extension of time to file a response.

Additionally, on March 27, 2018, the petitioner requested that we postpone the preliminary determination in this investigation.[28] On June 11, 2018, the petitioner requested that we align the final CVD determination in this investigation with the final determination in the companion AD investigation of rubber bands from China.[29] Also, on June 11, 2018, the petitioner submitted a critical circumstances allegation.[30] On June 27, 2018, we notified the petitioner that we needed additional information with respect to its critical circumstances allegation.[31]

B. Postponement of Preliminary Determination

On April 12, 2018, we postponed the deadline for this preliminary determination until no later than 130 days after the initiation of the investigation, based on a request from the petitioner.[32] As such, we postponed the preliminary determination until July 2, 2018,[33] in accordance with sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).

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[23] *See* Second Respondent Selection Memorandum at Attachment II.

[24] *See* Letter to the GOC, "Countervailing Duty Investigation of Rubber Bands from the People's Republic of China: Countervailing Duty Questionnaire for Additional Mandatory Respondent," dated April 23, 2018.

[25] *Id*. at cover letter (page 1).

[26] *See* Memorandum, "Countervailing Duty Investigation of Rubber Bands from the People's Republic of China: Delivery Status of Initial Questionnaire Sent to Ningbo Syloon Imp & Exp Co., Ltd.," dated May 4, 2018 at Attachment A.

[27] *Id*. at Attachment B.

[28] *See* Letter from the petitioner, "Petitioner's Request for Postponement of the Preliminary Determinations," dated March 27, 2018 (Request for Postponement).

[29] *See* Letter from the petitioner, "Petition for the Imposition of Countervailing Duties on Rubber Bands from Thailand and China – Request for Alignment," dated June 11, 2018 (Request for Alignment).

[30] *See* Letter from the petitioner, "Rubber Bands from the People's Republic of China: Critical Circumstances Allegation," dated June 11, 2018 (Critical Circumstances Allegation).

[31] *See* Letter to the petitioner, "Antidumping and Countervailing Duty Investigations of Rubber Bands from the People's Republic of China: Critical Circumstances Allegation," dated June 27, 2018; *see also* 19 CFR 351.206(b) (requiring "reasonably available factual information" to support a critical circumstances allegation).

[32] *See Rubber Bands from Thailand and the People's Republic of China: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 83 FR 15789 (April 12, 2018) (*Preliminary Determination Postponement*); *see also* Request for Postponement.

[33] *See Preliminary Determination Postponement*, 83 FR at 15790.

C. Period of Investigation

The POI is January 1, 2017, through December 31, 2017.

III. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,[34] we set aside a period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage.[35] We received several comments concerning the scope of the AD and CVD investigations of rubber bands from China and Thailand. 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 in the preliminary determinations of the companion AD investigations, the deadline for which is August 29, 2018. We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in case and rebuttal briefs.

IV. SCOPE OF THE INVESTIGATION

The products subject to this investigation are bands made of vulcanized rubber, with a flat length, as actually measured end-to-end by the band lying flat, no less than ½ inch and no greater than 10 inches; with a width, which measures the dimension perpendicular to the length, actually of at least 3/64 inch and no greater than 2 inches; and a wall thickness actually from 0.020 inch to 0.125 inch. Vulcanized rubber has been chemically processed into a more durable material by the addition of sulfur or other equivalent curatives or accelerators. Subject products are included regardless of color or inclusion of printed material on the rubber band's surface, including but not limited to, rubber bands with printing on them, such as a product name, advertising, or slogan, and printed material (*e.g.*, a tag) fastened to the rubber band by an adhesive or another temporary type of connection. The scope includes vulcanized rubber bands which are contained or otherwise exist in various forms and packages, such as, without limitation, vulcanized rubber bands included within a desk accessory set or other type of set or package, and vulcanized rubber band balls. The scope excludes products that consist of an elastomer loop and durable tag all-in-one, and bands that are being used at the time of import to fasten an imported product. Merchandise covered by this investigation is currently classified in the HTSUS under subheading 4016.99.3510. Merchandise covered by the scope may also enter under HTSUS subheading 4016.99.6050. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

V. ALIGNMENT

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i), and based on the petitioner's request,[36] we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of rubber bands from China.

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[34] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).
[35] *See Initiation Notice*, 83 FR at 8430.
[36] *See* Request for Alignment.

Consequently, the final CVD determination will be signed on the same date as the final AD determination, which is currently scheduled to be due no later than November 13, 2018, unless postponed.[37]

VI. INJURY TEST

Because China is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the 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 March 15, 2018, the ITC preliminarily determined that there was a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of rubber bands from China that are alleged to be sold at less than fair value and subsidized by the GOC.[38]

VII. APPLICATION OF THE CVD LAW TO IMPORTS FROM CHINA

On October 25, 2007, we published the 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.[39]

Commerce affirmed its decision to apply the CVD law to China in numerous subsequent determinations.[40] 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 under section 771(18) of the Act, such as China.[41] The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.[42]

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[37] The AD preliminary determination was postponed to no later than August 29, 2018, see *Rubber Bands from the People's Republic of China and Thailand: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 83 FR 29748 (June 26, 2018). Therefore, the AD final determination is currently due for signature no later than Monday, November 12, 2018, which is a federal holiday. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). As such, the AD final determination signature date rolls to Tuesday, November 13, 2018.

[38] *See ITC Preliminary Determination*, 83 FR at 12594; *see also* ITC Publication.

[39] *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 (IDM) at Comment 6.

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

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

[42] *See* Public Law 112-99, 126 Stat. 265 §1(b) (2012).

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

Section 776(b) of the Act 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."[43] 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."[44]

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[45] It is Commerce's practice to consider information to be corroborated if it has probative value.[46] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.[47] However, the SAA emphasizes that Commerce need

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[43] *See*, *e.g.*, *Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 58175 (December 11, 2017), and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences"; *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), and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences"; *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).

[44] *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.

[45] *Id*.

[46] *Id*.

[47] *Id*. at 869.

not prove that the selected facts are the best alternative information.[48] Furthermore, Commerce is not required to corroborate any countervailing subsidy rate applied in a separate segment of the same proceeding.[49]

Finally, under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[50]

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

B. Application of AFA: Graceful, Moyoung, Ningbo Syloon, and the GOC

As discussed in the "Initiation and Case History" section above, Graceful and Moyoung were the initially selected mandatory respondents in this investigation. However, neither company provided a response to the initial CVD questionnaire. As such, we subsequently selected Ningbo Syloon as an additional mandatory respondent. Ningbo Syloon also failed to provide any response to the initial CVD questionnaire. In addition, the GOC is not participating in this investigation, having not entered an appearance or responded to Commerce's initial CVD questionnaires for any of the mandatory respondents. We, therefore, preliminarily find that Graceful, Moyoung, Ningbo Syloon (collectively, the non-responsive companies), and the GOC withheld information that had been requested of them and failed to provide information within the deadlines established. By not responding to the initial CVD questionnaire, the non-responsive companies and the GOC significantly impeded this proceeding. Thus, in reaching a preliminary determination, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act, we are basing the subsidy rates for these companies and our findings regarding specificity and financial contribution by the GOC on facts otherwise available.

Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not responding to the initial CVD questionnaire, the non-responsive companies and the GOC did not cooperate to the best of their ability to comply with the requests for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted to ensure that the non-responsive companies and the GOC do not obtain a more favorable result by failing to cooperate than if they had fully complied with Commerce's requests for information. The application of AFA to the non-responsive companies and the

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[48] *Id*. at 869-870.
[49] *See* section 776(c)(2) of the Act.
[50] *See* section 776(d)(3) of the Act.

government is consistent with Commerce's practice.[51]

We are, therefore, finding all 15 programs in this proceeding to be countervailable—that is, they provide a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act, confer a benefit within the meaning of sections 771(5)(B) and (E) of the Act, and are specific within the meaning of section 771(5A) of the Act. As AFA, we find that the non-responsive companies, in fact, used these countervailable programs during the POI. We selected an AFA rate for each of the programs, which are fully described in the Initiation Checklist,[52] and included them in the determination of the AFA rate applied to Graceful, Moyoung, and Ningbo Syloon.[53] We additionally find that current record information provides additional bases to infer, as AFA, that these programs constitute financial contributions and meet the specificity requirements of the Act.[54]

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 cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[55] When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any 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 countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.[56]

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[51] *See, e.g., Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Preliminary Affirmative Determination*, 80 FR 68843 (November 6, 2015), and accompanying Preliminary Decision Memorandum (PDM) at "Initiation and Case History" and "Use of Facts Otherwise Available and Adverse Inferences," unchanged in *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) (*CORE from China*), and accompanying IDM at "Case History" and "Use of Facts Otherwise Available and Adverse Inferences." *See also Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018), and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences."

[52] *See* Initiation Checklist at 7-23.

[53] See Appendix.

[54] *See* Initiation Checklist at 7-23.

[55] *See*, *e.g.*, *CORE from China* IDM at "Use of Facts Otherwise Available and Adverse Inferences"; *see also Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies"; and *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 IDM at "Application of Facts Available, Including the Application of Adverse Inferences").

[56] *See*, *e.g.*, *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM at 13-14; *see also Essar Steel, Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

Accordingly, when selecting AFA rates, if we have no cooperating respondents, as is the case in this investigation, we look outside the current investigation to other CVD proceedings involving products from the same country (*i.e.*, China). We first determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).[57] 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.[58] 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.[59]

C. Selection of the AFA Rates

In determining the AFA rate for each non-responsive company, we are guided by Commerce's methodology detailed above. For the Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law program, we applied an adverse inference that each non-responsive company paid no income tax during the POI. The standard income tax rate for corporations in China in effect during the POI was 25 percent.[60] Thus, the highest possible benefit for this income tax program is 25 percent. Accordingly, we are applying a 25 percent AFA rate for the Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law program.

For all other programs, we are applying the highest above-*de minimis* subsidy rate calculated for the same or similar programs in a China CVD investigation or administrative review. We are able to match, based on program names, descriptions, and benefit treatments, the following programs to the same or similar programs from other China CVD proceedings:

- Export Loans from Chinese State-Owned Banks[61]
- Export Seller's Credit Program[62]
- Export Credit Guarantees[63]
- Export Buyer's Credit[64]

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[57] 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 IDM at "Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "Grant Under the Elimination of Backward Production Capacity Award Fund."
[58] *See Shrimp from China* IDM at 13-14.
[59] *Id.* at 14.
[60] *See* Petition at Exhibit CVD-CH-53 (Enterprise Income Tax Law) at Article 4.
[61] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201, 70202 (November 17, 2010) (*Coated Paper from China*).
[62] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011), and accompanying IDM at "Export Seller's Credit for High- and New-Technology Products."
[63] *See Coated Paper from China*, 75 FR at 70202.
[64] *Id*.

- Export Credit Insurance Subsidies[65]
- Provision of Natural Rubber for Less Than Adequate Remuneration (LTAR)[66]
- Provision of Land-Use Rights in Industrial and Other Special Zones for LTAR[67]
- Provision of Electricity for LTAR[68]
- Import Tariff Reductions to Foreign-Invested Enterprises and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries[69]
- GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands [70]
- Special Fund for Energy Savings Technology Reform[71]
- Small and Medium-Sized Enterprise (SME) International Market Exploration/Development Fund[72]
- SME Technology Innovation Fund[73]
- Export Assistance Grants[74]

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for each non-responsive company is 125.77 percent *ad valorem*. The Appendix to this memorandum contains a chart summarizing the calculation of the AFA rate.

D. Corroboration of the AFA Rate

As noted above, section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject

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[65] *Id*.
[66] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 40554 (August 25, 2017); *see also* Memorandum, "Placing on the Record OTR Tire Calculations," dated concurrently with this preliminary determination (for the Amended Final Calculations for Xuzhou Xugong Tyres Co., Ltd. (August 21, 2017) at 2 (public version)).
[67] *See Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 53473 (November 16, 2017), and accompanying IDM at "Provision of Land-Use Rights by the GOC for LTAR."
[68] *See Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014), accompanying IDM at "Electricity for LTAR."
[69] *See New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010) at "VAT and Import Duty Exemptions on Imported Material," unchanged in *New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011).
[70] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 27466 (June 15, 2017), and accompanying IDM at "Special Fund for Energy Saving Technology."
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] *Id.*

merchandise."[75] The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.[76]

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.[77] 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.[78]

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.[79]

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

IX. CALCULATION OF THE ALL-OTHERS RATE

In the event of an affirmative preliminary determination, section 703(d)(1)(A)(i) of the Act directs Commerce to determine an estimated all-others rate for all exporters and producers not individually investigated. Section 705(c)(5)(A)(i) of the Act states that the all-others rate shall be an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any rates that are zero or *de minimis* or any rates determined entirely on facts available. Section 705(c)(5)(A)(ii) of the Act, however, provides that, if the countervailable subsidy rates established for all individually examined exporters and producers are *de minimis* or based entirely under section 776 of the Act, Commerce may use any reasonable method to establish an all-others rate for exporters and

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[75] *See* SAA at 870.
[76] *Id*.
[77] *Id*. at 869-870.
[78] *See* section 776(d) of the Act.
[79] *See*, *e.g.*, *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017), and accompanying IDM at 14 (citing *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996)).

producers that were not individually-examined, including averaging the weighted-average countervailable subsidy rates determined for the individually-examined exporters and producers.

In this investigation, all rates for the individually investigated respondents are based entirely on facts available pursuant to section 776 of the Act. Accordingly, we are using "any reasonable method" to establish the all-others rate. We find that it is reasonable to rely on the rate established for the non-responsive company respondents as the all-others rate, particularly as there is no other information on the record that can be used to determine the all-others rate. Commerce has taken this approach to calculating the all-others rate in other CVD investigations.[80]

X. CONCLUSION

We recommend that you approve the preliminary findings described above.

☒ ☐

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Agree Disagree

7/2/2018

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

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[80] *See*, *e.g.*, *Countervailing Duty Investigation of Stainless Steel Flanges from the People's Republic of China: Preliminary Affirmative Determination*, 83 FR 3124 (January 23, 2018), and accompanying PDM at "Calculation of the All-Others Rate," unchanged in *Countervailing Duty Investigation of Stainless Steel Flanges from the People's Republic of China: Final Affirmative Determination*, 83 FR 15790 (April 12, 2018); and *Countervailing Duty Investigation of Ammonium Sulfate from the People's Republic of China: Preliminary Affirmative Determination*, 81 FR 76332 (November 2, 2016), and accompanying PDM at "Calculation of the All-Other Rates," unchanged in *Ammonium Sulfate from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 4850 (January 17, 2017).

APPENDIX

AFA Rate Calculation

Program	AFA Rate	Source of AFA Rate	Hierarchy Basis for AFA Rate
Export Loans from Chinese State-Owned Banks	10.54%	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201, 70202 (November 17, 2010) (*Coated Paper from China*).	Highest Calculated Rate for a Similar Lending Program (based on the treatment of the benefit): Preferential Lending to the Coated Paper Industry.
Export Seller's Credit Program	4.25%	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011).	Highest Calculated Rate for the Identical Program: Export Seller's Credit for High- and New-Technology Products.
Export Credit Guarantees	10.54%	*Coated Paper from China*	Highest Calculated Rate for a Similar Lending Program (based on the treatment of the benefit): Preferential Lending to the Coated Paper Industry.
Export Buyer's Credit	10.54%	*Coated Paper from China*	Highest Calculated Rate for a Similar Lending Program (based on the treatment of the benefit): Preferential Lending to the Coated Paper Industry.
Export Credit Insurance Subsidies	10.54%	*Coated Paper from China*	Highest Calculated Rate for a Similar Lending Program (based on the treatment of the benefit): Preferential Lending to the Coated Paper Industry.

Provision of Natural Rubber for LTAR	16.25%	*Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 40554 (August 25, 2017), and Amended Final Calculations for Xuzhou Xugong Tyres Co., Ltd. (August 21, 2017).	Highest Calculated Rate for a Similar LTAR Program (based on the treatment of the benefit): Provision of Synthetic Rubber for LTAR.
Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR	5.24%	*Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 53473 (November 16, 2017).	Highest Calculated Rate for a Similar Land Program (based on the treatment of the benefit): Provision of Land-Use Rights by the GOC for LTAR.
Provision of Electricity for LTAR	20.06%	*Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014).	Highest Calculated Rate for the Identical Program: Electricity for LTAR.
Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law	25.00%	Petition at Volume VI, Exhibit CVD-CH-53 (Enterprise Income Tax Law) at Article 4.	Corporate Income Tax Rate
Import Tariff Reductions to Foreign-Invested Enterprises and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries	9.71%	*New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010), unchanged in the final (*see New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of*	Highest Calculated Rate for a Similar Program (based on treatment of the benefit): VAT and Import Duty Exemptions on Imported Materials.

		Countervailing Duty Administrative Review, 76 FR 23286 (April 26, 2011).	
GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands	0.62%	*Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 27466 (June 15, 2017) (*Isos from China-2014*).	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology.
Special Fund for Energy Savings Technology Reform	0.62%	*Isos from China-2014*	Highest Calculated Rate for the Identical Program: Special Fund for Energy Saving Technology.
SME International Market Exploration/Development Fund	0.62%	*Isos from China-2014*	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology.
SME Technology Innovation Fund	0.62%	*Isos from China-2014*	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology.
Export Assistance Grants	0.62%	*Isos from China-2014*	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology.
TOTAL AFA PRELIMINARY SUBSIDY RATE:	**125.77%**		