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International Trade Administration
Washington, D.C. 20230

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Administrative Review
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DATE: August 31, 2018

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

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

SUBJECT: Decision Memorandum for the Preliminary Results of the Administrative Review of the Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China; 2016

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China) (*CVD Order*).[1] The period of review (POR) is January 1, 2016, through December 31, 2016. Commerce selected Cooper (Kunshan) Tire Co., Ltd. (Cooper)[2] and Qingdao Sentury Tire Co. Ltd. (Sentury) as mandatory respondents.[3]

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[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 47902 (August 10, 2015) (*CVD Order*).
[2] *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China: Selection of Respondents for Individual Examination," dated December 8, 2017 (Respondent Selection Memorandum).
[3] *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China: Selection of Respondents for Individual Examination," dated December 8, 2017 (Respondent Selection Memorandum) and Memorandum, "Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China: Selection of Additional Respondents for Individual Examination," dated February 1, 2018 (Additional Respondent Selection Memorandum).

If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), we will issue the final results no later than 120 days after the publication of these preliminary results.

II. BACKGROUND

On August 10, 2015, Commerce published the *CVD Order* on passenger tires from China.[4] On August 1, 2017, we published a notice of "Opportunity to Request Administrative Review" of the *CVD Order*.[5] Between August 21, 2017, and August 31, 2017, Commerce received timely requests to conduct an administrative review of the *CVD Order* of the interested parties listed in Appendix I.

On October 16, 2017, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published in the *Federal Register* a notice of initiation of an administrative review of the *CVD Order* for 42 producers/exporters for the POR.[6] For a list of these companies, please see Appendix I to this Decision Memorandum. In the *Initiation Notice,* we stated that, in the event we limited the number of respondents for individual examination in this administrative review, we intended to select respondents based on CBP data for U.S. imports during the POR.[7] On November 8, 2017, we released CBP import data under the Administrative Protective Order (APO) and invited interested parties to submit comments.[8] We received timely comments from the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union, AFL-CIO (USW) (the petitioner).[9] On December 8, 2017, Commerce issued its Respondent Selection Memorandum.[10] We selected the two Chinese producers/exporters accounting for the largest percentage of POR entries of subject merchandise, based on CBP data, as mandatory respondents: Cooper and Shandong Guofeng Rubber and Plastic Co., Ltd. (Guofeng). On December 28, 2017, Guofeng withdrew its request for an administrative review of itself,[11] and on December 28, 2017 and January 5, 2018, ITG Voma

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[4] *See CVD Order*.
[5] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 35754 (August 1, 2017).
[6] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 48051 (October 16, 2017). (*Initiation Notice).* Kumho Tire Co., Inc. was inadvertently omitted from the *Initiation Notice* so Commerce corrected this in a later publication. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 1329 (January 11, 2018).
[7] *See Initiation Notice* at the section, "Respondent Selection."
[8] *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China; Customs and Border Protection Entry Data," dated November 8, 2017.
[9] *See* Petitioner's letter, "Second Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China – The USW's Comments on U.S. Customs and Border Protection Entry Data," dated November 15, 2017.
[10] *See* Respondent Selection Memorandum.
[11] *See* Guofeng's letter, "Passenger Vehicle and Light Truck Tires from People's Republic of China: Withdrawal of Request for Administrative Review," dated December 28, 2017.

Corporation and American Pacific Industries, both importers of subject merchandise, also withdrew their requests for a review of Guofeng, respectively.[12] On February 1, 2018, Commerce selected Sentury as an additional mandatory respondent.[13]

We sent a CVD questionnaire to the Government of China (GOC) on December 15, 2017, with instructions to forward a copy to the respondent companies identified in the cover letter.[14] On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.[15] On February 5, 2018, we sent an additional questionnaire to Sentury.[16] Cooper and Sentury filed timely responses to the CVD questionnaire – responding to the portion of Section III of the questionnaire identifying affiliated companies on December 29, 2017, and March 2, 2018, respectively.[17] On April 25, 2018, Commerce extended the deadline for these preliminary results by 91 days, to August 6, 2018.[18] Cooper submitted the remainder of Section III of the initial questionnaire on February 5, 2018, and Sentury submitted the remainder of Section III of the initial questionnaire on April 2, 2018.[19] The GOC filed its timely response to Section II of the CVD questionnaire on February 5, 2018,[20] and filed an additional Section II response, concerning Sentury on April 2, 2018.[21] Commerce sent Cooper and Sentury supplemental questionnaires on June 12, 2018.[22] Cooper and Sentury filed timely responses to the supplemental questionnaires on June 18, 2018.[23] On July 16, 2018, Commerce further extended the deadline for these preliminary results by 29 days, until September 4, 2018.[24] Commerce sent a supplemental questionnaire to the GOC on August 10, 2018.[25] The GOC filed a timely response on August 17, 2018.[26]

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[12] *See* ITG Voma's letter, "Passenger Vehicle and Light Truck Tires from People's Republic of China: Withdrawal of Request for Administrative Review," dated December 28, 2017; API's letter, "Passenger Vehicle and Light Truck Tires from People's Republic of China: Withdrawal of Request for Administrative Review," dated January 5, 2018.

[13] *See* Additional Respondent Selection Memorandum.

[14] *See* Commerce Letter re: Countervailing Duty Questionnaire, dated December 15, 2017 (Initial CVD Questionnaire).

[15] S*ee* 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.

[16] *See* Commerce Letter re: Countervailing Duty Questionnaire, dated February 5, 2018 (Initial Sentury CVD Questionnaire).

[17] *See* Cooper's, December 29, 2017 Affiliation Response and Sentury's March 2, 2018 Affiliation Response.

[18] *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China: Extension of Deadline for Preliminary Results," dated April 25, 2018.

[19] *See* Cooper's February 5, 2018 Initial Questionnaire Response (Cooper's February 5, 2018 IQR) and Sentury's April 2, 2018 Initial Questionnaire Response (Sentury's April 2, 2018 IQR).

[20] *See* GOC February 5, 2018 Initial Questionnaire Response (GOC February 5, 2018 IQR).

[21] *See* GOC April 2, 2018 Initial Questionnaire Response (GOC April 2, 2018 IQR).

[22] *See* Commerce Letter re: Supplemental Questionnaire for Cooper dated June 12, 2018, and Commerce Letter re: Supplemental Questionnaire for Sentury, dated June 12, 2018.

[23] *See* Cooper's, June 18, 2017 Supplemental Questionnaire Response (Cooper June 18, 2018 SQR), and Sentury June 18, 2018 Supplemental Questionnaire Response (Sentury June 18, 2018 SQR).

[24] *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China: Second Extension of Deadline for Preliminary Results," dated July 16, 2018.

[25] *See* Commerce Letter re: Passenger Vehicle and Light Truck Tires from the People's Republic of China: Supplemental Questionnaire for Government of the People's Republic of China, dated August 10, 2018.

[26] *See* GOC August 17, 2018 Supplemental Questionnaire Response (GOC August 17, 2018 SQR).

III. PARTIAL RESCISSION OF REVIEW

For those companies for which we received timely withdrawals of the requests for review (*i.e.*, Zhongce Rubber Group Company Limited., Shandong Changhong Rubber Technology Co., Ltd., Shandong Guofeng Rubber Plastics Co., Ltd., Shengtai Group Co., Ltd., Shandong Zhongyi Rubber Co., Ltd., Kumho Tire Co., Inc.[27]), we are rescinding this administrative review, pursuant to 19 CFR 351.213(d)(1), because no other party requested review of these companies. For these companies, countervailing duties shall be assessed at rates equal to the rates of cash deposits for estimated countervailing duties required at the time of entry, or withdrawn from warehouse, for consumption, during the period January 1, 2016, through December 31, 2016, in accordance with 19 CFR 351.212(c)(2).

IV. NON-SELECTED COMPANIES UNDER REVIEW

The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation.

Section 705(c)(5)(A)(i) of the Act instructs Commerce as a general rule to calculate an all others rate using the weighted average of the subsidy rates established for the producers/exporters individually examined, excluding any zero, *de minimis*, or rates based entirely on facts available. In this review, the preliminary subsidy rates calculated for Cooper and Sentury are above *de minimis* and are not based entirely on facts available. Therefore, for the companies for which a review was requested that were not selected as mandatory company respondents, and for which we did not receive a timely request for withdrawal of review, and which we are not finding to be cross-owned with the mandatory company respondents, we are preliminarily basing the subsidy rates on the rates calculated for Cooper and Sentury. For a list of these companies, please see Appendix II to this Decision Memorandum.

V. SCOPE OF THE ORDER

The scope of this order is passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by this order may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market.

Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have the

[27] Kumho Tire Co., Inc. (Kumho) filed its withdrawal request two days after the 90-day line. *See* 19 CFR 351.213(d)(1). However, we find it reasonable to extend the 90-day deadline because Kumho was inadvertently excluded from the *Initiation Notice* and filed its withdrawal request only 2 days after the deadline. *See* 19 CFR 351.213(d)(1) ("The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.")

following prefixes or suffix in their tire size designation, which also appears on the sidewall of the tire:

Prefix designations:

P - Identifies a tire intended primarily for service on passenger cars

LT- Identifies a tire intended primarily for service on light trucks

Suffix letter designations:

LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service.

All tires with a “P” or “LT” prefix, and all tires with an “LT” suffix in their sidewall markings are covered by this investigation regardless of their intended use.

In addition, all tires that lack a “P” or “LT” prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the passenger car section or light truck section of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set out below.

Passenger vehicle and light truck tires, whether or not attached to wheels or rims, are included in the scope. However, if a subject tire is imported attached to a wheel or rim, only the tire is covered by the scope.

Specifically excluded from the scope are the following types of tires:

(1) racing car tires; such tires do not bear the symbol “DOT” on the sidewall and may be marked with “ZR” in size designation;

(2) new pneumatic tires, of rubber, of a size that is not listed in the passenger car section or light truck section of the Tire and Rim Association Year Book;

(3) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires;

(4) non-pneumatic tires, such as solid rubber tires;

(5) tires designed and marketed exclusively as temporary use spare tires for passenger vehicles which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire’s sidewall are listed in Table PCT-1B (“T” Type Spare Tires for Temporary Use on Passenger Vehicles) of the Tire and Rim Association Year Book,

(b) the designation “T” is molded into the tire’s sidewall as part of the size designation, and,

(c) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed is 81 MPH or a “M” rating;

(6) tires designed and marketed exclusively for specialty tire (ST) use which, in addition, exhibit each of the following conditions:

(a) the size designation molded on the tire’s sidewall is listed in the ST sections of the Tire and Rim Association Year Book,

(b) the designation “ST” is molded into the tire’s sidewall as part of the size designation,

(c) the tire incorporates a warning, prominently molded on the sidewall, that the tire is “For Trailer Service Only” or “For Trailer Use Only”,

(d) the load index molded on the tire’s sidewall meets or exceeds those load indexes listed in the Tire and Rim Association Year Book for the relevant ST tire size, and

(e) either

(i) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed does not exceed 81 MPH or an “M” rating; or

(ii) the tire’s speed rating molded on the sidewall is 87 MPH or an “N” rating, and in either case the tire’s maximum pressure and maximum load limit are molded on the sidewall and either

(1) both exceed the maximum pressure and maximum load limit for any tire of the same size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book; or

(2) if the maximum cold inflation pressure molded on the tire is less than any cold inflation pressure listed for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book, the maximum load limit molded on the tire is higher than the maximum load limit listed at that cold inflation pressure for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book;

(7) tires designed and marketed exclusively for off-road use and which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire’s sidewall are listed in the off-the-road, agricultural, industrial or ATV section of the Tire and Rim Association Year Book,

(b) in addition to any size designation markings, the tire incorporates a warning, prominently molded on the sidewall, that the tire is "Not For Highway Service" or "Not for Highway Use",

(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the Tire and Rim Association Year Book, and the rated speed does not exceed 55 MPH or a "G" rating, and

(d) the tire features a recognizable off-road tread design.

The products covered by the order are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.45.10, 4011.99.45.50, 4011.99.85.10, 4011.99.85.50, 8708.70.45.45, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

VI. APPLICATION OF THE COUNTERVAILING DUTY LAW TO IMPORTS FROM CHINA

On October 25, 2007, Commerce published its final determination on coated free sheet paper from China.[28] In *CFS from China*, Commerce found that:

> {G}iven the substantial difference between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to the Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.[29]

Commerce affirmed its decision to apply the CVD law to China in numerous subsequent determinations.[30] Furthermore, on March 31, 2012, Public Law 112-99 was enacted, which confirms 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.[31] The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.[32]

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[28] *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 IDM at Comment 6.
[29] *Id.*
[30] *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.
[31] Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.
[32] *See* Public Law 112-99, 126 Stat. 265 1(b).

VII. 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 review.[33] 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 the PRC. The industrial sector in the PRC alone is comprised of 37 listed industries and economic activities, indicating the diversification of the economy.

VIII. SUBSIDIES VALUATION

Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the Average Useful Life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the IRS Tables, as updated by the U.S. Department of the Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of fourteen years. No interested party has challenged the use of a fourteen-year AUL.

Further, for non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

Attribution of Subsidies

Cross Ownership: 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 the other corporation(s) in essentially the same ways it can use its own assets. This section of the Commerce's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or

[33] *See* Memorandum, "Additional Documents Memorandum," dated concurrently with this memorandum (Additional Document Memorandum).

more) corporations. The *CVD Preamble* to Commerce's regulations further clarifies Commerce's cross-ownership standard. According to the *CVD 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.[34]

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 way it could use its own subsidy benefits.[35] Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), among the following companies.

Cooper

Cooper is a wholly-owned subsidiary of Cooper Global Holding Co., Ltd, an offshore company registered in Barbados, which is indirectly owned by Cooper Tire and Rubber Company (CTRC), a U.S.-based company. Additionally, Cooper reported affiliations with Cooper Tire Asia-Pacific (Shanghai) Trading Co., Ltd. and Cooper Tire (China) Investment Co. Ltd., both wholly-owned subsidiaries of CTRC. Commerce preliminarily finds that the attribution rules under 19 CFR 351.525(b)(6) do not apply to Cooper's affiliates (*e.g.*, none of the affiliates produced subject merchandise or inputs used in the downstream product); thus, we have included only subsidies received by Cooper itself in determining its countervailable subsidy rate.

Sentury

In its March 2, 2018, questionnaire response, Sentury reported being affiliated with five companies. The five companies are holding companies that each own a direct interest in Sentury.[36] The five companies are, in turn, majority owned by a single shareholder, who is the largest individual owner of Sentury. Sentury reported that the five holding companies have no other business activities or revenue. In addition, Sentury reported having three trading

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[34] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).
[35] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[36] These companies are: Qingdao Shuang Linlin Trade Partnership Company; Qingdao Senzhonglin Enterprise Information Consultation Management Center; Qingdao Senweilin Enterprise Information Consultation Management Center; Qingdao Senlinglin Enterprise Information Consultation Management Center Qingdao Senbaolin Enterprise Information Consultation Management Center.

companies located outside of China. It reported no other affiliates. Finally, Sentury acquired all of the assets of another tire producer, Sentaida Group Co., Ltd. (Sentaida), in 2011, including fixed assets, intangible assets, debts, etc. Sentury provided a questionnaire response on behalf of itself, Sentaida, and the five holding companies. Sentury reported that subsidies were received during the AUL only by itself and Sentaida. Because Sentury reported that no subsidies were received by the five holding companies, it is not necessary to address whether the attribution rules of 19 CFR 351.525(b)(6) apply to these affiliates. According to Commerce's change-in-ownership (CIO) methodology,[37] any unamortized amount of any pre-sale subsidy is presumed to benefit the buyer of the predecessor company. Therefore, Commerce is attributing subsidies received by Sentaida during the AUL to Sentury.

Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. We have attributed subsidies received by Cooper to its total sales or export sales, depending on whether a subsidy is determined to be export contingent. We have attributed subsidies received by Sentury to its total sales or export sales, depending on whether the subsidy is determined to be export contingent. For subsidies received by Sentaida before the 2011 acquisition, we have applied the "0.5 percent" test described in 19 CFR 351.524(b)(2) using only the sales of Sentaida in determining whether to expense or allocate the subsidy. For pre-acquisition subsidies received by Sentaida determined to be allocable, we have attributed the amount allocated to the POR only to sales of Sentury (Sentaida had no sales during the POR).

IX. INTEREST RATE BENCHMARKS, DISCOUNT RATES, INPUT, ELECTRICTY AND LAND BENCHMARKS

We are examining loans received by Cooper and Sentury from Chinese policy banks and state-owned commercial banks (SOCBs). We are also examining non-recurring, allocable subsidies.[38] The derivation of the benchmark interest rates and discount rates used to measure the benefit from these subsidies are discussed below.

Short-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, Commerce uses comparable commercial loans reported by the company as a benchmark.[39] If the

[37] *See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act,* 68 FR 37125 (June 23, 2003). Starting with *Certain Pasta from Italy; Final Results of the Seventh Countervailing Duty Administrative Review*, 69 FR 70657 (December 7, 2004). Commerce has applied this new methodology to private-to-private sales of a company (or its assets) in addition to government-to-private sales (*i.e.*, "privatizations").
[38] *See* 19 CFR 351.524(b)(1).
[39] *See* 19 CFR 351.505(a)(3)(i).

firm did not have any comparable commercial loans during the period, Commerce's regulations provide that we "may use a national average interest rate for comparable commercial loans."[40]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS from China*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.[41] In an analysis memorandum dated July 21, 2017, Commerce conducted a re-assessment of the lending system in China.[42] Based on this re-assessment, Commerce has concluded that, despite reforms to date, the Government of China's role in the system continues to fundamentally distort lending practices in China in terms of risk pricing and resource allocation, precluding the use of interest rates in China for CVD benchmarking or discount rate purposes. Consequently, we preliminarily find that any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, Commerce is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with Commerce's practice. For example, in *Lumber from Canada*, Commerce used U.S. timber prices to measure the benefit for government-provided timber in Canada.[43]

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China* and later updated in *Thermal Paper China*.[44] Under that methodology, we first determine which countries are similar to China in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from China*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, China fell in the lower-middle income category.[45] Beginning in 2010, however, China was classified in the upper-middle income category and remained there from 2011 to 2014.[46] Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount

[40] *See* 19 CFR 351.505(a)(3)(ii).
[41] *See CFS from China* and accompanying IDM at Comment 10.
[42] *See* Memorandum, "Review of China's Financial System Memorandum," concurrently with this memorandum.
[43] *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Lumber Canada Final*), and accompanying IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."
[44] *See CFS from China* and accompanying IDM at Comment 10; *see also Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper China*), and accompanying IDM (Thermal Paper IDM) at 8-10.
[45] *See* World Bank Country Classification, *http://data.worldbank.org/about/country-and-lending-groups* (World Bank Country Classification); *see also*, Memorandum, "Interest Rate Benchmark Memorandum," dated concurrently with this memorandum. (Interest Rate Benchmark Memorandum).
[46] *See* World Bank Country Classification.

rates for 2010-2014. This is consistent with Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.[47]

After Commerce identifies the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation, the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators.

In each of the years from 2003-2009 and 2011-2016, the results of the regression analysis reflected the expected, common-sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.[48] For 2010, however, the regression does not yield that outcome for China's income group.[49] This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from China* to compute the benchmarks for the years from 2001-2009 and 2011-2016. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund (IMF), and they are included in that agency's International Financial Statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010-2016 and "lower middle income" for 2001-2009.[50] First, we did not include those economies that Commerce considered to be NMEs for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we remove any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year Commerce calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.[51] Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.[52]

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust

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[47] *See, e.g.*, *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying Preliminary Decision Memorandum at "Benchmarks and Discount Rates" (unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China Final*)).
[48] *See* Interest Rate Benchmark Memorandum.
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*

benchmark for long-term loans. To address this problem, Commerce developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.[53]

In *Citric Acid from China*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where "n" equals or approximates the number of years of the term of the loan in question.[54] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.[55]

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

Foreign Currency-Denominated Loans

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

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the Government of China provided non-recurring subsidies.[56] The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the Cooper Preliminary Calculation Memorandum and Sentury Preliminary Calculation Memorandum.

Benchmarks to Determine Adequacy of Remuneration

The adequacy of remuneration for government-provided goods or services is determined pursuant to 19 CFR 351.511(a)(2). Under 19 CFR 351.511(a)(2), Commerce measures the remuneration received by a government for goods or services against comparable benchmark prices to determine whether the government provided goods or services 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

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[53] *See, e.g.*, Thermal Paper IDM at 10.
[54] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836, (April 13, 2009) (*Citric Acid from China*) and accompanying IDM at Comment 14.
[55] *See* Interest Rate Benchmark Memorandum.
[56] *See* Memorandum, "Preliminary Results Analysis for Sentury" dated concurrently with this memorandum (Sentury Preliminary Calculation Memorandum) and Memorandum, "Preliminary Results Analysis for Cooper (Kunshan) Tire Co., Ltd. dated concurrently with this memorandum (Cooper Preliminary Calculation Memorandum); *see also* Interest Rate Benchmark Memorandum.

(*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) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation (*i.e.*, tier one). This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Land Benchmark

As detailed in previous investigations, Commerce cannot rely on the use of so-called "first-tier" and "second-tier" benchmarks to assess the benefits from the provision of land for LTAR in China.[57] Accordingly, we used the 2010 Thailand benchmark information, *i.e.*, "Asian Marketview Reports" by CB Richard Ellis (CBRE) that we relied on in calculating land benchmarks in the CVD investigation of *Passenger Tires from the China*[58] and the previous review. We initially selected this information in *Laminated Woven Sacks from China* after considering a number of factors, including national income levels, population density, and producers' perceptions that Thailand is a reasonable alternative to China as a location for Asian production.[59] We find that these benchmarks are suitable for the preliminary results, adjusted accordingly for inflation to account for benefits received by Cooper and Sentury during the POR.

Input Benchmarks

For each of the inputs, as discussed below in the section, "Use of Facts Otherwise Available and Application of Adverse Inferences," we preliminarily determine that domestic input producers that supplied Cooper and Sentury are "authorities" within the meaning of section 771(5)(B) of the Act. Therefore, prices from their domestic suppliers are not usable as benchmarks, as they are prices charged by the very providers of the good at issue. We selected the benchmarks for measuring the adequacy of remuneration for carbon black, nylon cord, synthetic rubber and butadiene, and natural rubber, in accordance with 19 CFR 351.511(a). Below we analyze the information provided and the selection of a benchmark for each input. We note that, where possible, we have removed China-related pricing data (*i.e*., imports into China) from all of the input benchmarks for these preliminary results for the reasons described below.

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[57] *See, e.g., Laminated Woven Sacks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007), unchanged in *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances***,** 73 FR 35639 (June 24, 2008) (*Laminated Woven Sacks from China*).

[58] *See* Letter from USW, "First Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People' s Republic of China – The USW's Benchmark Factual Information," dated June 30, 2017, at Exhibit 1.

[59] The complete history of our reliance on this benchmark is discussed in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015) (*Solar Cells from China*), and accompanying IDM at 6 and Comment 11. In that discussion, we reviewed our analysis from the laminated woven sacks investigation and concluded the CBRE data were still a valid land benchmark.

1. *Carbon Black*

The GOC reported that, of the 57 carbon black producers in operation during the POR, the GOC maintains an ownership or management interest in five.[60] According to data provided by the GOC, these five producers accounted for 30.31 percent of domestic carbon black consumption during the POR (2016) and 26.54 percent of domestic production.[61] This level of GOC-controlled production is substantial.[62] Moreover, the data provided by the GOC also show that the volume of imports as a percentage of domestic production and consumption (1.77 and 2.02 percent, respectively) is insignificant.[63] Based on these facts, we conclude that domestic prices in China for carbon black are distorted such that they cannot be used as a Tier 1 benchmark. For the same reasons, we preliminarily determine that import prices into China cannot serve as a Tier 1 benchmark.[64] Thus, to measure the adequacy of remuneration for the provision of carbon black, we are relying on world market prices as the Tier 2 benchmark provided for in 19 CFR 351.511(a)(2)(ii).

2. *Nylon Cord*

The GOC reported that, of the 57 nylon cord producers in operation during the POR, the GOC maintained an ownership or management interest in two.[65] According to data provided by the GOC, these producers account for 10.77 percent of domestic consumption and 8.47 percent of domestic production, which we find are not substantial shares of the market.[66] Moreover, the record shows no export restraints on nylon cord were in place. Consequently, we preliminarily find that the record evidence does not support a conclusion that the market is distorted. Thus, under Tier 1, we may rely on prices resulting from actual transactions in the domestic market. Nonetheless, because we have deemed the domestic producers of nylon cord purchased by respondents to be "authorities," the prices for those purchases do not meet the requirements for a Tier 1 benchmark, and we look instead to "actual imports." However, Cooper did not report imports of nylon cord during the POR. Thus, to measure the adequacy of remuneration for the provision of nylon cord for Cooper, we are relying on publicly available aggregate Chinese import prices as the Tier 1 benchmark provided for in 19 CFR 351.511(a)(2)(i).[67] Sentury did

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[60] *See* GOC February 5, 2018 IQR at 32.
[61] *Id*. at 32-34.
[62] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission, in Part; 2014-2015*, 82 FR 42287 (September 7, 2017) and accompanying preliminary decision memorandum (2015 PVLT PDM) at 16 (reaching the same conclusion for very similar numbers (30.31 percent of domestic consumption, and 26.54 percent of domestic production) for carbon black).
[63] *See* GOC February 5, 2018 IQR at 32-33; *see also* 2015 PVLT PDM at 16 (reaching the same conclusion for regarding very similar import figures).
[64] *See, e.g.*, *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010), and accompanying Issues and Decision Memorandum, at 22 and Comment 14.
[65] *See* GOC February 5, 2018 IQR at 54.
[66] *Id.* at 54-55.
[67] *See* Cooper Preliminary Calculation Memorandum.

not report domestic purchases of nylon cord. Therefore, Sentury did not use this program during the POR and a benchmark for Sentury's purchases is not necessary.

3. *Synthetic Rubber and Butadiene*
4. *Natural Rubber*

According to data provided by the GOC, during the POR, state-owned producers accounted for over 42 percent of the natural rubber, and 31 percent of the synthetic rubber produced in the country.[68] Overall, GOC-controlled producers accounted for nearly 32 percent of the total rubber production in the country during the POR. These levels of GOC-controlled production are substantial. However, the record data also show that the volume of imports was even more significant as a percentage of domestic consumption (76.28 percent for natural rubber and 36.29 percent for synthetic rubber).[69] Moreover, the record evidence shows no government export restraint measures on these inputs during the POR. Consequently, we preliminarily find no support in the record to find that the Chinese rubber market was distorted.[70]

As a Tier 1 benchmark, as set forth in 19 CFR 351.511(a)(2)(i), we may rely on prices resulting from actual transactions within the country of investigation. However, because we have found the producers of these inputs purchased by the respondents to be "authorities," the prices on those purchases do not meet the requirements for a Tier 1 benchmark, and we look instead to actual import prices. For both Cooper and Sentury, we have used each respective company's monthly weighted-average prices of imports of natural and synthetic rubber.[71]

Transportation

For these preliminary results, we preliminarily determine to rely on international rates from Descartes for 20-foot containers to value ocean freight, the only benchmark information for freight placed on the record.[72]

X. USE OF FACTS OTHERWISE AVAILABLE AND APPLICATION OF ADVERSE INFERENCES

Section 776(a) of the Act provides that Commerce shall, subject to section 782(d) of the Act, use the "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person withholds information that has been requested; 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; significantly impedes

[68] *See* GOC February 5, 2018 IQR at 79 and 102-103.
[69] *Id.* at 78 and 102
[70] We make this finding based solely on the facts of this particular case. In other cases, even if there are similar levels of import penetration and SOE production as here, we may consider other indicators of market distortion in determining whether domestic prices can serve as an appropriate benchmark.
[71] *See* Cooper Preliminary Calculation Memorandum and Sentury Preliminary Calculation Memorandum.
[72] *See* Letter from Sentury, "Sentury Benchmark Submission: Second Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People' s Republic (C-570-017)" dated July 9, 2018, at 10 and Exhibit 1.

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

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying 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. In doing so, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[73] 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 countervailing duty investigation, a previous administrative review, or other information placed on the record.[74]

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[75] Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[76] Further, Commerce is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.[77]

Finally, under section 776(d) of the Act, when applying an adverse inference, Commerce may use a 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 countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use.[78] The Act also makes clear that, when selecting facts available with an adverse inference, 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.[79]

[73] *See* section 776(b)(1)(B) of the Act.
[74] *See also* 19 CFR 351.308(d).
[75] *See also* 19 CFR 351.308(c).
[76] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 at 870 (1994).
[77] *See* section 776(c)(2) of the Act.
[78] *See* section 776(d)(1) of the Act.
[79] *See* section 776(d)(3) of the Act.

Application of Adverse Facts Available: Input Producers are "Authorities"

As discussed below in the section "Programs Preliminarily Determined to be Countervailable," Commerce is investigating the provision of four inputs for LTAR: carbon black, nylon cord, synthetic rubber and butadiene, and natural rubber. We requested information from the GOC regarding the specific companies that produced the input products that Cooper and Sentury, and their respective cross-owned companies, purchased during the POR. Specifically, we sought information from the GOC that would allow us to determine whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.[80]

In our original questionnaire, we requested detailed information from the GOC that would be needed for this analysis.[81] We asked the GOC to "{p}lease coordinate immediately with the company respondents to obtain a complete list of each respondent company's {input} producers, including the producers of inputs purchased by the respondent through a supplier."[82] In its initial questionnaire response the GOC stated that it could not collect the amount of documentation required in the Input Producer Appendix.[83]

The GOC did not attempt to identify particular producers as "private" or "state-owned." However, Commerce's analysis of the basic registration and ownership information provided indicates that some producers are state-owned enterprises. Regarding apparently non-state owned companies, the GOC was asked to provide information about the involvement of the Chinese Communist Party (CCP) in those companies, including whether individuals in management positions are CCP members, in order to evaluate whether the privately-owned suppliers are "authorities" within the meaning of section 771(5)(B) of the Act.[84] While the GOC provided a long narrative explanation of the role of the CCP, when asked to identify any owners, members of the board of directors, or managers of the input suppliers who were government or CCP officials during the POR, the GOC explained that it does not maintain " . . . a central record of this information. . ."[85] The GOC concluded its response to this question by stating that "{i}f the Department considers such information is necessary to the case, the GOC would suggest the Department to request such information from the mandatory respondents directly."[86] Furthermore, Commerce requested that the GOC provide the articles of incorporation, capital verification reports, business licenses and tax registration, again in order to analyze whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. However, in response to the request for these documents, the GOC, as noted above, provided only basic business registration and ownership information, which does not provide the level of detail that would be provided by the requested documents.

With regard to the ownership of the producers that appear to be non-state-owned companies, but for whom the GOC provided an inadequate response to Commerce's requests, we preliminarily

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[80] *See* Initial CVD Questionnaire, at section II, E (pp. 4-16).
[81] *Id.*
[82] *Id* at 4, 7, 10, 14.
[83] *See e.g.,* GOC February 5, 2018 IQR at 11 and GOC April 2, 2018 IQR at 15.
[84] *See* Additional Documents Memorandum (containing a previous Commerce decision memorandum concerning the role of the CCP in both public and private Chinese producers).
[85] *See* GOC February 5, 2018 IQR at 12.
[86] *Id.* at 17.

determine that the GOC has the necessary information that was requested of it, but withheld that information. In so doing, the GOC significantly impeded the review. Therefore, in accordance with sections 776(a)(2)(A) and 776(a)(2)(C) of the Act, Commerce must rely on "facts otherwise available" in issuing our preliminary results. Moreover, we preliminarily find that the GOC did not act to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. Thus, as AFA, we are finding that these producers are "authorities," within the meaning of section 771(5)(B) of the Act.

Application of AFA: Provision of Electricity for LTAR

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.

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. 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 POR; all original NDRC Electricity Price Adjustment Notice(s) that were in effect during the POR; 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 POR; 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.[87] 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 POR.

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},"[88] the NDRC no longer reviews, *i.e.* approves, 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 POR. Furthermore, the GOC also stated that, as a result

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[87] Please add citation.
[88] *See* GOC February 5, 2018 IQR at 114.

of Notice 748, provincial price departments develop and establish grid and electricity sales prices.[89] Consequently, according to the GOC, the NDRC no longer has any impact on prices, which are set autonomously at the provincial level.

Notice 748 is based upon consultations between the NDRC and the National Energy Administration.[90] Article 1 contained therein stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour.[91] 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."[92] Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity.[93] Articles 6 and 7, respectively, indicate that provincial pricing authorities "{s}hall make and 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."[94] Lastly, Article 10 directs that, "Administrative departments at all levels in charge of pricing shall guarantee the implementation of the price adjustment."[95]

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.[96] 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.[97] 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.[98]

Notice 748 and Notice 3015, issued by the NDRC, direct provinces to reduce prices by amounts specific to provinces. They neither explicitly eliminate Provincial Price Proposals nor define distinctions in price-setting roles between national and provincial pricing authorities. 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

[89] *Id* at 122.
[90] *Id* at Exhibit E.28.
[91] *Id.*
[92] *Id*.
[93] *Id*.
[94] *Id*.
[95] *Id*.
[96] *Id* at Exhibit E.29.
[97] *Id* at Exhibit E.29.
[98] *See, e.g.*, Notice 748 Article 10 and Notice 3015 Articles II and X.

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 both the derivation of price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves. Consequently, we preliminarily determine that the GOC withheld information that was requested of it for our analysis of financial contribution and specificity and, thus, Commerce must rely on "facts available" in making our preliminary determination.[99] Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. We also note that the GOC did not ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available.[100] 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 (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) 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.[101] The benchmark rates were selected from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, *see* "Provision of Electricity for LTAR" section.

<u>Application of AFA: Export Buyer's Credits</u>

Commerce has determined that the use of AFA is warranted in determining the countervailability of the Export Buyer's Credit program because the GOC did not provide the requested information needed to allow Commerce to analyze this program fully. In its questionnaire responses, the GOC claimed that none of the U.S. customers of the respondent companies used export buyer's credits from the China Export-Import Bank (Ex-Im Bank) during the POR.[102] The GOC also stated that "for a business contract to be supported by the export buyer's credit, the contract amount must be more than 2 million U.S. dollars."[103] Information on the record indicates that the GOC revised this program in 2013 to eliminate this minimum requirement.[104] In response to our request that it provide the documents pertaining to the 2013 program revision, the GOC refused to provide them, stating that "The Ex-Im Bank has confirmed to the GOC that its 2013 guidelines are internal to the bank, not public, and not available for release. The GOC has no authority or right to force the Ex-Im Bank to provide a copy of the 2013 guidelines, and is therefore unable to provide a copy to the Department."[105] Through its response to Commerce's supplemental questionnaire, the GOC refused to provide the requested information or any information concerning the 2013 program revision, which is necessary for Commerce to analyze how the program functions.

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[99] *See* section 776(a)(2)(A) of the Act.
[100] *See* section 776(b) of the Act.
[101] *See* section 776(b)(4) of the Act.
[102] *See* the GOC February 5, 2018 IQR at 126 and GOC April 2, 2018 IQR at 78.
[103] *See* the GOC February 5, 2018 IQR at 127.
[104] *See* Additional Document Memorandum.
[105] *See* GOC August 17, 2018 SQR at 4.

Moreover, information on the record also indicates that the China Ex-Im Bank may disburse Export Buyer's Credits directly or through a third-party partner and/or correspondent banks.[106] We asked the GOC to confirm whether it extended credit through third-party banks. Instead of providing a response stating whether third party banks play a role in the disbursement/settlement of export buyer's credits, the GOC replied that ". . . the GOC has confirmed that neither {Cooper} nor Sentury and its cross-owned affiliates applied for, received, or accrued assistance under this program during the POR, and has submitted evidence to that effect. The GOC has no authority or right to force Ex-Im Bank to reveal details of other transactions because those are confidential commercial information belonging to the Ex-Im Bank."[107] Commerce also requested that the GOC provide a list of all third-party banks involved in the disbursement/settlement of Export Buyer's Credits. Instead of providing the information requested, the GOC again advised us that that it had "no authority or right" to force Ex-IM bank to provide this information.[108]

Pursuant to sections 776(a)(2)(A) and (a)(2)(C) of the Act, when an interested party withholds information requested by Commerce and/or significantly impedes a proceeding, Commerce uses facts otherwise available to reach a determination. Because the GOC withheld the requested information described above, thereby impeding this proceeding, we preliminarily determine that the use of facts available is appropriate. Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding information that was within its control and significantly impeding this proceeding, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted.

As noted above, the GOC has not answered our questions with respect to this program. As a result, the GOC has not provided information that would permit us to make a determination as to whether this program constitutes a financial contribution and whether this program is specific. Because the GOC has not cooperated to the best of its ability in response to Commerce's specific information requests, we determine, as AFA, that this program constitutes a financial contribution and meets the specificity requirements of the Act.[109]

Moreover, the GOC has not provided information with respect to whether the China Ex-Im Bank limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million. In addition, the GOC has not provided information on whether it uses third-party banks to disburse/settle Export Buyer's Credits. Such information is critical to understanding how Export Buyer's Credits flow to/from foreign buyers and the China Ex-Im Bank. The nature of the GOC's responses to those information requests further indicates that any attempt to request the information again from the GOC would be futile. Absent the requested information, the GOC's

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[106] *See* Additional Document Memorandum.
[107] *See* GOC August 17, 2018 SQR at 6.
[108] *Id*. at 6-7.
[109] *See 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) and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences."

and respondent company's claims of non-use of this program are not verifiable.[110] Therefore, we preliminarily find that the GOC has not cooperated to the best of its ability and, as AFA, find that Cooper and Sentury used and benefited from this program, despite their claims of non-use and certifications of non-use from their customers.[111]

Under section 776(d) of the Act, Commerce may use as AFA a 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, 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.[112]

Consistent with section 776(d) of the Act and our established practice, we selected the highest calculated rate for the same or similar program as AFA.[113] When selecting rates in an administrative review, we first determine if there is an identical program from any segment of the proceeding and use the highest calculated rate for the identical program (excluding *de minimis* rates). If no such identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) within the same proceeding and apply the highest calculated rate for the similar/comparable program, excluding *de minimis* rates. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program in any CVD case involving the same country, but we do not use a rate from a program if the industry in the proceeding cannot use that program.[114] On this basis, we are applying an AFA rate of 7.55 percent *ad valorem*, the rate determined for Sentury for preferential loans in this proceeding.[115]

<u>Application of AFA: Other Subsidies</u>

Cooper and Sentury reported receiving assistance with respect to our question, "Did your government (or entities owned directly, in whole or in part, by your government or any

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[110] The Court of International Trade recently sustained our finding that "only the GOC, and in particular the Chinese Ex-Im, could provide and verify the information needed to determine whether a benefit was conferred to Respondents during the POI from the Export Buyer's Credit Program." *See Changzhou Trina Solar Energy Co. v. United States*, Slip Op. 16-121, at 33-34 (CIT December 30, 2016).

[111] In prior proceedings, we have accepted certifications of non-use from a respondent company and its consumers in certain limited situations. *See, e.g., Solar Cells from China Second AR* and accompanying IDM at 11. However, the program was apparently amended in 2013, and, as discussed above, the GOC has not provided information regarding the program's amendments. Accordingly, we preliminarily determine that it is not appropriate to accept Cooper and Sentury's statements or certifications of non-use because we do not know enough about the program to verify those statements or certifications of non-use. *See* Cooper's February 5, 2018 IQR at III-27 and Sentury's April 2, 2018 IQR at 23-24.

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

[113] *See, e.g., Shrimp from China* 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").

[114] *See Shrimp from China* IDM at 13-14.

[115] *See* Sentury Preliminary Calculation Memorandum.

provincial or local government) provide, directly or indirectly, any other forms of assistance to your company between December 11, 2001, and the end of the POR?"[116] In its responses to our question regarding this government assistance reported by the company respondents, the GOC stated that it has cooperated with Commerce regarding requests for information, and citing Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures, stated that no reply to questions on these other programs are warranted or required.[117]

Given the GOC's responses, we preliminarily determine that the use of facts available pursuant to sections 776(a)(1) and 776(a)(2)(A) of the Act is warranted in determining the countervailability of these apparent subsidies reported by Cooper and Sentury. First, necessary information regarding whether these programs provide a financial contribution within the meaning of section 771(5)(D) of the Act, and whether these programs are specific within the meaning of section 771(5A) of the Act, is not on the record of this review.[118] Further, the GOC withheld information that was requested of it by not providing information regarding these subsidies in response to our requests for information noted above.[119] Because the GOC expressly declined to provide the requested information, we find that the GOC failed to respond to the best of its ability regarding our questions on other, reported subsidies provided by the GOC, and we determine that an adverse inference is warranted with respect to these subsidies pursuant to section 776(b) of the Act. As a result, we are finding that, using AFA, these other subsidies reported by Cooper and Sentury provide a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. To preliminarily determine whether benefits were provided as a result of these other subsidies within the meaning of section 771(5)(E) of the Act, Commerce relied on the usage information provided by Cooper and Sentury.

XI. 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 and Used by Cooper and Sentury

1. <u>Government Policy Lending</u>

In the original investigation, Commerce determined that this program conferred countervailable subsidies on subject merchandise because: 1) it provides a financial contribution pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and 2) the loans provide a benefit pursuant to section 771(E)(ii) equal to the difference between what the recipients paid on their loans and the

[116] *See* Cooper February 5, 2018 IQR at III-31 and Sentury April 2, 2018 IQR at 31.
[117] *See* GOC February 5, 2018 IQR at 137.
[118] *See* section 776(a)(1) of the Act.
[119] *See* section 776(a)(2)(A) of the Act.

amount they would have paid on comparable commercial loans.[120] Commerce further determined that there is a program of preferential policy lending specific to the tire sector, and passenger tires in particular, within the meaning of section 771(5A)(D)(i) of the Act. Information on the record of this review remains consistent with those determinations. Therefore, we continue to find that this program provides a countervailable subsidy.

In its questionnaire responses in this segment of the proceeding, the GOC stated that this program does not exist and that no loans to any of the respondents were issued pursuant to a policy lending program. The GOC further claimed that if an industrial policy existed, it had "no connection to or effect on the decision of any bank to issue loans to any respondent companies," and, thus, those loans did not constitute a countervailable subsidy.[121] However, the GOC provided no documentation in support of these assertions that would call into question Commerce's conclusions from the investigation. In a CVD administrative review, we do not revisit past determinations of countervailability, absent new evidence, and none has been presented here.[122]

Cooper and Sentury reported having loans outstanding from banks in China during the POR under this program.[123] To calculate the benefit under this program, we used the benchmarks described under "Benchmark and Discount Rates" above. We divided the total benefits received during the POR by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable *ad valorem* subsidy rate of and 0.20 percent for Cooper and 7.55 percent for Sentury.

2. Export Seller's Credits from State-Owned Banks

In the original investigation, Commerce determined that this program conferred countervailable subsidies on subject merchandise because: 1) it provides a financial contribution pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and 2) the loans provide a benefit pursuant to section 771(E)(ii) in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings and, therefore, this program is specific under sections 771(5A)(A)-(B) of the Act. In a CVD administrative review, we do not revisit past determinations of countervailability, absent new evidence, and none has been presented here.[124] Therefore, we continue to find that this program provides a countervailable subsidy.

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[120] *See Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination in Park,* 80 FR 34888 (*Passenger Tires from China)* and accompanying Issues and Decision Memorandum (IDM) at 31.
[121] *See* the GOC February 5, 2018 IQR at 2 and GOC April 2, 2018 IQR at 2.
[122] *See Magnola Metallurgy, Inc. v. United States*, 508 F.3d 1349 (Fed. Cir. 2007) (*Magnola*); *see also Solar Cells from China*, 81 FR at 41005, and accompanying IDM at 27.
[123] *See* Cooper February 5, 2018 IQR at Exhibit 7 and Sentury April 2, 2018 IQR at Exhibit III.A.1.
[124] *See Magnola*, 508 F.3d at 1355; *see also Solar Cells from China*, 81 FR at 41005, and accompanying IDM at 27.

Sentury reported having outstanding loans from the Ex-Im Bank during the POR, which were provided under this program.[125]

To calculate the benefit under this program, we compared the amount of interest Sentury paid on the outstanding loans to the amount of interest the company would have paid on comparable commercial loans. In conducting this comparison, we used the interest rates described in the "Benchmarks and Discount Rates" section above. We divided the total benefit amount by Sentury's export sales during the POR.

On this basis, we preliminarily determine a subsidy rate of 1.28 percent *ad valorem* for Sentury.

3. Export Buyer's Credits

Commerce determined this program to be countervailable in the original investigation based on AFA. Through this program, the Ex-Im Bank provides loans at preferential rates for the purchase of exported goods from China. As further explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, for this review we preliminarily determine, relying upon AFA, that this program provides a countervailable subsidy, and that Cooper and Sentury used this program during the POR. On this basis, as explained above, we determine a countervailable subsidy rate of 7.55 percent *ad valorem* for both Cooper and Sentury for export buyer's credits.

4. Provision of Inputs for LTAR

a. Provision of Carbon Black, Nylon Cord and Synthetic Rubber and Butadiene and Natural Rubber for LTAR

In the investigation, we determined that carbon black, nylon cord, synthetic rubber and butadiene, and natural rubber were provided for LTAR and that a benefit existed for each respondent in the amount of the difference between the benchmark prices and the prices each respondent paid.[126] Our analysis of the limited information provided by the GOC indicates that certain producers of the four inputs are SOEs. Commerce has previously explained that majority state-owned enterprises in China possess, exercise, or are vested with government authority.[127] The GOC exercises meaningful control over these entities and used them to effectuate its goals of upholding the socialist market economy, allocating resources and maintaining the predominant role of the state section. Accordingly, these state-owned input producers are "authorities" within the meaning of section 771(5)(B) of the Act. As discussed above in the section entitled "Use of Facts Otherwise Available and Application of Adverse Inferences," we also find preliminarily, as AFA, that the remaining domestic producers of carbon black, nylon cord, synthetic rubber and butadiene and natural rubber purchased by the respondents are

[125] *See* Sentury April 2, 2018 IQR at 31 and Exbibit III.A.1; *see also* Memorandum "Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China: Qingdao Sentury Tire Co. Ltd's Export Seller's Credits from State-Owned Banks" dated concurrently with this memorandum.
[126] *See* 19 CFR 351.511(a).
[127] *See* Additional Documents Memorandum (including the Public Bodies Memorandum detailing Commerce's analysis of SOEs in the PRC economy).

"authorities" within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily determine that all domestic producers that supplied the the four inputs under examination to the respondents are "authorities" within the meaning of section 771(5)(B) of the Act and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act. Further, no new information has been presented on the record of this review to call into question our findings of specificity from the investigation. Therefore, we continue to find that these programs are countervailable.

To determine the benefit from these programs, we took the monthly benchmark for each input, added import duties, value-added tax (VAT), and other delivery charges, and subtracted the reported amount paid. We then multiplied the per-unit difference by the reported volume to obtain the total benefit for each transaction. If the benchmark adjusted for import duties, VAT, and other delivery charges was less than the reported price paid, we calculated a benefit for that transaction of zero. We then summed the total benefit for each transaction to obtain a total benefit for each respondent for the POR. To determine the subsidy rate for inputs provided for LTAR, we divided the total benefit for each respondent by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above, and in the Preliminary Calculation Memoranda.

On this basis, we preliminarily determine a subsidy rate of 4.94 percent *ad valorem* for Cooper and 4.92 percent *ad valorem* for Sentury for carbon black; 0.10 percent *ad valorem* for Cooper for nylon cord;[128] and 0.54 percent *ad valorem* for Cooper and 0.01 percent *ad valorem* for Sentury for synthetic rubber and butadiene. For natural rubber, we preliminarily determine a subsidy rate of less than 0.005 percent *ad valorem* for both Cooper and Sentury under this program; therefore, we are excluding the rate for natural rubber from the overall CVD rate.

b. Provision of Electricity for LTAR

In the original investigation, Commerce determined this program to be countervailable based, in part, on the application of AFA.[129] Likewise for this review, as explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are preliminarily basing our determination regarding the GOC's provision of electricity, in part, on AFA. For these preliminary results, we determine that Cooper and Sentury received a countervailable subsidy from electricity provided for LTAR.

As described above in more detail, the GOC did not provide certain information requested regarding its provision of electricity to the company respondents and, as a result, we determine, as AFA, that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act, respectively. To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the actual consumption volumes and rates paid reported by Cooper and Sentury. We compared the rates paid by Cooper and Sentury to the benchmark rates, which, as discussed above, are the highest rates charged in China during the POR. We made separate comparisons by price category (*e.g.*, great industry peak, basic electricity, *etc.*). We

[128] Sentury reported not using this program during the POR.
[129] *See Passenger Tires from China*, 80 FR at 34888, and accompanying IDM at 17.

multiplied the difference between the benchmark and the price paid by the consumption amount reported for that month and price category. We then calculated the total benefit to Cooper and Sentury during the POR by summing the difference between the benchmark prices and the prices paid by Cooper and Sentury, respectively.

To calculate the electricity benchmark, in accordance with 19 CFR 351.511(a)(2), we selected the highest rates in China for the user category of the respondents (*e.g.*, large industrial users) for the non-seasonal general, peak, normal, and valley ranges, as provided in the electricity tariff schedules submitted by the GOC.[130] As explained earlier, this benchmark reflects an adverse inference, which we drew as a result of the GOC's failure to cooperate by not acting to the best of its ability to provide requested information about its provision of electricity in this review.[131]

To calculate the subsidy rate, we divided the benefit amount by the appropriate total sales denominator, as discussed in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable *ad valorem* subsidy rate of 1.22 percent for Cooper and 1.45 percent for Sentury.

c. Provision of Land-Use Rights for Foreign Invested Enterprises (FIEs) for LTAR

Cooper reported that it did not purchase or lease land use rights during the POR. During the investigation, Commerce countervailed the provision of land to Cooper by the Kunshun Economic & Technical Development Zone. Commerce found that the provision of land-use rights constitutes a provision of goods or services, and is a financial contribution under section 771(5)(D)(iii) of the Act, and that the subsidy is export-contingent and, thus, specific within the meaning of section 771(5A)(A)-(B) of the Act. In the investigation, we found that the benefit was greater than 0.5 percent of relevant sales and that allocation was appropriate for CKT's land found to be countervailable. We allocated the total unallocated benefit amounts across the terms of the land-use agreement, using the standard allocation formula of 19 CFR 351.524(d).[132] We divided the amount attributable to the POR by the export sales denominator to determine as subsidy rate of 4.98 percent for Cooper.

Sentury reported obtaining land-use rights both directly and through its acquisition of Sentaida's assets. Neither company, however, is an FIE and, therefore, we have determined the program not to be used by Sentury.

5. Enterprise Income Tax Law, R&D Program

In the original investigation, Commerce determined that that this program constitutes a countervailable subsidy. This income tax deduction is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also found that the income tax deduction afforded by this program is limited as a matter of law to

[130] *See* the GOC February 5, 2018 IQR at Exhibit E.33.
[131] *See* "Application of AFA: Provision of Electricity for LTAR" section, above.
[132] *See Passenger Tires from the PRC*, 80 FR at 34888, and accompanying IDM at 30.

certain enterprises, *i.e.*, those with R&D in eligible high-technology sectors and, thus, is specific under section 771(5A)(D)(i) of the Act. In a CVD administrative review, we do not revisit past determinations of countervailability, absent new evidence, and none has been presented here.[133] Therefore, we continue to find that this program provides a countervailable subsidy.

Sentury reported not using this program during the POR.

Cooper reported receiving a benefit under this program during the POR. To calculate the benefit from this program to Cooper, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1).[134] To compute the amount of the tax savings, we calculated the amount of tax each respondent would have paid absent the tax deductions at the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax credit). We then divided the tax savings by the appropriate total sales denominator for Cooper.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.07 percent *ad valorem* for Cooper under this program.

6. Import Tariff and VAT Exemptions for Use of Imported Equipment

Consistent with the investigation, we preliminarily determine that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue foregone by the GOC and they provide a benefit to the recipient in the amount of VAT and tariff savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.510 (a). We also preliminarily determine that the VAT and tariff exemptions afforded by the program are specific under section 771(5A)(D)(i) of the Act because the program is limited to certain enterprises, *i.e.*, FIEs and domestic enterprises involved in "encouraged" projects.

As the program provides a benefit tied to the capital structure of respondents (plant and equipment used for production), to calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[135] In the years that the benefits received by each company under this program did not exceed 0.5 percent of relevant sales for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described above in the section "Subsidies Valuation Information," to calculate the amount of the benefit allocable to the POR. We then divided the benefit amount by the appropriate sales denominator.

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[133] *See Magnola*, 508 F.3d at 1355; *see also Solar Cells from the PRC*, 81 FR at 41005, and accompanying IDM at 27.

[134] These credits can be for either expensed or capitalized R&D expenditures. If a credit is for capitalized expenditures (*e.g.*, the expenditures were made toward developing an "intangible asset" or patent), however, the 50 percent deduction is amortized across the useful life of the developed asset. Therefore, even credits for capitalized expenditures would be allocated over tax returns filed during a number of years and would thus be recurring. *See e.g.*, *Solar Products Preliminary Determination*, and accompanying PDM at 34-35.

[135] *See* 19 CFR 351.524(b) and (c).

On this basis, we determine a countervailable subsidy rate of 1.32 percent *ad valorem* for Sentury under this program. Cooper reported not using this program during the AUL.

7. Income Tax Reductions for High-and-New-Technology Enterprises (HNTEs)

Commerce previously found that this program provides countervailable subsidies.[136] According to Article 28.2 of the Enterprise Income Tax Law (EITL) of China, if a company is designated to a High- and New-Technology Enterprise (HNTE), the government provides for the reduction of income tax rate from 25 percent to 15 percent for such companies.[137] The conditions to be met by an enterprise to be recognized as an HNTE are set forth in Article 93 of the Regulation on the Implementation of the Enterprise Income Tax Law.[138]

The GOC reported that there are no anticipated changes in this program and the program has not been terminated.[139] In its Initial Questionnaire Response of April 2, 2018, the GOC confirmed that Sentury utilized this program during the POR.[140]

There is no new information on the record that would warrant reconsideration of our prior determinations. Therefore, consistent with *Citric Acid from China First Review*, *Citric Acid from China Second Review*, *Citric Acid from China Third Review*, and *Aluminum Extrusions from China Third Review*, and based on the record in this proceeding, we preliminarily continue to find that this program provides a countervailable subsidy. The reduced income tax rate paid by Sentury under this program constitutes a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue foregone by the GOC, and provides a benefit to the recipient in the amount of the tax savings.[141]

We also determine, consistent with *Citric Acid from the PRC First Review*, *Citric Acid from the PRC Second Review*, *Citric Acid from the PRC Third Review*, and *Aluminum Extrusions from the PRC Third Review*, that the reduction afforded by this program is limited as a matter of law to certain new and high technology companies selected by the government pursuant to legal guidelines specified in the *Measures on Recognition of HNTEs* and, hence, is specific under section 771(5A)(D)(i) of the Act.

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[136] *See, e.g., Citric Acid from China First Review* IDM at "Reduced Income Tax Rate for High or New Technology Enterprises;" *Citric Acid from China Second Review* IDM at "Reduced Income Tax Rate for High or New Technology Enterprises;" *Citric Acid from China Third Review* IDM at "Reduced Income Tax Rate for High or New Technology Enterprises;" and *Aluminum Extrusions from the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 77325 (December 14, 2015), and accompanying IDM at "Preferential Tax Policies for High or New Technology Enterprises" (*Aluminum Extrusions from China Third Review Final*).
[137] *See* GOC April 2, 2018 IQR at 86-96 and *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review;2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at "Preferential Tax Program for High or New Technology Enterprises" (*Aluminum Extrusions from the PRC First Review Final*).
[138] *See Aluminum Extrusions from the PRC First Review Final.*
[139] *See* GOC April 2, 2018 IQR at 95.
[140] *Id.* at 86.
[141] *See* section 771(5)(D)(ii) of the Act, section 771(5)(E) of the Act, and 19 CFR 351.509(a)(1).

Sentury reported receiving tax savings under this program in the amount indicated on income tax returns filed during the POR.[142] To calculate the benefit, we compared the income tax that Sentury would have paid in the absence of the program, at the rate of 25 percent, to the income tax that the companies actually paid at the reduced rate of 15 percent. We treated the income tax savings as a recurring benefit, consistent with section 771(5)(E) of the Act and 19 CFR 351.524(c)(1). To calculate the countervailable subsidy rate, we divided the benefit by the total sales of the Sentury, in accordance with 19 CFR 351.525(b)(3), according to the methodology described in the "Attribution of Subsidies" section, above. On this basis, we calculated a countervailable subsidy of 1.39 percent, *ad valorem* for Sentury.

Cooper reported not using this program during the POR.

8. <u>Other Subsidy Programs</u>

Cooper and Sentury reported that they received various grants during the AUL. As stated above in the section, "Use of Facts Otherwise Available and Application of Adverse Inferences," Commerce has preliminarily determined that numerous additional grants provided to the company respondents are countervailable based upon AFA. The majority of the grants received by the respondents do not pass the "0.5 percent test" described in 19 CFR 351.524(b)(2) and, thus, are allocated to the respective year of receipt prior to the POR. However, Cooper and Sentury received several grants that were expensed during the POR. We calculated *ad valorem* subsidy rates of 4.07 percent for Cooper and 1.36 percent for Sentury for these grants.

B. Programs Preliminarily Determined Not Used by, or Not to Confer a Measurable Benefit During the POR to, Cooper and Sentury.

1. Provision of Natural Rubber for LTAR
2. Export Credit Insurance Subsidies
3. Preferential Loans to State-Owned Enterprises
4. Discounted Loans for Export-Oriented Enterprises
5. Export Credit Guarantees
6. Two Free, Three Half Program for FIE's
7. Provision of Land-Use Rights to Passenger Tire Producers for LTAR

In the investigation, Commerce determined the existence of a program to provide land to producers of passenger tires for LTAR.[143] In particular, we determined that under the program, beginning in 2010, the GOC encouraged provincial governments to provide land for free or at a discounted rate. We found the program not to be used by Cooper and the other mandatory respondent in the investigation, GITI Tire (Fujian) Co., Ltd. As noted above, in this review we are countervailing land provided to Cooper under a program specific to FIEs. Sentury also reported receiving land both directly and through its acquisition of Sentaida. Some of the tracts

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[142] *See* Sentury IQR at 28-29 and Exhibit II.B.4.a.

[143] *See Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Affirmative Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 79 FR 71093 (December 1, 2014) and accompanying IDM at 44 (unchanged in the final determination).

reported by Sentury were received before 2010, the year the program for providing land to passenger tire producers for LTAR began. For the remaining tracts, which were acquired through public auction, the record provides no indication that the tracts were provided for free or at a discount. Therefore, we find this program not to be used.

8. Provision of Land-Use Rights for SOEs for Less Than Adequate Remuneration
9. Provision of Land-Use Rights in Industrial and Other Special Economic Zones for Less Than Adequate Remuneration
10. Tax Benefit Programs

    a. Income Tax Reduction for Advanced-Technology FIEs
    b. Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs
    c. Income Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment

11. VAT Refunds for Domestic Firms on Purchases of Chinese-Made Equipment
12. VAT Rebates on FIE Purchases of Chinese-Made Equipment
13. Grant Programs

    a. State Key Technology Renovation Project Fund Program
    b. Famous Brands Program
    c. The Clean Production Technology Fund
    d. Export Interest Subsidy Funds for Enterprises Located in Guangdong and Zhejiang Provinces
    e. Funds for "Outward Expansion" of Industries in Guangdong Province
    f. Provincial International Market Development Fund Grant
    g. Provincial Import Discount Loan Subsidy

15. Subsidies for Companies Located in the Kunshan Economic and Technological Development Zone
16. Weihai Municipality Subsidies for the Automobile and Tire Industries
17. Subsidies for Companies Located in the Rongcheng Economic Development Zone

XII. DISCLOSURE AND PUBLIC COMMENT

Commerce intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of its public announcement.[144] Case briefs may be submitted to ACCESS within 30 days of issuance of the preliminary results, and rebuttal briefs, limited to issues raised on the case briefs, may be submitted no later than five days after the

[144] *See* 19 CFR 351.224(b).

deadline for the submission for case briefs.[145] Parties who submit case 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.[146]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[147] Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a time to be determined. Prior to the hearing, Commerce will contact all parties who submitted case or rebuttal briefs to determine if they wish to participate in the hearing. Commerce will then distribute a hearing schedule to these parties prior to the hearing and only those parties listed on the schedule may present issues raised in their briefs.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.[148] Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,[149] on the due dates established above.

Parties will have seven days after the publication of this memorandum to rebut, clarify, or correct information that Commerce has placed on the record concurrently with this memorandum (*i.e.*, the Additional Documents Memorandum referred to above, containing our prior analysis of government authorities in China, the CCP, and the banking sector in China, as well as information pertaining to the export buyer's credits program).[150]

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[145] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1). Interested parties will be notified through ACCESS regarding the deadline for submitting case briefs.
[146] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).
[147] *See* 19 CFR 351.310(c).
[148] *See* 19 CFR 351.303(b)(2)(i).
[149] *See* 19 CFR 351.303(b)(1).
[150] *See* 19 CFR 351.301(c)(4).

XIII. CONCLUSION

We recommend that you approve the preliminary findings described above.

☒ ☐

Agree Disagree

8/31/2018

X

Signed by: GARY TAVERMAN

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

Appendix I

Companies Listed in the Initiation Notice

1. Best Industries Ltd.
2. BC Tyre Group Limited
3. Cooper (Kunshan} Tire Co., Ltd.
4. Crown International Corporation
5. Dongying Zhongyi Rubber Co., Ltd.
6. Hangzhou Yokohama Tire Co., Ltd.
7. Hankook Tire China Co., Ltd.
8. Hong Kong Tiancheng Investment & Trading Co., Limited
9. Hongtyre Group Co.
10. Jiangsu Hankook Tire Co., Ltd.
11. Jiangsu Sanhe Aluminum
12. Kenda Rubber (China) Co., Ltd.
13. Koryo International Industrial Limited
14. Mayrun Tyre (Hong Kong) Limited
15. Qingdao Jinhaoyang International Co., Ltd.
16. Qingdao Nama Industrial Co., Ltd.
17. Qingdao Odyking Tyre Co., Ltd.
18. Qingdao Sentury Tire Co., Ltd.
19. Roadclaw Tyre (Hong Kong) Limited
20. Shandong Anchi Tyres Co., Ltd.
21. Shandong Changfeng Tyres Co., Ltd.
22. Shandong Changhong Rubber Technology Co., Ltd.
23. Shandong Guofeng Rubber Plastics Co., Ltd.
24. Shandong Haohua Tire Co., Ltd.
25. Shandong Haolong Rubber Co., Ltd.
26. Shandong Hengyu Science & Technology Co., Ltd.
27. Shandong Linglong Tyre Co., Ltd.
28. Shandong Longyue Rubber Co., Ltd.
29. Shandong New Continent Tire Co., Ltd.
30. Shandong Province Sanli Tire
31. Shandong Province Sanli Tire Manufactured Co., Ltd.
32. Shandong Shuangwang Rubber Co., Ltd.
33. Shandong Wanda Boto Tyre Co., Ltd.
34. Shandong Yongsheng Rubber Group Co., Ltd.
35. Shandong Zhongyi Rubber Co., Ltd.
36. Shengtai Group Co., Ltd.
37. Shouguang Firemax Tyre Co., Ltd.
38. The Yokohama Rubber Company, Ltd.
39. Tyrechamp Group Co., Limited
40. Winrun Tyre Co., Ltd.
41. Zhaoqing Junhong Co., Ltd.
42. Zhongce Rubber Group Company Limited

43. Kumho Tire Co., Inc.[151]

[151] Kumho Tire Co., Inc. was included in the *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 1329 (January 11, 2018).

Appendix II

Non-Selected Companies Under Review

1. Best Industries Ltd.
2. BC Tyre Group Limited
3. Cooper (Kunshan) Tire Co., Ltd.
4. Crown International Corporation
5. Dongying Zhongyi Rubber Co., Ltd.
6. Hankook Tire China Co., Ltd.
7. Hong Kong Tiancheng Investment & Trading Co., Limited
8. Hongtyre Group Co.
9. Jiangsu Hankook Tire Co., Ltd.
10. Jiangsu Sanhe Aluminum
11. Kenda Rubber (China) Co., Ltd.
12. Koryo International Industrial Limited
13. Mayrun Tyre (Hong Kong) Limited
14. Qingdao Jinhaoyang International Co., Ltd.
15. Qingdao Nama Industrial Co., Ltd.
16. Qingdao Odyking Tyre Co., Ltd.
17. Qingdao Sentury Tire Co., Ltd.
18. Roadclaw Tyre (Hong Kong) Limited
19. Shandong Anchi Tyres Co., Ltd.
20. Shandong Haohua Tire Co., Ltd.
21. Shandong Haolong Rubber Co., Ltd.
22. Shandong Hengyu Science & Technology Co., Ltd.
23. Shandong Linglong Tyre Co., Ltd.
24. Shandong Longyue Rubber Co., Ltd.
25. Shandong New Continent Tire Co., Ltd.
26. Shandong Province Sanli Tire
27. Shandong Province Sanli Tire Manufactured Co., Ltd.
28. Shandong Shuangwang Rubber Co., Ltd.
29. Shandong Wanda Boto Tyre Co., Ltd.
30. Shandong Yongsheng Rubber Group Co., Ltd.
31. Shouguang Firemax Tyre Co., Ltd.
32. The Yokohama Rubber Company, Ltd.
33. Tyrechamp Group Co., Limited
34. Winrun Tyre Co., Ltd.
35. Zhaoqing Junhong Co., Ltd.