C-570-971
Administrative Review
POR: 01/01/2016—12/31/2016
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DATE: December 20, 2018

MEMORANDUM TO: P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations

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 in the Countervailing Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China; 2016

I. SUMMARY

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

II. BACKGROUND

A. Case History

On December 8, 2011, Commerce published the CVD *Order* on MLWF from China.[1] On December 4, 2017, we published a notice of "Opportunity to Request Administrative Review" of the CVD *Order*.[2] We received timely requests for an administrative review from the petitioner[3]

[1] *See Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Order*, 76 FR 76693 (December 8, 2011); *see also Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders*, 77 FR 5484 (February 3, 2012), wherein the scope of the *Order* was modified (collectively, *Order*).
[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 57219 (December 4, 2017).
[3] *See, e.g.*, the Petitioner's Letter, "Request for Administrative Review: Multilayered Wood Flooring from the People's Republic of China," dated December 28, 2017. The petitioner in this review is the American Manufactures of Multilayered Wood Flooring and its individual members (the petitioner). We note that the request for review was

and other interested parties.[4] In accordance with 19 CFR 351.221(c)(1)(i), we published a notice initiating the review on February 23, 2018.[5] On December 11, 2017, a review was requested for Double F Limited (Double F) which we excluded from our initiation notice. On March 1, 2018, a request was made by Fine Furniture (Shanghai) Limited and its affiliated reseller Double F Limited (Double F) to correct Commerce's initiation notice by amending the notice to include Double F. On April 4, 2018, we informed Fine Furniture that we were not granting its request for initiating a review of Double F.[6]

On February 28, 2018, we released and requested comments on data obtained from U.S. Customs and Border Protection (CBP) regarding entries of the subject merchandise from China during the period of review (POR) for all of the exporters and/or producers for which a review was requested.[7] On March 14, 2018, Dalian Penghong Floor Products Co., Ltd. (Dalian Penghong) and Fusong Jinlong Wooden Group Co., Ltd., Fusong Jinqiu Wooden Product Co., Ltd., Fusong Qianqiu Wooden Product Co., Ltd., and Dalian Qianqiu Wooden Product Co., Ltd. (collectively Jinlong Group) submitted comments.[8] On June 4, 2018, we selected Jiangsu Senmao Bamboo Wood Industry Co. (Jiangsu Senmao), Power Dekor North America Inc. (Power Dekor), and Riverside Plywood Corp. (Riverside Plywood) as mandatory respondents in this administrative review.[9] On June 29, 2018, we placed a memorandum to the file on the record stating that we had inadvertently selected Power Dekor as a mandatory respondent, and clarifying that Power Dekor North America is not a mandatory respondent as it is not under review.[10]

On April 6, 2018, the petitioner timely submitted new subsidy allegations.[11] On June 6, 2018, we initiated an investigation of these additional subsidy programs.[12]

We issued initial and supplemental questionnaires to the Government of China (GOC), Jiangsu Senmao, and Riverside Plywood between June 8, 2018, and December 4, 2018. Jiangsu Senmao and Riverside Plywood submitted affiliation responses, initial responses, and supplemental

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filed on behalf of the Coalition for American Hardwood Parity and its member companies, which was the petitioner in the underlying investigation.

[4] *See, e.g.,* Dalian Peghong Floor Products Co., Ltd.'s (Dalian Penghong) *et al* Letter, "Multilayered Wood Flooring from the People's Republic of China," dated December 22, 2017; and Huzhou Jesonwood Co., Ltd.'s (Huzhou Jesonwood) *et al* Letter, "Request for Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China," dated January 2, 2018.

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 8058 (February 23, 2018) (*Initiation Notice*).

[6] *See* Commerce's Letter re: Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China; Correction of Initiation Notice, dated April 4, 2018

[7] *See* Memorandum, "Release of Customs and Border Protection (CBP) Data," dated February 28, 2018.

[8] *See* Dalian Penghong's Letter "Multilayered Wood Flooring from the People's Republic of China: Comments on CBP Data and Respondent Selection," dated March 14, 2018.

[9] *See* Memorandum,"Countervailing Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China: Respondent Selection: 2016," dated June 4, 2018 (Respondent Selection Memo).

[10] *See* Memorandum, "Multilayered Wood Flooring from the People's Republic of China: Inadvertent Selection of Power Dekor North America Inc.," dated June 29, 2018.

[11] *See* the Petitioner's Letter "Multilayered Wood Flooring from the People's Republic of China: New Subsidy Allegations," dated April 6, 2018 (the Petitioner's NSA Letter).

[12] *See* Memorandum, "Countervailing Duty Administrative Review on Multilayered Wood Flooring from the People's Republic of China: Decision Memorandum on New Subsidy Allegations," dated June 8, 2018.

responses between June 22, 2018, and November 26, 2018. The GOC submitted an initial response and supplemental responses between July 31, 2018, and December 11, 2018.

On October 23, 2018, Jiangsu Senmao, Riverside Plywood, and the petitioner submitted data for Commerce to consider using as benchmarks in the less than adequate remuneration (LTAR) subsidy rate calculations. On November 2, 2018, Jiangsu Senmao and the petitioner submitted rebuttal comments to the benchmark submissions.[13] On November 13, 2018, Riverside Plywood submitted additional benchmark information.[14]

B. Postponement of Preliminary Results

Commerce postponed the deadline for the preliminary results until December 20, 2018, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).[15]

C. Period of Review

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

D. Rescission of Review, In Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. On May 7, 2018, Dalian Penghong (Dalian Penghong) withdrew its request for a review of itself, and 15 other companies, including Dunhua City Jisen Wood Industry Co., Ltd (Dunhua City Jisen), Fusong Jinqui Wooden Product Co., Ltd. (Fusong Jinqiu), Fusong Qianqiu Wooden Product Co., Ltd. (Fusong Qianqiu), and Shanghaifloor Timber (Shanghai) Co., Ltd. (Shanghaifloor). On March 14, 2018, Huzhou Jesonwood withdrew its request for a review of itself. On May 3, 2018, the petitioner withdrew its request for review of Dalian Penghong, and Dalian Shumaike Floor Manufacturing Co., Ltd. (Dalian Shumaike). On May 24, 2018, the petitioner withdrew its request for Dunhua City Jisen. All withdrawal requests were filed within the 90-day deadline.[16] As no other party

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[13] *See* Jiangsu Senmao's Letter, "Multilayered Wood Flooring from the People's Republic of China: Rebuttal Benchmark Information," dated November 2, 2018 (Jiangsu Senmao's rebuttal benchmark); *see also* the Petitioner's Letter, "Multilayered Wood Flooring from the People's Republic of China: Submission of Rebuttal Benchmark Information," dated November 2, 2018 (the petitioner's benchmark rebuttal).

[14] *See* Riverside Plywood's Letter, "30-day Benchmark Data Submission: Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China," dated November 13, 2018 (Riverside Plywood's second benchmark submission).

[15] *See* Memorandum, "Multilayered Wood Flooring from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2016," dated August 16, 2018 (postponing the preliminary results until December 10, 2018); *see also* Memorandum, "Multilayered Wood Flooring from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2016," dated November 28, 2018 (further postponing the preliminary results until December 20, 2018).

[16] *See* Dalian Penghong's Letter, " Multilayered Wood Flooring from the People's Republic of China Withdrawal of Request for Review," dated May 7, 2018; American Manufacturers of Multilayered Wood Flooring's Letter, "Multilayered Wood Flooring from the People's Republic of China: Withdrawal of Request for Administrative Review, in Part" dated May 3, 2018; the Petitioner's Letter, "Multilayered Wood Flooring from the People's

requested an administrative review of Dalian Penghong, Dalian Shumaike, Dunhua City Jisen, Fusong Jinqiu, Fusong Qianqiu, Huzhou Jesonwood, and Shanghaifloor, we are rescinding this review with respect to these four companies, in accordance with 19 CFR 351.213(d)(1).

E. Intent to Rescind, in Part, the Administrative Review

We received timely filed no-shipment certifications from eight companies.[17] We issued no-shipment inquiries to CBP requesting any information that might contradict the no-shipment claims. We have not received information from CBP to date that contradicts Anhui Boya Bamboo Ltd.'s, Chinafloors Timber (China) Co., Ltd.'s, Jiangsu Keri Wood Co., Ltd.'s, Jiashan On-Line Lumber Co., Ltd.'s, Kingman Floors Co., Ltd.'s, Linyi Bonn Flooring Manufacturing Co., Ltd.'s, and Zhejiang Shiyou Timber Co., Ltd.'s claims of no sales, shipments, or entries of subject merchandise to the United States during the POR.[18] Because these companies timely filed their no-shipment certifications and there is no information on the record that contradicts the companies' claims, we preliminarily intend to rescind the review of these companies. Absent any evidence of shipments being placed on the record, pursuant to 19 CFR 351.213(d)(3), we intend to rescind the administrative review of these companies in the final results of review.

Hunchun Forest Wolf Wooden Industry Co., Ltd. (Hunchun Forest) also timely filed a no-shipment certification.[19] However, Hunchun Forest subsequently withdrew its no-shipment submission.[20] Therefore, we are continuing to include Hunchun Forest in this administrative review for purposes of the preliminary results.

On October 29, 2018, Huzhou Muyun Wood Co., Ltd. ("Muyun Wood") submitted an untimely

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Republic of China: Withdrawal of Request for Administrative Review, in Part," dated May 24, 2018; and Huzhou Jesonwood's Letter, "Withdrawal of Review Request in the 6th Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China," dated March 14, 2018.

[17] *See* Anhui Boya Bamboo & Wood Products Co., Ltd.'s (Anhui Boya Bamboo) Letter, "Multilayered Wood Flooring from the People's Republic of China: No Shipments Certification," dated March 13, 2018; Chinafloors Timber (China) Co., Ltd.'s (China Floors) Letter, "Multilayered Wood Flooring from the People's Republic of China: No Shipment Certification of Chinafloors Timber (China) Co., Ltd.," dated March 23, 2018; Jiangsu Keri Wood Co., Ltd.'s (Jiangsu Keri Wood) Letter, "Multilayered Wood Flooring from the People's Republic of China: No Sales Certification," dated March 14, 2018; Jiashan On-Line Lumber Co., Ltd.'s (Jiashan On-Line Lumber) Letter, "Multilayered Wood Flooring from the People's Republic of China: No Sales Certification," dated March 13, 2018; Kingman Floors Co., Ltd.'s (Kingman Floors) Letter, "Multilayered Wood Flooring from the People's Republic of China: No Sales Certification," dated March 13, 2018; Linyi Bonn Flooring Manufacturing Co., Ltd.'s (Linyi Bonn Flooring) Letter, "Multilayered Wood Flooring from the People's Republic of China: No Sales Certification," dated March 20, 2018; and Zhejiang Shiyou Timber Co., Ltd.'s (Zhejiang Shiyou Timber) Letter, "Multilayered Wood Flooring from the People's Republic of China: No Sales Certification," dated March 13, 2018.

[18] *See* Memorandum," Countervailing Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China: U.S. Customs and Border Protection No Shipment Inquiry," dated October 9, 2018, (stating that the CBP no-shipment data query identified entries of subject merchandise by Hunchun Forest Wolf Wooden Industry Co., Ltd. (Hunchun Forest), but did not identify entries of subject merchandise by Anhui Boya Bamboo, China Floors, Jiangsu Keri Wood, Jiashan On-Line Lumber, Kingman Floors, Linyi Bonn Flooring, and Zhejiang Shiyou Timber.

[19] *See* Hunchun Forest's Letter, "Multilayered Wood Flooring from the People's Republic of China: No Shipments Certification," dated March 13, 2018.

[20] *See* Hunchun Forest's Letter, "Multilayered Wood Flooring from the People's Republic of China: Comments on Hunchun Forest Shipments," dated October 23, 2018.

no-shipment claim 217 days after the March 26, 2018 deadline.[21] On November 13, 2018, Commerce notified Muyun Wood that its no-shipment submission was rejected because Muyun Wood did not provide an adequate justification for its late submission. Therefore, pursuant to 19 CFR 351.302(d), Commerce will neither consider nor retain Muyun Wood's submission in the official record of this proceeding.[22] Consequently, Muyun continues to be subject to this administrative review.

III. SCOPE OF THE ORDER[23]

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)[24] in combination with a core.[25] The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, *e.g.*, "engineered wood flooring" or "plywood flooring." Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.*, without a finally finished surface to protect the face veneer from wear and tear) or "prefinished" (*i.e.*, a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, ultra-violet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes). The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard, high-density fiberboard ("HDF"), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

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[21] *See Initiation Notice* at 8068.

[22] *See* Commerce's Letter, "Multilayered Wood Flooring from the People's Republic of China: Rejection of Letter Submitted October 29, 2018," dated November 13, 2018.

[23] *See Order; see also, Multilayered Wood Flooring from the People's Republic of China: Final Clarification of the Scope of the Antidumping and Countervailing Duty Orders*, 82 FR 27799 (June 19, 2017).

[24] A "veneer" is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

[25] Commerce Interpretive Note: The Department interprets this language to refer to wood flooring products with a minimum of three layers.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.*, circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product. Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of HDF, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States[26] ("HTSUS"): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.3175; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4160; 4412.31.4175; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5225; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.0640; 4412.32.0665; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2625; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3225; 4412.32.5600; 4412.32.5700; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; 4418.74.2000; 4418.74.9000; 4418.75.4000; 4418.75.7000; 4418.79.0100; and 9801.00.2500.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

[26] On October 31, 2018, we added the following HTS numbers to update the ACE Case Reference File: 4412.33.0640, 4412.33.0665, 4412.33.0670, 4412.33.2625, 4412.33.2630, 4412.33.3225, 4412.33.3235, 4412.33.3255, 4412.33.3275, 4412.33.3285, 4412.33.5700, 4412.34.2600, 4412.34.3225, 4412.34.3235, 4412.34.3255, 4412.34.3275, 4412.34.3285, 4412.34.5700, 4418.74.2000, 4412.74.9000, 4418.75.4000, and 4418.75.7000. *See* Memorandum "Multilayered Wood Flooring from the People's Republic of China (C-570-971): Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File," dated October 31, 2018.

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

A. Legal Standard

Section 776(a) of the Act provides that Commerce shall, subject to section 782(d) of the Act, shall select from 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 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 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 selecting from 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.[27] 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.[28]

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 an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[29] Secondary information is defined as information derived from the petition that gave rise to the investigation, the determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[30]

Finally, under section 776(d) of the Act, when using an adverse inference when selecting from the facts otherwise available, 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

[27] *See* section 776(b)(1)(B) of the Act.
[28] *See also* 19 CFR 351.308(c).
[29] *See also* 19 CFR 351.308(d).
[30] *See* Statement of Administrative Action, H.R. Doc. No. 316, 103rd Congress, 2d Session (1994) (SAA) at 870.

that Commerce considers reasonable to use.[31] When selecting from the facts otherwise 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.[32]

For purposes of these preliminary results, as discussed below, we have relied on adverse facts available (AFA), in part, due to the GOC's lack of response to the initial questionnaire and supplemental questionnaires regarding the alleged provision of electricity, provision of land-use rights to certain industrial zones, provision of veneers, provision of cut timber, Export Buyers' Credit, and other subsidies.[33]

B. Application of AFA: Provision of Electricity for LTAR

As discussed below under the section "Programs Preliminarily Found to be Countervailable," Commerce is investigating whether the GOC provided electricity for less than adequate remuneration (LTAR).

GOC

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, we 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. Commerce requested this information in order to determine the process by which

[31] *See* section 776(d)(1) of the Act.
[32] *See* section 776(d)(3) of the Act.
[33] *See* GOC's Letter, "GOC's Initial Questionnaire Response," dated July 31, 2018 (GOC IQR); *see also* GOC's Letter, "GOC's Supplemental Questionnaire Response," dated September 17, 2018 (GOC SQR).

electricity prices and price adjustments are derived, identify entities that manage and impact price adjustment processes, and 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 "the NDRC issued the notice with respect to the price adjustment in order to promote the electricity system reform and to facilitate the formation of the coal-electricity price linkage mechanism."[34] Furthermore, the GOC stated that "{i}n the electricity price adjustment on January 1, 2016, according to the regulation in Notice of the NDRC on Completing Price Linkage Mechanism Between Coal and Electricity (NDRC 2015-3169, see Exhibit 6), the adjustment shall be launched when the prevailing thermal coal price is more than 30 Yuan per ton from the benchmark coal price."[35] The GOC further stated that "these documents do not serve as the NDRC's notices of control over the provincial electricity price adjustments. Rather, according to the GOC, this notice only provides the most basic principles of electrical adjustment and provides an average range of selling price adjustments for each province, and as a result of the 2016 policy, provinces have acted largely independently when carrying out electricity price adjustments."[36] Therefore, according to the GOC, Provincial Price Proposals did not exist during the POI.[37] Consequently, according to the GOC, the NDRC no longer has any impact on prices, which are set autonomously at the provincial level. The GOC contends that electricity prices in China are based on purely market-oriented mechanisms.[38] The GOC states that the NDRC price adjustment notice in effect during the POR, Number 3105, was issued on December 27, 2015, and that the only corresponding regulation lies in Article 4 of the *Notice on Reducing the On-Grid Electricity Price of Coal-fired Electricity from NDRC* … which went into effect on April 20, 2015, and only dealt with the elimination of the preferential electricity price of fertilizer production.[39] The GOC confirmed that Notices 748, 3105, and 3169 are the most recent central government measures that the GOC claims mandates the delegation of electricity pricing authority to the provinces.[40]

Article 1 of Notice 748 stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour.[41] Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts.[42] Article 2 indicates that this price reduction is to be "mainly used for reducing the price of industrial and commercial electricity."[43] Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity.[44] Articles 6 and 7, respectively, indicate that provincial pricing authorities shall "develop and issue specific adjustment plan of electricity price and sales price in accordance with the average price adjustment standards of Annex 1, and reported to our Commission for the

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34 *See* GOC IQR at 12.
35 *Id.* at 15 and Exhibit 6 (Notice 3169).
36 *Id*. at 15.
37 *Id*. at 18.
38 *Id*. at 11.
39 *Id*. at Exhibit 3 (Notice 3105).
40 *Id.* at 11 and Exhibits 2 (Notice 748), 3 and 6 (3169).
41 *Id.* at Exhibit 2.
42 *Id*.
43 *Id*.
44 *Id*.

record," and that the "above price adjustment should be implemented since April 20, 2015."[45] Lastly, Article 10 directs that "{l}ocal price departments shall organize and arrange carefully to put in place the electricity price adjustment measures."[46]

NDRC Notice 3105, which was based upon consultations between the NDRC and the National Energy Administration, directs additional price reductions, and stipulates 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 the NDRC.[47]

Article 2 of NDRC Notice 3169 provides that, when the "thermal coal price is fluctuated for more than {Renminbi (RMB)} 30 Yuan (inclusive) comparing with benchmark coal price during the cycle," then an adjustment must be made pursuant to a "tiered regressive linkage for {the} excess portion" using a "linkage coefficient" which is also defined in Article 2.[48] Article 3 stipulates that "{b}enchmark on-grid electricity price of coal-fired machine unit should be strictly measured and determined by coal-electricity price linkage mechanism" using a specific formula defined in Appendix 1 of Notice 3169.[49] Article 3 further stipulates that the "industrial and commercial electricity price should be correspondingly adjusted; adjustment level should be determined by on-grid electric quantity of coal-fired machine unit, on-grid electric quantity of other power sources, outsourced electric quantity condition, energy-saving and eco-friendly electricity price and other factors" using a specific formula defined in Appendix 1 of Notice 3169.[50]

In a supplemental questionnaire, Commerce requested that the GOC explain what steps are taken in the NDRC's review of provincial price schedules. The GOC referred Commerce to Notice 3105, and explained that the electricity tariff schedules were approved by the government of each province, and the provinces are only required to provide their final adjusted electricity price schedules to the NDRC for its records.[51] The GOC also stated that the NDRC does not develop specific price levels for specific provinces and municipalities, and there is practically no NDRC review. The GOC also referred Commerce to Notice 748, and stated that Notice 748 does not serve as NDRC's notice of control over the provincial electricity price adjustments. Rather, this notice only provides the most basic principles for electrical adjustment and provides an average range of adjustments for the sales prices for each province.[52] However, as discussed above, these documents, issued by the NDRC, direct provinces to reduce prices by amounts specific to provinces and provide specific formulae by which price adjustments must be made. They neither explicitly eliminate Provincial Price Proposals nor define distinctions in price-setting roles between national and provincial pricing authorities.

Commerce additionally requested that the GOC explain, in detail, how the pricing values indicated in the Appendix to Notice 748 were derived, including the specific factors or

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[45] *Id*.
[46] *Id*.
[47] *Id*. at Exhibit 3.
[48] *Id*. at Exhibit 6.
[49] *Id*.
[50] *Id*.
[51] *See* GOC SQR at 5.
[52] *Id*. at 8.

information relied upon by the NDRC. Specifically, in our supplemental questionnaire, we asked the GOC whether NDRC Notifications, *e.g.* Notice 748, coincided with price changes set forth at the provincial level. The GOC responded that,

> the final price adjustments that are reflected in the electricity price schedules are derived from the different adjustment rates of thermal coal prices by provinces, while the final price adjustments reflected in the electricity price schedules of each province are allocated by average across tariff end-user categories by an amount derived from different volumes as used by each category within the total price decrease amount for that province, *i.e.*, the power coal price decrease rate multiplied by the total kWh as used by all the relevant categories in that province. Please note that the sale price is a basket price that includes power purchasing costs, transmission and distribution losses, government funds and add-ons. Besides cost elements, other elements may also influence the sales electricity price.[53]

As discussed above, these documents, issued by the NDRC, direct provinces to reduce prices by amounts specific to provinces and provide specific formulae by which price adjustments must be made.[54]

In particular, both Notice 748 and Notice 3105 explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Article 2 of NDRC Notice 3169 provides that, when the "thermal coal price is fluctuated for more than {Renminbi (RMB)} 30 Yuan (inclusive) comparing with benchmark coal price during the cycle," then an adjustment must be made pursuant to a "tiered regressive linkage for {the} excess portion" using a "linkage coefficient" which is also defined in Article 2.[55] Article 3 stipulates that "{b}enchmark on-grid electricity price of coal-fired machine unit should be strictly measured and determined by coal electricity price linkage mechanism" using a specific formula defined in Appendix 1 of Notice 3169.[56] Article 3 further stipulates that the "industrial and commercial electricity price should be correspondingly adjusted; adjustment level should be determined by on-grid electric quantity of coal-fired machine unit, on-grid electric quantity of other power sources, outsourced electric quantity condition, energy-saving and eco-friendly electricity price and other factors" using a specific formula defined in Appendix 1 of Notice 3169.[57]

Neither Notice 748 nor Notice 3105 explicitly stipulates that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions. Rather, 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.[58] Moreover, while Article IV of Notice 3169 does indicate that "local government and relevant departments should not designate the

[53] *See* GOC SQR at 11.
[54] *Id*. at 17.
[55] *See* GOC IQR at Exhibit 6.
[56] *Id*.
[57] *Id*.
[58] *See e.g.*, Notice 748 Article 10 and Notice 3105 Articles II and X.

transaction price," Articles 2 and 3 of Notice 3169 also make clear that the NDRC stipulates the formulae by which prices are to be adjusted.

As explained above, the GOC failed on multiple occasions to explain the roles and nature of cooperation between the NDRC and the provinces in deriving electricity price adjustments. Further, the GOC failed to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves. Consequently, we preliminarily determine, in accordance with section 776(a)(2)(A), 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 its preliminary determination.[59] Moreover, we preliminarily determine, in accordance with section 776(b), 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, AFA is warranted.[60] We find, based on AFA, 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.[61] 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 applying AFA in selecting the benchmark for determining the existence and amount of the benefit.[62] The benchmark rates we selected are derived from the record of this review 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* the "Provision of Electricity for LTAR" section.

C. Application of AFA: Provision of Land-Use Rights to Certain Industrial Zones for LTAR

GOC

In its initial response, the GOC stated that two land parcels were transferred from the Bureau of Land Resources of Yixing City to Jiangsu Senmao in 2007 and 2010 through negotiated contracts, not at prices below market value.[63] With respect to Riverside Plywood, the GOC states that Baroque Timber Industries (Zhongshan) Co., Ltd. (BaroqueTimber), Riverside Plywood's cross-owned affiliate,[64] acquired one parcel of land from the Bureau of Land Resources of Zhongshan City through public auction.[65] However, the GOC did not provide an explanation of how the price of land-use rights was established.

In our supplemental questionnaire, we provided the GOC a second opportunity to explain how it established the land-use rights prices and how it reconciled the prices paid by the mandatory

[59] *See* section 776(a)(2)(A) of the Act.
[60] *See* section 776(b) of the Act.
[61] *See*, *e.g.,* Volume III of the Petition, at 58-62.
[62] *See* section 776(b)(2)(D) of the Act.
[63] *See* GOC IQR at 40.
[64] *See* Attribution Section below.
[65] *Id.*

respondents with the provinces, cities, and counties' relevant laws and regulations.[66] In its response, the GOC provided the Land Administration Law of the PRC (2004 and 1998 versions), the Urban Real Estate Administration Law of the PRC (2009, 2007, and 1994 versions), and the Regulation of the Implementation of the Land Administration law of the PRC (2014 and 1998 versions), but did not provide a reconciliation between the prices paid and those dictated by applicable laws.[67] Additionally, the GOC did not provide any explanation on how the price of land-use rights was established for Jiangsu Senmao or Baroque Timber, the GOC simply states that the land parcels transferred to Jiangsu Senmao were transferred through negotiated prices in the contracts and the land parcels provided to Baroque Timber were provided through public auction.[68]

In response to our request to explain the basis upon which the land or land-use rights were provided (*i.e.*, status or activity) to the mandatory respondents, the GOC provided vague, general, incomplete or inconsistent explanations. In the GOC's initial questionnaire response, the GOC stated, "any land parcel transferred to the respondents during the POR and AUL period were independent of the companies' status, location or activity."[69] However, in its supplemental response, the GOC submitted a public bid notice for Baroque Timber's parcel of land that states, "the bidder must be a company or enterprise that has the qualification of manufacturing, producing, and processing wooden products."[70] Additionally, the notice states that the bidder must have a License of National Industry Product Manufacture issued by the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China, and a Timber Business License issued by Guangdong Forestry Bureau and Zhongshan Forestry Bureau. Furthermore, in its initial response, the GOC stated, "the enterprise that offers the highest price in the auction is awarded the parcel of land.[71] However, the GOC did not provide evidence of any other offers and the bid is restricted to companies in the wood industry with the above qualifications.

The information requested regarding the provision of land and land-use rights to the mandatory respondents and the basis on which they were provided is crucial for our analysis to determine whether an alleged program is a financial contribution and specific. This type of information has been provided and verified in previous proceedings.[72] Thus, we preliminarily find that the information requested, but not provided, was available to the GOC.

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[66] *See* Commerce's Letter to the GOC, "2016 Countervailing Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Questionnaire," dated June 8, 2018 (Commerce's Initial Questionnaire to the GOC) at III-14 – III-16; Commerce's Letter to the GOC, "2016 Countervailing Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Questionnaire," dated August 22, 2018 (Commerce's Supplemental Questionnaire to the GOC) at 7.
[67] *See* GOC IQR at 41 and Exhibit 25, 26, and 27.
[68] *Id.* at 40.
[69] *Id.* at 41.
[70] *Id.* at 41 and Exhibit SQ-15.
[71] *See* GOC SQR at 20.
[72] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum (IDM).

Further, the GOC's statement that it "believes" the provision of land or land-use rights is not contingent upon status or activities,[73] without providing any supporting evidence to corroborate this statement, is wholly inadequate. As in prior proceedings, Commerce finds unpersuasive the GOC's response that it "believes" that none of the land-use rights reported by respondents in this review were contingent upon status or activities; moreover, the GOC provided no other evidence to demonstrate the basis for its "belief."[74]

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

D. Application of AFA: Provision of Veneers for LTAR

GOC

In its initial response, the GOC did not provide a complete response to the input producer appendices of Commerce's questionnaire; instead, it claimed that veneers are thin layers of wood that are not manufactured, but produced by rural households that peel the timber into thin layers.[75] The GOC also stated that there is no official data of the exact number of veneer producing households, or their exact input volume, and that the provision of veneers for LTAR is not possible because the central and local governments do not have this information.[76]

In a supplemental questionnaire, we provided the GOC a second opportunity to answer the input producer appendices for veneers.[77] In its response, the GOC provided a revised ownership structure of veneer suppliers and the GOC claimed that these suppliers are all private

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[73] *See* GOC IQR at 41.
[74] *See, e.g., Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Determination*, 81 FR 43577 (July 5, 2016), and accompanying Preliminary Decision Memorandum (PDM) at 12-14, unchanged in *Truck and Bus Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 8606 January 27, 2017.
[75] *See* GOC IQR at 43, 55-56.
[76] *Id.* at 43.
[77] *See* Commerce's Letter, "2016 Countervailing Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Questionnaire," dated August 22, 2018 (Commerce SQR to the GOC) at 10-12.

companies.[78] Furthermore, the GOC stated that it cannot provide any information on whether any veneer suppliers are part of the Chinese Communist Party (CCP) nine entities[79] because it does not collect this information.[80] As such, because the GOC has not provided the necessary information to make a determination of whether veneer suppliers are authorities, we preliminarily find that the domestic Chinese producers that produced the veneers purchased by Jiangsu Senmao and Riverside Plywood (including Baroque Timber) during the POR are "authorities" within the meaning of section 771(5)(B) of the Act.

Because the GOC failed to provide complete response to Commerce's initial and supplemental questionnaires, we preliminarily find that the GOC withheld necessary information that was requested of it. Moreover, we preliminarily find that the GOC did not respond completely to the input producer appendices, failing to identify whether any owners, directors, or managers of the cut timber suppliers are members or representatives of CCP's nine entities. With the information necessary to determine financial contribution and specificity missing from the record, due to the GOC's refusal to provide the information requested, we find that an adverse inference is warranted in applying facts otherwise available, under sections 776(a) and (b) of the Act, in making a finding that this program provided a financial contribution under section 771(5)(D) of the Act, and is specific under section 771(5A) of the Act.

E. Application of AFA: Provision of Cut Timber for LTAR

GOC

In its initial response, the GOC did not provide complete responses to Commerce's standard appendix and input producer appendices; instead, the GOC asserts that there is no government program for supplying cut timber to the Chinese MLWF industry, because cut timber is a basic raw material for the production of all wood products, not just in the MLWF industry.[81] Additionally, the GOC states that there is a vast number of uses for timber and the consumers are highly varied in the world and Chinese markets.[82]

In the GOC's supplemental questionnaire, we provided the GOC a second opportunity to answer the standard appendix and input producer appendices for veneers. In its response, the GOC provided the input producer appendix as well as a revised chart of the ownership structure of cut timber suppliers.[83] In its supplemental response, the GOC claims that all the cut timber suppliers used by Jiangsu Senmao are privately-owned companies that are bound by company laws, and provided a chart with the suppliers' name, address, status, registration number, and shareholder

[78] *See* GOC SQR at 63.
[79] The following are the nine CCP entities: (1) CCP Party Congresses, (2) CCP Committees (3) CCP Standing Committees, (4) People's Congresses, (5) Standing Committees of People's Congresses, (6) other Government administration entities, including village committees, (7) the Chinese People's Political Consultative Conferences (CPPCC), (8) the Discipline Inspection Committees of the CCP, and (9) CCP committee, branch, or "primary organization".
[80] *See* GOC SQR at 69.
[81] *See* GOC IQR at 43.
[82] *Id*.
[83] *See* GOC SQR at 37-38 and Exhibit SQ-21.

information.[84] However, the GOC did not provide company by-laws, annual reports, tax registration documents, capital verification reports, articles of association, or articles of incorporation.[85] Consequently, the GOC's claim that the cut timber suppliers are privately-owned companies that make decisions in accordance with their company laws, and not with government authorities, is without support. The GOC also argues that WTO jurisprudence demonstrates that the CCP nine entities questions are irrelevant to whether the cut timber suppliers are public bodies.[86] As such, because the GOC has not provided the necessary information to make a determination of whether cut timber suppliers are authorities, we preliminarily find that the domestic Chinese producers of cut timber purchased by Jiangsu Senmao during the POR are "authorities" within the meaning of section 771(5)(B) of the Act.

Because the GOC failed to provide complete responses to Commerce's initial and supplemental questionnaires, we preliminarily find that the GOC withheld necessary information that was requested of it. Moreover, we preliminarily find that the GOC did not respond completely to the input producer appendix, failing to identify whether any owners, directors, or managers of the cut timber suppliers are members or representatives of CCP's nine entities. With the information necessary to determine financial contribution and specificity missing from the record, due to the GOC's refusal to provide the information requested, we find that an adverse inference is warranted in applying facts otherwise available, under sections 776(a) and (b) of the Act, in making a finding that this program provided a financial contribution under section 771(5)(D) of the Act, and is specific under section 771(5A) of the Act.

F. Application of AFA: Export Buyers' Credit

GOC

We preliminarily determine that the use of AFA is warranted in determining the countervailability of the Export Credit from Export-Import Bank of China: Export Buyers' Credit program because the GOC did not provide the requested information needed to allow Commerce to fully analyze this program.

In the initial questionnaire, we requested that the GOC provide original and translated copies of laws, regulations or other governing documents for this program.[87] The GOC provided the Administrative Measures of Export Buyers' Credit of the Export-Import Bank of China and Detailed Implementation Rules Governing Export Buyers' Credit of the Export-Import Bank of China.[88] Additionally, we have information on the record that the program was revised in 2013; however, the GOC did not provide the 2013 amendment to these laws.[89] We also requested that the GOC provide a list of all partner/correspondent banks involved in the disbursement of funds, but the GOC did not provide this information and, instead, merely asserted that "{n}one of the

[84] *See* GOC SQR at 40-41 and Exhibit 21.
[85] *Id.* at 39-40 and Exhibit 21.
[86] *Id.* at 45-46.
[87] *See* Commerce's Initial Questionnaire to the GOC at II-11 and II-12.
[88] *See* GOC's IQR at 107-111 and Exhibit 49 – 50.
[89] *Id.* at Exhibit 48.

respondents or their cross-owned affiliates applied for, used, benefitted from or accrued assistance from Export Buyers Credits from China Ex-Im.[90]" In a supplemental questionnaire on December 4, 2018, Commerce provided the GOC with another chance to provide this information.[91] However, the GOC did not provide the information requested before the preliminary results; and therefore, we preliminarily find that the GOC withheld necessary information, thereby impeding this review.[92] In their initial questionnaire responses, Jiangsu Senmao and Riverside Plywood claimed non-use for this program, and Jiangsu Senmao submitted certifications of non-use from its customers.[93] However, the GOC is the only party that can answer questions about the internal administration of this program, and thus, absent the requested information, the GOC's and respondent company's claims of non-use of this program are not verifiable. Additionally, the GOC has not provided information that would permit us, absent the use of facts available pursuant to section 776 of the Act, to make a determination as to whether this program constitutes a financial contribution or whether this program is specific. Accordingly, we preliminarily find that the GOC has not cooperated to the best of its ability in response to the Department's specific information requests and determine, as AFA, that this program constitutes a financial contribution and meets the specificity requirements of the Act.[94] Additionally, consistent with our practice,[95] as AFA, we find that Jiangsu Senmao and Riverside Plywood used and benefited from this program.

Pursuant to section 776(a)(1) of the Act when necessary information is not available on the record and sections (2)(A) and (C) of the Act, when an interested party withholds information requested by Commerce and significantly impedes a proceeding, Commerce uses facts otherwise available to reach a determination. Here, the record is missing necessary information because the GOC withheld the requested information described above, thereby impeding this proceeding. Accordingly, we preliminarily determine that the use of facts available is warranted based on the record. Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding information and significantly impeding this proceeding, failed to cooperate by not acting to the best of its ability. Accordingly, we find that the application of AFA is warranted.

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[90] *Id.* at 108 – 109.

[91] *See* Commerce's Letter to the GOC, "Multilayered Wood Flooring from the People's Republic of China: 2016 Countervailing Duty Administrative Review," dated December 4, 2018.

[92] *See* GOC's Letter, "GOC's Supplemental Questionnaire Response," dated December 11, 2018 (GOC's December 11 Response).

[93] *See* Riverside Plywood's Letter, "Riverside Plywood Co., Ltd. – Initial Questionnaire Response: Fifth Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring," dated July 26, 2018 (Riverside Plywood IQR) at 5; *see also* Jiangsu Senmao's Letter, "Multilayered Wood Flooring from the People's Republic of China Section III Questionnaire Response," dated July 26, 2018 (Jiangsu Senmao IQR) at 22-23 and Exhibit 15.

[94] *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."

[95] We have determined in previous cases, *e.g.*, *Crystalline Silicon Photovoltaic Cells from China,* that because of the nature of this program, Commerce cannot rely on non-use statements from respondents without the corroboration of the GOC. Therefore, although we normally collect non-use information from the respondent directly, this program requires a fully cooperative GOC response to determine non-use. *See Crystalline Silicon Photovoltaic Cells from China, Whether or Not Assembled Into Modules from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent to Rescind, in Part*: 2014, 82 FR 2317 (January 9, 2017), and accompanying IDM at 31.

Selection of the AFA Rate

Consistent with section 776(d) of the Act and our established practice, we applied our CVD hierarchy to determine the AFA rate for the Export Buyer's Credit Program.[96] Under the first step of Commerce's CVD AFA hierarchy for administrative reviews, Commerce applies the highest non-*de minimis* rate calculated for the identical program in any segment of the same proceeding. If there is no identical program match within the same proceeding, or if the rate is *de-minimis*, under step two of the hierarchy, Commerce applies the highest non-*de minimis* rate calculated for a similar program within any segment of the same proceeding. If there is no non-*de minimis* rate calculated for a similar program within the same proceeding, under step three of the hierarchy, Commerce applies the highest non-*de minimis* rate calculated for an identical or similar program in another CVD proceeding involving the same country. Finally, if there is no non-*de minimis* rate calculated for an identical or same program in another CVD proceeding involving the same country, under step four, Commerce applies the highest calculated rate for any program from the same country that the industry subject to the review could have used.[97]

Furthermore, Commerce's methodology is consistent with Section 502 of the Trade Preferences Extension Act of 2015 (TPEA), which the President of the United States signed into law on June 29, 2015. Section 502 of the TPEA added new subsection (d) to section 776 of the Act. Section 776(d)(1)(A) of the Act states that when applying an adverse inference in selecting from the facts otherwise available, Commerce may (i) use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that Commerce considers reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for Commerce's existing practice of using an AFA hierarchy in selecting a rate "among the facts otherwise available" in CVD cases, should the facts warrant such a selection.

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."[98] No legislative history accompanied this provision of the TPEA. Accordingly, Commerce is left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

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[96] *See*, *e.g.*, *Shrimp from China,* and accompanying 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 for an uncooperative respondent").

[97] *See* section 776(d) of the Act; *see also SolarWorld Americas, Inc. v. United States*, CIT No. 15-00232 (CIT 2017) (*SolarWorld*) (sustaining Commerce's CVD AFA hierarchy and selection of AFA rate for CVD reviews).

[98] *See* Section 776(d)(2) of the Act.

We find that the Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: 1) Commerce may apply its hierarchy methodology and 2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.[99]

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[100] Further, "in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin."[101] It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.[102]

In applying its AFA hierarchy in CVD reviews, Commerce's goal is as follows: In the absence of necessary information from cooperative respondents, Commerce is seeking to find a rate that is a relevant indicator of how much the government of the country under reviewis likely to subsidize the industry at issue, through the program at issue, while inducing cooperation. Accordingly, in sum, the three factors that Commerce takes into account in selecting a rate are: 1) the need to induce cooperation, 2) the relevance of a rate to the industry in the country under investigation or review (*i.e.*, can the industry use the program from which the rate is derived), and 3) the relevance of a rate to a particular program, though not necessarily in that order of importance.

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[99] This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B). Under that provision, "any dumping margin from any segment of the proceeding under the applicable antidumping order" may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

[100] *See* Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, vol. 1, at 870, reprinted in 1994 U.S.C.C.A.N 4040, 4090; *see also Essar Steel*, 678 at 1276 (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (finding that "{t}he purpose of the adverse facts statute is 'to provide respondents with an incentive to cooperate with Commerce's investigation, not to impose punitive damages.'") (*De Cecco*).

[101] *See De Cecco*, 216 F.3d at 1032.

[102] Commerce has adopted a practice of applying its hierarchy in CVD cases. *See e.g.*, *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM, Comment 4 at 28-31 (applying the AFA hierarchical methodology within the context of CVD investigation); *see also 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), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. *See e.g.*, *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a "pool" of available rates that Commerce can rely upon for purposes of identifying an AFA rate for a particular program. In reviews, for example, this "pool" of rates could include a non-*de minimis* rate calculated for the identical program in any segment of the proceeding, a non-*de minimis* rate calculated for a similar program in any segment of that proceeding, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy therefore does not focus on identifying the highest possible rate that could be applied from among that "pool" of rates; rather, it adopts the factors identified above of inducement, relevancy to the industry and to the particular program.

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[103] The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.[104]

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.[105] Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[106]

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.[107]

Consistent with section 776(d) of the Act and our established practice, we applied our CVD hierarchy to determine the AFA rate for the Export Buyers' Credit Program.[108] Our examination

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[103] *See* SAA at 870.
[104] *Id*.
[105] *Id*. at 869-870.
[106] *See* section 776(d) of the Act.
[107] *See, e.g.*, *Silica Fabric China* IDM at 14 (citing *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996)).
[108] *See*, *e.g.*, *Shrimp from China,* and accompanying 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 for an uncooperative respondent").

of the results of all the segments of this proceeding leads us to conclude that there are no calculated rates for this program in this proceeding - and thus no rates are available under step one of the CVD AFA hierarchy. Because we have not calculated a rate for an identical program in this proceeding, we then determine, under step two of the hierarchy, if there is a calculated rate for a similar/comparable program (based on the treatment of the benefit) in the same proceeding, excluding *de minimis* rates. When Commerce selects a similar program, it looks for a program with the same type of benefit. For example, it selects a loan program to establish the rate for another loan program, or it selects a grant program to establish the rate for another grant program.[109] Consistent with this practice, upon examination of the available above *de minimis* programs from the current review and the underlying investigation, Commerce selected the Policy Loans Program because it confers the same type of benefit as the Export Buyer's Credit Program, as both programs are subsidized loans from the GOC.[110] On this basis, we are using an AFA rate of 0.44 percent *ad valorem*, the highest rate determined for a similar program in this proceeding (for the Policy Loans to the MLWF Industry program calculated in this review) as the rate for this program, applicable to both respondent companies.

G. Application of AFA: "Other Subsidies"

GOC

While Riverside Plywood self-reported receiving "Other Subsidies" in its initial questionnaire response, the GOC stated that:

> The Department has requested information on various programs in this investigation according to allegations made out in a petition and as initiated by the Department. The GOC has cooperated with respect to the Department's requests. Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures dictates that investigations may not be initiated on the basis of "simple assertion, unsubstantiated by relevant evidence." Sufficient evidence with regard to the existence, amount, and nature of a subsidy must be presented for the Department to initiate the investigation of another program, consistent with Article 11.2(iii). Therefore, in the absence of allegations and sufficient evidence in respect of "other" subsidies, consistent with Article 11.2 and other relevant articles of the WTO Agreement on Subsidies and Countervailing Measures no reply to this question is warranted or required. For more details about other subsidies used by the respondent enterprises and their cross-owned affiliates, please refer to the respondent enterprises' response.[111]

In response, on September 12, 2018, we issued a supplemental questionnaire requesting the GOC's full responses to the "Other Subsidies" reported by the respondents. Specifically, we asked the GOC to respond to the following questions concerning the "Other Subsidies" reported

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[109] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China*, 80 FR 41003 (July 14, 2015) (final countervailing duty admin. review), and accompanying IDM at 14, 44; *Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China*, 79 FR 78036 (December 29, 2014) (final results admin. review), and accompanying IDM at 5; *Large Residential Washers from the Republic of Korea*, 80 FR 55336 (September 15, 2015) (final results admin. review), and accompanying IDM at 5.
[110] *See* Policy Loans section below.
[111] *See* GOC IQR at 124.

by Riverside Plywood and Baroque Timber:

> In Exhibit 9a of the July 26, 2018, Riverside Plywood/Baroque Timber Response (Riverside/Baroque Response) to Commerce's June 8, 2018 Initial Questionnaire (Initial Questionnaire), Riverside Plywood reported that it received grants other than the grant programs listed in the Initial Questionnaire. In 2011 and 2016, Riverside Plywood received the following grants that appear to exceed Commerce's threshold of measurability: Attorney's Fees and Position Maintenance Subsidy. Therefore, please provide a full response, i.e., Commerce's Standard Questions Appendix and Usage Appendix, for each of the 2016 grants listed from the above-noted sources.
>
> In Exhibit 36 of the Riverside/Baroque Response, Baroque Timber reported that it received grants from the Zhongshan Municipal Bureau of Commerce, Guangdong Provincial Bureau of Science and Technology, Wood Industry Research Institute of China Forestry Research Institute, Guangdong Quality and Technical Supervision Bureau, Zhongshan Economic Information Bureau, and Zhongshan Science and Technology Office, in 2016, that appear to exceed Commerce's threshold of measurability. Therefore, please provide a full response, i.e., Commerce's Standard Questions Appendix and Usage Appendix, for each of the 2016 grants listed from the above-noted sources.[112]

In its September 17, 2018, supplemental questionnaire response, the GOC supplied no substantive information about the programs but confirmed the reported usage, and acknowledged providing a financial contribution with respect to the respondents' self-reported subsidies.[113] Furthermore, we note that the GOC provided no information regarding the criteria governing the eligibility for and receipt of any assistance under these programs.[114]

Therefore, based upon the above, we preliminarily determine that necessary information to determine whether these initially-reported "Other Subsidies" are specific is not available on the record and that the GOC withheld information that was requested of it, and, thus, that Commerce must rely on "facts available" in making its preliminary determination, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, AFA is warranted, in accordance with section 776(b) of the Act. Based on the GOC's decision not to provide information related to specificity, we preliminarily find that the self-reported programs are specific within the meaning of section 771(5A) of the Act.[115] For details regarding the remainder of our analysis, *see* the "Other Subsidies" section.

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[112] *See* Commerce's Letter, "2016 Countervailing Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Questionnaire," dated September 12, 2018 (Commerce SQ1 to the GOC).
[113] *See* GOC SQR at 3.
[114] *Id.*
[115] *Id.*

V. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.[116] Commerce finds the AUL for this segment of this proceeding to be 10 years (*i.e.*, 2007-2016), pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as updated.[117] Commerce notified the respondents of the 10-year AUL in the initial questionnaire and requested data accordingly.[118] No party in this segment of the proceeding disputed this allocation period.

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

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides 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. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

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 regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has 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.[119]

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[116] *See* 19 CFR 351.524(b).
[117] *See How to Depreciate Property,* U.S. Internal Revenue Service Publication 946 (2008), at Table B-2: Table of Class Lives and Recovery Periods.
[118] *See* Initial CVD Questionnaire.
[119] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

Jiangsu Senmao did not report any companies with which it is cross-owned that would give rise to subsidy attributions within the meaning of 19 CFR 351.525(b)(6)(ii)-(v).

Riverside Plywood

Riverside Plywood reports that it was established as a wholly foreign-owned company.[120] Riverside Plywood has responded on behalf of itself, Baroque Timber, and Suzhou Times Flooring Co., Ltd. (SuzhouTimes).[121] These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of common ownership.[122]

Furthermore, Riverside Plywood identified Baroque Timber and Suzhou Times as producers of multilayered wood flooring.[123] We preliminarily determine that Baroque Timber and Suzhou Times produce subject merchandise and, thus, for purposes of the preliminary results, we are attributing subsidies provided to Baroque Timber and Suzhou Times to Riverside Plywood pursuant to 19 CFR 351.525(b)(6)(ii), by dividing the benefit amounts by the combined sales of Baroque Timber, Suzhou Times, and Riverside Plywood (net of intercompany sales).

C. Denominators

When selecting an appropriate denominator to use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondent's receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to Be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator. Where the program has been found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator. In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.

VI. INTEREST RATE BENCHMARKS, DISCOUNT RATES, INPUTS, LAND-USE AND ELECTRICITY

Commerce is investigating loans received by the respondents and their cross-owned affiliates from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies received by the mandatory respondents.[124] The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

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[120] *See* Riverside Plywood IQR at 5.
[121] *See* Riverside Plywood's July 2, 2018 Affiliation Response (AFFR) at 2 and Riverside Plywood's July 27, 2018, Second Affiliation Response (2nd AFFR) at 4.
[122] *See* Riverside Plywood 2nd AFFR at Exhibit S1.
[123] *See* Riverside Plywood AFFR at 2 and Riverside Plywood 2nd AFFR at 4.
[124] *See* 19 CFR 351.524(b)(1).

A. Short-Term and Long-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.[125] If the 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."[126]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS from the PRC*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.[127] In an analysis memorandum dated July 21, 2017, Commerce conducted a re-assessment of the lending system in China.[128] Based on this re-assessment, Commerce has concluded that, despite reforms to date, the GOC'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.[129] In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from the PRC* and later updated in *Thermal Paper from the PRC*.[130] 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 the PRC*, 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.[131]

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[125] *See* 19 CFR 351.505(a)(3)(i).
[126] *See* 19 CFR 351.505(a)(3)(ii).
[127] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying IDM (CFS IDM) at Comment 10.
[128] *See* Memorandum, "Placing Information on Record," dated August 28, 2018, at Attachments 1 and 2.
[129] *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Lumber from Canada*), and accompanying IDM at "Analysis of Programs: Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."
[130] *See* CFS IDM at Comment 10; *see also Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying IDM (Thermal Paper IDM) at 8-10.
[131] *See* World Bank Country Classification, http://data.worldbank.org/about/country-and-lending-groups (World

Beginning in 2010, however, China was classified in the upper-middle income category and remained there from 2011 to 2017.[132] 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 the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2017. This is consistent with Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.[133]

After Commerce identifies the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in the 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 2011-2017, 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.[134] For 2010, however, the regression does not yield that outcome for China's income group.[135] 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 the PRC* to compute the benchmarks for the years from 2001-2009 and 2011-2017. 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 2010-2017 and "lower middle income" for 2001-2009.[136] 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 a short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates

Bank Country Classification).

[132] *See* World Bank Country Classification.

[133] *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 PDM at "VII. Subsidies Valuation: Benchmarks and Discount Rates" (unchanged in *Shrimp from the PRC*).

[134] *See* Memorandum to The File, "Multilayered Wood Flooring from China: Interest Rate Benchmark Memorandum," dated December 4, 2018 (Interest Rate Benchmark Memorandum).

[135] *Id.*

[136] *Id.*

for the year in question.[137] Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.[138]

The lending rates reported in the *IFS* represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, 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.[139]

In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term markup 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.[140] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component. The resulting inflation-adjusted benchmark lending rates are provided in the Interest Rate Benchmark Memorandum.

B. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used as the discount rate the long-term interest rate calculated for the year in which the nonrecurring subsidy was approved by the government. The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the Jiangsu Senmao Preliminary Calculation Memorandum and the Riverside Preliminary Calculation Memorandum.

C. Input Benchmarks

We selected benchmarks for determining the benefit from the provision of cut timber and veneers for LTAR in accordance with 19 CFR 351.511. Section 351.511(a)(2) sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions in the country in question (*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 in question (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). For all of the inputs, as discussed in the section entitled "Use of Facts Otherwise Available and Adverse Inferences," above, we preliminarily determine that each of Jiangsu Senmao's and Riverside Plywood's (including Baroque Timber's) input producers are "authorities." Therefore, prices from these producers do not constitute market-determined prices. Moreover, as discussed above in the "Application of AFA: The Provision of Cut Timber and Veneers for LTAR"

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[137] *Id.*
[138] *Id.*
[139] *See*, *e.g.*, Thermal Paper IDM at 10.
[140] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying IDM at Comment 14.

sections, the GOC did not provide the information requested with respect to Jiangsu Senmao and Riverside's (including Baroque Timber's) suppliers of cut timber and veneers for LTAR. As such we are preliminarily find that all of the mandatory respondents and their cross-owned companies' suppliers of cut timber and veneers are authorities within the meaning of section 771(5)(B) of the Act and we are relying on world market prices as the tier two benchmark provided for in 19 CFR 351.511(a)(2)(ii).

We used world export data from the UN Comtrade for Harmonized Tariff System (HTS) categories 440391, 440799, 440399 to value cut timber, and HTS categories 440810, 440839, 440890, and 4408 to value veneers. The average of the export prices provided by the petitioner and the mandatory respondents[141] represents an average of commercially available world market prices for the inputs that would be available to purchasers in the PRC. Also, 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, Commerce will average the prices to the extent practicable. Therefore, we averaged the prices to calculate a single benchmark by month.

D. Provision of Land-Use Rights for LTAR

As explained in detail in previous proceedings, Commerce cannot rely on the use of the so-called "tier one" and "tier two" benchmarks described above to assess the benefits from the provision of land for LTAR in China. Specifically, in *Sacks from the PRC*, Commerce determined that "Chinese land prices are distorted by the significant government role in the market," and hence, no usable "tier one" benchmarks exist.[142] Furthermore, Commerce also found that "tier two" benchmarks (world market prices that would be available to purchasers in China) are not appropriate.[143] Accordingly, consistent with Commerce's past practice, we are relying on the use of so called "tier three" benchmarks for purposes of calculating a benefit for this program.[144]

For this review, we are placing on the record benchmark information to value land from "Asian Marketview Reports" by CB Richard Ellis ("CBRE") for Thailand for 2010,[145] which was also relied upon in calculating land benchmarks in the CVD investigations of *Solar Cells from the PRC* and *ITDCs from the PRC*.[146] We initially selected this information in the *Sacks from the*

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[141] *See* the Petitioner's benchmark rebuttal at Exhibit 1; Jiangsu Senmao's benchmark at Exhibit 1a – 1c and Exhibit 2a – 2c; Jiangsu Senmao's rebuttal benchmark at Attachment 1-3; Riverside Plywood's benchmark at Exhibit 1; and Riverside Plywood's second benchmark submission at Attachment 1-3.

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

[143] *Id.*

[144] *See* Memorandum, "Multilayered Wood Flooring from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2016: Land Analysis Memo," dated December 20, 2018.

[145] *See* Memorandum to the File, from Dennis McClure, Senior International Trade Compliance Analyst, Office VIII, AD/CVD Operations, re: "Countervailing Duty Review of Multilayered Wood Flooring from the People's Republic of China: Asian Marketview Report," dated concurrently with this memorandum.

[146] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances*

PRC investigation after considering a number of factors, including national income levels, population density, and producer's perceptions that Thailand is a reasonable alternative to the PRC as a location for Asian production.[147] We find that these benchmarks are suitable for these preliminary results, adjusted accordingly for inflation, to account for any countervailable land received by Jiangsu Senmao and Riverside Plywood (including Baroque Timber) from December 11, 2001, through the POR.[148]

E. Provision of Electricity for LTAR

As discussed above in the section, "Use of Facts Otherwise Available and Adverse Inferences," we are relying on AFA to select the highest electricity rates that are on the record of this review as our benchmark for measuring the adequacy of remuneration.

VI. ANALYSIS OF PROGRAMS

Based upon our analysis of the record, including the responses to our questionnaires, we preliminarily determine the following.

A. Programs Preliminarily Determined to Be Countervailable

1. Allowance for Attorney's Fees

Riverside Plywood reported receiving an allowance from the GOC in 2011 under this program, which is intended to support Chinese enterprises involved in U.S. antidumping proceedings.[149] In return for these grants, Chinese enterprises allow the GOC access to their business proprietary legal documents related to antidumping proceedings.[150] The GOC reported that the program was terminated on January 1, 2014.[151] However, the GOC corroborated Riverside Plywood's reporting that it received assistance under this program during the AUL.[152]

Determination, 77 FR 63788 (October 17, 2012) (*Solar Cells from the PRC*), and accompanying IDM (Solar Cells IDM), at 6 and Comment 11; *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 21316 (April 11, 2016) (*ITDCs from China*), and accompanying Preliminary Decision Memorandum at 13 (unchanged in Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components From the People's Republic of China: Final Affirmative Determination, 81 FR 75037 (October 28, 2016), and accompanying IDM).

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

[148] We are using the date of December 11, 2001, the date on which China became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies.

[149] *See* Riverside Plywood's Letter, "Riverside Plywood Co., Ltd. – Supplemental Questionnaire Response: Fifth Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from China," dated September 11, 2018 at Exhibit SS6.

[150] *Id*.

[151] *See Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, in Part, and Intent To Rescind the Review, in Part; 2015*, 82 FR 57722 (December 7, 2017), and accompanying Decision Memorandum at 13 (*Fifth Administrative Review*).

[152] *See* GOC IQR at 10.

Consistent with Commerce's prior review of this program, we preliminarily find that the grant provided under this program confers a countervailable subsidy in the form of a direct transfer of funds from the government in accordance with section 771(5)(D)(i) of the Act, and that it provides a benefit in the amount of the grant.[153] Further, we continue to find the grant to be export-contingent within the meaning of section 771(5A)(B) of the Act because the receipt of the grant is limited to companies that export.[154]

As noted above, the GOC corroborated that Riverside Plywood received assistance under this program during the POR, but the GOC did not provide information regarding the approval date for the total grant amount received.[155] Notwithstanding the GOC's failure to provide the requested information, as Riverside Plywood reported having received assistance under this program in 2011, we continue to find that assistance under this program meets the criteria in 19 CFR 351.524(c)(2) and that it is therefore appropriate to treat these grants as non-recurring subsidies with benefits allocable across the 10-year AUL (*i.e.*, 2007-2016) as explained above under "Allocation Period." Therefore, we first applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2).[156] We then divided the grant received by Riverside Plywood by that year's respective export sales. As the result was greater than 0.5 percent, we allocated those benefits over the remainder of the AUL.[157] To calculate the countervailable subsidy rate for 2016, we divided the benefit amount allocated to 2016 by Riverside Plywood's export sales during the POR.[158] On this basis, we preliminarily find that Riverside Plywood received a countervailable subsidy of 0.03 percent *ad valorem* under this program during the POR. [159]

Jiangsu Senmao reported not using this program.

2. Provision of Electricity for LTAR

Commerce has investigated and determined that this LTAR program confers a countervailable subsidy in several prior China proceedings.[160] As discussed in "Use of Facts Otherwise Available and Application of Adverse Inferences," we are preliminarily basing our finding on the government's provision of electricity, in part, on AFA. As AFA, we determine that the GOC's provision of electricity is a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act, and that it is specific within the meaning of section 771(5A)(D) of the Act.

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[153] *See, e.g.*, *Fifth Aadministrative Review* at 14.
[154] *See* Riverside Plywood SQR at Exhibit SS6.
[155] *See* GOC IQR at 10.
[156] *See* Riverside Plywood Preliminary Calculation Memorandum.
[157] *Id.*
[158] *Id*.
[159] *Id*.
[160] *See, e.g., Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009), and accompanying IDM at 22-23; *see also Multilayered Wood Flooring From the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2015,* 83 FR 27750 (June 14, 2018), and accompanying IDM.

In a CVD proceeding, Commerce requires information from both the government of the country whose merchandise is under investigation or review and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, Commerce, as AFA, may preliminarily find that a financial contribution exists under the alleged program and that the program is specific.[161] However, where possible, Commerce will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit, to the extent that those records are useable and verifiable.

Both Jiangsu Senmao and Riverside Plywood (including Baroque Timber) reported using this program, and provided data on their electricity consumption and the electricity rates paid during the POR.[162] To measure the benefit under the program, we compared the rates paid by each respondent for its electricity to the highest rates that it could have paid in China during the POR.

In deriving the benchmark,[163] we selected the highest non-seasonal provincial rates in China during the POR for each applicable user category (*e.g.*, "large industrial user," and "normal industrial and commercial user"), voltage class (*e.g.*, 1-10kv, 35kv), time period (general, peak, normal, and valley), and basic fee (*e.g.*, "base charge/maximum demand") as provided by the GOC.[164] We calculated benchmark electricity payments by multiplying consumption volumes by the benchmark electricity rate corresponding to the user category, voltage class, and time period (*i.e.*, peak, normal, and valley), where applicable. We then compared the calculated benchmark payments to the actual electricity payments made by the company during the POR. Where the benchmark payments exceeded the payments made by the company, a benefit was conferred. Based on this comparison, we preliminarily find that electricity was provided for LTAR to Jiangsu Senmao and Riverside Plywood (including Baroque Timbers).

To calculate the countervailable subsidy rates for the POR, we summed each individual company's benefits and divided the amount by the appropriate sales denominator for the POR. On this basis, we preliminarily determine that Jiangsu Senmao received a countervailable subsidy of 0.13 percent *ad valorem*,[165] and Riverside Plywood (including Baroque Timber) received a countervailable subsidy of 0.26 percent *ad valorem*.[166]

3. Policy Loans to the MLWF Industry

The petitioner alleged that policy banks and SOCBs in China make loans to MLWF producers at preferential terms as a matter of government policy.[167] Commerce has countervailed policy

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[161] *See, e.g., Hardwood and Decorative Plywood from the People' Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013), and accompanying IDM at Comment 3, "Provision of Electricity."
[162] *See* Jiangsu Senmao IQR at Exhibit 6; and Riverside Plywood IQR at Exhibits 14a and 14b.
[163] *See* 19 CFR 351.511(a)(2).
[164] *See* GOC IQR at Exhibit 10.
[165] *See* Jiangsu Senmao Preliminary Calculation Memorandum.
[166] *See* Riverside Plywood Preliminary Calculation Memorandum.
[167] *See* Countervailing Duty Administrative Review on Multilayered Wood Flooring from the People's Republic of China: Decision Memorandum on New Subsidy Allegations, dated June 6, 2018.

lending programs in previous proceedings.[168] We find that Jiangsu Senmao and Riverside Plywood's cross-owned affiliate, Baroque Timber, used this program during the POR.[169]

In response to our questionnaire, Jiangsu Senmao reported its respective loans and Riverside Plywood identified certain loans received from SOCBs.[170] Based on our review of the record, we preliminarily determine that loans received by the MLWF industry from SOCBs were made pursuant to government directives. We determine that the GOC, through its directives, has policies in place encouraging the use of loans to encourage and support the growth of favored industries, including those using timber, which would include the MLWF industry. For instance, the Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation (No. 40 (2005)) (Decision 40) states in its preamble that "{a}ll relevant administrative departments shall speed up the formulation and amendment of policies on public finance, taxation, credit, land, import and export, *etc.*, effectively intensify the coordination and cooperation with industrial policies, and further improve and promote the policy system on industrial structure adjustment" with respect to the listed industrial categories.[171] In Chapter II "Directions and Key Points of Industrial Structure Adjustment," Article 4, Decision 40 additionally states that "We shall develop materials forests, timber forest bases in light of local circumstances, and raise the rate of comprehensive utilization of timbers" (emphasis added).[172] Additionally, the Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue) indicates that the industry under consideration falls within "Section I Agriculture and Forestry" category.[173] Section I includes the Development of technologies for wood-based composite materials and structural artificial boards, and it is axiomatic that MLWF is a wood-based composite material.

Based on the record information described above, we preliminarily determine that the GOC has a policy in place to encourage the development and production of hardwood products, including MLWF, through policy lending. The loans to MLWF producers from policy banks and SOCBs in China constitute financial contributions from "authorities" within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.[174] Finally, we determine that the loans are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of the GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the plywood industry.

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[168] *See*, *e.g.*, *Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013), and accompanying IDM (Steel IDM) at 24-25.
[169] *See* Jiangsu Senmao IQR at 15 and Riverside Plywood IQR at 28 (Riverside Plywood obtained its loans from a foreign-owned commercial bank).
[170] *See* Jiangsu Senmao IQR at Exhibit 8 and Riverside Plywood IQR at Exhibits 19a and 19b.
[171] *See* GOC IQR at Exhibit 22.
[172] *Id*. at Exhibit 22.
[173] *Id.* at Exhibit 19.
[174] *See* section 771(5)(E)(ii) of the Act.

To calculate the benefit from this program, we used the benchmarks discussed under the "Subsidy Valuation Information" section.[175] On this basis, we preliminarily determine a subsidy rate of 0.44 percent *ad valorem* for Jiangsu Senmao and a subsidy rate of 0.34 percent *ad valorem* for Riverside Plywood's cross-owned affiliate, Baroque Timber.

4. Provision of Veneers for LTAR

According to the petitioner, the GOC is providing timber to Chinese MLWF producers at LTAR, because the GOC owns all of the forest lands in China and controls the quantity and distribution of the timber harvested.[176] The petitioner also argues that the GOC directly controls downstream wood products like veneers because significant sellers of veneers are owned by GOC authorities.[177] As stated above, in the "Application of AFA: Provision of Veneers for LTAR" section, the GOC failed to identify whether any of the veneer suppliers were affiliated with any of the CCP nine entities. Additionally, the GOC states that veneers are not necessarily manufactured and that there is no official data of the exact number of veneers produced as the GOC does not have this information because a large proportion of veneers are produced by rural households rather than enterprises.[178]

Jiangsu Senmao and Riverside Plywood (including Baroque Timber) reported purchasing veneers during the POR. Based on the GOC's involvement in the timber and MLWF industries and its failure to provide the requested information, we preliminarily find, based in part on AFA, that this program provides a financial contribution under section 771(5)(D) of the Act, and is specific under section 771(5A)(D) of the Act. To the extent that the prices paid by Jiangsu Senmao and Riverside Plywood (including Baroque Timber) fall below the benchmark price, we preliminary find that a benefit exists under section 771(5)(E) of the Act and 19 CFR 351.511. To calculate the benefit from this program, we used the benchmarks discussed under the "Input Benchmarks" section.[179] On this basis, we preliminarily determine a subsidy rate of 0.25 percent *ad valorem* for Jiangsu Senmao, and a subsidy rate of 0.53 percent for Riverside Plywood (including Baroque Timber).[180]

5. Provision of Cut Timber for LTAR

As described above, in the "Provision of Veneers for LTAR," the petitioner alleged that the GOC's control of the Chinese timber and forestry industries has led to the distortion of the Chinese cut timber markets, resulting in the provision of cut timber for LTAR. As stated in the "Application of AFA: Provision of Cut Timber for LTAR" section, the GOC claims that there is no government program for supplying cut timber to the Chinese MLWF industry because cut timber is a basic raw material for the production of all wood products, not just in the MLWF industry. The GOC further states that there is a vast number of uses for timber and the

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[175] *See* 19 CFR 351.505(c).
[176] *See* the Petitioner's NSA Letter at 4.
[177] *See* the Petitioner's NSA Letter at 6-7.
[178] *See* GOC IQR at 43.
[179] *See* 19 CFR 351.505(c).
[180] *See* Jiangsu Senmao and Riverside Plywood Preliminary Calculation Memorandums.

consumers are highly varied, and that there is no official data of the exact number of veneers produced because the GOC does not have this information.

Jiangsu Senmao reported purchasing cut timber during the POR. Based on the GOC's involvement in the cut timber and MLWF industries and its failure to provide the requested information, we preliminarily find, based in part on AFA, that this program provides a financial contribution under section 771(5)(D) of the Act, and is specific under section 771(5A)(D) of the Act. To the extent that the prices paid by Jiangsu Senmao fall below the benchmark price, we preliminary find that a benefit exists under section 771(5)(E) of the Act and 19 CFR 351.511. To calculate the benefit from this program, we used the benchmarks discussed under the "Input Benchmarks" section.[181] On this basis, we preliminarily determine a subsidy rate of 0.35 percent *ad valorem* for Jiangsu Senmao.

Riverside Plywood and its cross-owned affiliates reported not using this program.

6. Provision of Land-Use Rights to Certain Industrial Zones[182] for LTAR

As stated above, in the "Application of AFA: Provision of Land-Use Rights to Certain Industrial Zones for LTAR" section, we are basing our determination regarding the GOC's provision of land on AFA, in part. For these preliminary results we determine that Jiangsu Senmao and Riverside Plywood (including its affiliate Baroque Timber) received a countervailable subsidy through land provided for LTAR. Specifically, as discussed above in the "Use of Facts Otherwise Available and Application of Adverse Inferences" section, because the GOC provided no information regarding the entities that provided land-use rights to Jiangsu Senmao and Riverside Plywood (including Baroque Timber), we preliminarily determine as AFA that these entities are authorities and that the provision of land-use rights to Jiangsu Senmao and Riverside Plywood (including Baroque Timber) constitute financial contributions. Additionally, as discussed above, we find as AFA that this subsidy is specific under section 771(5A) of the Act because the GOC did not provide any evidence to corroborate its statements regarding specificity.

To determine the benefit pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we first multiplied the Thailand industrial land benchmarks discussed above under the "Interest Rate Benchmarks, Discount Rates, Inputs, Land-Use, and Electricity" section, by the total land areas of the land-use rights held by of Jiangsu Senmao or Riverside Plywood (including Baroque Timber). We then subtracted the net price actually paid for the land to derive the total unallocated benefit. We next conducted the "0.5 percent test" provided for under 19 CFR 351.524(b)(2) for the year(s) of the relevant land-rights agreement by dividing the total unallocated benefit by the appropriate sales denominator. As a result, we found that the benefits

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[181] *See* 19 CFR 351.505(c).

[182] The mandatory respondents are located in the following industrial zones: Jinzhangzhu Industrial Zone (Jiangsu Senmao), Nantong Economic and Technological Development Zone (Riverside Plywood), and Suian Industrial Zone (Baroque Timber). Suzhou Times is not located in a special economic zone. *See* Jiangsu Senmao's IQR at 3, Riverside Plywood IQR at 32-33 and Exhibit 3b, and Suzhou Times's Letter, "Suzhou Times Flooring Initial Questionnaire Response: Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from China," dated August 7, 2018 at 18.

were greater than 0.5 percent of relevant sales and, therefore, allocated the benefits to the POR over a 50-year land-use rights period and determined the amounts attributable to the POR. We divided this amount by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section.[183] On this basis, we preliminarily determine a subsidy rate of 0.56 percent *ad valorem* for Jiangsu Senmao and a subsidy rate of 0.50 percent *ad valorem* for Riverside Plywood (including Baroque Timber).

7. **Export Buyers' Credit**

Based upon the preliminary application of AFA discussed above, we preliminarily determine the Export Buyers' Credit program to be countervailable, and the subsidy rate to be 0.44 percent for both respondents.

8. **"Other Subsidies"**

a. Grants

Riverside Plywood self-reported that Baroque Timber received the grants indicated below either in the POR or during the AUL period.[184] The GOC acknowledged providing a financial contribution with respect to the respondent's self-reported subsidies.[185] Additionally, for the reasons explained in the "Application of AFA: 'Other Subsidies'" section above, regarding the grants provided by the GOC to Baroque Timber, we are basing our preliminary results partly on AFA. Based on the GOC's decision not to provide information related to specificity, we find that these grants are specific within the meaning of section 771(5A).[186] On this basis, we find that Baroque Timber received the following non-recurring grants during the POR or AUL period:[187]

i. Technology Innovation Support
ii. Support for Developing a National Technology Standard
iii. International Participation Allowance
iv. Project Appropriation
v. Export Credit Insurance
vi. Steady Growth Export
vii. Equipment Upgrade Subsidy
viii. Central Municipal Project Award

To calculate the benefit received under these programs, Commerce followed the methodology described in 19 CFR 351.524. Grants under the programs listed above were received by Riverside Plywood during the POR or during the AUL period. In accordance with 19 CFR 351.524(b)(2), we determine whether to allocate the non-recurring benefit from the grants over

[183] *See* Jiangsu Senmao Preliminary Calculation Memorandum and Riverside Plywood Calculation Memorandum.
[184] *See* Riverside Plywood IQR at Exhibits 9a and 36.
[185] *See* GOC IQR at 124.
[186] *Id.*
[187] *See* Riverside Plywood IQR at Exhibits 9a and 36.

the AUL by dividing the approved grant amount by the company's total sales in the year of approval. If the approved amount was less than 0.5 percent of the company's relevant sales, we expensed the amounts received under the grants in the year received. To calculate the *ad valorem* subsidy rate for these grants, we divided the benefit conferred under each of these programs during the POR by the appropriate sales denominator, depending on the nature of the subsidy program.[188] Based on the methodology outlined above, Commerce preliminarily calculated a cumulative *ad valorem* subsidy rate of 0.62 percent for Riverside Plywood's cross-owned affiliate, Baroque Timber, for the programs listed above.[189]

Jiangsu Senmao reported not using other subsidies.

b. Direct Taxes

Riverside Plywood reported that Baroque Timber received benefits from the Income Tax Reduction for High or New Technology Enterprises and Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law.[190] Because the GOC did not respond to the "other subsidies" portion of Commerce's Initial Questionnaire with respect to this program, we are basing our preliminary determination regarding the Income Tax Reduction for High or New Technology Enterprises and Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law tax programs provided by the GOC to Baroque Timber, in part, on AFA. Therefore, we preliminarily determine that these tax programs confer a financial contribution in the form of revenue forgone by the government under section 771(5)(D)(ii) of the Act, and are specific under section 771(5A)(D) of the Act. We find that Baroque Timber received a recurring benefit in the form of the tax savings, consistent with 19 CFR 351.524(c)(1).

To compute the amount of the tax savings, we calculated the amount of tax Baroque Timber would have paid absent the tax deductions based on the standard corporate tax rate of 25 percent. We then divided the benefit by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section. On this basis, we preliminarily determine that Riverside Plywood (including Baroque Timber) received net countervailable subsidy rates of 0.14 percent *ad valorem* under the Income Tax Reduction for High or New Technology Enterprises program,[191] and 0.39 percent *ad valorem* under the Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law program.

Jiangsu Senmao reported not using these programs.

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[188] *See* Riverside Plywood Preliminary Calculation Memorandum.
[189] *Id*.
[190] *See* Riverside Plywood IQR at 41-46.
[191] For the attribution of Baroque Timber's subsidy rate to Riverside Plywood, *see* Riverside Plywood Preliminary Calculation Memorandum.

B. Programs Preliminarily Determined Not to Confer a Countervailable Benefit

1. Provision of Water for LTAR

In their new subsidy allegation, the petitioner alleged that China has established policies that provide preferential water rates to attract investment to areas, such as Jiangsu Province.[192] The GOC provided the *Water Law of the People's Republic of China* and the *Regulation on the Administration of the License for Water Drawing and the Levy of Water Resources Fees* which made no indication that the MLWF industry benefitted from the provision of water at LTAR.[193] Furthermore, in response to Commerce's initial questionnaire, the GOC stated that Jiangsu Senmao and Riverside Plywood are both located in Jiangsu Province.[194]

In the GOC's initial response, it stated that the program in Jiangsu province was terminated on June 24, 2002.[195] As evidence, the GOC provided, "The Decision of the Government of Jiangsu Province for the Abolishment of Some Regulations Promulgated before 2001," where 375 existing government regulations were annulled at the end of 2001, upon China's accession to the WTO.[196] Specifically, with regards to water, the "Interim measures of Jiangsu Province for Town Water Resources Management" regulations were annulled.[197] This regulation provided a reward of 20 percent on saved water fees for enterprises and institutions that achieved water conservation, which is no longer in effect.[198] Furthermore, as noted by the GOC, in *Passenger Vehicle and Light Truck Ties from China,*[199] the GOC provided information demonstrating the revocation of this program in the Jiangsu Province.[200]

The GOC also stated that Baroque Timber is located in Guangdong province, and Baroque Timber paid the Guangdong province water tariff rate and did not pay a preferential rate.[201] Evidence placed on the record by the GOC regarding the water tariff rate and evidence provided by Baroque Timber demonstrate that the rate paid by Baroque Timber is the industrial rate and is not preferential because customer-pricing is not classified based on specific industries.[202] Therefore, we preliminary determine that this program did not confer a benefit during the POR.

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[192] *See* Commerce's Memorandum, "Decision Memorandum on New Subsidy Allegations," dated June 6, 2018 at 6.
[193] *See* GOC SQR at Exhibits 19 and 20.
[194] *See* GOC IQR at 38.
[195] *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 PDM at 48; unchanged in *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 Part*, 80 FR 34888 (June 18, 2015) (*Passenger Vehicle and Light Truck Tires from China)*. *See also* GOC IQR at 38 and Exhibit 23.
[196] *See* GOC IQR at Exhibit 23.
[197] *Id.*
[198] *See* GOC SQR at 30-31 and Exhibit SQ-16 at Article 21.
[199] *See Passenger Vehicle and Light Truck Tires from China.*
[200] *See* GOC IQR at 38.
[201] *Id.* at 25B, 26B, and 38.
[202] *See* GOC SQR at 29.

C. Programs Preliminarily Determined Not to Confer a Measurable Benefit

1. Value Added Tax (VAT) and Tariff Exemptions on Imported Equipment

In Riverside Plywood's initial questionnaire response, the company reported that Baroque Timber and Suzhou Times received benefits from VAT and tariff exemptions on imported equipment.[203] However, these benefits either do not pass the "0.5 percent test" provided in CFR 351.524(b)(2), and they are allocated to the pre-POR year of receipt, or they are less than 0.005 percent *ad valorem* during the POR, and thus not measurable under our practice. Therefore, we are not including this program in our calculation of the company's total subsidy rate for the POR.[204]

2. VAT Rebates on Foreign-Invested Enterprises (FIEs) Purchases of Chinese-Made Equipment

In Riverside Plywood's initial questionnaire response, Baroque Timber received benefits from the VAT rebates on FIE purchases of domestic equipment.[205] However, these benefits either do not pass the "0.5 percent test" provided in CFR 351.524(b)(2), and they are allocated to the pre-POR year of receipt, or they are less than 0.005 percent *ad valorem* during the POR, and they are not measurable under our practice. Therefore, we are not including this program in our calculation of the company's total subsidy rate for the POR.[206]

3. "Other Subsidies"

As discussed in Section VI.A.7, above, Jiangsu Senmao and Riverside Plywood self-reported that they received the grants below in the POR.[207] However, these benefits either do not pass the "0.5 percent test" provided in CFR 351.524(b)(2) and are allocated to the pre-POR year of receipt, or they are less than 0.005 percent *ad valorem* during the POR, and thus not measurable under our practice. Therefore, we are not including these grants in our calculation of the company's total subsidy rate for the POR:

<u>Jiangsu Senmao</u>

a. Foreign Trade Development Fund
b. Financial Subsidy
c. Subsidy from Foreign Trade Bureau
d. E-port Subsidy
e. Subsidy of Grain and Oil Matter
f. Subsidy of Sanitation Fee
g. Grant for Labor and Social Security

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[203] *See* Riverside Plywood IQR at 11 and Suzhou Times IQR at 9.
[204] *See* Riverside Plywood Preliminary Calculation Memorandum.
[205] *See* Riverside Plywood IQR at 37.
[206] *See* Riverside Plywood Preliminary Calculation Memorandum.
[207] *See* Jiangsu Senmao August 31, 2018 SQR at Exhibit 7; Riverside Plywood IQR at Exhibits 9a and 36; and Suzhou Times IQR at Exhibit 8c.

h. Subsidy for Foreign Trade Bureau

Riverside Plywood

a. Incentives for Growth in International Trade for the years 2012, 2013, and 2015
b. Local Tax Subsidy (service fee withheld)
c. National Tax Subsidy (service fee withheld)
d. Subsidy for Elimination of Coal-Burning in Nantong Development Zone in 2014
e. Patent Application Support
f. Position Maintenance Subsidy

Baroque Timber

a. Patent Application Support for 2011
b. Support for Developing a National Technology Standard for 2012, 2013, 2014, and 2015
c. Patent Fund
d. Salary Survey for 2014 and 2015
e. Unemployment Survey
f. Export Credit Insurance for 2010, 2011, 2012, 2013, 2014, and 2015
g. Project Appropriation for 2011 and 2015
h. New 300 Improving Enterprise Project
i. Promoting a Hundred of Enterprises for 2012 and 2013
j. International Participation Allowance for 2011 and 2013
k. Steady Growth of Export
l. Export Tax Rebate
m. Project Appropriation
n. Transition Subsidy
o. International Market Development Award
p. Loan Discount for 2009, 2010 and 2011
q. Award for Expansion of Domestic Sales
r. Economic Contribution Award for 2009 and 2010
s. Foreign Exchange for Export for 2009 and 2010
t. Import Promotion Award
u. Foreign Investment Award for 2008 and 2009

Suzhou Times

a. Attorney's Fee for 2011
b. Grant for 2009

D. Programs Preliminarily Determined Not to Be Used

1. Income Tax Subsidies for FIEs Based on Geographic Location

2. International Market Development Fund Grants for Small and Medium Enterprises

3. Certification of National Inspection-Free on Products and Reputation of Well Known

Firm – Jiashan County

4. International Market Development Fund Grants for Small and Medium Enterprises

5. Minhang District Little Giant Enterprise Support

6. Minhang District Pujiang Town Enterprise Support

7. Technology Innovation Support

8. Support for Developing a National Technology Standard

9. Jinzhou New District 2012 Technology Innovation Award

10. Jinzhou District 2013 New and High Technology Research & Development Plan Industrialization Special Fund

11. Technical Innovation Fund from Linyi Bureau of Finance

12. 2005 Enterprise Development Special Funds Awarded to Penghong Wood

13. Local Income Tax Exemption and Reductions for "Productive" FIEs

14. Provision of Electricity at LTAR for FIEs and "Technology Advanced" Enterprises by Jiangsu Province

15. Program of Loan Interest Discount

16. Program of Provincial Famous Brand and New Product

17. GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of "Famous Brands"

18. Program of VAT Refunds for Production and Processing Comprehensive Utilization Products by Using Three Leftover Materials and Down-Graded Small Woods

19. Party Members' Activities Fund

20. Patent Application Support

21. Patent Fund

22. Provision of Standing Timber for LTAR

23. Provision of Formaldehyde for LTAR

24. Provision of Urea for LTAR

25. Provision of Land-Use Rights to SOEs for LTAR

26. Provision of Export Credits – Export Sellers' Credits

27. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment

28. Preferential Loans to SOEs

VII. Preliminary *Ad Valorem* Rate for 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 limited 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. We also note that section 777A(e)(2) of the Act provides that "the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section {705(c)(5) of the Act}." Section 705(c)(5)(A) of the Act states that for companies not investigated, in general, we will determine an all-others rate by using the weighted average countervailable subsidy rates established for each of the companies individually investigated, excluding zero and *de minimis* rates or any rates based solely on the facts available.

As indicated in the accompanying *Federal Register* notice of the preliminary results, dated concurrently with this preliminary decision memorandum, we preliminarily determine that Jiangsu Senmao and Riverside Plywood received countervailable subsidies that are above *de minimis*. Therefore, we are applying to the non-selected companies the weighted average of the net subsidy rates calculated for Jiangsu Senmao and Riverside Plywood, which we calculated using publicly ranged sales data submitted by respondents.[208] Accordingly, for each of the 132 companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent, we are applying a preliminary subsidy rate of 2.81 percent *ad valorem*, consistent with section 705(c)(5) of the Act.[209]

[208] *See* Memorandum, "Calculation of the Non-Selected Rate for the Preliminary Results, 2016," dated December 20, 2018.

[209] For a list of the non-selected companies, *see* the *Federal Register* notice, signed concurrently with this PDM.

VIII. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

☒ Agree   ☐ Disagree

12/20/2018

X

Signed by: PRENTISS SMITH

P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations