C-570-098
Investigation
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E&C/VIII: JD/RJP

DATE: April 26, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Polyester Textured Yarn from the People's Republic of China

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I. SUMMARY

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

II. BACKGROUND

A. Initiation and Case History

On October 18, 2018, Commerce received a petition from Nan Ya Plastics Corporation, America and Unifi Manufacturing, Inc. (collectively, the petitioners) seeking the imposition of countervailing duties (CVDs) on yarn from China.[1] We describe the supplements to the Petition in the CVD Initiation Checklist.[2] Pursuant to section 702(b)(4)(A)(ii) of the Act, we invited representatives of the Government of China (GOC) for consultations with respect to the Petition.[3] On November 7, 2018, we initiated a CVD investigation on yarn from China.[4]

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[1] *See* Petitioners' Letter, "Polyester Textured Yarn from the People's Republic of China – Petition for the Imposition of Antidumping and Countervailing Duties," dated October 18, 2018 (Petition).
[2] *See* Memorandum, "Countervailing Duty Investigation Initiation Checklist: Polyester Textured Yarn from the People's Republic of China," dated November 7, 2018 (Initiation Checklist); *see also Polyester Textured Yarn from India and the People's Republic of China: Initiation of Countervailing Duty Investigation*, 83 FR 58232 (November 19, 2018) (*Initiation Notice*).
[3] *See* Commerce's Letter, "Countervailing Duty Petition on Polyester Textured Yarn from the People's Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition," dated October 18, 2018.
[4] *See Initiation Notice*, 83 FR at 58232.

In the *Initiation Notice*, we stated that in the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) entry data from the Harmonized Tariff Schedule of the United States (HTSUS) subheading(s) listed in the scope of the investigation.[5] On November 6, 2018, we released CBP data under Administrative Protective Order (APO) and indicated that interested parties wishing to comment on the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of this CVD investigation.[6] On November 21 and 28, 2018, we received CBP data comments from the petitioners[7] and from Suzhou Shenghong Fiber Co Ltd (Shenghong Fiber), respectively.[8]

On December 11, 2018, pursuant to section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2), we selected Fujian Billion Polymerization Fiber Technology Industrial Co., Ltd. (Fujian Billion),[9] Jiangsu Shenghong Textile Imp & Exp Co. (Jiangsu Textile), Shenghong Fiber, and Suzhou Shenghong Garmant Development Co (Suzhou Garmant) as mandatory respondents, and issued our CVD questionnaire.[10] We issued the Initial Questionnaire addressed to the GOC via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[11] In the cover letter to the questionnaire, we notified the GOC that Commerce had selected Fujian Billion, Jiangsu Textile, Shenghong Fiber, and Suzhou Garmant as mandatory respondents in this investigation and stated that the GOC "is responsible for forwarding copies of this cover letter and questionnaire to these respondent companies."[12]

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[5] *Id.* at 58235.
[6] *See* Memorandum, "Polyester Textured Yarn from the People's Republic of China Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection," dated November 6, 2018 (CBP Data).
[7] *See* Petitioners' Letter, "Original Countervailing Duty Investigation of Polyester Textured Yarn from the People's Republic of China – Petitioners' Comments on Respondent Selection," dated November 21, 2018.
[8] *See* Shenghong Fiber's Letter, "Polyester Textured Yarn from China: Respondent Selection Comments," dated November 28, 2018 (Shenghong Fiber RS Comments).
[9] We note this is the same company as Fujian Billion Polymerization Fiber Industrial Co Ltd. identified in the Respondent Selection Memorandum. *See* Memorandum, "Countervailing Duty Investigation of Polyester Textured Yarn from the People's Republic of China: Respondent Selection," dated December 11, 2018 (Respondent Selection Memorandum); *see also* Fujian Billion's Letter, "Polyester Textured Yarn from the People's Republic of China Billion Section III Response," dated February 26, 2019 (Fujian Billion IQR) at Exhibit 5.
[10] *See* Respondent Selection Memorandum.
[11] *See* Commerce's Letter, "Investigation of Polyester Textured Yarn from the People's Republic of China: Countervailing Duty Questionnaire," dated December 11, 2018 (Initial Questionnaire).
[12] *Id.* at 1.

Between February 4, 2019, and April 15, 2019, we received timely questionnaire responses from Fujian Billion,[13] Shenghong Fiber,[14] and the GOC.[15] On March 27, 2019, the petitioners submitted benchmark data for calculation of benefits relating to the provision of inputs for less than adequate remuneration (LTAR).[16] On April 9, 2019, the petitioners submitted pre-preliminary comments.[17]

On March 21, 2019, the petitioners filed four new subsidy allegations (NSAs).[18] On April 2, 2019, the petitioners filed an uncreditworthiness allegation for Shenghong Fiber.[19] On April 8, 2019, the petitioners submitted a response to Commerce's questions concerning their NSAs.[20] On April 26, 2019, Commerce initiated an investigation of two of the NSAs and the uncreditworthiness allegation for Shenghong Fiber.[21] We intend to seek further information and to address these programs and the uncreditworthiness allegation in a post-preliminary analysis.

B. Postponement of Preliminary Determination

On February 1, 2019, based on a request from the petitioners,[22] Commerce postponed the deadline for the preliminary determination until March 18, 2019, in accordance with sections

[13] *See* Fujian Billion's Letters, "Polyester Textured Yarn from the People's Republic of China: Billion Affiliation Response," dated February 11, 2019; Fujian Billion IQR; "Polyester Textured Yarn from the People's Republic of China: Billion Supplemental Affiliation Response," dated March 18, 2019; "Polyester Textured Yarn from the People's Republic of China Billion First Supplemental Section III Response," dated March 22, 2019 (Fujian Billion SQR); "Polyester Textured Yarn from the People's Republic of China Billion Second Supplemental Section III Response," dated March 22, 2019 (Fujian Billion 2SQR); "Polyester Textured Yarn from the People's Republic of China Billion Third Supplemental Section III Response," dated March 25, 2019; and "Polyester Textured Yarn from the People's Republic of China Billion Fourth Supplemental Section III Response," dated April 3, 2019.
[14] *See* Shenghong Fiber's Letters, "Polyester Textured Yarn from China; Response to Section III Regarding Affiliated Companies," dated February 4, 2019 (Shenghong Fiber ACQR); "Polyester Textured Yarn from China; Affiliation Supplemental Response," dated February 20, 2019; "Polyester Textured Yarn from China; Countervailing Duty Questionnaire Responses," dated March 5, 2019 (Shenghong Fiber IQR); "Polyester Textured Yarn from China; First Supplemental Response," dated March 28, 2019 (Shenghong Fiber SQR); "Polyester Textured Yarn from China: Second Supplemental Response," dated April 1, 2019; and "Polyester Textured Yarn from China; Resubmission of Third Supplemental Questionnaire Response," dated April 15, 2019 (Shenghong Fiber 3SQR).
[15] *See* GOC's Letter, "Polyester Textured Yarn from China; CVD Investigation; GOC Initial Response," dated March 5, 2019 (GOC IQR); GOC's Letter, "Polyester Textured Yarn from China; CVD Investigation; GOC Supplemental Questionnaire Response," dated April 3, 2019 (GOC SQR).
[16] *See* Petitioners' Letter, "Original Investigation of Polyester Textured Yarn from the People's Republic of China: Petitioners' Submission of Factual Information to Measure the Adequacy of Remuneration," dated March 27, 2019 (Benchmark Info).
[17] *See* Petitioners' Letter, "Original Investigation of Polyester Textured Yarn from the People's Republic of China: Petitioners' Pre-Preliminary Determination Comments," dated April 9, 2019.
[18] *See* Petitioners' Letter, "Original Investigation of Polyester Textured Yarn from the People's Republic of China: New Subsidy Allegations," dated March 21, 2019.
[19] *See* Petitioners' Letter, "Original Investigation of Polyester Textured Yarn from the People's Republic of China: Petitioners' Uncreditworthiness Allegation for Shenghong," dated April 2, 2019.
[20] *See* Petitioners' Letter, "Polyester Textured Yarn from the People's Republic of China: Petitioners' Response to New Subsidy Allegation Supplemental Questions," dated April 8, 2019.
[21] *See* Memorandum, "Decision Memorandum on New Subsidy Allegations and Uncreditworthy Allegation," dated April 26, 2019.
[22] *See* Petitioners' Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from China – Petitioners' Request to Postpone Preliminary Determination," dated December 10, 2018.

703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).[23] Subsequently, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[24] The revised deadline for the preliminary determination in this investigation is April 26, 2019.

C. Period of Investigation

The period of investigation (POI) is January 1, 2017, through December 31, 2017. This period corresponds to the most recently completed calendar year in accordance with 19 CFR 351.204(b)(2).

III. PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

On April 2, 2019, the petitioners filed allegations that critical circumstances exist with respect to imports of subject merchandise from China.[25] On April 18, 2019, Commerce issued its preliminary critical circumstances determination.[26] Pursuant to this determination, Commerce found that critical circumstances exist for imports from all producers and exporters of the subject merchandise from China.[27]

IV. INJURY TEST

Because China is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry. On December 10, 2018, the ITC preliminarily determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of yarn from China that are allegedly subsidized by the GOC.[28]

V. APPLICATION OF THE CVD LAW TO IMPORTS FROM CHINA

On October 25, 2007, Commerce published its final determination in *CFS from China*, where we found that:

> {G}iven the substantial differences between the Soviet-style economies and China's economy in recent years, Commerce's previous decision not to apply the

[23] *See Polyester Textured Yarn from India and the People's Republic of China: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 84 FR 1062 (February 1, 2019).
[24] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.
[25] *See* Petitioners' Letter, "Polyester Textured Yarn from the People's Republic of China - Petitioners' Allegation of Critical Circumstances," April 2, 2019.
[26] *See Polyester Textured Yarn from the People's Republic of China: Preliminary Affirmative Determinations of Critical Circumstances in Antidumping and Countervailing Duty Investigations*, 84 FR 16840 (April 23, 2019).
[27] *See* Memorandum, "Antidumping and Countervailing Duty Investigations of Polyester Textured Yarn from the People's Republic of China: Critical Circumstances Analysis," dated April 19, 2019.
[28] *See Polyester Textured Yarn from China and India*, 83 FR 63532 (December 10, 2018).

> CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.[29]

Commerce affirmed its decision to apply the CVD law to China in numerous subsequent determinations.[30] Furthermore, on March 13, 2012, Public Law 112-99 was enacted which makes clear that Commerce has the authority to apply the CVD law to countries designated as non-market economies (NMEs) under section 771(18) of the Act, such as China.[31] The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.[32]

VI. DIVERSIFICATION OF CHINA'S ECONOMY

Concurrently with this decision memorandum, we are placing the following excerpts from the China Statistical Yearbook from the National Bureau of Statistics of China on the record of this investigation: Index Page; Table 14-7: Main Indicators on Economic Benefit of State-owned and State-holding Industrial Enterprise by Industrial Sector; Table 14-11: Main Indicators on Economic Benefit of Private Industrial Enterprise by Industrial Sector.[33] This information reflects a wide diversification of economic activities in China. The industrial sector in China alone is comprised of 37 listed industries and economic activities, indicating the diversification of China's economy.

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

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

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

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[29] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*) and accompanying Issues and Decision Memorandum (IDM) at Comment 6.
[30] *See, e.g.*, *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from China*) and accompanying IDM at Comment 1.
[31] Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.
[32] *See* Public Law 112-99, 126 Stat. 265 §1(b).
[33] *See* Memorandum, "China Statistical Yearbook Memorandum," dated concurrently with this memorandum.

information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."[34] Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[35] At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[36] It is Commerce's practice to consider information to be corroborated if it has probative value.[37] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.[38] However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.[39] Furthermore, Commerce is not required to corroborate any countervailing subsidy rate applied in a separate segment of the same proceeding.[40]

Under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[41] For purposes of this preliminary determination, we are applying AFA in the circumstances outlined below.

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[34] *See, e.g., Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).
[35] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.
[36] *See*, *e.g.*, SAA at 870.
[37] *Id.*
[38] *Id.* at 869.
[39] *Id.* at 869-870.
[40] *See* section 776(c)(2) of the Act.
[41] *See* section 776(d)(3) of the Act.

B. Application of AFA: Jiangsu Textile, Shenghong Fiber and Suzhou Garmant

Jiangsu Textile and Shenghong Fiber

As noted above in "Initiation and Case History," on November 6, 2018, we released the CBP data for comment for purposes of respondent selection.[42] On November 28, 2018, we received CBP data comments from Shenghong Fiber.[43] In Shenghong Fiber's respondent selection comments, it stated that Jiangsu Textile is affiliated with Shenghong Fiber.[44] On December 11, 2018, we selected both Jiangsu Textile and Shenghong Fiber as mandatory respondents.[45] Jiangsu Textile never responded to our Initial Questionnaire. On February 4, 2019, Shenghong Fiber submitted its Affiliation Response.[46] In its Affiliation Response, Shenghong Fiber made no mention of Jiangsu Textile, nor did Shenghong Fiber indicate that it would submit a section III response for Jiangsu Textile as it would for its other cross-owned companies.[47] On March 5, 2019, Shenghong Fiber submitted its Initial Questionnaire response and Jiangsu Textile was not identified in this response.[48] On March 13, 2019, we issued a supplemental questionnaire to Shenghong Fiber requesting that it explain its affiliation with Jiangsu Textile and Jiangsu Textile's role in exporting the subject merchandise such that Jiangsu Textile is identified in the CBP data.[49] On March 28, 2019, Shenghong Fiber responded to the supplemental questionnaire.[50] In its supplemental response, Shenghong Fiber explained that Jiangsu Textile changed its name to Jiangsu Huahui Textile Imp & Exp Co. in 2006 and to Jiangsu Huahui Import and Export Co., Ltd (Jiangsu Huahui) in 2013.[51] Shenghong Fiber provided the business licenses for Jiangsu Huahui, which demonstrate that it is the successor company of Jiangsu Textile.[52]

Shenghong Fiber further explained that Jiangsu Huahui is controlled by a relative of Mr. Miao Hagen (Shenghong Fiber's Legal Representative),[53] and that Jiangsu Huahui is not cross-owned with Shenghong Fiber, and that it did not produce or sell subject merchandise to Shenghong Fiber or export the subject merchandise during the POI.[54] However, Shenghong Fiber did not explain how or why Jiangsu Textile appeared in the CBP data, such that it was chosen as a mandatory respondent, or Jiangsu Textile's role in exporting the subject merchandise. Therefore, on April 2, 2019, Commerce issued a second supplemental questionnaire requesting that Shenghong Fiber provide the previously requested information regarding Jiangsu Textile, as well as responses to questions related to Shenghong Fiber's affiliation with Jiangsu Textile, why

42 *See* CBP Data.
43 *See* Shenghong Fiber RS Comments.
44 *Id.* at 2.
45 *See* Respondent Selection Memorandum at 6.
46 *See* Shenghong Fiber ACQR.
47 *Id.* at 2 and Exhibit 1 and 2.
48 *See* Shenghong Fiber IQR.
49 *See* Commerce's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from the People's Republic of China: Initial Questionnaire Response Supplemental Questionnaire for Attachments A-E," dated March 13, 2019, at 3.
50 *See* Shenghong Fiber SQR at Attachment A.
51 *Id.* at 1.
52 *Id.* at Attachment A, 1 and Exhibit 1.
53 *Id.* at Attachment A, 1; *see also* Shenghong Fiber IQR at Attachment A, Exhibit 6.
54 *See* Shenghong Fiber SQR at Attachment A, 1.

Jiangsu Textile was not reported in the Affiliation Response, the location of Jiangsu Textile and whether it shares facilities with Shenghong Fiber's other cross-owned affiliates, and documentation demonstrating Jiangsu Textile's main business operations during the POI.[55]

In response, Shenghong Fiber reiterated that Jiangsu Textile/Jiangsu Huahui did not have any role in the production or sale of subject merchandise during the POI.[56] Shenghong Fiber further explained that Jiangsu Huahui was owned by Mr. Miao Hangen's wife's sister and her son and subsequently became wholly-owned by a member company of the Shenghong Group.[57] Shenghong Fiber also provided information about the ownership structure of Jiangsu Huahui's parent companies, which differed from that in its affiliation chart in the affiliation questionnaire response.[58] Specifically, Mr. Miao Hangen's ownership of a parent company of Jiangsu Textile changed from an overwhelming majority to a minority ownership, which would suggest that Jiangsu Textile and Shenghong Fiber are not cross-owned.[59]

In addition, Shenghong Fiber claimed that its "U.S. importer's customs broker erroneously used the manufacturer identification code for Jiangsu Textile, but input the correct name and address for Jiangsu Shenghong Science and Technology Co., Ltd. (Jiangsu Science) as this was the company identified on the sales invoice."[60] As reported by Shenghong Fiber, Jiangsu Science is a Shenghong Fiber cross-owned affiliate that produces subject merchandise.[61] Shenghong Fiber also provided an exhibit with a list of the affected shipments during the POI provided by the U.S. importer.[62] However, the list of shipments provided only covered a small portion of the shipments attributed to Jiangsu Textile as indicated in the CBP data placed on the record by Commerce for respondent selection purposes.[63] Shenghong Fiber did not provide an explanation for the vast majority of the shipments that were not accounted for in its exhibit but appear in the CBP data.

In CVD proceedings, disclosure of the universe of corporate affiliates is required in the very first questionnaire response because it is essential to determine whether any affiliate meets the requirements for cross-ownership outlined in 19 CFR 351.525 to ensure that the subsequent questionnaire responses are complete and to allow us to calculate accurate subsidy rates.[64] Here, we were required to issue multiple supplemental questionnaires to determine the universe of Shenghong Fiber's corporate affiliates and whether each affiliate should be required to file a section III questionnaire response. In response, Shenghong Fiber provided contradictory and incomplete answers regarding its affiliation and cross-ownership with Jiangsu Textile/Jiangsu Huahui, such as the ownership information discussed above. Further, Shenghong Fiber provided contradictory and incomplete answers regarding the number of shipments imported into the United States from Jiangsu Textile that are recorded in the CBP data. Shenghong Fiber also did

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[55] *See* Commerce's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from the People's Republic of China: Supplemental Questionnaire," dated April 2, 2019.
[56] *See* Shenghong Fiber 3SQR at Attachment I, 1.
[57] *Id.* at 4.
[58] *Id.* at Exhibit 3.
[59] *Id.*; *see also* Shenghong Fiber ACQR at Exhibit 2.
[60] *See* Shenghong Fiber 3SQR at Attachment I, 2.
[61] *See* Shenghong Fiber ACQR at 2.
[62] *See* Shenghong Fiber 3SQR at Exhibit 6.
[63] *See* CBP Data at Attachment.
[64] *See Large Diameter Welded Pipe from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 84 FR 6369 (February 27, 2019) and accompanying IDM at Comment 1.

not explain why Jiangsu Textile's name continues to appear in the CBP data for the vast majority of subject merchandise entries if the U.S. customs broker input the correct manufacturer name. Therefore, we find that necessary information is missing from the record within the meaning of section 776(a)(1) of the Act, and that Shenghong Fiber withheld information and failed to provide such information in the form or manner requested, within the meaning of section 776(a)(2)(A)-(B) of the Act. Consequently, we find it appropriate to use facts available, pursuant to section 776(a) of the Act.

In addition, as a mandatory respondent, Jiangsu Textile was required to respond to our Initial Questionnaire, but it did not do so. Therefore, necessary information is missing from the record within the meaning of section 776(a)(1) of the Act. We also find that Jiangsu Textile withheld information that had been requested by Commerce, failed to provide such information by the deadlines established, and significantly impeded the proceeding, pursuant to section 776(a)(2)(A)-(C) of the Act, respectively.

Further, we preliminarily find that the use of an adverse inference with respect to the facts available is appropriate for both Jiangsu Textile and Shenghong Fiber, because we find that neither mandatory respondent acted to the best of its ability in responding to requests for information by Commerce, as discussed below. The Court of Appeals for the Federal Circuit (CAFC) in *Nippon Steel* held that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum that it is able to do.[65] The CAFC acknowledged, however, that while there is no willfulness requirement, "deliberate concealment or inaccurate reporting" would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.[66] Hence, compliance with the "best of its ability" standard is determined by assessing whether a respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation.[67]

As an initial matter, we find that Jiangsu Textile failed to cooperate to the best of its ability, because it did not respond to our Initial Questionnaire based on its status as a mandatory respondent in this investigation. Furthermore, we find that Shenghong Fiber did not act to the best of its ability to comply with Commerce's request for information, because Shenghong Fiber failed repeatedly to clarify its affiliation and cross-ownership with Jiangsu Textile. Although "the best-of-its-ability standard requires that Commerce examine a respondent's abilities, efforts, and cooperation in responding to Commerce's requests for information," we note that the CAFC in *Nippon Steel* also stated that the standard "does not condone inattentiveness, carelessness, or inadequate record keeping."[68] As an initial matter, Shenghong Fiber should have, at a minimum, been able to provide documentation to support its claim that Jiangsu Science imported the entire amount of subject merchandise that is attributed to Jiangsu Textile in the CBP data. Shenghong Fiber did not provide the level of detail and supporting documentation needed for us to conduct the necessary analysis to determine the accuracy and reliability of Shenghong Fiber's assertions about the shipments. Further, we note that Shenghong Fiber does not explain why Jiangsu Textile's name continues to appear in the CBP data, if the U.S. customs broker input the correct

[65] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (CAFC 2003) (*Nippon Steel*).
[66] *Id.* at 1383.
[67] *Id.* at 1382.
[68] *Id*.

manufacturer name. As a result of Shenghong Fiber's contradictions, we were precluded from conducting a complete cross-ownership analysis based on the universe of Shenghong Fiber's affiliates. Accordingly, because we determine that Shenghong Fiber did not act to the best of its ability in providing the requested information, we have applied an adverse inference in selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, for the preliminary determination.

Accordingly, as we are missing key information about the full universe of Shenghong Fiber's affiliates for determining cross-ownership, which is exacerbated by Shenghong Fiber's failure to cooperate to the best of its ability, as well as Jiangsu Textile's failure to cooperate based on its non-response to our Initial Questionnaire, we are finding as AFA, first, that Jiangsu Huahui is the successor-in-interest to Jiangsu Textile. Furthermore, we are finding, as AFA, that Shenghong Fiber and Jiangsu Textile/Jiangsu Huahui are cross-owned. Finally, we are relying on AFA in determining the estimated net countervailable subsidy rate for Shenghong Fiber and its cross-owned companies, which include Jiangsu Textile/Jiangsu Huahui, for this preliminary determination.

Suzhou Garmant

As discussed above in the section "Initiation and Case History," we selected Suzhou Garmant as a mandatory respondent. Suzhou Garmant failed to provide a response to Commerce's questionnaire. Moreover, the GOC did not respond to our Initial Questionnaire with respect to Suzhou Garmant. By not responding to the Initial Questionnaire, Suzhou Garmant withheld information that was requested of them, failed to provide information by the established deadlines, and significantly impeded this proceeding. Thus, in reaching a preliminary determination, pursuant to sections 776(a)(2)(A)-(C) of the Act, we are determining the subsidy rate for Suzhou Garmant by selecting from among the facts otherwise available on the record.

Moreover, we preliminarily determine that an adverse inference is warranted in determining Suzhou Garmant's estimated countervailable subsidy rate, pursuant to section 776(b) of the Act, because, by not responding to our requests for information, Suzhou Garmant did not cooperate to the best of its ability to comply with our requests for information in this investigation. Accordingly, we preliminarily find that application of AFA is warranted to ensure that Suzhou Garmant does not obtain a more favorable result by failing to cooperate than if it had fully complied with Commerce's requests for information. The application of AFA in this instance is consistent with Commerce's practice.[69]

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

As facts otherwise available with an adverse inference, we find that all of the programs at issue in this proceeding are countervailable with respect to Shenghong Fiber (including its cross-owned companies) and Suzhou Garmant and confer a benefit within the meaning of sections 771(5)(B) and (E) of the Act. Additionally, as discussed below in "Application of AFA: Provision of 'Other Subsidies,'" the GOC did not respond to our requests for information regarding programs which were self-reported by the mandatory respondents. Therefore, we find that all self-reported programs included in this investigation provide a financial contribution within the meaning of sections 771(5)(B) and (D) of the Act and are specific within the meaning of section 771(5A) of the Act. Accordingly, we are including each of these programs in the determination of the AFA rate for Shenghong Fiber and its cross-owned affiliates which include Jiangsu Textile/Jiangsu Huahui, and also for Suzhou Garmant.[70] We selected an AFA rate for each of the programs based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's practice, and we included them in the determination of the AFA rate applied to Shenghong Fiber and its cross-owned affiliates, which include Jiangsu Textile/Jiangsu Huahui, and also for Suzhou Garmant. For a description of the selection of the AFA rate and our corroboration of this rate, see the "Selection of the AFA Rate" and "Corroboration of the AFA Rate" sections below.

Selection of the AFA Rate

It is Commerce's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[71] When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any countervailable subsidy rate applied for the same or similar program in a countervailable duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.[72] Accordingly, when selecting AFA rates, if we have cooperating respondents, as we do in this investigation, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program. If there is no identical program that resulted in a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and

[70] *See* Memorandum, "AFA Calculation Memorandum for the Preliminary Determination in the Investigation of Polyester Textured Yarn from China," dated April 26, 2019 (AFA Memo).

[71] *See*, *e.g.*, *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009) and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences"); *see also Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) and accompanying IDM (*Aluminum Extrusions* IDM) at "Application of Adverse Inferences: Non-Cooperative Companies."

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

apply the highest calculated rate for the identical program (excluding *de minimis* rates).[73] If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use.[74]

Commerce's methodology is consistent with section 776(d)(1)(A) 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."[75] No legislative history accompanied this provision. 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.

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.[76]

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

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[73] For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be *de minimis*. *See, e.g.*, *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) and accompanying IDM at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."
[74] *See Shrimp from China* and accompanying IDM at 13-14.
[75] *See* section 776(d)(2) of the Act.
[76] 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.

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."[77] 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."[78] It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.[79]

In applying its AFA hierarchy in CVD investigations, 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 investigation is 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 (*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.

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 investigations for example, this "pool" of rates could include the rates for the same or similar programs used in either that same investigation, 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.

Under the first step of Commerce's investigation hierarchy, Commerce applies the highest non-zero rate calculated for a cooperating company for the identical program in the investigation. Under this step, we will even use a *de minimis* rate as AFA if that is the highest rate calculated for another cooperating respondent in the same industry for the same program.

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[77] *See* 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 (CAFC 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*).
[78] *See De Cecco*, 216 F.3d at 1032.
[79] 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 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).

However, if there is no identical program match within the investigation, or if the rate is zero, then Commerce will shift to the second step of its investigation hierarchy, and either apply the highest non-*de minimis* rate calculated for a cooperating company in another countervailing duty proceeding involving the same country for the identical program, or if the identical program is not available, for a similar program. This step focuses on the amount of subsidies that the government has provided in the past under the investigated program. The assumption under this step is that the non-cooperating respondent under investigation uses the identical program at the highest above *de minimis* rate of any other company using the identical program.

Finally, if no such rate exists, under the third step of Commerce's investigation hierarchy, Commerce applies the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.[80]

In all three steps of Commerce's AFA investigation hierarchy, if Commerce were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the "reward" for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce's investigation AFA hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), Commerce strikes a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.[81]

Furthermore, we find that section 776(d)(2) applies as an exception to the selection of an AFA rate under 776(d)(1); that is, after "an evaluation of the situation that resulted in the application of an adverse inference," Commerce may decide that given the unique and unusual facts on the record, the use of the highest rate within that step is not appropriate.

There are no facts on this record that suggest that a rate other than the highest rate envisioned under the appropriate step of the hierarchy, in accordance with section 776(d)(1) of the Act, should be applied as AFA. As explained above, we are preliminarily applying AFA, because Shenghong Fiber and its cross-owned affiliates, which include Jiangsu Textile/Jiangsu Huahui, and also Suzhou Garmant, either failed to submit a response to the questionnaire and/or chose not to cooperate by not providing all the necessary information we requested. Therefore, we

[80] In an investigation, unlike an administrative review, Commerce is just beginning to achieve an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

[81] It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. *See, e.g.*, *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60632 (October 25, 2007) and accompanying IDM at 2, dated October 17, 2007 ("As AFA in the instant case, Commerce is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/producer in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed…"). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as AFA under its hierarchy.

preliminarily find that the record does not support the application of an alternative rate, pursuant to section 776(d)(2) of the Act.

In applying AFA to determine a net subsidy rate for the non-cooperating companies, we are guided by the methodology detailed above. We began by selecting, as AFA, the highest calculated program-specific above-zero rates determined for the cooperative mandatory respondent in the instant investigation. Accordingly, we are applying the subsidy rate calculated for the cooperative mandatory respondent for the following programs:

- Policy Loans
- Provision of Electricity for LTAR
- Provision of Monoethylene Glycol (MEG) for LTAR
- Provision of Purified Terephthalic Acid (PTA) for LTAR
- Export Assistance Grants

In determining an AFA rate for the following income tax reduction programs on which we initiated an investigation, we are finding, as AFA, that the non-cooperating companies paid no Chinese income tax during the POI:

- Preferential Income Tax Reductions for High and New Technology Enterprises (HNTEs)
- Preferential Deduction of Research & Development (R&D) Expenses Under Enterprise Income Tax

The standard income tax rate for corporations in China in effect during the POI was 25 percent.[82] Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, that the two programs, combined, provide a 25 percent benefit). Consistent with Commerce's practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and value-added tax (VAT) exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.[83]

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

- State Key Technology Renovation Project Fund
- Small and Medium Enterprise (SME) International Market Exploration/Development Fund
- SME Technology Innovation Fund
- Subsidies for Development of Famous Brands and China World Top Brands
- Export Buyer's Credits

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[82] *See* CVD Initiation Checklist at 11.
[83] *See, e.g.*, *Aluminum Extrusions Final* and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

- Export Credit Guarantees
- Export Seller's Credits
- Special Fund for Energy Savings Technology Reform
- Export Loans from State-Owned Banks
- Import Tariff and VAT Reductions for Foreign-Invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
- VAT Refund for FIEs Purchasing Domestically-Produced Equipment
- Provision of Land for LTAR

For this preliminary determination, we were similarly able to match all of Shenghong Fiber's and Fujian Billion's self-reported subsidies for which we did not calculate a rate in the instant investigation to similar programs from other China CVD proceedings. A full list of such self-reported subsidies is contained in the AFA Memo.[84]

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for the non-cooperating companies to be 459.98 percent *ad valorem*. The AFA Memo contains a chart summarizing our calculation of this rate.

Corroboration of AFA Rate

Section 776(c)(1) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[85] The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.[86]

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.[87] 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.[88]

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

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[84] With respect to Fujian Billion's and Shenghong Fiber's self-reported subsidies, we have combined programs that had identical or nearly identical names, and which were received in the same year. *See* Memorandum, "AFA Calculation Memorandum for the Preliminary Determination in the Investigation of Polyester Textured Yarn from China," dated concurrently with this memorandum.
[85] *See* SAA at 870.
[86] *Id*.
[87] *Id*. at 869-870.
[88] *See* section 776(d) of the Act.

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.[89]

In the absence of reliable record evidence concerning the Shenghong Fiber's (and its cross-owned affiliates) and Suzhou Garmant's usage of the subsidy programs at issue due to their decision not to participate or provide complete information in the investigation, we have reviewed the information concerning Chinese subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this investigation. The relevance of these rates is that they are actual calculated subsidy rates for Chinese programs, from which the non-responsive companies could actually receive a benefit. Accordingly, we have corroborated the rates we selected to use as AFA to the extent practicable pursuant to section 776(c)(1) for this preliminary determination.

Application of AFA: Provision of MEG and PTA for Less Than Adequate Remuneration (LTAR)

As discussed below, under "Programs Preliminarily Determined to be Countervailable," we are investigating the provision of MEG and PTA for LTAR. We requested that the GOC provide information necessary to determine whether the specific companies that produced MEG and PTA that Fujian Billion purchased during the POI are "authorities" within the meaning of section 771(5)(B) of the Act.[90] In prior CVD proceedings involving China, Commerce has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an "authority" within the meaning of section 771(5)(B) of the Act and that the price paid by the respondent for the input was for LTAR.[91]

In our Initial Questionnaire, we asked the GOC to "{p}lease coordinate immediately with the company respondents to obtain a complete list of each company's input producers,"[92] in order to provide a complete response to our questions regarding the input producers. As described below, the GOC did not provide a full response with respect to Fujian Billion's input producers.

Government of China – Whether Certain MEG and PTA Producers Are "Authorities"

In Commerce's Initial CVD Questionnaire, we asked the GOC to respond to the specific questions regarding the producers of MEG and PTA and to respond to the Input Producer

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[89] *See*, *e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).
[90] *See* Initial CVD Questionnaire, at Section II.
[91] *See*, *e.g.*, *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying IDM at "Hot-Rolled Steel for Less Than Adequate Remuneration;" *Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying IDM at "Provision of Wire Rod for Less than Adequate Remuneration."
[92] *See* Initial CVD Questionnaire at Section II, 9.

Appendix for each producer which produced the MEG and PTA purchased by Fujian Billion.[93] We instructed the GOC to coordinate with Fujian Billion to obtain a complete list of the MEG and PTA producers, including the producers of inputs purchased through a supplier.[94] Fujian Billion identified certain of the companies that produced and supplied the MEG and PTA purchases during the POI,[95] which the GOC confirmed in its questionnaire responses.[96]

With respect to Fujian Billion's purchases of MEG and PTA, while the GOC ultimately provided the identities of certain of the producers of MEG and PTA inputs, the GOC did not provide all of the information requested in the Initial CVD Questionnaire that was sent to the GOC. In our initial and supplemental questionnaires to the GOC,[97] Commerce requested that certain information be provided with respect to both the majority government-owned and non-majority government-owned enterprises.

With respect to those MEG and PTA producing enterprises that the GOC identified as majority government-owned,[98] we note that Commerce made multiple requests for the GOC to provide the articles of incorporation and capital verification reports of all of these enterprises.[99] The GOC provided partial information (*i.e.*, shareholder structure and business registration) with respect to certain majority government-owned enterprises. However, despite Commerce's repeated requests, the GOC did not provide the articles of incorporation and capital verification reports for any of the majority government-owned enterprises.[100]

With respect to those MEG and PTA entities that were reported as being non-majority government-owned enterprises that produced MEG and PTA purchased by Fujian Billion during the POI, although the GOC provided website screenshots of certain business registrations for some of the input producers, the GOC did not provide other documentation requested by Commerce, including company by-laws, annual reports, tax registration documents, and articles of association.[101]

Additionally, although Commerce made attempts to obtain ownership and management information for all of the respondents' MEG and PTA producers, the GOC did not provide the requested information. For instance, in its IQR, the GOC refused to provide Commerce with requested Chinese Communist Party (CCP) information regarding the MEG and PTA producers.[102] In response to Commerce's supplemental questionnaire, in which Commerce reiterated the same requests for information, the GOC again refused to provide a complete response with regard to all requested documentation for producers of MEG and PTA in China.[103]

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[93] *See* Initial CVD Questionnaire, at Section II.
[94] *Id.*
[95] *See* Fujian Billion IQR at Exhibit 17-1 and 17-2.
[96] *See* GOC's IQR at 81 and Exhibit II.E.1; and 106-107 and Exhibit II.E.15.
[97] *See* Initial CVD Questionnaire, at Section II; *see also* GOC Supplemental Questionnaire at 8-11.
[98] *See* GOC IQR at 80-82, 106-108, and Exhibits II.E.1., II.E.2, II.E.15, and II.E.16; *see also* GOC SQR at 18-26 and Exhibits S-7, S-8, S-9, and S-10.
[99] *See* GOC SQR at 18-20, 22-23.
[100] *Id.*
[101] *See* GOC IQR at 80-82 and 106-108.
[102] *Id.* at 86-92, and 113-114.
[103] *See* GOC SQR at 20 and 23.

As discussed above, the GOC did not provide complete responses to our repeated requests for information with respect to MEG and PTA producers which the GOC claimed to be non-majority government-owned enterprises, including requests for information pertaining to ownership or management by CCP officials. Such information is necessary to our determination of whether the input producers are authorities within the meaning of section 771(5)(B) of the Act. Additionally, pursuant to section 782(c) of the Act, if the GOC could not provide any of the requested information, it should have promptly explained to Commerce what attempts it undertook to obtain this information and proposed alternative forms of providing the information.

Therefore, we determine that necessary information is not available on the record pursuant to section 776(a)(1) of the Act, and that the GOC withheld information that was requested of it with regard to the input purchases by Fujian Billion pursuant to section 776(a)(2)(A) of the Act. Accordingly, Commerce must rely on "facts otherwise available" in reaching a determination in this respect. Further, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with requests for information regarding the producers of the MEG and PTA from which Fujian Billion purchased during the POI because the GOC did not provide the requested information, pursuant to section 776(b) of the Act. Consequently, we find that an adverse inference is warranted in the application of facts available. As AFA, we preliminarily determine that the government and non-government-owned domestic producers of the MEG and PTA purchased by Fujian Billion are "authorities" within the meaning of section 771(5)(B) of the Act. As such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.[104] Therefore, we preliminarily determine that these enterprises are "authorities" within the meaning of section 771(5)(B) of the Act and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

Government of China – Whether the MEG and PTA Markets are Distorted

In Commerce's Initial CVD Questionnaire, we asked the GOC to respond to specific questions regarding the Chinese MEG and PTA industry and market for the POI.[105] Specifically, we asked the GOC to:

> Identify the precise product code/industry classification used to collect the reported data. Provide the complete description for this code/classification

a. The total number of producers.

b. The total volume and value of Chinese domestic consumption of MEG and PTA and the total volume and value of Chinese domestic production of MEG and PTA.

c. The percentage of domestic consumption accounted for by domestic production.

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[104] *See* Memorandum, "Public Bodies Memoranda," dated concurrently with this memorandum.

[105] *See, e.g.*, Initial CVD Questionnaire, Section II, Provision of MEG and PTA for LTAR (Industry and Market Questions).

d. The total volume and value of imports of MEG and PTA.

e. The percentage of total volume and (separately) value of domestic production that is accounted for by companies in which the Government maintains a majority ownership or a controlling management interest, either directly or through other Government entities. Please also provide a list of the companies that meet these criteria.

f. If the share of total volume and/or value of production that is accounted for by the companies identified in paragraph "e", above, is less than 50 percent, please provide the following information:

   i. The percentage of total volume and value of domestic production that is accounted for by companies in which the Government maintains some, but not a majority, ownership interest or some, but not a controlling, management interest, either directly or through other Government entities.

   ii. A list of the companies that meet the criteria under sub-paragraph "i", above.

   iii. A detailed explanation of how it was determined that the government has less than a majority ownership or less than a controlling interest in such companies, including identification of the information sources relied upon to make this assessment.

g. A discussion of what laws, plans or policies address the pricing of MEG and PTA, the levels of production of MEG and PTA, the importation or exportation of MEG and PTA, or the development of MEG and PTA capacity. Please state which, if any, central and sub-central level industrial policies pertain to the MEG and PTA industry.[106]

Commerce requested such information to determine the degree of the GOC's presence in the market and whether its presence in the market distorts all transaction prices for MEG and PTA. With respect to MEG and PTA, in its March 5, 2019 IQR, the GOC failed to provide the number of producers in which it maintains an ownership or management interest or the total production volumes of MEG and PTA by such producers.[107] Instead of providing the requested information, the GOC reported that it does not maintain MEG or PTA industry information in 2015 and 2016, and qualified the 2017 information by reporting that only companies with main business income of RMB 20 million or more are required to report production data to the State Statistics Bureau (SSB).[108] In a supplemental questionnaire, we again requested information from the GOC regarding the MEG and PTA industries. Specifically, we requested industry-specific data, including: (1) MEG industry data for 2015 and 2016; (2) the number of Chinese MEG producers with main business income of less than 20 million RMB that are not accounted for in the SSB data; (3) production figures for PTA producers with less than majority government ownership; and (4) the number of Chinese PTA producers with main business income of less than 20 million

[106] *Id.*
[107] *See* GOC IQR at 96-97 and 120-121.
[108] *Id.*

RMB that are not accounted for in the SSB data.[109] The GOC refused to provide this information.[110]

Commerce preliminarily determines that the GOC's refusal to provide the information requested constitutes a lack of cooperation. The GOC has previously provided, and Commerce has verified, information from other government databases concerning the value and volume of production by enterprises producing input products.[111] Moreover, Commerce has verified the operation of the GOC's "Enterprise Credit Information Publicity System," which requires that the administrative authorities release detailed information of enterprises and other entities and is intended to bring clarity to companies registered in China.[112] Based on this experience, Commerce is aware that this system is a national-level internal portal that holds certain information regarding any China-registered company. Among other information, each company must upload its annual report, make public whether it is still operating, and update any changes in ownership. The GOC has stated that all companies operating within China maintain a profile in the system, regardless of whether they are private or a state-owned enterprise (SOE). Therefore, we determine that information related to the operation and ownership of companies within the MEG and PTA industry is in fact available to the GOC.

For these reasons and based on the record evidence discussed above, we preliminarily determine that the GOC withheld necessary information with regard to the Chinese MEG and PTA industries and markets for the POI and, therefore, must rely on facts available. Further, because the GOC refused to meaningfully respond to our information request, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information necessary for our analysis of the MEG and PTA markets in China, despite the fact that it was able to provide similar information in another proceeding. Consequently, we find that an adverse inference is warranted in the application of facts available. As AFA, that the GOC's involvement in the Chinese MEG and PTA markets result in significant distortions in prices such that the Chinese prices cannot be used as a tier one benchmarks, and hence, the use of an external benchmark for determining the benefit from the provision of MEG and PTA at LTAR, in accordance with 19 CFR 351.511(a)(2)(ii), is warranted.

C. Application of AFA: Provision of Electricity for LTAR

As discussed below under, "Programs Preliminarily Determined to be Countervailable," Commerce is investigating whether the GOC provided electricity for LTAR. The GOC did not provide complete responses to Commerce's questions regarding the alleged provision of electricity for LTAR. These questions requested information needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section

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[109] *See* GOC SQR at 20-26.
[110] *Id.*
[111] *See, e.g.*, *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013*, 80 FR 77318 (December 14, 2015).
[112] *See Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016), and accompanying Preliminary Decision Memorandum (PDM) at 21-22, unchanged in *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017).

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 financial contribution and specificity for this program, we requested that the GOC provide information regarding the roles of provinces, the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC in electricity price adjustments. Specifically, Commerce requested, *inter alia*: Provincial Price Proposals for the province in which mandatory respondents or any company "cross-owned" with those respondents is located for applicable tariff schedules that were in effect during the POI; all original NDRC Electricity Price Adjustment Notice(s) that were in effect during the POI; the procedure for adjusting retail electricity tariffs and the role of the NDRC and the provincial governments in this process; the price adjustment conferences that took place between the NDRC and the provinces, grids and power companies with respect to the creation of all tariff schedules that were applicable during the POI; the cost elements and adjustments that were discussed between the provinces and the NDRC in the price adjustment conferences; and how the NDRC determines that the provincial-level price bureaus have accurately reported all relevant cost elements in their price proposals with respect to generation, transmission and distribution.[113] Commerce requested this information to determine the process by which 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 POI.

In its Initial Questionnaire response, the GOC stated that the provincial price proposals are not mandated by law and that the proposals are obsolete now that the provinces have the authority to set their own prices, under the *Notice of NDRC on Lowering Coal-Fired Electricity On-Grid Price and General Industrial and Commercial Electricity Price* (Notice 3105).[114] According to the GOC, the creation of this new structure has eliminated the need for Provincial Price Proposals that had previously been used by the NDRC to set prices for each province.[115]

However, both Notice 3105 and the *Notice of National Development and Reform Commission on Adjusting Schedule of Coal-fired Power Generation Grid Purchase Price and Sale Price of Industrial and Commercial Electricity of Each Province (District or City)* (Notice 748) explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Specifically, 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.[116] Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts.[117] Article 2 indicates that the price reduction is "mainly used for reducing the price of industrial and commercial electricity."[118] Articles 3 and 4 specifically direct the reduction of the sales price for industrial

[113] *See* Initial Questionnaire at Electricity Appendix.
[114] *See* GOC IQR at 128-132.
[115] *Id.*
[116] *Id.* at Exhibit II.E.20.
[117] *Id.*
[118] *Id.*

and commercial electricity.[119] Articles 6 and 7 indicate that provincial pricing authorities will "develop and issue specific adjustment plan of electricity price and sales price in accordance with the average price adjustment standards of Annex 1" and will submit the adjustments to the NDRC, and further that the price adjustment will be enforced on April 20th, 2015.[120] Finally, Article 10 directs that "{l}ocal price departments shall organize and arrange carefully to put in place the electricity price adjustment measures."[121] NDRC Notice 3105 also 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 must report resulting prices to the NDRC.[122]

Neither Notice 748 nor Notice 3105 explicitly stipulates that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions, as the GOC states to be the case.[123] 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.[124] The notices do not explicitly eliminate Provincial Price Proposals and do not define distinctions in price-setting roles between national and provincial pricing authorities. In a supplemental questionnaire, we requested that the GOC explain how the NDRC monitors compliance with the price changes directed in Notice 748 and what action the NDRC would take were any province not to comply with the directed price changes. The GOC's response failed to explain what actions the NDRC would take in the event of non-compliance with a directed price change.[125] The GOC, did however, note that "{p}rovincial authorities do submit their price schedules to the NDRC to ensure that the price adjustments follow the principles laid out by the NDRC."[126]

As explained above, the GOC's response does not constitute a full explanation regarding the roles and nature of cooperation between the NDRC and provinces in deriving electricity price adjustments. In fact, the information provided by the GOC indicates that despite its claim that the responsibility for setting prices within each province has moved from the NDRC to the provincial governments, the NDRC continues to play a major role in setting and adjusting prices.

Consequently, we preliminarily determine, in accordance with sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, that information necessary to our analysis of financial contribution and specificity is not available on the record, that the GOC withheld information requested by Commerce, and that the GOC significantly impeded this proceeding. Thus, we must rely on "facts available" in making our preliminary determination.[127] Moreover, we preliminarily determine, in accordance with section 776(b) of the Act, that the GOC failed to cooperate to the best of its ability to comply with our repeated requests for information. As a result, an adverse inference is warranted in the application of facts available.[128] In applying AFA, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section

[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] *Id.* at Exhibit II.E.21.
[123] *Id.* at 128-130.
[124] *Id.* at Exhibit II.E.20 and Exhibit II.E.21.
[125] *See* GOC SQR at 31.
[126] *Id.*
[127] *See* section 776(a) of the Act.
[128] *See* section 776(b) of the Act.

771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. The GOC failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments. Therefore, we are also relying on AFA in selecting the benchmark for determining the existence and amount of the benefit. The benchmark rates we selected are derived from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, *see* "Provision of Electricity for LTAR," below.

D. Application of AFA: Export Buyer's Credit Program

As discussed below under the section "Programs Preliminarily Determined to be Countervailable," Commerce is investigating the Export Buyer's Credit Program. Commerce preliminarily determines that the use of AFA is warranted in determining the countervailability of the Export Buyer's Credit program, because the GOC did not provide the requested information needed to allow Commerce to fully analyze this program.

In our Initial Questionnaire, we requested that the GOC provide the information requested in the Standard Questions Appendix "with regard to all types of financing provided by the China Export-Import Bank (China ExIm Bank) under the Buyer Credit Facility."[129] The Standard Questions Appendix requested various information that Commerce requires in order to analyze the specificity and financial contribution of this program, including the following: translated copies of the laws and regulations pertaining to the program, a description of the agencies and types of records maintained for administration of the program, a description of the program and the program application process, program eligibility criteria, and program use data. Rather than respond to the questions in the Standard Questions Appendix, the GOC stated it confirmed with the China ExIm Bank that none of the U.S. customers of Fujian Billion used the alleged Export Buyer's Credit program during the POI and therefore understands the appendix to not be applicable.[130] In doing so, the GOC provided Commerce with screenshots from the China ExIm Bank system that included several trading companies,[131] which are ineligible for the programs, because the qualifying condition is that borrowers under the Export Buyer's Credit program are foreign banks and foreign importers and not simply trading companies.[132] The evidence the GOC provides therefore does not effectively prove non-use of the program.

Therefore, we preliminarily find that necessary information from the GOC is missing from the record because the GOC has withheld that information, thereby impeding this investigation not cooperating to the best of its ability. As a result, we find the application of AFA is warranted, and, as AFA, we find that the respondents used and benefited from this program, despite their claims of non-use and submissions of certifications of non-use from the respondents' customers. Although we have accepted similar certifications of non-use from the respondents' customers to determine countervailability in prior proceedings, this was when we understood how the program

[129] *See* GOC IQR at 33-34.
[130] *See* GOC IQR at 34, and GOC SQR at 10.
[131] *Id.* at Exhibit S-4.
[132] *See* GOC IQR at Exhibit II.B.15 (Exhibit II.B.17 of the GOC 7th Supplemental Response in the Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China).

ran prior to the 2013 amendments. Since learning about the amendments, Commerce has specifically stated that we intended in future proceedings to continue requesting the GOC's cooperation on this program, and that we would base subsequent evaluations of this program on the record developed in the relevant proceeding.[133] Therefore, to fully analyze whether the current program runs in the same manner, as we have discussed in other proceedings investigating this program,[134] Commerce must be able to review the amendments to the program. Because the GOC has not provided the complete responses to the required appendixes for this program, Commerce has been unable to do so.

Pursuant to section 776(a)(1) of the Act when necessary information is not available on the record and pursuant to 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.

We preliminarily find, as AFA, that under this program the GOC bestowed a financial contribution pursuant to section 771(5)(D) of the Act and there was a benefit pursuant to section 771(5)(E) of the Act. Further, we find, as AFA, that this program is contingent on exports and therefore specific pursuant to section 771(5A)(B) of the Act.[135]

Based on the AFA rate selection hierarchy described above, for this program we are using an AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in the *Coated Paper from China Investigation Amended Final* proceeding.[136]

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[133] *See, e.g.*, *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review*; 2014, 82 FR 27466 (June 15, 2017) and accompanying IDM at 13 (citing *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) and accompanying IDM at Comment 1).

[134] *See, e.g.*, *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) and accompanying IDM at Comments 2 through 6.

[135] *See Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 17382 (April 25, 2019), and accompanying IDM at Comment 16. *See also* Petition, Volume III at 30 ("Export buyer's credits are loans at preferential rates to foreign companies, such as importers, to promote the export of Chinese products, technology, and services.").

[136] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201, 70202 (November 17, 2010) (*Coated Paper from China Investigation Amended Final*) (identifying a revised *ad valorem* subsidy rate of 10.54 percent under "Preferential Lending to the Coated Paper Industry").

E. Application of AFA: Provision of "Other Subsidies"

In response to our question asking all mandatory respondents to report whether they had received assistance under any other program, Fujian Billion and Shenghong Fiber identified numerous additional instances of assistance under programs not otherwise identified in our Initial Questionnaire.[137] In response to our request for information on these self-reported subsidies, the GOC responded:

> The Department has requested information on numerous programs in this investigation. The responding companies and the GOC have cooperated to the best of their ability to provide the information requested. The GOC further notes that 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). The GOC believes, therefore, that an answer to this question would not be appropriate. For more information about the subsidies received by the respondent enterprises, please refer to the respondent enterprises' responses.[138]

Therefore, we issued a supplemental questionnaire requesting that the GOC provide a full response regarding the measurable "Other Subsidies" reported by Fujian Billion and Shenghong Fiber. However, in its response, the GOC did not provide any of the requested information concerning the programs at issue.[139]

Based upon the foregoing, we preliminarily determine that the information necessary to analyze whether these reported "Other Subsidies" constitute a financial contribution and are specific is not available on the record and that the GOC has withheld information that was requested of it. Thus, we must rely on facts available for purposes of this preliminary determination, in accordance with section 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, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In applying AFA, we find that the "Other Subsidies" reported by Fujian Billion and Shenghong Fiber constitute financial contributions, pursuant to section 771(5)(D) of the Act, and are specific, within the meaning of section 771(5A) of the Act. We determined the benefit by dividing the amount of any measurable "other subsidy" applicable to the POI by the appropriate sales denominator for Fujian Billion or as AFA for the non-cooperative respondents. *See* "Other Subsidies," below.

[137] *See* Fujian Billion IQR at Exhibit 9; *see also* Shenghong Fiber IQR at Attachment A Exhibit 18, Attachment B Exhibit 26, Attachment C Exhibit 12, Attachment E Exhibit 8, Attachment F Exhibit 24, Attachment G Exhibit 26, Attachment H Exhibit 12, and Attachment I Exhibit 11.
[138] *See* GOC IQR at 141.
[139] *See* GOC SQR at 3.

VIII. 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.[140] In Commerce's Initial Questionnaires to the GOC and the mandatory respondents, we notified the respondents to this proceeding that the AUL period would be 8 years,[141] on the basis of U.S. Internal Revenue Service Publication 946 (2016).[142] No party submitted comments challenging this AUL period.

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of a subsidy 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 subsidy is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), we normally attribute a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provide additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of Commerce's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to Commerce's regulations further clarifies Commerce's cross-ownership standard. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

> {T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a

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[140] *See* 19 CFR 351.524(b).

[141] The AUL in the original questionnaire was mistakenly listed as 15 years and subsequently corrected to 8 years. *See* Memorandum, "Correction of Average Useful Life in Questionnaire," dated December 13, 2018.

[142] *See* 19 CFR 351.524(d)(2).

> majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[143]

Thus, Commerce's regulations make clear that we must look at the facts presented in each case to determine whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[144]

Fujian Billion

As discussed above, we selected Fujian Billion as a mandatory respondent. Fujian Billion responded to Commerce's questionnaire on behalf of itself and its affiliates, Billion Development (Hong Kong) Limited (Billion Development) and Billion Industrial Investment Limited (Billion Industrial).[145]

Fujian Billion identified Billion Development and Billion Industrial as affiliates during the POI. Although these affiliates were not involved in either the production or sale of subject merchandise or non-subject merchandise during the POI, they meet the other attribution conditions in our regulations. Therefore, we preliminarily determine that such affiliated companies meet the conditions for cross-ownership set forth in 19 CFR 351.525(b)(6)(ii)-(v).

Additionally, the petitioners requested that Commerce require full questionnaire responses from any trading companies located in mainland China or Hong Kong that exported subject merchandise to the United States from Fujian Billion. Fujian reported that it exports subject merchandise through one unaffiliated trading company located in Hong Kong. We note that there is no indication that the Hong Kong company in question may be receiving subsidies from the GOC and, moreover, we note that the percentage of subject merchandise sold through the Hong Kong trading company is negligible. Therefore, we did not require Fujian Billion to submit a questionnaire response for this company.[146]

Shenghong Fiber

As discussed above, we selected Jiangsu Textile and Shenghong Fiber as mandatory respondents. Shenghong Fiber responded to Commerce's questionnaire on behalf of itself and its affiliates, (1) Jiangsu Zhonglu Technology Development Co., Ltd., (2) Jiangsu Guowang High-Technique Fiber Co., Ltd., (3) Jiangsu Shenghong Science and Technology Co., Ltd, (4) Jiangsu Honggang Petrochemical Co., Ltd, (5) Shenghong Group Co., Ltd, (6) Shenghong Holding Group, Co., Ltd., (7) Shenghong (Suzhou) Group Co., Ltd., (8) Jiangsu Shenghong Investment Development Co., Ltd., and (9) Jiangsu Shenghong New Material Co., Ltd.[147] We preliminarily determine that

[143] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).
[144] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[145] *See* Fujian Billion IQR.
[146] *See* Fujian Billion's Preliminary Analysis Memorandum for this company's name.
[147] *See* Shenghong Fiber IQR.

these companies are cross-owned with Shenghong Fiber. However, as stated in the "Application of AFA: Jiangsu Textile, Shenghong Fiber and Suzhou Garmant" section above, we applied an AFA rate for Shenghong Fiber and its cross-owned companies, including Jiangsu Textile/Jiangsu Huahui, for this preliminary determination.

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below under "Programs Preliminarily Determined to Be Countervailable," where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or, when appropriate, the total combined sales of the cross-owned affiliates, as described above). Where the program has been found to be contingent upon export activities, we used the recipient's total export sales as the denominator. All sales used in our net subsidy rate calculations are net of intra-company sales. For a further discussion of the denominators used, *see* the Fujian Billion Preliminary Calculation Memorandum.[148]

IX. BENCHMARKS AND INTEREST RATES

We are investigating loans received by Fujian Billion from state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.[149] The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

A. Short-Term and Long-Term Renminbi (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, we use comparable commercial loans reported by the respondent as a benchmark.[150] 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."[151]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS from China*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.[152] On July 21, 2017, Commerce conducted a reassessment of China's financial system for CVD benchmarking purposes.[153]

[148] *See* Memorandum, "Fujian Billion Calculations for Preliminary Determination" dated April 26, 2019 (Fujian Billion Preliminary Calculation Memorandum).
[149] *See* 19 CFR 351.524(b)(1).
[150] *See* 19 CFR 351.505(a)(3)(i).
[151] *See* 19 CFR 351.505(a)(3)(ii).
[152] *See CFS from China* and accompanying IDM at Comment 10.
[153] *See* Memorandum, "Countervailing Duty Investigation of Polyester Textured Yarn from the People's Republic of China: Review of China's Financial System Memorandum," dated concurrently with this memorandum at Attachment 1 "Review of China's Financial System for Countervailing Duty (CVD) Benchmarking Purposes."

Based on this reassessment, Commerce has concluded that, despite the 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 mandatory 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 selected an external market-based benchmark interest rate. The use of an external benchmark is consistent with Commerce's practice.[154]

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China* and later updated in *Thermal Paper from China*.[155] Under that methodology, we first determine which countries are similar to China in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from China*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, China fell in the lower-middle income category.[156] Beginning in 2010, however, China was classified in the upper-middle income category and remained there from 2011 to 2017.[157] Accordingly, as explained below, we used the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2017. This is consistent with Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.[158]

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

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[154] *See*, *e.g.*, *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 82 FR 46754 (October 6, 2017), and accompanying PDM at 21, unchanged in *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018).
[155] *See CFS from China* and accompanying IDM at Comment 10; *see also Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*) and accompanying IDM at 8-10.
[156] *See* World Bank Country Classification, http://data.worldbank.org/about/country-and-lending-groups (World Bank Country Classification); *see also* Memorandum, "Countervailing Duty Investigation of Polyester Textured Yarn from the People's Republic of China: Interest Rate Benchmark Memorandum," dated concurrently with this memorandum (Interest Rate Benchmark Memorandum).
[157] *See* World Bank Country Classification.
[158] *See*, *e.g.*, *Cast Iron Soil Pipe Fittings from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Fina Determination with Final Antidumping Duty Determination*, 82 FR 60178 (December 19, 2017) and accompanying PDM at "Benchmarks and Discount Rates," unchanged in *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 32075 (July 11, 2018) (*Soil Pipe from China*), and accompanying IDM.

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.[159] For 2010, however, the regression did not yield that outcome for China's income group.[160] This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from China* to compute the benchmarks for the years from 2001-2009 and 2011-2017. 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, 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.[161] First, we did not include those economies that we considered to be NMEs for antidumping 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 we calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.[162] Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.[163]

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.[164]

In *Citric Acid from China*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where "n" equals or approximates the number of years of the term of the loan in question.[165] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an

[159] *See* Interest Rate Benchmark Memorandum.
[160] *Id*.
[161] *Id*.
[162] *Id*.
[163] *Id*.
[164] *See, e.g.*, *Thermal Paper from China* and accompanying IDM at 10.
[165] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from China*) and accompanying IDM at Comment 14.

inflation component.[166] The resulting inflation-adjusted benchmark lending rates are provided in the preliminary calculation memorandum for Fujian Billion.[167]

B. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the GOC provided non-recurring subsidies.[168] The interest rate benchmarks and discount rates used in our preliminary calculations are provided in Fujian Billion's Preliminary Calculation Memorandum.

C. Input Benchmarks

We selected benchmarks for determining the benefit from the provision of MEG and PTA 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 within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three).[169]

As discussed in the "Use of Facts Otherwise Available and Adverse Inferences" section, we are relying on "tier two" (world market) prices for the MEG and PTA input benchmarks for these programs. We received data submissions from the petitioners for consideration as "tier two" benchmarks for MEG and PTA.[170] In these submissions, the petitioners submitted 2017 monthly world market prices of exports for MEG and PTA prices from Trade Data Monitor (TDM) specific to HTS subheading 2905.31 for MEG and HTS subheading 2917.36 for PTA.[171]

The petitioners also submitted ocean freight data for shipping a forty-foot container to Shanghai from various ports around the world from Maersk Shipping Line (Maersk), which was also used by Commerce to value ocean freight in *Certain Steel Wheels*.[172] The petitioners also submitted information which identifies worldwide major commercial shipping ports and information on various shipping terminology.[173] Additionally, the petitioners provided information demonstrating that Maersk's freight costs are on a kilogram basis.[174] Regarding inland freight, we are relying on the respondents' reported inland freight prices. For further discussion of ocean

[166] *See* Interest Rate Benchmark Memorandum.
[167] *See* Fujian Billion's Preliminary Calculation Memorandum.
[168] *Id.*; *see* Fujian Billion Preliminary Calculation Memorandum.
[169] *See* 19 CFR 351.511(a)(2).
[170] *See* Benchmark Info.
[171] *Id.* at Attachments 2 and 3.
[172] *Id.* at Attachments 5 and 6; *see also Certain Steel Wheels from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 44573 (August 31, 2018) (*Certain Steel Wheels*) and accompanying PDM at 13, unchanged in *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 11744 (March 28, 2019).
[173] *Id.* at Attachment 7.
[174] *Id.*

and inland freight expenses pertaining to the MEG and PTA input benchmarks, *see* Fujian Billion Preliminary Calculation Memorandum.

X. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following:

A. Programs Preliminarily Determined to Be Countervailable

1. Export Buyer's Credit

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, our preliminary determination regarding the GOC's provision of export buyer's credit is based on AFA. As AFA, we determine that the GOC's provision of export buyer's credit confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A)(B) of the Act, respectively. Furthermore, we determine on the basis of AFA that Fujian Billion benefitted from this program during the POI within the meaning of section 771(5)(E) of the Act.

Consistent with Commerce's AFA rate selection methodology, we determine a countervailable subsidy rate of 10.54 percent *ad valorem* for Fujian Billion, a rate calculated for the same or similar program in another CVD proceeding involving imports from China.[175]

2. Provision of MEG for LTAR

We are examining whether the GOC or other "authorities" within China provided Fujian Billion MEG for LTAR. Fujian Billion reported that it purchased MEG during the POI.[176]

As discussed above in the section "Use of Facts Otherwise Available and Adverse Inferences," we find that the use of AFA is warranted with respect to the status of Fujian Billion's MEG producers as "authorities." As AFA, we find that Fujian Billion's input producers are "authorities" within the meaning of section 771(5)(B) of the Act and provided financial contributions to the respondent in the form of MEG, pursuant to section 771(5)(D)(iii) of the Act.

The GOC reported that MEG is primarily used for producing polyester.[177] In 2016, the production of polyester accounted for 92.1 percent of apparent consumption of MEG in China.[178] Accordingly, we preliminarily determine that the subsidies under this program are specific pursuant to section 771(5A)(D)(iii)(II) of the Act.

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[175] *See Coated Paper from China Investigation Amended Final*, 75 FR at 70202 (identifying a revised *ad valorem* subsidy rate of 10.54 percent under "Preferential lending to the Coated Paper Industry").
[176] *See* Fujian Billion IQR at Exhibit 17-1.
[177] *See* GOC IQR at 101.
[178] *Id.*

Additionally, as explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine, as AFA, that the domestic market for MEG is distorted, and we are relying on an external benchmark for determining the benefit from the provision of MEG for LTAR under section 771(5)(E)(iv) of the Act.

As discussed above under "Input Benchmarks," because we find that the Chinese market for MEG was distorted by government involvement, we are selecting external benchmark prices, *i.e.*, "tier two" or world market prices, consistent with 19 CFR 351.511(a)(2)(ii) and the *CVD Preamble*.[179] Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under "tier two," we will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices we included, as appropriate, any ocean freight and inland freight that would be incurred to deliver the inputs to the respondent's production facilities. We then added to the benchmark prices the appropriate import duties applicable to imports of MEG into China, as provided by the GOC. Additionally, we added the appropriate VAT of 17 percent to the benchmark prices.[180]

We compared these monthly benchmark prices to the purchase prices that Fujian Billion reported for individual domestic transactions, including VAT. We determined the benefit to be the difference between the benchmark prices and the prices reported by Fujian Billion. We divided the total benefits received by Fujian Billion's respective POI sales.[181]

On this basis, we preliminarily calculated a net countervailable subsidy rate of 0.89 percent *ad valorem* for Fujian Billion.[182]

3. <u>Provision of PTA for LTAR</u>

We are examining whether the GOC or other "authorities" within China provided Fujian Billion PTA for LTAR. Fujian Billion reported that it purchased PTA during the POI.[183]

As discussed above in the section "Use of Facts Otherwise Available and Adverse Inferences," we find that the use of AFA is warranted with respect to the status of Fujian Billion's PTA producers as an "authority." As AFA, we find that the producer is an "authority" within the meaning of section 771(5)(B) of the Act that provided financial contributions to the respondent in the form of PTA for LTAR.

The GOC reported that PTA is mainly used in the polyester industry, with 76 percent of polyester used to produce polyester fiber in the China market.[184] Further, the GOC reports that domestic consumption of PTA accounts for 100 percent of domestic production during 2017.[185] Accordingly, we preliminarily determine that the subsidies under this program are specific, pursuant to section 771(5A)(D)(iii)(II) of the Act.

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[179] *See CVD Preamble*, 63 FR at 65401.
[180] *See* Fujian Billion Preliminary Calculation Memorandum.
[181] *Id.*
[182] *Id.*
[183] *See* Fujian Billion IQR at Exhibit 17-1.
[184] *See* GOC IQR at 101.
[185] *Id.* at 119.

Additionally, as explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily determine, as AFA, that the domestic market for PTA is distorted, and we are relying on an external benchmark for determining the benefit from the provision of PTA for LTAR under section 771(5)(E)(iv) of the Act.

As discussed above under "Input Benchmarks," because we find that the Chinese market for PTA was distorted by government involvement, we are selecting external benchmark prices, *i.e.*, "tier two" or world market prices, consistent with 19 CFR 351.511(a)(2)(ii) and the *CVD Preamble*.[186] Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under "tier two," we will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices we included, as appropriate, any ocean freight and inland freight that would be incurred to deliver the inputs to the respondent's production facilities. We then added to the benchmark prices the appropriate import duties applicable to imports of PTA into China, as provided by the GOC. Additionally, we added the appropriate VAT of 17 percent to the benchmark prices.[187]

We compared the monthly benchmark prices to the purchase prices that Fujian Billion reported for individual domestic transactions, including VAT. We determined the benefit as the difference between the benchmark prices and the prices reported by Fujian Billion. We divided the total benefits received by company's respective POI sales.[188]

On this basis, we preliminarily determine a net countervailable subsidy rate of 13.04 percent *ad valorem* for Fujian Billion.[189]

4. <u>Provision of Electricity for LTAR</u>

For the reasons explained above in the section "Use of Facts Otherwise Available and Adverse Inferences," we based our preliminary determination regarding the GOC's provision of electricity for LTAR on AFA. We preliminarily determine that the GOC's provision of electricity confers a financial contribution as a provision of a good under section 771(5)(D)(iii) of the Act and is specific under section 771(5A)(D) of the Act.

For determining the existence and amount of any benefit under this program, we selected the highest non-seasonal provincial rates in China for each electricity category (*e.g.*, "large industry," "general industry and commerce") and "base charge" (either maximum demand or transformer capacity, where applicable) used by Fujian Billion. Additionally, we identified and applied the peak, normal, and valley rates within a category, where applicable.

Consistent with our approach in *Wind Towers*, we first calculated Fujian Billion's variable electricity costs by multiplying the monthly kilowatt hours (kWh) consumed at each price

[186] *See CVD Preamble*, 63 FR at 65401.
[187] *See* Fujian Billion Preliminary Calculation Memorandum.
[188] *Id*.
[189] *Id*.

category (*e.g.*, peak, normal, and valley, where appropriate) by the corresponding electricity rates paid during each month of the POI.[190] Next, we calculated the benchmark variable electricity costs by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity costs paid by Fujian Billion during the POI from the monthly benchmark variable electricity costs.[191]

To measure whether Fujian Billion received a benefit with regard to its base rate (*i.e.*, either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to the company by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the company's consumption quantities by the highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by Fujian Billion during the POI from the benchmark base rate costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from Fujian Billion's variable electricity payments and base rate payments.[192] To calculate the net subsidy rate attributable to Fujian Billion, we divided Fujian Billion's benefit by its respective POI sales.

On this basis, we preliminarily calculated a net countervailable subsidy rate of 5.71 percent *ad valorem* for Fujian Billion.[193]

5. Policy Loans to the Polyester Textured Yarn Industry

We are investigating whether the GOC subsidizes producers of yarn through the provision of policy loans at preferential rates. According to the petitioners, China's policy banks and SOCBs make loans to producers of yarn at preferential terms as a matter of government policy.[194] The petitioners state that industry groupings encompassing yarn production are the subject of strategic industry planning at the national and sub-national levels[195] and have been designated as industries for government support.[196] As explained below, we preliminarily determined that yarn producers in China have received policy loans during the POI.

When examining a loan program, we look to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals, especially with regard to certain encouraged sectors.[197] Where such plans or policy directives exist, it is our practice to find that a policy lending program exists that is *de jure* specific to the named industry (or producers that fall under that industry) within the meaning of

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[190] *See Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers*) and accompanying IDM at 21-22.
[191] *See* Fujian Billion Preliminary Calculation Memorandum.
[192] *Id.*
[193] *Id.*
[194] *See* Petition, Volume III at 20-25.
[195] *Id.*
[196] *Id.*
[197] *See Citric Acid from China* and accompanying IDM at Comment 14.

section 771(5A)(D)(i) of the Act.[198] Once that finding is made, we rely upon the analysis undertaken in *CFS from China* to further conclude that national and local government control over the SOCBs render the loans financial contributions from "authorities" within the meaning of section 771(5)(B) of the Act.

Fujian Billion reported having loans from Chinese SOCBs that were outstanding during the POI.[199] We preliminarily find that these loans provide countervailable subsidies under a policy lending program directed at industries that encompass the chemical fiber industry – including yarn. Record information indicates that the Government of the China placed great emphasis on targeting these segments of the manufacturing sector.

For example, the "11th Five-Year Outline of the Guidelines for National Economic Development of the People's Republic of China" encourages the chemical fiber industry – including the yarn industry – to create added value through the development of "high tech, high performance, differential, green and environmental protection fibre and recovered fibre."[200] Likewise, the "12th Five-Year Outline of the Guidelines for National Economic and Social Development of the People's Republic of China" calls for promoting the production of "hi-tech fibers and compound materials" to help grow and develop certain strategic industries.[201] Moreover, the provincial governments, including Fujian Province where Fujian Billion is located, have promoted key industrial sectors that include the yarn industry. In the "Outline of the 11th Five-Year Plan for National Economic and Social Development for Fujian Province," the Fujian government sought to concentrate industrial development efforts on specific advanced manufacturing sectors, to include the "modern textile industry."[202]

Further, evidence indicates that financial support was directed specifically toward certain encouraged industries, including yarn. For example, the "*Decision of the State Council on Promulgating the Interim Provisions Promoting Industrial Structure Adjustment for Implementation* (Guo Fa {2005} No. 40)" (Decision 40) indicates that the "Directory Catalogue for the Readjustment of Industrial Structure" is an important basis for investment guidance and government administration of policies such as public finance, taxation, and credit."[203] Decision 40 further indicates that projects in "encouraged" industries, such as "high-performance differential fiber" shall be provided credit support in compliance with credit principles."[204] The "Directory Catalogue on Readjustment of Industrial Structure (Version 2005)" includes production of "all kinds of differential, functional chemical fiber, high-tech fiber" and "fiber and new non-fiber polyester (polyethylene terephthalate, polydiacid glycol ester, PTB, *etc*.)" as encouraged.[205] Commerce has previously found such guidance catalogues and Decision 40 as

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[198] *See CFS from China* and accompanying IDM at Comment 8; *see also Thermal Paper from China* and accompanying IDM at "Government Policy Lending Program."
[199] *See* Fujian Billion IQR at 8 and Exhibit 10.
[200] *See* GOC IQR at Exhibit II.B.6 at Chapter 2, Section 2.
[201] *Id.* at Chapter 4, Column 4 and Chapter 10, Section 1.
[202] *See* GOC SQR at Exhibit S-3, Part 3, Chapter V, Section 2, Column 3.
[203] *See* GOC IQR at Exhibit II.B.11.
[204] *Id.*
[205] *Id.* at Exhibit II.B.9 at Category I, Chapter XVII, Sections 3 and 4.

evidence of a GOC policy of lending to preferred industries in China,[206] in this case to the chemical fiber industry, encompassing the yarn industry.

Accordingly, given the policy and plans discussed above, we preliminarily determine that there is a program of preferential policy lending specific to producers of yarn within the meaning of section 771(5A)(D)(i) of the Act. We also preliminarily find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B) and 771(5)(D)(i) of the Act, because SOCBs are "authorities."[207] The loans 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.

To determine whether a benefit was conferred under section 771(5)(E)(ii) of the Act, we compared the amount of interest paid during the POI on these loans to the amount of interest that the respondent would have paid on comparable commercial loans.[208] In conducting this comparison, we used the interest rate benchmarks described above in the section "Benchmarks and Interest Rates."

On this basis, we preliminarily calculated a countervailable subsidy of 0.62 percent *ad valorem* for Fujian Billion.[209]

6. <u>Export Assistance Grants</u>

Fujian Billion reported receiving export assistance grants.[210] Under the *Measures for the Management of Special Funds for foreign Economy and Trade Development*, this program provides direct grants to encourage the development of international markets and promote export-focused companies with exemplary performance.[211] These grants confer a financial contribution as a direct transfer of funds under section 771(5)(D)(i) of the Act, and are specific under 771(5A)(B) because they are contingent upon export. To calculate the benefit under this program, Commerce followed the methodology described in 19 CFR 351.524.

To calculate the *ad valorem* subsidy rate for this grant, Commerce divided the benefit conferred under this program by Fujian Billion's total export sales in the year it was received. On this basis, we calculate an *ad valorem* rate of 0.14 percent for Fujian Billion.[212]

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[206] *See Fine Denier Polyester Staple Fiber from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 51396 (November 6, 2017), and accompanying PDM at "X. Analysis of Programs," unchanged in *Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination*, 83 FR 3120 (January 23, 2018).
[207] *See CFS from China* and accompanying IDM at Comment 8.
[208] *See* 19 CFR 351.505(a).
[209] *See* Fujian Billion Preliminary Calculation Memorandum.
[210] *See* Fujian Billion 2SQR at Exhibit SQR-14.
[211] *See* GOC IQR at 17-19.
[212] *See* Fujian Billion Preliminary Calculation Memorandum.

7. **<u>Income Tax Reductions for High-and New-Technology Enterprises (HNTEs)</u>**

Under Article 28 of the Enterprise Income Tax Law of the People's Republic of China and Article 93 of the Implementing Regulations for the Enterprise Income Tax Law of the People's Republic of China, a firm's income tax is reduced to a rate of 15 percent from the standard 25 percent rate, if an enterprise is recognized as a HNTE.[213] Fujian Billion reported that it used this program.[214] Commerce has previously found this program to be countervailable in *Shrimp from China*, and no record evidence provided in the instant investigation warrants a change to this finding.[215]

Consistent with our determination in *Shrimp from China*, we preliminarily determine that the income tax reductions under the HNTE program are financial contributions in the form of revenue foregone by the GOC under section 771(5)(D)(ii) of the Act and confer a benefit to Fujian Billion in the amount of the tax savings pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We further determine that the income tax reduction afforded by this program is limited as a matter of law to certain enterprises whose products are designated as being in "high-tech fields with state support," and, hence, is *de jure* specific, under section 771(5A)(D)(i) of the Act.

As provided under 19 CFR 351.509(a)(1) and (b)(1), we calculated the benefit as the difference between the taxes Fujian Billion would have paid under the standard 25 percent tax rate and the taxes the company actually paid under the preferential 15 percent tax rate, as reflected on the tax returns filed during the POI. We treated the tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We then divided the POI benefit by the appropriate total sales denominator, as described in the "Attribution of Subsidies" section.

On this basis, we preliminarily determine a net countervailable subsidy rate of 0.42 percent *ad valorem* for Fujian Billion.[216]

8. **<u>Income Tax Deduction for Research and Development Expenses Under the Enterprise Income Tax Law</u>**

Under Article 30.1 of the Enterprise Income Tax Law, which became effective January 1, 2008, companies may deduct from their taxable income R&D expenses incurred in the development of new technologies, products, or processes.[217] Article 95 of the Implementing Regulations of the Enterprise Income Tax Law of China (Decree 512 of the State Council, 2007) provides that, if eligible research expenditures do not "form part of the intangible assets value," an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount.[218] Where these expenditures form the value of certain intangible assets, the expenditures may be

[213] *See* GOC IQR at 49 and Exhibits II.C.1 and II.C.2.
[214] *See* Fujian Billion IQR at 14.
[215] *See e.g.*, *Shrimp from China*.
[216] *See* Fujian Billion Preliminary Calculation Memorandum.
[217] *See* GOC IQR at 58.
[218] *Id.* at 59 and Exhibits II.C.1 and II.C.2.

amortized based on 150 percent of the intangible assets' costs.[219] Fujian Billion reported use of this program.[220]

We preliminarily determine that this program constitutes a countervailable subsidy. This income tax deduction is a financial contribution in the form of revenue foregone by the GOC under section 771(5)(D)(ii) of the Act, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also find that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with R&D in eligible high-technology sectors and, thus, is *de jure* specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1).[221] To compute the amount of the tax savings, we calculated the amount of tax Fujian Billion would have paid absent the tax deductions at the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax credit). We then divided the tax savings by the appropriate total sales denominator, as discussed in the "Subsidies Valuation" section.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.03 percent *ad valorem* for Fujian Billion.[222]

9. "<u>Other Subsidies</u>"

Fujian Billion self-reported various non-recurring subsidies from the GOC during the AUL.[223] The subsidies self-reported by Fujian Billion, which conferred a measurable benefit, are as follows (rates included in parentheses):[224]

(1) Bonus for Electricity Consumption (.03%)
(2) Funds for Encouraging and Supporting Economic Development (.01%)
(3) Funds for Provincial-Level Industry and Information Development (.07%)
(4) Incentives for Integration of Informatization and Industrialization (.06%)
(5) Incentives for Scientific and Technological Innovation (.22%)
(6) Subsidies for Integration Technology and Application of Large-Volume Differential Polyester Polyamide (.02%)

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[219] *Id.*
[220] *See* Fujian Billion IQR at 18.
[221] These credits can be either expensed or capitalized as R&D expenditures. If a credit is for capitalized expenditures (*e.g.*, the expenditures were made toward developing an "intangible asset" or patent), however, the 5 percent deduction is amortized across the useful life of the developed asset. Therefore, even credits for capitalized expenditures would be allocated over tax returns filed during a number of years and would thus be recurring. *See, e.g.*, *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 79 FR 33174 (June 10, 2014) and accompanying PDM at 34-35, unchanged in *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014).
[222] *See* Fujian Billion Preliminary Calculation Memorandum.
[223] *See* Fujian Billion IQR at Exhibit 9.
[224] With respect to Fujian Billion's self-reported subsidies, we have combined programs that had identical or nearly identical names, and which were received in the same year.

(7) Subsidy for Scientific Research Funds (.01%)
(8) Subsidies for Hundred Talents Program (.01%)
(9) Subsidy for Intelligent-Manufacturing Digital Workshop Project of Directly Spinning of Polyester Filament-Melt (0.11%)
(10) Tax Incentives for Key Enterprises (0.11%)

As discussed above in the section "Use of Facts Available and Adverse Inferences," we preliminarily determine that these subsidies constitute a financial contribution under section 771(5)(D)(i) of the Act and are specific under section 771(5A) of the Act. Further, we preliminarily determine that each of these subsidies confers a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504(a). To calculate the benefit received under these programs, we followed the methodology described in 19 CFR 351.524. To calculate the *ad valorem* subsidy rate for these programs, we divided the benefit conferred under each of these programs by the appropriate POI sales denominator.

Based on the methodology outlined above, we preliminarily calculated a cumulative *ad valorem* subsidy rate of 0.65 percent for Fujian Billion for such "other subsidies."[225]

Based on the methodology outline above, we preliminarily calculated a cumulative *ad valorem* subsidy rate of 32.04 percent for Fujian Billion.

B. Programs Preliminarily Determined to Require Additional Information

10. Export Credit Guarantees

Fujian Billion reported the use of this program.[226] The current information on the record regarding this program is limited. We intend to seek further information with respect to the countervailability of Fujian Billion's use of Export Credit Guarantees in 2017 for consideration in a post-preliminary analysis.

C. Programs Preliminarily Determined Not to Have Conferred a Measurable Benefit During the POI on Fujian Billion

1. Special Fund for Energy Savings Technology Reform

Fujian Billion reported receiving benefits under this program during the AUL but not the POI.[227] The program provides a benefit tied to energy-saving technological transformation projects approved by the Development and Reform Commission, the Economic Trade Commission, or the Economic Commission. To calculate the benefit under this program, we first applied the "0.5 percent expense test" as described in the "Allocation Period" section above. Grant amounts that did not exceed the 0.5 percent threshold were expensed fully in the year of receipt. In calculating a benefit for these grants to Fujian Billion, we preliminarily determine that these grants do not meet the 0.5 percent threshold for allocation over the AUL period, pursuant to 19

[225] *See* Fujian Billion Preliminary Calculation Memorandum.
[226] *See* Fujian Billion IQR at 11 to 13 and Exhibit 13-2.
[227] *See* Fujian Billion SQR at Exhibit SQR-11.

CFR 351.524(b)(2). Therefore, we preliminarily determine that grants received by Fujian Billion conferred no allocable benefit during the POI.

2. Import Tariff and VAT Reductions for Foreign-Invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Fujian Billion reported receiving benefits under this program during the AUL but not the POI.[228] As the program provides a benefit tied to the capital structure of respondents (plant and equipment used for production), to calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[229] Therefore we first applied the "0.5 percent expense test" as described in the "Allocation Period" section above. Grant amounts that did not exceed the 0.5 percent threshold were expensed fully in the year of receipt. In calculating a benefit for these grants to Fujian Billion, we preliminarily determine that these grants do not meet the 0.5 percent threshold for allocation over the AUL period, pursuant to 19 CFR 351.524(b)(2). Therefore, we preliminarily determine that grants received by Fujian Billion conferred no allocable benefit during the POI.

3. VAT Refunds for FIEs Purchasing Domestically-Produced Equipment

Fujian Billion reported receiving benefits under this program during the AUL but not the POI.[230] As the program provides a benefit tied to the capital structure of respondents (plant and equipment used for production), to calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[231] Therefore we first applied the "0.5 percent expense test" as described in the "Allocation Period" section above. Grant amounts that did not exceed the 0.5 percent threshold were expensed fully in the year of receipt. In calculating a benefit for these grants to Fujian Billion, we preliminarily determine that these grants do not meet the 0.5 percent threshold for allocation over the AUL period, pursuant to 19 CFR 351.524(b)(2). Therefore, we preliminarily determine that grants received by Fujian Billion conferred no allocable benefit during the POI.

4. Certain Self-Reported Subsidy Programs

Additionally, Fujian Billion reported receiving benefits under various self-reported programs that did not confer a measurable benefit.[232] Based on the record evidence, we preliminarily determine that the benefits from certain programs were fully expensed prior to the POI or are less than 0.005 percent *ad valorem* when attributed to the respondent's applicable sales, as discussed in the "Attribution of Subsidies" section above. Full lists of these programs are contained in the respondent's calculation memorandum,[233] and are provided in the AFA calculation in the AFA Memo as they pertain to the non-cooperative respondents in this investigation.

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[228] *See* Fujian Billion IRQ at 21 to 24 and Exhibit 15-3.
[229] *See* 19 CFR 351.524(b) and (c).
[230] *See* Fujian Billion IRQ at 24 to 25 and Exhibit 16-3.
[231] *See* 19 CFR 351.524(b) and (c).
[232] *See* Fujian Billion IQR at Exhibit 9.
[233] *See* Fujian Billion Preliminary Calculation Memorandum.

D. Programs Preliminarily Determined to Be Not Used

1. State Key Technology Renovation Project Fund
2. Subsidies for Development of Famous Brands and China World Top Brands
3. Small and Medium Enterprise (SME) International Market Exploration and Development Fund
4. SME Technology Innovation Fund
5. Government Grants to Fujian Billion
6. Export Loans from State-Owned Banks
7. Export Seller's Credits
8. Land in Economic Development Zones for LTAR

XI. CONCLUSION

We recommend that you approve the preliminary findings described above.

☒ Agree ☐ Disagree

4/26/2019

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistance Secretary
for Enforcement and Compliance