



C-570-111  
Investigation  
POI: 01/01/2018 – 12/31/2018  
**Public Document**  
E&C/OVII: KW

October 7, 2019

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

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Determination in  
the Countervailing Duty Investigation of Vertical Metal File  
Cabinets from the People's Republic of China

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## I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of vertical metal file cabinets (file cabinets) from the People's Republic of China (China), as provided in section 705 of the Tariff Act of 1930, as amended (Act). The period of investigation (POI) is January 1, 2018 through December 31, 2018.

Below is the complete list of the issues in this investigation for which we received comments:

**Comment 1:** Whether Commerce should apply adverse inferences to the Government of China

**Comment 2:** Whether Commerce should revise the rate applied to the Provision of Zinc for Less Than Adequate Remuneration program

## II. BACKGROUND

On August 1, 2019, Commerce published its *Preliminary Determination*.<sup>1</sup> On August 12, 2019, Commerce issued a questionnaire to the Government of China (GOC) via ACCESS and by mail asking questions related to financial contribution and specificity of the programs alleged, but

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<sup>1</sup> See *Vertical Metal File Cabinets from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 84 FR 37622 (August 1, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

omitting questions specific to respondent companies.<sup>2</sup> On September 18, 2019, the deadline for its response, the GOC failed to respond to Commerce’s questionnaire.

On September 18, 2019, we invited parties to comment on the *Preliminary Determination*.<sup>3</sup> On September 20, 2019, we received a case brief from Hirsch Industries, LLC, the petitioner.<sup>4</sup> We did not receive any rebuttal briefs.

We did not receive any requests for a hearing in this investigation.

### **III. PERIOD OF INVESTIGATION**

The POI is January 1, 2018 through December 31, 2018.

### **IV. SCOPE OF INVESTIGATION**

We did not receive any comments regarding the scope of this investigation. For a full description of the scope of this investigation, *see* this memorandum’s accompanying *Federal Register* notice at Appendix I.

### **V. 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 information placed on the record. When selecting an AFA rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to

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<sup>2</sup> *See* Commerce’s Letter, “Countervailing Duty Investigation on Vertical Metal File Cabinets from the People’s Republic of China: Countervailing Duty Questionnaire,” dated August 12, 2019 (GOC Questionnaire); and Public Service List, “Vertical Metal File Cabinets from People’s Republic of China INV – Investigation,” dated May 3, 2019.

<sup>3</sup> *See* Memorandum, “Countervailing Duty Investigation of Vertical Metal File Cabinets from the People’s Republic of China: Deadlines to Submit Case and Rebuttal Briefs,” dated September 18, 2019.

<sup>4</sup> *See* Petitioner’s Letter, “Vertical Metal File Cabinets from the People’s Republic of China: Petitioner’s Case Brief,” dated September 20, 2019 (Petitioner’s Case Brief).

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.”<sup>5</sup> 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.”<sup>6</sup>

In a CVD investigation, Commerce requires information from both the foreign producers and exporters of the merchandise under investigation and the government of the country where those producers and exporters are located. When the government fails to provide requested and necessary information concerning alleged subsidy programs, Commerce, applying AFA, may find that a financial contribution exists under the alleged program and that the program is specific.<sup>7</sup> However, where possible, Commerce will rely on the responsive producer’s or exporter’s records to determine the existence and amount of the benefit conferred, to the extent that those records are useable and verifiable.<sup>8</sup>

Otherwise, consistent with section 776(d) of the Act and our established practice of the hierarchical methodology for selecting an AFA rate in investigations,<sup>9</sup> Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>10</sup>

## **B. Application of Total AFA: GOC**

As discussed in the Preliminary Decision Memorandum, Commerce issued quantity and value (Q&V) questionnaires to potential producers or exporters because the Harmonized Tariff Schedule (HTS) subheading listed in the scope included all metal file cabinets, rather than just vertical metal file cabinets.<sup>11</sup> Prior to the *Preliminary Determination*, Commerce did not receive any responses for these Q&V questionnaires, and thus, did not select mandatory respondents or issue questionnaires to any producers and/or exporters.<sup>12</sup> In addition, Commerce did not issue a

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<sup>5</sup> 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); and *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).

<sup>6</sup> See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 at 870.

<sup>7</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34828 (July 23, 2018), and accompanying Issues and Decision Memorandum (IDM) at 6-7.

<sup>8</sup> *Id.*

<sup>9</sup> See Preliminary Decision Memorandum at 7-11 (citations omitted).

<sup>10</sup> See section 776(d)(3) of the Act.

<sup>11</sup> See Preliminary Decision Memorandum at 6.

<sup>12</sup> See Preliminary Decision Memorandum at 2 and 6.

questionnaire to the GOC prior to the *Preliminary Determination*, but indicated that we would do so following the publication of the *Preliminary Determination* in the *Federal Register*.<sup>13</sup> Accordingly, because the necessary information relied upon for our financial contribution and specificity findings was absent from the record, we relied upon neutral facts available in our preliminary determinations of specificity and financial contribution.<sup>14</sup> Specifically, for each program alleged, we reviewed the sole record evidence, the Petition, to determine whether there was sufficient support for financial contribution and specificity findings, pursuant to sections 771(5)(B) and (D) and 771(5A) of the Act, respectively.<sup>15</sup> As detailed in the Preliminary Decision Memorandum, in the instant investigation, the Petition contained sufficient evidence to support our findings of specificity and financial contribution for each constituent program.<sup>16</sup> Accordingly, as neutral facts available, Commerce preliminarily determined that each of the programs upon which we initiated the investigation provides a financial contribution and is specific within the meaning of sections 771(5)(B) and (D) and 771(5A) of the Act, respectively.<sup>17</sup>

Following the *Preliminary Determination*, as stated above, we issued a questionnaire to the GOC regarding its provision of subsidies to producers and/or exporters of file cabinets.<sup>18</sup> The GOC did not request that Commerce extend the deadline for its response or indicate that it was experiencing difficulty responding to the questionnaire. On September 18, 2019, the deadline for the GOC's questionnaire response, the GOC failed to respond to Commerce's questionnaire.

Because the GOC did not respond to the questionnaire, the information provided by the GOC regarding its provision of subsidies to producers and/or exporters which is typically analyzed in our financial contribution and specificity findings is not on the record, pursuant to section 776(a)(1) of the Act. Furthermore, by not responding to the questionnaire, we find that the GOC withheld information that was requested by Commerce, failed to provide such information by the established deadline, and significantly impeded this investigation, within the meaning of section 776(a)(2)(A)-(C), respectively. The only information on the record with respect to financial contribution and specificity is from the Petition. Accordingly, for this final determination, for our financial contribution and specificity findings, we continue to find it appropriate to rely on information from the Petition, as facts available.<sup>19</sup> Moreover, by not responding to the questionnaire, we find that the GOC did not "do the maximum it is able to do," and, thus, did not cooperate to the best of its ability.<sup>20</sup> Therefore, we find it appropriate to resort to adverse inferences in selecting from among the facts otherwise available, pursuant to section 776(b)(1)(A) of the Act.

The SAA states that Commerce may employ an adverse inference in selecting from among the facts available "to ensure that the party does not obtain a more favorable result by failing to

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<sup>13</sup> See Preliminary Decision Memorandum at 6.

<sup>14</sup> *Id.* at 13-41.

<sup>15</sup> *Id.* at 13-41 (citing Petitioner's Letter, "Vertical Metal File Cabinets from the People's Republic of China - Petition for the Imposition of Antidumping and Countervailing Duties," dated April 30, 2019 (Petition)).

<sup>16</sup> *Id.*

<sup>17</sup> See Preliminary Decision Memorandum at 13-41.

<sup>18</sup> See GOC Questionnaire; and Initiation Checklist.

<sup>19</sup> See Preliminary Decision Memorandum at 6.

<sup>20</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

cooperate than if it had cooperated fully.”<sup>21</sup> As discussed, in the instant investigation, the Petition contains substantial information regarding each of the programs upon which we initiated.<sup>22</sup> Thus, the only facts available on this record supported a finding of countervailability for each constituent program.<sup>23</sup> As there is no additional information available on the record regarding financial contribution or specificity, adverse or otherwise, there is no manner in which Commerce may “ensure that the {GOC} does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>24</sup>

Accordingly, as AFA, we continue to rely on the sole information on the record, the Petition, to find that each of the programs upon which we initiated this investigation provides a financial contribution and is specific within sections 771(5)(B) and (D) and 771(5A) of the Act, respectively.<sup>25</sup>

### **C. Application of Total AFA: Non-Responsive Companies**

We continue to find that, because we did not receive responses to the Q&V questionnaires issued to certain exporters and producers of file cabinets from China for which we confirmed receipt of the Q&V questionnaire,<sup>26</sup> we do not have the necessary information to calculate the benefit for these non-responsive companies within the meaning of section 776(a)(1) of the Act. Further, we find that those exporters or producers failed to provide such information by our deadline and in the form and manner requested, and significantly impeded this proceeding, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, respectively.<sup>27</sup> Moreover, we continue to find that for these companies, adverse inferences are warranted in selecting from the facts otherwise available, pursuant to section 776(b)(1)(A) of the Act.<sup>28</sup> In light of the above, as AFA, we continue to find that these non-responsive companies are benefitting from countervailable subsidies from all programs identified in the Initiation Checklist (and *Preliminary Determination*).<sup>29</sup>

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<sup>21</sup> See SAA at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum at page 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

<sup>22</sup> See Petition; and Initiation Checklist.

<sup>23</sup> See Preliminary Decision Memorandum at 13-41.

<sup>24</sup> See SAA at 870.

<sup>25</sup> See Initiation Checklist. For an analysis of this information, see Preliminary Decision Memorandum at 13-41.

<sup>26</sup> See Memorandum, “Countervailing Duty Investigation of File Cabinets from the People’s Republic of China: Delivery of Quantity and Value Questionnaire to Exporters/Producers,” dated July 5, 2019.

<sup>27</sup> See Preliminary Decision Memorandum at 7.

<sup>28</sup> *Id.* at 7.

<sup>29</sup> See *Vertical Metal File Cabinets from the People’s Republic of China: Initiation of Countervailing Duty Investigation*, 84 FR 24089 (May 24, 2019) (Initiation Notice) and accompanying Initiation Checklist; and Preliminary Decision Memorandum at 13-37.

## Selection of AFA Rate

It is Commerce's practice in CVD proceedings to determine an 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.<sup>30</sup> When selecting AFA rates, section 776(d) of the Act provides that Commerce may use a countervailable subsidy rate applied for the same or a similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.<sup>31</sup> Accordingly, when selecting AFA rates, if we have cooperating respondents (which we do not in this investigation), we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program. If there is no identical program that resulted in a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).<sup>32</sup> If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in any 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.<sup>33</sup>

In the instant case, and for the reasons explained in our *Preliminary Determination*, the record does not suggest that we should apply a rate other than the highest rate envisioned under the appropriate step of the hierarchy pursuant to section 776(d)(1) of the Act for all programs included in the AFA rate for the non-responsive companies.<sup>34</sup> As explained above and in our

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<sup>30</sup> 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), and accompanying Preliminary Decision Memorandum (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 DM 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) (*Aluminum Extrusions from China Final*), and accompanying Issues and Decision Memorandum at "VI. Use of Facts Otherwise Available and Adverse Inferences: Application of Adverse Inferences: Non-Cooperative Companies."

<sup>31</sup> 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 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate") (*Essar Steel Ltd.*).

<sup>32</sup> 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."

<sup>33</sup> See *Shrimp from China*, IDM at 13-14.

<sup>34</sup> See Preliminary Decision Memorandum at 8-11 (discussing sections 776(d)(1)-(2) of the Act).

*Preliminary Determination*, the non-responsive companies did not participate in the investigation by not providing Q&V data, and, as such, they have failed to cooperate to the best of their ability.<sup>35</sup> Thus, we are applying AFA. Therefore, we continue to find that the record does not support the application of an alternative rate, pursuant to section 776(d)(2) of the Act.

Commerce relied on AFA regarding the calculation of the benefit for the non-responsive companies in the *Preliminary Determination*.<sup>36</sup> Commerce has made no changes to our decision in the *Preliminary Determination* to rely on AFA with regard to non-responsive companies. However, as discussed in Comment 2, Commerce has revised the subsidy rate applied to the Provision of Zinc for Less Than Adequate Remuneration (LTAR) program in this final determination.

Consequently, based on the methodology described above, we determine the AFA net countervailable subsidy rate to be 271.79 percent *ad valorem* for the non-responsive companies and 271.79 percent *ad valorem* for all other producers and exporters.

#### Corroboration of the AFA Rate

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.”<sup>37</sup> It is Commerce’s practice to consider information to be corroborated if it has probative value.<sup>38</sup>

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.<sup>39</sup> 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.<sup>40</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the

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<sup>35</sup> See Preliminary Decision Memorandum at 11.

<sup>36</sup> See Preliminary Decision Memorandum at 7.

<sup>37</sup> See SAA at 870.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 869-870.

<sup>40</sup> See section 776(d) of the Act.

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.<sup>41</sup>

Because the non-responsive companies failed to provide information concerning their usage of the subsidy programs due to their decision not to participate in the investigation, we have reviewed the available record information as well as 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 receive a benefit. Due to the lack of participation by these companies and the limited record information concerning these programs, we have corroborated the rates we selected to use as AFA to the extent practicable.

## VI. DISCUSSION OF THE ISSUES

### Comment 1: Whether Commerce Should Apply Adverse Inferences to the GOC

#### Petitioner's Case Brief<sup>42</sup>

- The GOC did not submit any response by the established deadline, nor did the GOC request additional time to submit the questionnaire response. Thus, the GOC has chosen not to cooperate in this investigation.
- The GOC has withheld information and failed to cooperate to the best of its ability to comply with Commerce's requests for information. Accordingly, an adverse inference, within the meaning of section 776(b) of the Act, is warranted.
- Consistent with Commerce's practice, as AFA, Commerce should find that the GOC provides a financial contribution under each subsidy program alleged in the petition, and that each program is specific.<sup>43</sup>

**Commerce's Position:** As discussed in "Use of Facts Otherwise Available and Adverse Inferences," we find that necessary information is missing from the record to determine whether the programs under investigation constitute financial contributions and are specific, pursuant to section 776(a)(1) of the Act. Furthermore, we find that the GOC withheld information that was requested by Commerce, failed to provide that information by the applicable deadline, and significantly impeded this investigation, pursuant to section 776(a)(2)(A)-(C) of the Act. In addition, we find that the GOC's inaction in this investigation constitutes a failure to cooperate to the best of its ability within the meaning of section 776(b)(1)(A) of the Act. Accordingly, we are

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<sup>41</sup> See, e.g., *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017), and accompanying IDM at 14 (citing *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996)).

<sup>42</sup> See Petitioner's Case Brief at 6-9.

<sup>43</sup> *Id.* at 7-8 (citing *Ammonium Sulfate from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 4850 (January 17, 2017); *Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 11177 (March 14, 2018); and *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011)).



relying on facts available with adverse inferences in determining that each of the programs upon which Commerce initiated is specific and provides a financial contribution pursuant to sections 771(5A) and 771(5)(B) and (D) of the Act, respectively.<sup>44</sup>

## **Comment 2: Whether Commerce Should Revise the Rate Applied to the Provision of Zinc for Less Than Adequate Remuneration Program**

### Petitioner's Case Brief<sup>45</sup>

- Commerce's reliance on a *de minimis* subsidy rate from another proceeding for the Provision of Zinc for LTAR program is contrary to the second step of Commerce's CVD AFA hierarchy.
- Commerce should find that a non-*de minimis* rate is "not available" from another CVD proceeding and rely on a similar program (*i.e.*, the provision of raw material inputs for LTAR) as Commerce did in *Wire Decking from China*.<sup>46</sup>

**Commerce's Position:** In the Preliminary Decision Memorandum, we outlined Commerce's hierarchy for rate selection in a CVD investigation when facts available with adverse inferences are applied:

Under the first step of Commerce's investigation hierarchy, Commerce applies the highest nonzero 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 adverse facts available if that is the highest rate calculated for another cooperating respondent in the same industry for the same program. 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 CVD 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 noncompany-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.<sup>47</sup>

As noted by the petitioner, in the *Preliminary Determination*, Commerce inadvertently relied on a *de minimis* subsidy rate for the Provision of Zinc for LTAR program under the second step of

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<sup>44</sup> See Petition; Initiation Checklist; *see also* Preliminary Decision Memorandum at 13-41.

<sup>45</sup> See Petitioner's Case Brief at 9-11.

<sup>46</sup> *Id.* at 10 (citing *Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32902 (June 10, 2010) (*Wire Decking from China*)).

<sup>47</sup> See Preliminary Decision Memorandum at 10 (footnote omitted).

our AFA hierarchy for investigations. However, according to the investigation hierarchy, where there is no identical program within the investigation upon which we may rely, Commerce will rely on the highest non-*de minimis* rate calculated for an identical program, or if the identical program is not available, for a similar program.<sup>48</sup> In the current proceeding, there is not an identical program within the investigation upon which Commerce may rely. Further, in each proceeding in which Commerce has calculated a subsidy for a cooperating respondent for the Provision of Zinc for LTAR program, the resulting program-specific rate has been *de minimis*.<sup>49</sup> Accordingly, pursuant to the hierarchy for rate selection in a CVD investigation when facts available with adverse inferences are applied, Commerce will rely on the highest non-*de minimis* rate calculated for a similar program (provision of raw material inputs for LTAR).

For this final determination, as AFA, Commerce will apply the subsidy rate calculated in *Steel Pipe from China* for the Provision of Hot-Rolled/Cold-Rolled Steel for LTAR program to the Provision of Zinc for LTAR program.<sup>50</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> See 19 CFR 351.106(c)(1); *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); see also *Wire Decking from China*.

<sup>50</sup> See *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 11744 (March 28, 2019) (*Steel Wheels from China*), and accompanying IDM (citing *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 73 FR 42545 (July 22, 2008) (*Steel Pipe from China*)).

**VII. RECOMMENDATION**

We recommend approving all the above positions. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

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Agree

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Disagree

10/7/2019

**X** 

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Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**APPENDIX**

**Total AFA Rate**

<b>Program Name</b>		<b>Rate</b>	<b>Source</b>	<b>Export Subsidy</b>
1	Policy Loans to File Cabinets Industry	10.54	<i>Coated Paper from China</i> <sup>51</sup>	
2	Export Loans from Chinese State-Owned Banks	10.54	<i>Coated Paper from China</i>	X <sup>52</sup>
3	Export Seller's Credit	4.25	<i>Citric Acid from China</i> <sup>53</sup>	X <sup>54</sup>
4	Export Buyer's Credit	10.54	<i>Coated Paper from China</i>	X <sup>55</sup>
5	Export Credit Guarantees	10.54	<i>Coated Paper from China</i>	X <sup>56</sup>
6	Income Tax Reduction for High or New Technology Enterprises	25.00	The standard income tax rate for corporations in China during the period of investigation was 25 percent. Thus, the highest possible benefit for all income tax reduction or exemption programs combined is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis ( <i>i.e.</i> , finding that the two programs, combined, provide a 25 percent benefit).	
7	Income Tax Deduction for Research and Development Expenses Under the Enterprise Income Tax Law			
8	Provincial Government of Guangdong (PGOG) Tax Offset for R&D	9.71	<i>OTR Tires from China</i> <sup>57</sup>	
9	Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported	9.71	<i>OTR Tires from China</i>	

<sup>51</sup> *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 (November 17, 2010) (*Coated Paper from China*).

<sup>52</sup> See Initiation Checklist at 10.

<sup>53</sup> See *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011) (*Citric Acid from China*).

<sup>54</sup> See Initiation Checklist at 11.

<sup>55</sup> *Id.* at 12.

<sup>56</sup> *Id.* at 13.

<sup>57</sup> See *New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010), unchanged in *New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011) (collectively, *OTR Tires from China*).

	Equipment in Encouraged Industries			
10	VAT Refunds for FIEs Purchasing Domestically-Produced Equipment	9.71	<i>OTR Tires from China</i>	
11	Provision of Land for LTAR	13.36	<i>Woven Sacks from China</i> <sup>58</sup>	
12	Provision of Hot-Rolled/Cold-Rolled Steel for LTAR	44.91	<i>Steel Wheels from China</i> (citing <i>Steel Pipe from China</i> )	
13	Provision of Galvanized Steel for LTAR	44.91	<i>Steel Wheels from China</i> (citing <i>Steel Pipe from China</i> )	
14	Provision of Zinc for LTAR	44.91	<i>Steel Wheels from China</i> (citing <i>Steel Pipe from China</i> )	
15	Provision of Electricity for LTAR	20.06	<i>Isos from China Investigation</i> <sup>59</sup>	
16	GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands	0.62	<i>Isos from China Review</i> <sup>60</sup>	X <sup>61</sup>
17	Special Fund for Energy Savings Technology Reform	0.62	<i>Isos from China Review</i>	
18	SME International Market Exploration/Development Fund	0.62	<i>Isos from China Review</i>	X <sup>62</sup>
19	SME Technology Innovation Fund	0.62	<i>Isos from China Review</i>	
20	Export Assistance Grants	0.62	<i>Isos from China Review</i>	X <sup>63</sup>
<b>Total AFA Rate:</b>		<b>271.79</b>	<b>Total Export Subsidy Rate:</b>	<b>37.73</b>

<sup>58</sup> See *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Woven Sacks from China*).

<sup>59</sup> See *Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014), and accompanying Issues and Decision Memorandum (*Isos from China Investigation*).

<sup>60</sup> See *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review*, 82 FR 27466 (June 15, 2017) (*Isos from China Review*).

<sup>61</sup> See Initiation Checklist at 23.

<sup>62</sup> *Id.* at 25.

<sup>63</sup> *Id.* at 27.