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International Trade Administration
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Investigation
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March 30, 2020

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 Ceramic Tile from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) finds that countervailable subsidies are being provided above the *de minimis* level to producers and exporters of ceramic tile from the People's Republic of China (China), as provided for in section 705 of the Tariff Act of 1930, as amended (the Act).[1] The period of investigation (POI) is January 1, 2018 through December 31, 2018. The mandatory respondents subject to this investigation are Foshan Sanfi Imp & Exp. Co., Ltd. (Sanfi)[2] and Temgoo International Trading Limited (Temgoo).

After analyzing the comments submitted by interested parties, we made changes to the *Preliminary Determination* with respect to Sanfi and Temgoo.[3] Below is the complete list of issues in this investigation for which we received comments from interested parties.

Comment 1: Application of AFA to Sanfi and Temgoo and Calculation of the All-Others Rate
Comment 2: Whether Commerce's Calculation of the AFA Rate is Unreasonable
Comment 3: Selection of AFA Rates for Subsidy Programs
Comment 4: Preliminary Scope Determination

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[1] *See* section 701(f) of the Act.
[2] Commerce has found the following company, Guandgong Sanfi Ceramics Group Co., Ltd. (Sanfi Group), to be cross-owned with Sanfi.
[3] *See Ceramic Tile from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 48125 (September 12, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

II. BACKGROUND

On September 6, 2019, we published the *Preliminary Determination* for this investigation, in which we aligned the final countervailing duty (CVD) determination with the final antidumping duty determination, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4). On November 22, 2019, Sanfi submitted a letter notifying Commerce that it did not intend to participate in verification.[4] As a result, we did not conduct a verification of Sanfi's responses in this investigation.

We received a case brief regarding the *Preliminary Determination* from the Coalition for Fair Trade in Ceramic Tile (the petitioner) on December 17, 2019,[5] and rebuttal briefs from interested parties (*i.e.*, Belite Ceramics (Anyang) Co., Ltd.; Beilitai (Tianjin) Tile Co., Ltd.; Quanzhou Lans Ceramic Products Co., Ltd.; Yekalon Industry, Inc.; and Soho Studio Corp, (collectively, GDLSK Parties)) on December 23, 2019.[6] On January 27, 2020, GDLSK Parties withdrew their request for a hearing.[7]

The "Analysis of Programs" and "Subsidies Valuation" sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. For details of revisions to Commerce's rate calculations resulting from those modifications, *see* the Final AFA Memorandum.[8] We recommend that you approve the positions we describe in this memorandum.

III. SCOPE COMMENTS

During the course of this investigation and the concurrent antidumping duty investigation of ceramic tile from China, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Memorandum to address these comments and set aside a period of time for parties to address scope issues in case and rebuttal briefs.[9] We received comments from interested parties on the Preliminary Scope Memorandum, which we address in

[4] *See* Sanfi's Letter, "Ceramic Tile from the People's Republic of China – Notice of Intention Not to Participate in Verification," dated November 22, 2019 (Sanfi's Withdrawal Letter).
[5] *See* Petitioner's Letter, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: Petitioner's Case Brief," dated December 17, 2019 (Petitioner's Case Brief).
[6] *See* Belite Ceramics (Anyang) Co., Ltd.'s and Beilitai (Tianjin) Tile Co., Ltd.'s Letter, "Belite Ceramics (Anyang Co., Ltd.'s, et al. Rebuttal Brief: Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China," dated December 23, 2019; *see also* Quanzhou Lans Ceramic Products Co., Ltd.'s, Yekalon Industry, Inc.'s, and Soho Studio Corp's Letter, "GDLSK Parties' Rebuttal Brief: Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China," dated December 23, 2019 (collectively, GDLSK Parties' Rebuttal Briefs).
[7] *See* GDLSK Parties' Letter, "Withdrawal of Hearing Request: Countervailing Duty Investigation on Ceramic Tile from the People's Republic of China," dated January 27, 2020.
[8] *See* Memorandum, "Adverse Facts Available Calculation Memorandum for the Final Determination in the Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China," dated concurrently with this memorandum (Final AFA Memorandum).
[9] *See* Memorandum, "Ceramic Tile from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations," dated September 6, 2019.

Comment 4. For this final determination, we have made no change to the scope of the investigation. For further discussion, *see* this memorandum's accompanying *Commerce's Final Scope Decision Memorandum*.[10]

IV. SCOPE OF THE INVESTIGATION

The product covered by this investigation is ceramic tile from China. For a complete description of the scope of this investigation, *see* the accompanying *Federal Register* notice at Appendix II.

V. CRITICAL CIRCUMSTANCES

Commerce preliminarily found that critical circumstances did not exist for Sanfi, Temgoo, and all other producers or exporters.[11] For Sanfi, Temgoo, and all other producers or exporters, we continue to find that critical circumstances do not exist, based on the U.S. Census Bureau data placed on the record.[12]

Section 703(e)(1) of the Act provides that Commerce will determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect: (A) that "the alleged countervailable subsidy" is inconsistent with the Agreement on Subsidies and Countervailing Measures of the World Trade Organization, and (B) that "there have been massive imports of the subject merchandise over a relatively short period."

As stated in the *Preliminary Determination*, in determining whether there are "massive imports" over a "relatively short period," pursuant to section 703(e)(1)(B) and 19 CFR 351.206(i), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately before the date when the proceeding begins (*i.e.*, the filing of the petition)[13] (*i.e.*, the "base period") to a comparable period of at least three months following the same date (*i.e.*, the "comparison period"). Commerce's regulations provide that, generally, imports must increase by at least 15 percent during the "comparison period" to be considered "massive."[14] Here, record evidence does not demonstrate an increase in the volume of U.S. imports by 15 percent from the base period to the comparison period. As such, for the final determination, we continue to find that information provided in the critical circumstances allegation does not support an affirmative critical circumstances findings. No parties commented on this issue in their case briefs or rebuttal briefs.

[10] *See* Memorandum, "Ceramic Tile from the People's Republic of China: Scope Decision Memorandum for the Final Determinations," dated concurrently with this memorandum (Final Scope Decision Memorandum).
[11] *See* PDM at 6-7.
[12] *Id*.
[13] *See* 19 CFR 351.102(b)(40) (providing that a proceeding begins on the date of the filing of a petition); and PDM at 6.
[14] *See* 19 CFR 351.206(h)(2).

VI. SUBSIDIES VALUATION

A. Allocation Period

Commerce has made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination* and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination*.[15]

B. Attribution of Subsidies

We made no changes to, and interested parties raised no issues in their case briefs regarding, the methodology underlying our attribution of subsidies in the *Preliminary Determination.* For a description of the methodology used for this final determination, *see* the *Preliminary Determination*.[16]

C. Denominators

We made no changes to, and interested parties raised no issues in their case briefs regarding, the denominators used in the *Preliminary Determination*.[17]

VII. BENCHMARKS AND INTEREST RATES

We made no changes to, and interested parties raised no issues in their case briefs regarding, the benchmarks and interest rates used in the *Preliminary Determination*.[18]

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Commerce relied on "facts otherwise available," including AFA, for several findings in the *Preliminary Determination*.[19] For this final determination, Commerce has made changes to its use of facts otherwise available and AFA, as applied in the *Preliminary Determination*.[20] Those changes are discussed in detail below.

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

[15] *See* PDM at 7.
[16] *Id.* at 7-9.
[17] *Id*. at 9.
[18] *Id.* at 9-13.
[19] *See* PDM at 14-41.
[20] *Id*.

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) 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 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."[21] 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."[22]

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.[23] 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 usable and verifiable.[24]

Otherwise, 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 776(c), 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.[25]

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[21] *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) (*Drill Pipe Final*); *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).
[22] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 at 870 (1994) (SAA).
[23] *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) (*Crystalline Silicon Photovoltaic Cell*s), and accompanying IDM at 6-7.
[24] *Id.*
[25] *See* section 776(d)(3) of the Act.

B. Application of Total AFA: Temgoo and Sanfi

As discussed in the *Preliminary Determination*, because the mandatory respondent Temgoo withdrew its participation, we have relied on facts available with an adverse inference in selecting from among the facts otherwise available, pursuant to sections 776(a)(A)-(C) and 776(b) of the Act.[26] No parties raised this issue in case briefs or rebuttal briefs.

In the *Preliminary Determination*, we determined that countervailable subsidies were being provided to the mandatory respondent Sanfi for certain programs under investigation, and that Sanfi did not use the remaining programs under investigation.[27] Additionally, in the *Preliminary Determination*, we adversely inferred that Sanfi benefitted from all non-recurring programs initiated on and/or reported by Sanfi because key information concerning a certain entity was missing from the record.[28]

Pursuant to section 782(i) of the Act, Commerce "shall verify all information relied upon in making a final determination in an investigation."[29] In this proceeding, Commerce intended to verify Sanfi's questionnaire and supplemental questionnaire responses *in toto*, except in those instances where Sanfi failed to provide information needed for Commerce's analysis.[30] However, after the *Preliminary Determination*, Sanfi submitted a letter notifying Commerce that it would not to participate in verification.[31] Consequently, as a result of its withdrawal from verification and in the absence of verified information, we find that Sanfi has significantly impeded this proceeding and has provided unverifiable information, in accordance with section 776(a)(2)(C) and (D) of the Act. In addition, we find that because Sanfi has withdrawn from the investigation by not participating in Commerce's verification, it has failed to cooperate to the best of its ability. Thus, pursuant to section 776(b) of the Act, we have relied on facts available with an adverse inference in selecting the facts otherwise available, as discussed further below. Additionally, as AFA, we have assigned Sanfi's rate to its cross-owned company (*i.e.*, Sanfi Group), consistent with our finding regarding the cross-ownership between these companies.[32]

In light of the above, as AFA, we find that countervailable subsidies are being provided to Temgoo and Sanfi for all programs identified in the Initiation Checklist and *Preliminary Determination*, as appropriate.[33] Accordingly, as AFA, Commerce finds the programs identified in the Final AFA Memorandum to be countervailable – that is, the programs provide a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act, confer a benefit

[26] *See* PDM at 15-16.
[27] *Id.* at 16-17 and 60-61.
[28] *Id.* at 16-17.
[29] *See* section 782(i) of the Act.
[30] *See* PDM at 16-17.
[31] *See* Sanfi's Letter, "Ceramic Tile from the People's Republic of China – Notice of Intention Not to Participate in Verification," dated November 22, 2019.
[32] *See* PDM at 8-9.
[33] *See Ceramic Tile from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 84 FR 20101 (May 8, 2019), and accompanying Initiation Checklist (Initiation Checklist).

within the meaning of sections 771(5)(B) and (E) of the Act, and are specific within the meaning of section 771(5A) of the Act.[34]

C. Selection of AFA Rates

It is Commerce's practice in CVD proceedings to determine 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.[35] 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 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.[36] 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).[37] 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.[38]

In the present case, 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

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[34] *See* Initiation Checklist; and PDM at 24-60.

[35] *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) (*Aluminum Extrusions China Final*), and accompanying *Aluminum Extrusions China Final* IDM at "Application of Adverse Inferences: Non-Cooperative Companies.

[36] *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 China Final*), and accompanying *Shrimp China Final* IDM at 13; *see also Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (*Essar Steel*) (upholding "hierarchical methodology for selecting an AFA rate").

[37] 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) (*Steel Wire China Final*), 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."

[38] *See Shrimp China Final* IDM at 13-14.

Act for all programs included in the AFA rate for Temgoo and Sanfi. As explained above, Temgoo and Sanfi withdrew their participation in the investigation, and, as such, they have failed to cooperate to the best of their ability. As a result, we are applying AFA.

In the *Preliminary Determination*, Commerce relied on AFA regarding several findings, including the AFA finding concerning Temgoo.[39] Interested parties commented on the AFA rates preliminarily assigned to Temgoo for certain programs. For further discussion regarding our selection of program specific AFA rates, *see* Comment 3.

The standard income tax rate for corporations in China in effect during the POI was 25 percent.[40] Thus, the highest possible benefit for income tax programs which we have included in our AFA rate for both Temgoo and Sanfi is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the seven programs, combined, provide a 25 percent subsidy rate). Consistent with past practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs because such programs may provide a benefit in addition to a preferential tax rate.[41]

For all other programs not noted 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 final determination, we are able to match, based on program names, descriptions, and treatment of the benefit, to the same or similar programs from other CVD proceedings involving China.[42]

Consequently, based on the methodology described above, we determine the AFA net countervailable subsidy rate to be 358.81 percent *ad valorem* for Temgoo, Sanfi. and all other producers and exporters during the POI.[43]

D. 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."[44] It is Commerce's practice to consider information to be corroborated if it has probative value.[45] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and

[39] *See* PDM at 15-16.
[40] *Id.* at 21.
[41] *See, e.g., Aluminum Extrusions China Final* IDM at "Application of Adverse Inferences: Non-Cooperative Companies."
[42] *See* Final AFA Memorandum.
[43] Because Temgoo and Sanfi's total AFA rates are identical, we used their total AFA rate as the rate assigned to all-other producers and exporters.
[44] *See* SAA at 870.
[45] *See* SAA at 870.

relevance of the information to be used.[46] However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.[47] Furthermore, Commerce is not required to corroborate any countervailing subsidy rate applied in a separate segment of the same proceeding.[48] Commerce is also 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.[49]

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.[50]

Because Temgoo and Sanfi 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 subsidies provided by the Government of China (GOC), 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.

[46] *See*, *e.g.*, SAA at 869.
[47] *See* SAA at 869-870.
[48] *See* section 776(c)(2) of the Act.
[49] *See* section 776(d) of the Act.
[50] *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) (*Amorphous Silica Fabric China Final*), and accompanying IDM at 14 (citing *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996) (*Flowers Mexico Final 92-93 AR*)).

IX. DISCUSSION OF THE ISSUES

Comment 1: Application of AFA to Sanfi and Temgoo and Calculation of the All-Others Rate

Petitioner's Comments:

- For the final determination, application of total AFA to Sanfi and Temgoo is warranted because both failed to act to the best of their ability and provide Commerce with necessary information.[51]
- Specifically, Temgoo failed to respond to Commerce's requests for information, while Sanfi declined to participate in verification.[52]
- If all investigated rates are determined pursuant to facts available, Commerce's may select an all-others rate using "any reasonable method."[53]

GDLSK Parties' Rebuttal Comments:

- In using "any reasonable method to establish an all-others rate," for producers and/or exporters not individually examined, Commerce must take into account all facts (*e.g.*, zero, *de minimis*, or AFA rates) when determining what is reasonable.[54]
- Commerce never revisited the selection of respondents or apparently considered replacing Temgoo with a new mandatory respondent in spite of the fact that all Chinese recipients and several additional voluntary Chinese producers/exporters responded to the quantity and value questionnaire. As a consequence, there is no cooperating mandatory respondent with a calculated rate on which to establish the all-others rate.[55]
- *Albemarle Corp*. supports their claim that averaging the AFA rates of individually investigated respondents is unreasonable in this investigation as accuracy and fairness must be Commerce's primary objectives in determining the all-others rate when the rates assigned to all mandatory exporters and producers are zero, *de minimis*, or determined entirely on the basis of facts available.[56]
- Commerce is obligated to provide a reasoned explanation as to why it is reasonable to apply non-contemporaneous AFA rates that are otherwise not corroborated and are significantly higher than the rates assigned to cooperating respondents in the proceedings from which Commerce selected the rates.
- Citing to *Mueller Comercial*, GDLSK Parties argue that none of the policy considerations – namely deterring non-cooperation or thwarting duty evasion – are relevant in the context of

[51] *See* Petitioner's Case Brief at 3.
[52] *Id*. at 3.
[53] *Id*. at 4.
[54] *See* GDLSK Parties' Rebuttal Briefs at 4-6 (citing SAA at 4201 and 4251; and *Albemarle Corp. & Subsidiaries v. United States*, 821 F. 3d 1345, 1354, and 1356 (Fed. Cir. May 2, 2016) (*Albemarle Corp.*).
[55] *See* GDLSK Parties' Rebuttal Briefs at 3-4.
[56] *Id*. at 6 (citing *Albermarle Corp.*, 821 F. 3d at 1354 and 1356).

this investigation.[57] Neither Belite nor any of the non-investigated respondents have attempted to avoid the investigation or otherwise avoid duties.

- There is no record evidence that supports including any AFA component in the all-others rate as a reasonable method that could lead to a more accurate and fairer margin. [58]
- In this case, using the AFA rates of two non-cooperative mandatory respondents, Sanfi and Temgoo, to impute an all-others rate is unreasonable.[59]
- It is unreasonable to assume that the non-contemporaneous AFA rates drawn from other investigations and reviews are accurate or reflective of Belite's rate in this investigation, especially given that Belite was fully cooperative throughout this investigation and the companion antidumping investigation. Commerce must first find that Belite failed to cooperate by not acting to the best of its ability to comply with a request for information.[60]
- The AFA plug rates used for programs in the *Preliminary Determination* should not be used here.[61] Commerce should calculate an all-others rate, exclusive of any AFA rates, using Sanfi's reported information, as neutral facts available, for cooperative non-investigated respondents.[62]

Commerce's Position: As described above, we continue to find that it is appropriate to apply AFA to Temgoo. Moreover, and as described above, we agree with the petitioner that application of AFA to Sanfi is warranted for this final determination. Further, because the rates for individually examined producers/exporters are determined entirely under Section 776 of the Act, we agree with the petitioner that it is reasonable to use the rates established for Temgoo and Sanfi as the all-others rate.

As explained in the *Preliminary Determination*, on July 10, 2019, Temgoo notified Commerce that it would not be responding to section III of Commerce's June 17, 2019 Initial CVD questionnaire.[63] Therefore, we found that Temgoo significantly impeded this proceeding, within the meaning of section 776(a)(2)(A)-(C) of the Act, by withholding necessary information and failing provide such information by the established deadlines.[64] For this final determination, we continue to find that Temgoo withheld and failed to provide such information in the form and manner requested, and significantly impeded this proceeding pursuant to section 776(a)(2)(A)-(C) of the Act. Additionally, by failing to cooperate to the best of its ability, we continue to find that an adverse inference is warranted, pursuant to section 776(b)(1) of the Act.

[57] *Id*. at 9 (citing *Mueller Comercial de Mexico, S De R.L. de V.V. v. United States*, 753 F. 3d 1227, 1235 (Fed. Cir. May 29, 2014) (*Mueller Comercial*).
[58] *Id*. at 9 (citing *Changzhou Wujin Fine Chemical Factory Co., Ltd. v. United States*, 701 F. 3d 1367 (CIT 2014) (*Changzhou Wujin*).
[59] *Id*. at 6-10.
[60] *Id*. at 7-8.
[61] *Id*. at 6-10. (citing SAA at 4201; *Albemarle Corp.*, 821 F. 3d at 1354 and 1356; *The Navigator Company, S.A. v. United States*, Consol. Court No. 18-00192, Slip Op. 19-146 at 22-23 (CIT 2019); *Guizhou Tyre Co., Ltd. v. United States*, Consol. Court No. 18-00100, Slip Op. 19-155 at 9 (CIT 2019); *Mueller Comercial*, 753 F. 3d at 1235; and *Changzhou Wujin*, 701 F. 3d at 1367.
[62] *Id*. at 10-12 (citing SAA at 4199).
[63] *See* PDM at 15.
[64] *Id*. at 15-16.

Regarding Sanfi, as indicated above, on November 22, 2019, we received a letter notifying us that Sanfi did not intend to participate in verification because it believed its verification would be futile. As such, Sanfi failed to cooperate to the best of its ability in this proceeding. Specifically, Sanfi deprived Commerce of the opportunity to verify the accuracy of all information provided on the record of this proceeding in its questionnaire and supplemental questionnaire responses. Prior to Sanfi's non-cooperation, we intended to rely on Sanfi's responses and verification of its responses to calculate Sanfi's subsidy rate. By failing to participate in verification, we find that Sanfi's response cannot be verified and therefore are not reliable. Accordingly, we find that Sanfi did not cooperate to the best of its ability. Based on the above, we find that selection of facts available using an adverse inference is warranted, pursuant to section 776(b)(1) of the Act. However, as noted below, upon further review, we have revised certain program rates following the *Preliminary Determination*. The revised rates are noted *infra* in the Subsidy Rate Chart. As a result, the revised AFA rate is 358.81 percent *ad valorem*.

With respect to the all-others rate, Commerce finds that applying the weighted average of the total AFA rates to non-cooperating mandatory respondents as the all-others rate in this investigation is appropriate. Section 705(c)(5)(A) of the Act mandates that Commerce determine an estimated all-others rate for companies not individually examined. Section 705(c)(5)(A)(i) states that the all-others rate shall be an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero or *de minimis* rates determined under section 776 of the Act. However, section 705(c)(5)(A)(ii) of the Act states that if the countervailable subsidy rates for all exporters and producers individually investigated are zero or *de minimis* rates, or are determined entirely under section 776 of the Act, Commerce may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually investigated. Moreover, the SAA also explains that a reasonable method to establish an all-others rate when all countervailable subsidy rates established for the mandatory respondents are zero, *de minimis*, or determined entirely under section 776 of the Act, is averaging countervailable subsidy rates that are zero, *de minimis*, or determined entirely under section 776 of the Act.[65]

In this investigation, the rates for the individually investigated respondents are determined entirely under section 776 of the Act. Specifically, both selected mandatory respondents chose to withdraw from the investigation.[66] Furthermore, because both respondents withdrew, there is no verified information on the record that can be used to determine the all-others rate. Thus, we find that arguments urging Commerce to use unverified information as the final all-others rate to be unpersuasive. Section 782(i)(1) of the Act explicitly requires that Commerce verify all information relied upon in making its final determinations in an investigation. As such, we find GDLSK Parties' suggestion to rely on Sanfi's unverified data to establish a final all-others rate unreasonable and inconsistent with U.S. law and practice.[67] Particularly, as noted above and

[65] *See* SAA at 873.
[66] *See* PDM at 15-16; *see also* Sanfi's Withdrawal Letter.
[67] *See e.g., Countervailing Duty Investigation of Stainless Flanges from the People's Republic of China: Preliminary Affirmative Determination*, 83 FR 3124 (January 23, 2018) (*Stainless Steel Flanges China Prelim*), and

contrary to GDLSK Parties' claims, when all rates for individually investigated respondents are based entirely on section 776 of the Act, we have consistently used the weighted average of the countervailable subsidy rates of the non-cooperating respondents to establish the all-others rate.[68] Thus, consistent with our practice, we find it reasonable to rely on a weighted average of the total AFA rates computed for Temgoo and Sanfi as the all-others rate for this final determination.

We disagree with GDLSK Parties that *Albemarle Corp.* prevents us from using Temgoo's and Sanfi's rates in determining an all-others rate.[69] The *Albemarle Corp*. decision involved the determination of separate rates for non-selected respondents in an antidumping duty investigation involving a non-market economy (NME) country. In that case, Commerce decided to assign rates calculated from a previous administrative review as the separate rate for non-mandatory respondents (*i.e.*, companies eligible for a separate rate), rather than relying on the *de minimis* rates calculated in the ongoing review. The issue before the Court was whether Commerce properly determined that the expected method of calculating the separate rates (*i.e.*, averaging the *de minimis* rates from the current review) was unreasonable, and, if so, whether it was reasonable to use previously calculated rates to establish separate rates.

Albemarle Corp. is distinct from the present proceeding in many respects. In the second administrative review of the proceeding underlying *Albemarle Corp*., Commerce determined that the separate rate companies were reasonably represented by the individually examined respondents, and Commerce relied on those rates to calculate the separate rates. In the third review, Commerce deviated from the expected methodology, with no explanation as to why the separate rate companies were no longer represented by the individually examined respondents. The Court found that Commerce's decision was arbitrary and unsupported by substantial evidence. In contrast, in the present case there are no other calculated rates available that are based upon companies that were individually investigated. Indeed, the only rates available in this case are the AFA rates Commerce determined for the non-cooperating respondents.

Albemarle Corp. is also distinct from the present proceeding with respect to the information on the record for the affected interested parties. In *Albemarle Corp.*, the Court found that Commerce had at least partial information regarding interested party Huahui.[70] Huahui had requested voluntary treatment, and Commerce had contemporaneous normal value and additional

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

[68] *Id*.; *see also GDLSK Parties' Rebuttal Briefs at 8-9; Certain Steel Wheels 12 to 16.5 inches in Diameter from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances*, 84 FR 32723 (July 9, 2019) (*Steel Wheels China Final*); and accompanying Issues and Decision Memorandum; and *Grain-Oriented Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 59221 (October 1, 2014) (*GOES China Final*), and accompanying Issues and Decision Memorandum.

[69] *See Albemarle Corp.*, 821 F. 3d at 1354-1356.

[70] *See Albermarle Corp.*, 821 F. 3d at 1359.

quantity and value data, which could have served as a basis for Commerce to make approximate comparisons of Huahui's export price.[71] Having declined to collect additional information, the Court found that Commerce was required to follow the "expected method" of using the *de minimis* margins of the individually examined respondents from the contemporaneous period. In contrast, no parties to this proceeding requested voluntary treatment and none submitted voluntary questionnaire responses, thus, Commerce does not have partial information regarding Belite or other interested parties.[72] Other than Sanfi's unverified questionnaire responses, there is no information on the record concerning subsidy use by any party.

GDLSK Parties argue that *Albemarle Corp*. supports their claim that averaging the AFA rates of individually investigated respondents is unreasonable in this investigation as accuracy and fairness must be Commerce's primary objectives in determining the all-others rate when the rates assigned to all mandatory exporters and producers are zero, *de minimis*, or determined entirely on the basis of facts available. However, in the present proceeding, there is no information on the record to suggest that reliance on Temgoo and Sanfi's rate is either inaccurate or unfair to Belite and other interested parties. Neither Belite nor other interested parties submitted a questionnaire response accompanied by a request for voluntary treatment. Further, because of Temgoo and Sanfi's failure to cooperate, Commerce does not have verified information about the use of countervailable subsidies in the ceramic tile industry. However, Commerce does have reasonably supported allegations of countervailable subsidy use by the Chinese ceramic tile industry from the petitioner.[73] Commerce is left to draw conclusions concerning subsidy use on the basis of limited record information, and there is no basis to find the record information is either inaccurate or unfair with respect to Belite and other interested parties.

Citing *Mueller Comercial*, GDLSK Parties argue that none of the policy considerations concerning the application of AFA – deterring non-cooperation or thwarting duty evasion - are relevant in this investigation with respect to Belite or the non-investigated respondents, nor could they have asserted control over Sanfi and Temgoo. However, this argument ignores the fact that there is no record information that calls into question the accuracy of Commerce's reliance on AFA to calculate the subsidy rates for the respondents, or the use of these rates as a basis for the all-others rate. The Court has stated that it finds no support in caselaw or the statute's plain text for the proposition that deterrence, rather than fairness or accuracy, is the overriding purpose of the antidumping statute when calculating a rate for a cooperating party.[74] The rates that Commerce used for Sanfi and Temgoo's subsidy rates were rates that 1) Commerce calculated in other countervailing duty proceedings for other Chinese companies, 2) did not include any component of AFA, and 3) were calculated for subsidy programs that could have been used by companies in the ceramic tile industry. Due to Sanfi and Temgoo's non-cooperation, this is the most accurate information on the record concerning the subsidization for Chinese ceramic tile producers.

[71] *Id*.
[72] *Id.*
[73] *See* the Petition.
[74] *See Mueller Comercial*, 753 F. 3d 1235.

In its brief, Belite faults Commerce for not selecting additional respondents when Temgoo made clear its intention of non-cooperation.[75] However, this argument overlooks the statute's guidance concerning respondent selection and the calculation of the all-others rate. If Commerce determines that it is not practicable to determine individual countervailable subsidy rates for all exporters or producers of the subject merchandise, it may determine individual rates by limiting its examination to exporters or producers accounting for the largest volume of the subject merchandise from the exporting country that Commerce determines can be reasonably examined.[76] The statute instructs Commerce to use these rates to determine the all-others rate under section 705(c)(5).[77]

As to Belite's claim that Commerce should have selected other respondents once the respondents selected failed to participate, Belite fails to come to terms with the statutory timing of CVD investigations in general, and the time allotted for Commerce to make its preliminary determination and verify the information and data submitted. In this case, Commerce selected Temgoo and Sanfi on June 17, 2019 and issued questionnaires to these companies on that same day. Both companies submitted responses to the affiliated portions of the Initial Questionnaire. Temgoo withdrew from the proceeding on July 10, 2019. The fully extended deadline for the *Preliminary Determination* was September 6, 2019. The SAA provides respondents with at least 37 days to respond to Commerce's Initial Questionnaire.[78] As such, there simply would have been insufficient time for Commerce to select another respondent, provide a minimum of 37 days to respond to the Initial Questionnaire, prepare and provide time to respond to supplemental questions, and conduct a full analysis of such responses prior to the *Preliminary Determination*.

Finally, GDLSK Parties cite to *Changzhou Wujin* as evidence that the statute contemplates other approaches when non-selected respondents have been cooperative. We note that although *Changzhou Wujin* states that the statue contemplates the possibility of other valid approaches to selecting "any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers not individually investigated," this relates to whether the method of selecting the all-others rate is reasonable.[79] As noted above, here we find assigning the AFA rates of the mandatory respondents as the all-others rate to be reasonable. For the reasons discussed, we find that our approach is consistent with U.S. law and practice where AFA rates for mandatory respondents are used to establish the all-others rate.

[75] *See* GDLSK Parties' Rebuttal Briefs at 3-4.
[76] 777(e)(2)(A)(ii) of the Act.
[77] Belite argues that Sanfi's and Temgoo's AFA rates should not apply to it because it cannot exercise control over these non-cooperating respondents. However, the statute does not contemplate or consider elements of control when it instructs Commerce to calculate the all-others rate on the basis of 777(e)(2)(A)(ii) of the Act. Thus, Belite's argument is misplaced. *See* 777(e) of the Act.
[78] *See* SAA at 866; *see also* 19 CFR 351.702 (Annex I to Part 351)
[79] *See Changzhou* Wujin, 701 F. 3d at1378-1379.

Comment 2: Whether Commerce's Calculation of the AFA Rate in Unreasonable

Petitioner's Comments:

- As indicated above, the petitioner finds that application of AFA to the mandatory respondents is warranted. Furthermore, the petitioners argue that Commerce may use these AFA rates in calculating the all-others rate in this investigation.[80]

GDLSK Parties' Rebuttal Comments:

- The application of a 222.24 percent AFA rate is unreasonable because Commerce did not provide any justification for selecting the highest rates.[81]

The petitioner and GDLSK Parties also commented on program-specific rates Commerce should use as the AFA rates for the final determination. We have addressed those comments, below.

Commerce's Position: In the *Preliminary Determination*, we followed our AFA hierarchy to determine the appropriate rate to assign to each program used to determine the AFA rate, which included certain "self-reported" programs from Sanfi.[82]

We disagree that the AFA rate applied in this case is punitive. The subsidy rate for each program is based on actual subsidies provided by the GOC. There is no evidence that these subsidies were not available to the ceramic tile industry in China and further, there is no evidence that the rate for any subsidy program is based on an aberrational transaction or is otherwise unsupported by evidence.[83]

POSCO rejected the contention that Commerce must corroborate the aggregate subsidy rate in addition to corroborating individual program-specific rates.[84] Additionally, we note that the AFA rates calculated in the *Preliminary Determination*, and for this final determination, both fall within the range of rates total AFA rates calculated by Commerce in prior China CVD proceedings.[85] For these reasons, we find GDLSK Parties' argument regarding the unlawful

[80] *See* Petitioner's Case Brief at 1-4.
[81] *See* GDLSK Parties' Rebuttal Brief at 12-15 (citing SAA at 4199; *F.lli De Cecco Di Filippo Fara S. Martino S.p.A v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. June 22, 2011) (*De Cecco*); *Tai Shan City Kam Kiu Aluminum Extrusion Co. Ltd., v. United States*, 58 F. Supp. 3d 1384, 1391 (CIT 2018) (*Tai Shan*); *Hyundai Steel Co. v. United States*, 319 F. Supp. 3d 1327 (CIT 2018); *POSCO et. al. v. United States*, 296 F. Supp. 3d 1320, 1349 (CIT 2018) (*POSCO*)).
[82] *See* PDM at 23; Memorandum, "Adverse Facts Available Calculation Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China," dated September 6, 2019; and Memorandum, "Preliminary Determination Calculation Memorandum for Sanfi Imp and Exp Co., Ltd. And Guangdong Sanfi Ceramics Group Co., Ltd.," dated September 6, 2019.
[83] *See* GDLSK Parties' Rebuttal Briefs at 13-14.
[84] *See POSCO*, 296 F. Supp. 3d at 1352 n.47.
[85] *See e.g.*, *Certain Steel Wheels from the People's Republic of China: Final affirmative Countervailing Duty Determination*, 84 FR 11744 (March 28, 2019) (*Steel Wheels II China Final*), and accompanying Issues and Decision Memorandum (IDM); *see also Countervailing Duty Investigation of certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical*

nature of the total AFA rate both unpersuasive and factually inconsistent with Commerce's prior determinations.

We also note that on remand, in *POSCO*, Commerce justified its selection of the highest rates by explaining that within each prong of the AFA hierarchy, Commerce strikes a balance between inducement, industry relevancy, and program relevancy.[86] Further, Commerce explained that section 776(d)(2) of the Act constitutes an exception to the selection of AFA under section 776(d)(1) of the Act, such that after an "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,"[87] Commerce may decide that given the facts on the record, the highest rate may or may not be appropriate.[88] Commerce's explanation was upheld by the Court of International Trade, which stated that, "Commerce explained, with citations to supporting evidence, why this case did not merit deviation from the highest calculated rate selected pursuant to Commerce's hierarchical methodology."[89] In this instant investigation, no mandatory respondent provided unique or unusual facts or justifications that would lead Commerce to deviate from selecting the highest calculated rate pursuant to our hierarchical methodology. In the *Preliminary Determination* and here, we have clearly evaluated the situations that led us to apply AFA, namely that Temgoo and Sanfi withdrew their participation from this investigation. As such, we have continued to utilize our AFA hierarchy to determine the AFA rate applied to both non-cooperating mandatory respondents.

Comment 3: Selection of AFA Rates for Subsidy Programs

Petitioner's Comments:

- Because Sanfi refused to participate in the investigation and Commerce can no longer use the highest calculated rate above zero for the identical program, Commerce should rely on either a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding from China and apply the highest calculated above-*de minimi*s rate for the similar/comparable program or highest calculated above-de minimis rate from any non-company specific program in a CVD case involving China that the company's industry could use.[90]

Circumstances Determination, in Part, 82 FR 53473 (November 16, 2017) (*Hardwood Plywood China Final*); *Aluminum Extrusions China Final*, 76 FR 18521, and accompanying IDM at section VI; and *Certain Steel Nails from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 80 FR 28962 (May 20, 2015) (*Nails Vietnam Final*).

[86] *See POSCO II*, 335 F. Supp. 3d at 1286.

[87] *See* section 776(d)(2) of the Act.

[88] *See POSCO II*, 335 F. Supp. 3d at 1286.

[89] *Id*. at 1287.

[90] *See* Petitioner's Case Brief at 4.

GDLSK Parties' Rebuttal Comments:

- Certain program-specific adjustments for loans, indirect taxes, land for less than adequate remuneration (LTAR), and self-reported grants should be made to the AFA rate to determine a final AFA rate that is consistent with Commerce's practice and is reasonable.[91]

Commerce's Position: For the reasons described above, we are revising the total AFA rate for this final determination. As noted, because Sanfi withdrew participation in this investigation after the *Preliminary Determination*, Commerce was unable to verify Sanfi's responses. Therefore, we have not relied on the preliminary rates calculated for Sanfi in determining the total AFA rates for this final determination. Interested parties also commented on program-specific rates Commerce should use as the AFA rates for the final determination. In light of these, we re-examined the rates pursuant to the hierarchy under section 776(d) of the Act, as outlined in the *Preliminary Determination* and in the aforementioned section titled "Selection of AFA Rates," to determine the appropriate final rate to assign to each program for which we had preliminarily calculated a rate for Sanfi. Accordingly, we are revising the AFA rates for certain programs (*i.e.*, Provision of Electricity for LTAR; Provision of Water for LTAR; Provision of Clay for LTAR; Provision of Feldspar for LTAR; Provision of Sand for LTAR; Provision of Land for LTAR to Encouraged Industries; Provision of Land for LTAR to Enterprises in Certain Industrial/Development zones – Guandong Qingyuan High-Tech Industrial Development Zone and Foshan High-Tech Industrial Development Zone; and Sanfi's self-reported grants).

Regarding the comments raised by interested parties, we have addressed them as follows.

First, GDLSK Parties claim that Commerce improperly assigned individual AFA rates to all of the alleged lending and land for LTAR programs.[92] Specifically, GDLSK Parties claim if Commerce applies the 10.54 percent AFA rate used for lending programs to each of the five lending programs, the resulting rate would be absurd and would never occur in reality.[93] They argue that respondents report all loans received, regardless of the program under which they were received, that all loans are either provided together or separated by export and domestic loans, and that Commerce calculates one rate for loans found to be domestic subsidies, and another rate for loans found to be export subsidies.[94] Therefore, to determine the appropriate AFA rate for the lending programs, interested parties contend that Commerce should group together all domestic subsidy loans and all export subsidy loans, and assign an AFA rate to each of the two groups of lending programs.[95] In addition, they maintain that the Export Credit

[91] *See* GDLSK Parties' Rebuttal Briefs at 15-21.
[92] *Id*. at 16-17 and 19-20.
[93] *Id*. at 16. We note that interested parties' argument is factually incorrect. In the *Preliminary Determination*, we note that there are six lending programs and we applied one collective AFA rate of 10.54 percent to two programs (*i.e.*, "Policy Loans to the Ceramic Tile Industry" and "Regional Policy Loans – Guangdong Province"). See PDM at 22. Further, we applied the AFA rate of 4.25 percent to the program titled "Export Seller's Credit and Guarantees." *See* Memorandum, "Adverse Facts Available Calculation Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China," dated concurrently with PDM (Prelim AFA Memorandum).
[94] *See* GDLSK Parties' Rebuttal Briefs at 17.
[95] *Id.*

Insurance Subsidies is not a lending program, but rather an export insurance program, such that the most similar program is a grant program.[96] Similarly, GDLSK Parties alleges that respondents report all land purchases over the average useful life (AUL) period, regardless of the program under which they fall, and that Commerce does not calculate specific land program rates, but instead calculates a single rate for land for LTAR.[97] They assert that Commerce should therefore combine the two land programs for LTAR and assign a single AFA rate to land for LTAR, consistent with how land for LTAR is normally calculated.[98]

As an initial matter, GDLSK Parties misinterpret the questions in Commerce's Initial Questionnaire, and our practice with regard to the reporting of loans and land for LTAR programs. In the Initial Questionnaire, for each lending program, respondents were asked either to report the loans associated with the program in question in a separate worksheet (*i.e.*, Policy Loans to the Ceramic Tile Industry, Regional Policy Loans – Guangdong Province, and Preferential Loans Provided by the Export-Import Bank "Going-Out" for Outbound Investment).[99] Similarly, for land for LTAR programs, respondents were required to indicate under which program(s) their reported land purchases fall.[100] Commerce calculates a program rate for each program used during the POI and/or over the AUL period.[101] Commerce's practice is therefore not to calculate one domestic lending rate and one export lending rate, or one land for LTAR rate, but to calculate a program-specific rate for each program used by a respondent.

In addition, we find that the cases referenced by GDLSK Parties do not support their assertions. First, in *Cast Iron Soil Pipe Fittings China Final*, while we did apply one AFA rate to six loan programs (including both domestic and export subsidy loans), no rationale was provided.[102] It is not at all clear from that proceeding that Commerce intended to apply one rate to domestic lending programs and one rate to export lending programs. Based on our analysis in *Large Diameter Welded Pipe China Final*, we applied one rate to Government Policy Lending and Preferential Loans to State-Owned Enterprises (SOEs) because we found that such a rate would apply to the same loans provided by state-owned commercial banks.[103] For the three other

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[96] *Id.*
[97] *Id.* at 19.
[98] *Id.* at 19-20.
[99] *See* Commerce's Letter, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: Countervailing Duty Questionnaire," dated June 17, 2019 (Initial Questionnaire) at Section III at 8-9.
[100] *Id*. at Section III at 15-16 and 18-19.
[101] *See, e.g., Steel Wheels II China Final*, and accompanying IDM at Appendix I (applying separate AFA rates to each of four land programs); and *Hardwood Plywood China Final*, and accompanying IDM at 11 (where we used a calculated rate from a cooperating respondent for one land program, and an AFA rate for another land program that was not used by the cooperating respondent).
[102] *See Cast Iron Soil Pipe Fittings from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 60178 (December 19, 2017) (*Pipe Fittings China Prelim*), and accompanying PDM at 8 and 43 (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) (*Cast Iron Soil Pipe Fittings China Final*), and accompanying IDM at Appendix).
[103] *See Large Diameter Welded Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination*, 83 FR 30695 (June 29, 2018) (*Large Diameter Welded Pipe China Prelim*), and accompanying PDM at 9, footnote 42 (unchanged in *Countervailing Duty Investigation of Large Diameter Welded Pipe from the People's Republic of China: Final Affirmative Determination*, 83 FR 56804,

lending programs alleged in *Large Diameter Welded Pipe from China*, we applied separate AFA rates to each program.[104] Commerce has routinely applied separate AFA rates to each loan program investigated, except as parties note, when the programs at issue are Government Policy Lending and Preferential Loans to SOEs. When dealing with these two programs only do we routinely combine the programs and assign a single AFA rate to the combined programs because we have found that the two allegations in other proceedings encompass the same loans provided by state-owned commercial banks.[105] More importantly, as both respondents have withdrawn from the investigation, there is no verifiable record evidence indicating that the non-cooperating respondents could not have conceivably benefited from each alleged land program, as well as each alleged loan program, individually. For these same reasons, we continue to treat the Export Credit Insurance Subsidy as a loan, consistent with our practice.[106] Thus, as Commerce has done in prior proceedings, in the absence of verifiable record evidence about the use of these programs by the respondents, and to the extent to which the respondents may have benefited from them, we are continuing to assign individual rates to all alleged land and loan programs.[107]

Regarding the program-specific rate we are assigning to each of the two land for LTAR programs, following our AFA hierarchy, the highest calculated rate for the same program in this proceeding (*i.e.*, Provision of Land for LTAR to Encouraged Industries) is 10.68 percent for Provision of Land Use Rights to Favored Industries for LTAR from *Fabricated Structural Steel China Final*.[108] In addition, consistent with the *Preliminary Determination*, the highest calculated rate for a similar program in this proceeding (*i.e.*, Provision of Land for LTAR to Enterprises in Certain Industrial/Development Zones – Guangdong Qingyuan High-Tech Industrial Development Zone and Foshan High-Tech Industrial Development Zone) is 5.24 percent from *Hardwood Plywood China Final*.[109] We have therefore assigned these aforementioned rates to these respective land for LTAR programs, as appropriate.[110]

56804-05 (November 14, 2018) (*Large Diameter Welded Pipe China Final*).

[104] *Id.*

[105] *See Calcium Hypochlorite from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 74064 (December 15, 2014) (*Calcium Hypochlorite China Final*), and accompanying IDM at 3; *see also Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Affirmative Determination and Final Determination of Critical Circumstances, in Part*, 82 FR 3282 (January 11, 2017) (*Certain Biaxial Geogrid China Final*), and accompanying IDM at Attachment; and *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) (*Stainless Steel Strip China Final*), and accompanying IDM at Appendix.

[106] *See, e.g., Steel Wheels II China Final* IDM at Appendix I*; Stainless Steel Strip China* IDM at Appendix.

[107] *See, e.g., Stainless Steel Strip China* IDM at Attachment; *Amorphous Silica Fabric China* IDM at Appendix I; *Certain Biaxial Geogrid* IDM *China Final* at Attachment.

[108] *Certain Fabricated Structural Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 5384 (January 30, 2020) (*Fabricated Structural Steel China Final*), and accompanying IDM at 15. Notwithstanding the different products, we note that the basis for financial contribution, benefit, and specificity is identical for both programs in *Fabricated Structural Steel China Final* and this proceeding. *See* PDM at 47-50.

[109] *See Hardwood Plywood China Final*, and accompanying IDM at 11; and Prelim AFA Memorandum.

[110] *See* Final AFA Memorandum.

Further, consistent with past practice, for the final determination, we have continued to apply separate AFA rates for each of the indirect income tax exemption and reduction programs.[111] Specifically, consistent with the *Preliminary Determination*, we have applied an AFA rate of 9.71 percent, a rate we calculated for a similar program in a prior China CVD proceeding, to four of the indirect income tax exemption and reduction programs.[112] Also, we have applied an AFA rate of 0.51 percent, a rate we calculated for the same program in a prior China CVD proceeding, to the Value-Added Tax (VAT) Refunds for Foreign Invested Enterprises (FIEs) on Purchase of Chinese-Made Equipment program.[113] GDLSK Parties argue that the AFA rate of 9.71 percent is based on AFA because the GOC did not participate, and thus the rate is not probative.[114] We disagree. As stated by GDLSK Parties, the 9.71 percent rate is based partially on AFA; however, AFA was only applied to find the program countervailable (*i.e.*, provides a financial contribution and is specific).[115] Commerce calculated the 9.71 percent rate using actual data provided by a respondent.[116] The rate is, in fact, probative of rates above *de minimis* for a similar program, and in accordance with Commerce's AFA hierarchy.[117]

Moreover, GDLSK Parties argue that as two of the programs (*i.e.*, VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund, and VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries) are non-recurring subsidies covering fixed assets and imported equipment, respectively, any AFA rate for these programs should be based on an allocated or non-recurring subsidy benefit methodology that is calculated over the AUL period.[118] Moreover, Commerce cannot use the *Preliminary* D*etermination* AFA rate of 9.71 percent for these two programs because it is not designed to address a non-recurring subsidy program. Therefore, Commerce should either use the 0.51 percent calculated rate that it used for VAT Refunds for FIEs on Purchases of Chinese-Made Equipment or find the highest rate calculated for these programs pursuant to its AFA hierarchy.[119]

We disagree. In the *Preliminary Determination*, we identified these programs as indirect tax programs and assigned calculated rates as AFA from either the identical or a similar program (based on the benefit type).[120] For VAT Refunds for FIEs on Purchases of Chinese-Made

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[111] *Id.*
[112] *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) (*OTR Tires China 07-08 AR Prelim*) (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) (*OTR Tires China 07-08 AR Final*)).
[113] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010) (*MC Bricks China Final*), and accompanying IDM at 10.
[114] *See* GDLSK Parties' Rebuttal Briefs at 18.
[115] *See OTR Tires China 07-08 AR Prelim* at 75 FR 64275.
[116] *Id.*
[117] *See, e.g., 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) (*Corrosion Resistant Steel Products China Final*), and accompanying IDM at Appendix; and *Hardwood Plywood China Final*, 82 FR 53473 (November 16, 2017), and accompanying IDM at 12.
[118] *See* GDLSK Parties' Rebuttal Briefs at 18.
[119] *Id.* at 18-19.
[120] *See* PDM at 66.

Equipment, we applied the highest non-*de minimis* calculated rate of 0.51 percent from the identical program as AFA.[121] For the VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund, and VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries, we applied a calculated rate of 9.71 percent from a similar program (based on treatment of the benefit) as AFA in the *Preliminary Determination*.[122] This 9.71 percent rate was calculated for the VAT and Import Duty Exemptions on Imported Material.[123]

For the final determination, for the VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund and FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries programs, we continue to apply a calculated rate of 9.71 percent from a similar program as AFA in *OTR Tires 2007-2008 AR China Prelim*.[124] As for the VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund, we initiated this program, partly based on the benefit for the amount of any import tariff exemptions.[125] Also, in the *Preliminary Determination*, we determined that the benefit for VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries is the amount of the VAT and tariffs saved.[126] Thus, the type of benefit for the two aforementioned programs in this proceeding is the same as the one from VAT and Import Duty Exemptions on Imported Material in *OTR Tires 2007-2008 AR from China* as they are both indirect programs and related to VAT and duty amounts that would otherwise have been paid. Thus, our selection of the AFA rates for this program was appropriate, pursuant to our AFA hierarchy.

Further, in applying our AFA hierarchy, Commerce does not consider the allocation of a benefit to a particular time period (*i.e.*, whether a subsidy is recurring or non-recurring) to be relevant in determining whether programs are similar. Rather, Commerce considers the existence of a benefit by its type, as opposed to the manner in which the benefit is allocated. Thus, pursuant to section 776(d) of the Act and our AFA hierarchy, when selecting an AFA rate to determine the existence of a benefit, when there is no identical program in the same investigation, or in the same country, then we will use the highest rate for a *similar program based on the benefit type* (emphasis added). This is the approach followed by Commerce for the two aforementioned programs in this proceeding.[127] Neither the statute, Commerce's regulations, nor the AFA hierarchy distinguishes the allocation of a benefit under the circumstances of AFA. As such, we find that the allocation of the benefit of a subsidy over time is not relevant to whether the

[121] *See* PDM at 46.
[122] *Id*. at 45; and Prelim AFA Memorandum.
[123] *See OTR Tires China 07-08 AR Prelim* at 75 FR 64275 (unchanged in *OTR Tires 2007-2008 AR China Final*).
[124] *Id.*
[125] *See* Initiation Checklist at 25-26.
[126] *See* PDM at 44.
[127] *See, e.g.*, *Non-Oriented Electrical Steel from Taiwan*, 79 FR 16290 (March 25, 2014) and accompanying Issues and Decision Memorandum at 43; *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 Issues and Decision Memorandum at 15 ("under our CVD AFA methodology, we strive to assign AFA rates that are the same in terms of type of benefit (*e.g.*, grant to grant, loan to loan, indirect tax to indirect tax) because these rates are relevant to the respondent.").

program that may potentially serve as a basis for an AFA rate is similar to the subsidy program at issue in a proceeding.

Lastly, GDLSK Parties argue that because the 0.62 percent AFA rate assigned to each of Sanfi's self-reported grants based on *Isos 2014 AR* was an accumulated single rate from multiple years and Commerce did not explain how this rate can conceivably represent the most similar program for the self-reported subsidies in this investigation, the AFA rate should be based on a single rate established for a POI benefit and should be calculated using the proper AUL when discounted.[128] We disagree. Following the AFA hierarchy, we find that the highest applicable AFA rate for a similar program based on the benefit type since the *Preliminary Determination* is the 1.27 percent AFA rate calculated for a grant from *HPSC 2017 AR China Final.*[129] Thus, the argument raised by GDLSK Parties for the particular circumstance involving the calculated rate from *Isos 2014 AR from China* is moot. More importantly, in applying our AFA hierarchy, Commerce does not consider whether subsidies were received in multiple years during the AUL period or whether an AFA rate needs to be modified based on the difference of the AUL periods covering each proceeding to be relevant in determining whether programs are similar. Rather, Commerce considers the existence of a benefit calculated for a specific time period (*i.e.*, period of investigation or review), as opposed to the manner in which the benefit is allocated over a specific AUL period. Thus, pursuant to section 776(d) of the Act and our AFA hierarchy, when selecting an AFA rate to determine the existence of a benefit, when there is no identical program in the same investigation, or in the same country, then we will use the highest rate for a *similar program based on the benefit type* (emphasis added). Neither the statute nor the AFA hierarchy distinguishes such factors raised by GDLSK Parties when applying AFA rates. As such, we find that the allocation of the benefit of a subsidy over a specific AUL period is not relevant to whether the program that may potentially serve as a basis for an AFA rate is similar to the subsidy program at issue in a proceeding.

Comment 4: Preliminary Scope Determination

Petitioner's Comments:

- As certain tile products for which interested parties requested scope exclusions are all expressly covered by or excluded from the scope description and the petitioner clearly intended to cover the products, which were requested to be excluded, in the scope of the investigation, Commerce should not make any amendments to the scope in the final determination.[130]

[128] *See* GDLSK Parties' Rebuttal Briefs at 20-21; and *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review;* 2014, 82 FR 27466 (June 15, 2017) (*Isos 2014 AR China Final*)) and accompanying IDM at 7.

[129] *See High Pressure Steel Cylinders from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017*, 84 FR 71373 (December 27, 2019) (*HPSC China 2017 AR Final*), and accompanying IDM at 6 and Comment 6 ("Production Base Construction for Gas Storage and Transportation Equipment" grant program).

[130] *See* Petitioner's Case Brief at 4-5.

GDLSK Parties' Rebuttal Comments:

- No parties submitted comments regarding this issue in the rebuttal brief.

Commerce's Position: We agree with the petitioner. As detailed in the Final Scope Memorandum, we have made no changes to the scope of the investigation. For further discussion, *see* Commerce's Final Scope Decision Memorandum.[131]

X. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Commerce 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.

☒	☐
Agree	Disagree

3/30/2020

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[131] *See* Final Scope Decision Memorandum.