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Investigation

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June 8, 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: Decision Memorandum for the Preliminary Determination of the
Countervailing Duty Investigation of Wood Mouldings and
Millwork Products from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of wood mouldings and millwork products (millwork products) from the People's Republic of China (China), as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act). Pursuant to section 701(f) of the Act, Commerce is applying the countervailing duty (CVD) law to countries designated as non-market economies under section 771(18) of the Act, such as China.

II. BACKGROUND

A. Initiation and Case History

On January 8, 2020, Commerce received a petition from the Coalition of American Millwork Producers (the petitioner) seeking the imposition of countervailing duties on millwork products from China.¹ We describe the supplements to the Petition in the CVD Initiation Checklist.² Pursuant to section 702(b)(4)(A)(ii) of the Act, we invited representatives of the Government of China (GOC) for consultations with respect to the Petition.³ The GOC did not request

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties: Wood Mouldings and Millwork Products from Brazil and the People's Republic of China," dated January 8, 2020 (Petition).

² See Memorandum, "Wood Mouldings and Millwork Products from the People's Republic of China: Countervailing Duty Initiation Checklist," dated January 28, 2020 (Initiation Checklist).

³ See Commerce's Letter, "Countervailing Duty Petition on Wood Mouldings and Millwork Products from the People's Republic of China: Invitation for Consultations," dated January 8, 2020.



consultations. On January 28, 2020, we initiated a CVD investigation on millwork products from China.⁴

In the *Initiation Notice*, we stated that in the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intended to select mandatory respondents based on U.S. Customs and Border Protection (CBP) entry data from the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁵ On January 17, 2020, we released the CBP data under Administrative Protective Order (APO) and indicated that interested parties wishing to comment on the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of this CVD investigation.⁶ On January 31, 2020 and February 4, 2020, we received CBP data comments on behalf of a group of Chinese companies.⁷ On February 10, 2020, we received comments from Fujian Yinfeng Imp & Exp Trading Co., Ltd (Yinfeng).⁸ On February 11, 2020, Commerce received a request for voluntary respondent treatment from Bel Trade Wood Industrial Co. (Bel Trade).⁹

On February 21, 2020, pursuant to section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2), we selected Fujian Nanping Yuanqiao Wood Industry Co., Ltd. (Yuanqiao) and Yinfeng as mandatory respondents.¹⁰ We issued the Initial Questionnaire to the GOC via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).¹¹ In the cover letter to the questionnaire, we notified the GOC that Commerce selected Yuanqiao and Yinfeng as mandatory respondents in this investigation and stated that the GOC "is responsible for forwarding copies of this cover letter and questionnaire to these respondent companies."¹²

On March 11, 2020, Yuanqiao notified Commerce of its intent to not participate in the investigation and that it would not respond to the CVD questionnaire.¹³ On April 29, 2020, Commerce declined to select Bel Trade as a voluntary respondent.¹⁴ Between March and May

⁴ See *Wood Mouldings and Millwork Products from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 85 FR 6513 (February 5, 2020) (*Initiation Notice*).

⁵ *Id.*, 85 FR at 6516.

⁶ See Memorandum, "Wood Mouldings and Millwork Products from the People's Republic of China, Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection," dated January 17, 2020 (CBP Data).

⁷ See deKieffer & Horgan's Letter, "Comments on Respondent Selection & CBP Data," dated January 31, 2020 and deKieffer & Horgan's Letter, "Clarification on Comments on Respondent Selection & CBP data," dated February 4, 2020 (collectively, deKieffer Comments).

⁸ See Fujian Yinfeng Imp & Exp Trading Co., Ltd.'s Letter, "Comments on Respondent Selection & CBP Data," dated February 10, 2020 (Yinfeng Comments).

⁹ See Bel Trade Wood Industrial Co.'s Letter, "Request for Voluntary Respondent Treatment," dated February 11, 2020 (Bel Trade Voluntary Request).

¹⁰ See Memorandum, "Respondent Selection," dated February 21, 2020 (Respondent Selection Memorandum).

¹¹ See Commerce's Letter, "Countervailing Duty Questionnaire," dated February 21, 2020 (Initial Questionnaire).

¹² *Id.* at 1.

¹³ See Yuanqiao's Letter, "Yuanqiao Notice of Intent Not to Participate," dated March 11, 2020.

¹⁴ See Memorandum, "Whether to Select Voluntary Respondents," dated April 29, 2020.

2020, we received timely initial and supplemental questionnaire responses from Yinfeng¹⁵ and the GOC.¹⁶

On May 4, 2020, the petitioner filed a creditworthiness allegation for Yinfeng's cross-owned producer Fujian Province Youxi City Mangrove Wood Machining Co., Ltd. (Mangrove).¹⁷ On May 6, 2020, the petitioner filed two new subsidy allegations (NSAs).¹⁸ On May 18, 2020, Yinfeng rebutted the petitioner's NSAs.¹⁹ On May 21 and 26, 2020, the petitioner filed pre-preliminary determination comments, which Yinfeng rebutted on May 28, 2020, and the GOC rebutted on June 3, 2020.²⁰ On June 4, 2020, Commerce initiated an investigation of the two NSAs and the creditworthiness allegation for Mangrove.²¹ We intend to seek further information and to address these programs and the creditworthiness allegation in a post-preliminary analysis.

B. Postponement of Preliminary Determination

On March 12, 2020, based on a request from the petitioner,²² Commerce postponed the deadline for the preliminary determination until June 8, 2020, in accordance with sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).²³

C. Period of Investigation

The period of investigation (POI) is January 1, 2019 through December 31, 2019. This period corresponds to the most recently completed calendar year in accordance with 19 CFR 351.204(b)(2).

¹⁵ See Yinfeng's Letters, "Identifying Affiliates Questionnaire Response," dated March 13, 2020 (Yinfeng AQR); "Identifying Affiliates Supplemental Questionnaire Response," dated April 10, 2020 (Yinfeng Supplemental AQR); "Yinfeng Questionnaire Response," dated April 13, 2020 (Yinfeng IQR); "Mangrove Questionnaire Response," dated April 13, 2020 (Mangrove IQR); "Xicheng Branch Questionnaire Response," dated April 13, 2020 (Xicheng IQR); "Yinfeng Second Supplemental Questionnaire Response," dated May 15, 2020 (Yinfeng SQR1); "Yinfeng Third Supplemental Questionnaire Response," dated May 18, 2020 (Yinfeng SQR2).

¹⁶ See GOC Letters, "GOC Questionnaire Response," dated April 13, 2020 (GOC IQR); "GOC First Supplemental Questionnaire Response," dated May 15, 2020 (GOC SQR).

¹⁷ See Petitioners' Letter, "Creditworthiness Allegation," dated May 4, 2020.

¹⁸ See Petitioner's Letter, "New Subsidy Allegations," dated May 6, 2020.

¹⁹ See Yinfeng's Letter, "Rebuttal to Petitioner's NSA," dated May 18, 2020.

²⁰ See Petitioner's Letter, "Pre-Preliminary Determination Comments," dated May 21, 2020 (containing benchmark rebuttals and arguments) and Petitioner's Letter, "Additional Pre-Preliminary Determination Comments," dated May 26, 2020 (containing additional benchmark arguments and general arguments); *see also* Yinfeng's Letter, "Yinfeng Rebuttal Preliminary Comments," dated May 28, 2020, and GOC Letter, "GOC Rebuttal Pre-Preliminary Comments," dated June 3, 2020. Given the timing of the submission of these comments relative to the preliminary determination deadline, we considered these comments to the extent practicable.

²¹ See Memorandum, "Decision Memorandum on New Subsidy Allegations and Creditworthiness Allegation," dated June 4, 2020.

²² See Petitioner's Letter, "Request to Postpone Preliminary Determination," dated March 6, 2020.

²³ See *Wood Mouldings and Millwork Products from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 85 FR 15433 (March 18, 2020).

III. ALIGNMENT

In accordance with section 705(a)(1) of the Act, and 19 CFR 351.210(b)(4), and based on the petitioner's request,²⁴ we are aligning the final determination in this CVD investigation with the final determination in the companion antidumping (AD) investigation of millwork products from China. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than October 19, 2020, unless postponed.

IV. INJURY TEST

Because China is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry. On February 24, 2020, the ITC preliminarily determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of millwork products from China that are allegedly subsidized by the GOC.²⁵

V. DIVERSIFICATION OF CHINA'S ECONOMY

Concurrently with this decision memorandum, we are placing the following excerpts from the China Statistical Yearbook from the National Bureau of Statistics of China on the record of this investigation: Index Page; Table 14-7: Main Indicators on Economic Benefit of State-owned and State-holding Industrial Enterprise by Industrial Sector; Table 14-11: Main Indicators on Economic Benefit of Private Industrial Enterprise by Industrial Sector.²⁶ This information reflects a wide diversification of economic activities in China. The industrial sector in China alone is comprised of 37 listed industries and economic activities, indicating the diversification of China's economy.

VI. 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.

²⁴ See Petitioner's Letter, "Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination," dated May 4, 2020.

²⁵ See *Wood Mouldings and Millwork Products from Brazil and China; Determinations*, 85 FR 11391 (February 27, 2020).

²⁶ See Memorandum, "China Statistical Yearbook Memorandum," dated concurrently with this memorandum.

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 adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."²⁷ 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."²⁸ At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that, while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."²⁹ Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the Federal Circuit noted that the "best of its ability standard" does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.³⁰ The "best of its ability" standard requires respondents to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.³¹

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."³² It is Commerce's practice to consider information to be corroborated if it has probative value.³³ In analyzing

²⁷ See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

²⁸ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol. 1 (1994) at 870.

²⁹ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

³⁰ *Id.*, 337 F.3d at 1382.

³¹ *Id.*

³² See, e.g., SAA at 870.

³³ *Id.*

whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.³⁴ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.³⁵ Furthermore, Commerce is not required to corroborate any countervailing subsidy rate applied in a separate segment of the same proceeding.³⁶

Under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.³⁷ For purposes of this preliminary determination, we are applying AFA in the circumstances outlined below.

B. Application of Total AFA

As noted above, we selected Yuanqiao as a mandatory respondent. Yuanqiao notified Commerce that it would not participate in the investigation and would not respond to the CVD questionnaire. Consequently, pursuant to section 776(a)(2)(A), (B) and (C) of the Act, we find that Yuanqiao withheld information that was requested, failed to provide information by the established deadlines, and significantly impeded this proceeding. Moreover, the GOC did not respond to our Initial Questionnaire with respect to Yuanqiao, which requested that the GOC provide information pertaining to the programs identified in the *Initiation Notice*.³⁸ Additionally, by not responding to the Initial Questionnaire as discussed above, we find that the GOC withheld information that was requested of it, failed to provide information by the established deadlines, and significantly impeded this proceeding. Thus, in reaching a preliminary determination, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act, we are determining the subsidy rate for Yuanqiao by selecting from among the facts otherwise available on the record.

Moreover, we preliminarily determine that an adverse inference is warranted in determining Yuanqiao's estimated countervailable subsidy rate, pursuant to section 776(b) of the Act, because, by not responding to our request for information, Yuanqiao did not cooperate to the best of its ability to comply with our request for information in this investigation. Additionally, we find that the GOC also did not cooperate to the best of its ability to comply with our requests for information in this investigation. Accordingly, we preliminarily find that application of AFA is warranted to ensure that Yuanqiao does not obtain a more favorable result by failing to cooperate

³⁴ *Id.* at 869.

³⁵ *Id.* at 869-870.

³⁶ See section 776(c)(2) of the Act.

³⁷ See section 776(d)(3) of the Act.

³⁸ See Initial Questionnaire.

than if it had fully complied with Commerce's requests for information. The application of AFA in this instance is consistent with Commerce's practice.³⁹

In selecting from among the facts otherwise available on the record, with an adverse inference, we find that all of the programs identified in the *Initiation Notice* constitute a financial contribution within the meaning of section 771(5)(D) of the Act, are specific within the meaning of section 771(5A) of the Act, and confer a benefit with respect to Yuanqiao within the meaning of sections 771(5)(B) and (E) of the Act.⁴⁰ Additionally, as discussed below in "Application of AFA: Provision of 'Other Subsidies,'" the GOC did not respond to our requests for information regarding programs which were self-reported by the cooperating mandatory respondent, Yinfeng and its cross-owned affiliate, Mangrove.⁴¹ Therefore, we find that all self-reported programs included in this investigation provide a financial contribution within the meaning of sections 771(5)(B) and (D) of the Act and are specific within the meaning of section 771(5A) of the Act. Accordingly, we are including each of these programs in the determination of the AFA rate for Yuanqiao.⁴² We selected an AFA rate for each of the programs based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's practice, and we included them in the determination of the AFA rate applied to Yuanqiao. For a description of the selection of the AFA rate and our corroboration of this rate, *see* the "Selection of the AFA Rate" and "Corroboration of the AFA Rate" sections below.

Selection of the AFA Rate

When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any countervailable subsidy rate applied for the same or similar program in a countervailable duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering

³⁹ See, e.g., *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Preliminary Affirmative Determination*, 80 FR 68843 (November 6, 2015), and accompanying Issues and Decision Memorandum at "Initiation and Case History" and "Use of Facts Otherwise Available and Adverse Inferences," unchanged in *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016), and accompanying Issues and Decision Memorandum at "Case History" and "Use of Facts Otherwise Available and Adverse Inferences"; *see also Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences."

⁴⁰ See *Initiation Notice*; and CVD Initiation Checklist. For further discussion of our determinations based on AFA with respect to the Provision of Electricity for Less-Than-Adequate-Renumeration (LTAR), Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR, and the Export Buyer's Credit program, *see* discussion below. Additionally, for further discussion of certain determinations with respect to the Export Buyer's Credit and Enterprise Income Tax Law, R&D Programs, *see* discussion below.

⁴¹ See GOC SQR at 25-26.

⁴² See Memorandum, "AFA Calculation Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Wood Mouldings and Millwork Products from the People's Republic of China," dated concurrently with this memorandum (AFA Memorandum).

authority considers reasonable to use, including the highest of such rates.⁴³ Accordingly, when selecting AFA rates, if we have cooperating respondents, as we do in this investigation, we first determine if there is an identical program in the instant investigation and use the 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).⁴⁴ If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company-specific program in a CVD case involving the same country that the company's industry could conceivably use.⁴⁵

Commerce's methodology is consistent with section 776(d)(1)(A) of the Act. Section 776(d)(1)(A) of the Act states that when applying an adverse inference in selecting from the facts otherwise available, Commerce may (i) use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that Commerce considers reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for Commerce's existing practice of using an AFA hierarchy in selecting a rate "among the facts otherwise available" in CVD cases, should the facts warrant such a selection.

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."⁴⁶ No legislative history accompanied this provision. Accordingly, Commerce is left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

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

⁴³ 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 Issues and Decision Memorandum at 13; see also *Essar Steel, Ltd. v. United States*, 753 F. 3d 1368, 1373-74 (Fed. Cir. 2014) (*Essar Steel*) (upholding "hierarchical methodology for selecting an AFA rate").

⁴⁴ 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 Issues and Decision Memorandum at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

⁴⁵ See *Shrimp from China* and accompanying Issues and Decision Memorandum at 13-14.

⁴⁶ See section 776(d)(2) of the Act.

AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.⁴⁷

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴⁸ Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.”⁴⁹ It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.⁵⁰

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

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a “pool” of available rates that Commerce can rely upon for purposes of identifying an AFA rate for a particular program. In investigations for example, this “pool” of rates could include the rates for the same or similar programs used in either that same investigation, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy therefore does not focus on

⁴⁷ This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B). Under that provision, “any dumping margin from any segment of the proceeding under the applicable antidumping order” may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

⁴⁸ See SAA, H.R. Doc. No. 103-316, vol. 1, at 870, reprinted in 1994 U.S.C.C.A.N 4040, 4090; see also *Essar Steel*, 678 at 1276 (citing *F. Lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000) (finding that “{t}he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate’ with Commerce’s investigation, not to impose punitive damages.”)) (*De Cecco*).

⁴⁹ See *De Cecco*, 216 F. 3d at 1032.

⁵⁰ Commerce has adopted a practice of applying its hierarchy in CVD cases. See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) and accompanying Issues and Decision Memorandum at 28-31 (applying the AFA hierarchical methodology within the context of CVD investigation); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015) and accompanying Issues and Decision Memorandum at 11-15 (applying the AFA hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. See, e.g., *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016) and accompanying Issues and Decision Memorandum at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

identifying the highest possible rate that could be applied from among that “pool” of rates; rather, it adopts the factors identified above of inducement, relevancy to the industry and to the particular program.

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

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 non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.⁵¹

In all three steps of Commerce’s AFA investigation hierarchy, if Commerce were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the “reward” for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce’s investigation AFA hierarchy (which is different from selecting the highest possible rate in the “pool” of all available rates), Commerce strikes a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.⁵²

Furthermore, we find that section 776(d)(2) applies as an exception to the selection of an AFA rate under 776(d)(1); that is, after “an evaluation of the situation that resulted in the application

⁵¹ In an investigation, unlike an administrative review, Commerce is just beginning to achieve an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

⁵² It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. *See, e.g., Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60632 (October 25, 2007) (*CFS from China*) and accompanying Issues and Decision Memorandum at 2 (“As AFA in the instant case, Commerce is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/producer in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did not receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed...”). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as AFA under its hierarchy.

of an adverse inference,” Commerce may decide that given the unique and unusual facts on the record, the use of the highest rate within that step is not appropriate.

There are no facts on this record that suggest that a rate other than the highest rate envisioned under the appropriate step of the hierarchy, in accordance with section 776(d)(1) of the Act, should be applied as AFA. As explained above, we are preliminarily applying AFA because Yuanqiao failed to submit a response to the questionnaire and chose not to cooperate by not providing all the necessary information we requested. Therefore, we preliminarily find that the record does not support the application of an alternative rate, pursuant to section 776(d)(2) of the Act.

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

- Policy Loans to the Wood Mouldings and Millwork Products Industry
- Provision of Sawn Wood and Continuously Shaped Wood for Less than Adequate Remuneration (LTAR)
- Provision of Plywood for LTAR
- Provision of Electricity for LTAR
- Provision of Land-Use Rights by the GOC to Encouraged Industries for LTAR
- “Other Subsidies”: Industrial Enterprise Preferential Policy Fund for 2017; Transition and Updating Project for 2018; Provincial Intellectual Property Advantage Enterprise Prize for 2019; Enterprises Production and Efficiency Increase Awards for the First Quarter of 2019; Export Transition & Upgrade Fund for 2018; Youxi County Export Prize for 2018; Foreign Trade Cooperation and Development Fund for 2013; Foreign Trade Cooperation and Development Fund for 2014⁵³

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

- Income Tax Reductions under Article 28 of the Enterprise Income Tax
- Tax Offsets for Research and Development (R&D) Expenses Under the Enterprise Income Tax Law
- Preferential Income Tax Policy for Enterprises in the Northeast Region
- Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
- Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment

⁵³ See Yinfeng SQR2 at Exhibits SQ2-12 and SQ2-13.

The standard income tax rate for corporations in China in effect during the POI was 25 percent.⁵⁴ Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, that the five programs, combined, provide a 25 percent benefit). Consistent with Commerce’s practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and value-added tax (VAT) exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.⁵⁵

For all other programs not identified above, we are applying, where available, the highest above *de minimis* subsidy rate calculated for the same or comparable programs in a CVD proceeding involving China.⁵⁶ For this preliminary determination, we are able to match, based on program names, descriptions, and treatment of the benefit, the following programs to the same programs from other CVD proceedings involving China:

- Export Assistance Grants
- Export Buyer’s Credit
- Export Interest Subsidies
- Export Seller’s Credit
- Foreign Trade Development Fund Grants
- Funds for Outward Expansion of Industries in Guangdong Province
- Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
- Import Duty Exemptions for Use of Imported Equipment
- Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
- Loan Interest Subsidies for the Forestry Industry
- Provision of {Urea-Formaldehyde} UF Resin for LTAR
- Provision of Cut Timber for LTAR
- Provision of Veneers for LTAR
- Provision of Standing Timber for LTAR
- Provision of Formaldehyde for LTAR
- Provision of Land to SOEs by the GOC for LTAR
- Provision of Land-Use Rights by the GOC for LTAR in Industrial and Other Special Economic Zones
- Provision of Urea for LTAR
- The State Key Technology Project Fund
- Preferential Loans for State-Owned Enterprises
- Provincial Fund for Fiscal and Technological Innovation
- Shandong Province’s Environmental Protection Industry Research and Development Funds
- Shandong Province’s Special Fund for the Establishment of Key Enterprise Technology Centers
- Subsidies for the Development of Famous Brands and China World Top Brands

⁵⁴ See CVD Initiation Checklist at 10-11, citing to Volume IV of the Petition at page 112.

⁵⁵ See, *e.g.*, *Aluminum Extrusions Investigation* and accompanying Issues and Decision Memorandum at “Application of Adverse Inferences: Non-Cooperative Companies.”

⁵⁶ See AFA Memorandum and Appendix I of this memorandum.

- Technology to Improve Trade Research and Development Fund
- Waste Water Treatment Subsidies

For this preliminary determination, we were similarly able to match all of Yinfeng's and Mangrove's self-reported subsidies for which we did not calculate a rate in the instant investigation to similar programs from other China CVD proceedings. A full list of such self-reported subsidies is located in the AFA Rate Calculation in Appendix I below and also contained in the AFA Memorandum.⁵⁷

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for the non-cooperating company to be 247.82 percent *ad valorem*. The AFA Memorandum contains a chart summarizing our calculation of this rate.

Corroboration of AFA Rate

Section 776(c)(1) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."⁵⁸ The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.⁵⁹

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.⁶⁰ 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.⁶¹

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.⁶²

In the absence of record evidence concerning Yuanqiao's usage of the subsidy programs at issue due to its decision not to participate in the investigation or provide any responses to the CVD

⁵⁷ See AFA Memorandum; see also Appendix I.

⁵⁸ See SAA at 870.

⁵⁹ *Id.*

⁶⁰ *Id.*, at 869-870.

⁶¹ See section 776(d) of the Act.

⁶² See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

questionnaire, we have reviewed the information concerning Chinese subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this investigation. The relevance of these rates is that they are actual calculated subsidy rates for Chinese programs, from which the non-responsive companies could actually receive a benefit. Due to the lack of participation by this company and the resulting lack of record information concerning these programs, we have corroborated the rates we selected to use as AFA to the extent practicable pursuant to section 776(c)(1) of the Act for this preliminary determination.

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

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

In the initial questionnaire, we requested that the GOC provide original and translated copies of laws, regulations or other governing documents for this program.⁶³ This request included the 2013 *Administrative Measures* revisions (2013 Revisions) to the Export Buyer's Credit program; however, the GOC did not provide the 2013 amendment to these laws. In a supplemental questionnaire, Commerce provided the GOC with another opportunity to provide this information,⁶⁴ and the GOC again failed to provide the information requested stating, "the GOC has provided the *Rules Governing Export Buyers' Credit of the Export-Import Bank of China* which is still in effect," referring to Exhibit EXPORT-2 of its initial response, which does not contain the 2013 amendment.⁶⁵ Information obtained in a prior CVD proceeding indicates that the GOC revised the administrative measures regarding this program in 2013 and that the China EX-IM Bank may disburse export buyer's credits directly or through third-party partner and/or correspondent banks.⁶⁶ Furthermore, in response to our request that the GOC provide a list of all partner/correspondent banks involved in the disbursement of funds, the GOC stated that, "this question is not applicable...the GOC is unable to compel the Ex-Im Bank to disclose, or provide the GOC with, a list of all partner or correspondent banks which may have been involved in disbursement of funds under the Export Buyer's Credit Program."⁶⁷ Therefore, in its initial and supplemental questionnaire responses, the GOC refused to provide the requested information or any information concerning the 2013 program revision and the partner/correspondent banks, which is necessary for Commerce to analyze how the program functions. Given the complicated structure for loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary. Thus, the GOC's refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administered by the EX-IM Bank, significantly impedes Commerce's ability to conduct its investigation of this program.

⁶³ See Initial Questionnaire at II-6 and II-7.

⁶⁴ See Commerce's Letter, "Supplemental Questionnaire to the Government of China's Questionnaire Response," dated May 1, 2020 (GOC Supplemental) at 4.

⁶⁵ See GOC SQR at 5; see also GOC IQR at EXPORT-2.

⁶⁶ See Memorandum, "Placing Documents on the Record," dated concurrently with this memorandum (Additional Documents Memorandum).

⁶⁷ See GOC SQR at 6.

In its initial response, the GOC reported that the China EX-IM Bank searched its database for the U.S. importers provided by the mandatory respondents, and it did not find any of the companies listed in its database. The GOC further claims that the China EX-IM Bank's database contains all users of the Export Buyer's Credit program, regardless of whether the China EX-IM Bank partnered with any other bank. In our supplemental questionnaire, we asked the GOC to provide the documents, databases, accounts, *etc.* that were examined to determine there was no use, and a step-by-step detail of how it determined that the Export Buyer's Credit was not used by the listed U.S. importers.⁶⁸ The GOC provided no supporting documentation demonstrating evidence of its data query from the Ex-Im Bank of China showing no results for this program.⁶⁹ Additionally, the GOC did not explain how the Ex-Im Bank of China performed the query search stating, "the GOC checked if any listed importers obtained any Export Buyers Credits from the Exim Bank."⁷⁰ The GOC provided no documentation demonstrating its "checking" of listed importers with the Ex-Im Bank of China; therefore, we find the GOC's response to be insufficient because it was incomplete, and without the additional information we requested, unusable. Specifically, there is no information tying the database to the Export Buyer's Credit Program to the step-by-step process that the GOC undertook to obtain information. As a result, the GOC failed to respond to Commerce's request, and instead continued to merely claim that neither of the mandatory respondents, nor their respective customers, used the program.

Therefore, the explanation provided does not constitute complete, verifiable, and positive evidence that none of the companies under investigation received assistance under this program. Because of the complicated structure of loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary. Therefore, without the necessary information, we are not able to make a determination as to whether this program constitutes a financial contribution and is specific. Accordingly, we find that the GOC has not cooperated to the best of its ability in response to Commerce's specific information requests.⁷¹

In its initial questionnaire responses, Yinfeng reported receiving no benefits for this program, and submitted certifications of non-use from its customers.⁷² However, the GOC is the only party that can answer questions about the internal administration of this program and thus, absent the requested information, the GOC's and respondent company's claims of non-use of this program are not verifiable. Commerce cannot verify claims of non-usage, whether originating with the respondents or their U.S. customers, if it does not know the names of the intermediary banks that might appear in the books and records of the recipient of the credit (*i.e.*, loan) or the cash disbursement made pursuant to the credit. There will not necessarily be an account in the name "China ExIm Bank" or "Ex-Im Bank" in the books and records (*e.g.*, subledger, tax return, bank statements) of either the exporter or the U.S. customer. The GOC's refusal to provide the 2013 revisions to the administrative measures, which provide internal guidelines for how this program is administered by the China EX-IM Bank, and a list of partner/correspondent banks that are used to disperse funds through this program, constitutes withholding necessary

⁶⁸ See GOC Supp at 4.

⁶⁹ See GOC SQR at 3-4.

⁷⁰ See the GOC SQR at 4.

⁷¹ See Section 776(d) of the Act.

⁷² See Yinfeng IQR at 24 and Exhibit 12.

information and impeded Commerce's ability to analyze the program's operation or determine how the program could be properly verified. This information is necessary to understand fully how the Export Buyer's Credits program operates, and is, therefore critical to Commerce's ability to verify the program operation and the accuracy of the GOC's claims, including with respect to the company respondent's claimed non-use of this program. By not providing us with this critical information, we find that the GOC failed "to do the maximum it is able to do."⁷³ Additionally, the GOC has not provided information that would permit us, absent the use of facts available pursuant to section 776 of the Act, to make a determination as to whether this program constitutes a financial contribution or whether this program is specific. Accordingly, we preliminarily find that the GOC has not cooperated to the best of its ability in response to Commerce's specific information requests and determine, as AFA, that this program constitutes a financial contribution and meets the specificity requirements of the Act.⁷⁴ Additionally, consistent with our practice,⁷⁵ as AFA, we find that Yinfeng used and benefited from this program.

Pursuant to section 776(a)(1) of the Act when necessary information is not available on the record and sections 776(a)(2)(A) and (C) of the Act, when an interested party withholds information requested by Commerce and significantly impedes a proceeding, Commerce uses facts otherwise available to reach a determination. Here, the record is missing necessary information because the GOC withheld the requested information described above, thereby impeding this proceeding. Accordingly, we preliminarily determine that the use of facts available is warranted based on the record. Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding information and significantly impeding this proceeding, failed to cooperate by not acting to the best of its ability. Accordingly, we find that the application of AFA is warranted. For these reasons, we preliminarily find, as AFA, that under this program, the GOC bestowed a financial contribution pursuant to section 771(5)(D) of the Act and provided a benefit pursuant to section 771(5)(E) of the Act.

Regarding specificity, although the record regarding this program suffers from significant deficiencies, we note that the GOC's description of the program and supporting materials (albeit found to be deficient) demonstrate that through this program, state-owned banks, such as the China EX-IM Bank, provide loans at preferential rates for the purchase of exported goods from

⁷³ See *Nippon Steel*, 337 F.3d at 1382.

⁷⁴ See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81

FR 35308 (June 2, 2016) and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences."

⁷⁵ We have determined in previous cases, e.g., *Crystalline Silicon Photovoltaic Cells from China*, that because of the nature of this program, Commerce cannot rely on non-use statements from respondents without the corroboration of the GOC. Therefore, although we normally collect non-use information from the respondent directly, this program requires a fully cooperative GOC response to determine non-use. See *Crystalline Silicon Photovoltaic Cells from China, Whether or Not Assembled Into Modules from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent to Rescind, in Part: 2014*, 82 FR 2317 (January 9, 2017) and accompanying Issues and Decision Memorandum at 31 (*Crystalline Silicon Photovoltaic Cells from China*).

China.⁷⁶ In addition, the program was alleged by the petitioner as a possible export subsidy.⁷⁷ Finally, Commerce has found this program to be an export subsidy in the past.⁷⁸ Thus, taking all such information into consideration indicates that the provision of export buyer's credits is contingent upon exports within the meaning of sections 771(5A)(A) and (B) of the Act.

Under section 776(d) of the Act, Commerce may use, as AFA, a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 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.⁷⁹

Consistent with section 776(d) of the Act and our established practice, we selected the highest calculated rate for the same or similar program as AFA.⁸⁰ For this program we are using an AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in the *Coated Paper from China Investigation Amended Final* proceeding, as the rate applicable to Yinfeng and Yuanqiao.⁸¹ Additionally, based on the methodology also described above for corroborating secondary information, we have corroborated the selected rate to the extent possible and find that the rate is reliable and relevant for use as an AFA rate for the Export Buyer's Credit Program.

B. Application of AFA: The Provision of Sawn Wood and Continuously Shaped Wood for LTAR and the Provision of Plywood for LTAR

GOC – Whether Sawn Wood and Plywood Producers Are "Authorities"

As discussed below, under the section "Programs Preliminarily Found to Be Countervailable," Commerce is investigating whether the GOC provided sawn wood⁸² and plywood for LTAR. As part of its analysis, Commerce sought information that would allow it to analyze whether the domestic producers providing these inputs to the company respondents are "authorities" within the meaning of section 771(5)(B) of the Act.

⁷⁶ See GOC IQR at 61-62.

⁷⁷ See Initiation Checklist at 10.

⁷⁸ See, e.g., *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 17382 (April 25, 2019) and accompanying Issues and Decision Memorandum at Comment 16.

⁷⁹ See section 776(d)(3) of the Act.

⁸⁰ See, e.g., *Shrimp from China* and accompanying Issues and Decision Memorandum 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").

⁸¹ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from China Investigation Amended Final*) (revised rate for "Preferential Lending to the Coated Paper Industry" program).

⁸² Because Mangrove reported no purchases of continuously shaped wood during the POI, we have only discussed sawn wood within the Provision of Sawn Wood and Continuously Shaped Wood for LTAR. See Mangrove IQR at 18.

In the Initial Questionnaire, we asked the GOC to respond to the specific questions regarding the producers of these inputs and to respond to the Input Producer Appendix for each producer which produced the inputs purchased by the respondents.⁸³ We instructed the GOC to coordinate with the respondents to obtain a complete list of the input producers, including the producers of inputs purchased through a supplier.⁸⁴ In response to the Initial Questionnaire, Mangrove identified certain companies that produced and supplied these input purchases during the POI,⁸⁵ which the GOC confirmed in its questionnaire response.⁸⁶ With respect to Mangrove's purchases of sawn wood and plywood, while the GOC ultimately provided the identities of certain of the producers of sawn wood and plywood inputs, it did not provide all the information requested of it in the Initial Questionnaire. In its initial and supplemental questionnaire to the GOC, Commerce requested certain information be provided with respect to the producers of sawn wood and plywood, including percentages of government ownership, articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, articles of association, business group registrations, business licenses, and tax registration documents.⁸⁷ In response to our request for this information, the GOC simply resubmitted the input producer appendix for sawn wood/continuously shaped wood and the input producer appendix for plywood revised only for electronic formatting and legibility, but did not cure the defects of the original appendices which were lacking articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, articles of association, business group registrations, business licenses, and tax registration documents.⁸⁸ In its supplemental response, the GOC simply stated that “{t}he information provided in Exhibit WOOD-2/WOOD-3 and PLY-2/PLY-3 {of its IQR} constitutes an official and sufficient demonstration of the ownership status and changes (if any) of all the related input suppliers during the POI.”⁸⁹

With respect to those entities producing sawn wood and plywood that were reported as being non-majority government-owned enterprises that produced sawn wood and plywood purchased by Mangrove during the POI, while the GOC provided ownership structure and basic registration information supplied by the Enterprise Credit Information Publicity System (ECIPS), the GOC did not provide other relevant documentation requested by Commerce, including company by-laws, annual reports, and articles of association.⁹⁰ Instead, the GOC claimed that the information provided by the ECIPS was authoritative evidence of an enterprise's ownership structure in China.⁹¹ We noted in our supplemental questionnaire that the GOC's response with respect to ownership information, as requested in the input producer appendix, was deficient with respect to plywood and sawn wood, and again asked for the information requested in the initial

⁸³ See Initial Questionnaire, Section II at 15-22; and “Input Producer Appendix.”

⁸⁴ *Id.*

⁸⁵ See Mangrove IQR at 18-19 and Exhibits 9.1 and 9.2. Yinfeng reported it did not make domestic purchases of inputs. See Yinfeng IQR at 17.

⁸⁶ See GOC IQR at 22-30, 33-43, and Exhibits WOOD-1, WOOD-2, WOOD-3, WOOD-4, PLY-1, PLY-2, PLY-3, and PLY-4.

⁸⁷ See, e.g., GOC Supp at 5-8.

⁸⁸ See GOC SQR at Exhibits S-3 and S-4.

⁸⁹ *Id.*, at 11.

⁹⁰ See GOC IQR at Exhibits WOOD-1, WOOD -2, WOOD -3, WOOD-4, PLY-1, PLY-2, PLY-3, and PLY-4; see also GOC SQR at 11 and Exhibit S-3 and S-4.

⁹¹ See GOC IQR at Exhibit WOOD-1 and PLY -1.

questionnaire; in response, the GOC again claimed that the information previously provided by the ECIPS was a sufficient demonstration of the ownership status of the domestic companies that supplied sawn wood and plywood to Mangrove during the POI.⁹²

Additionally, the GOC did not provide a full response to Commerce's request for information regarding the structure and role of the Chinese Communist Party (CCP) in managing the business affairs of companies that are not majority-owned by the government, and the membership status of persons identified as owners of enterprises supplying Mangrove with sawn wood and plywood. The GOC responded that "the facts {presented in the GOC IQR} and related WTO jurisprudence demonstrate that the 'nine entity' questions are irrelevant to this proceeding and do not go to whether the suppliers at issue are 'public bodies' for the purposes of {Commerce's} LTAR analysis," and that "GOC has consistently maintained and clarified that the CCP, National/ Provincial/ Local People's Congresses and CPPCC do not constitute government agencies."⁹³ In response to Commerce's supplemental questionnaire, in which Commerce reiterated the same requests for information, the GOC again failed to provide a complete response with regard to all requested documentation.⁹⁴ As we explained in the Additional Documents Memorandum,⁹⁵ we understand that the CCP exerts significant control over economic activities in China. Thus, Commerce finds, as it has in prior CVD proceedings,⁹⁶ that the information requested regarding the role of CCP officials and CCP committees in the management and operations of Mangrove's input suppliers not majority-owned by the government is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. As discussed above, the GOC did not provide complete responses to our requests for information with respect to sawn wood and plywood producers which the GOC claimed to be non-majority government-owned enterprises, including requests for information pertaining to ownership or management by CCP officials. Such information is necessary to our determination of whether the input producers are authorities within the meaning of section 771(5)(B) of the Act. Therefore, we determine that necessary information is not available on the record, and that the GOC withheld information that was requested of it with regard to the input purchases by Mangrove, and impeded this investigation.⁹⁷ Accordingly, Commerce must rely on "facts otherwise available" in reaching a determination in this respect. Further, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with requests for information regarding the producers of the sawn wood and plywood from which Mangrove purchased during the POI because the GOC did not provide the requested information.⁹⁸ Consequently, we find that an adverse inference is warranted in the application of facts available.⁹⁹

⁹² See GOC SQR at 11.

⁹³ See GOC IQR at Exhibit WOOD-1 and PLY-1.

⁹⁴ See GOC SQR at 11 and Exhibits S-3 and S-4.

⁹⁵ See Additional Documents Memorandum at Attachment 1.

⁹⁶ See *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014), and accompanying Issues and Decision Memorandum at Comment 5.

⁹⁷ See sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act.

⁹⁸ See sections 776(a) and (b) of the Act; see also *Nippon Steel*, 337 F. 3d at 1382 (discussing the "best of its ability" standard).

⁹⁹ See section 776(b) of the Act.

As explained in the Public Bodies Memorandum, an entity with significant CCP presence on its board or in management or in party committees may be controlled such that it possesses, exercises or is vested with government authority.¹⁰⁰ Thus, in selecting from among the facts otherwise available with an adverse inference, we preliminarily determine that the non-majority government-owned domestic producers of the sawn wood and plywood purchased by Mangrove, are “authorities” within the meaning of section 771(5)(B) of the Act, and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

GOC – Whether the Provision of Sawn Wood and Continuously Shaped Wood Inputs and Plywood Inputs Are Specific

For purposes of Commerce’s *de facto* specificity analysis, we asked the GOC to provide a list of industries in China that purchase sawn wood plywood directly, and to provide the amounts (volume and value) purchased by each of the industries.¹⁰¹ Specifically, our questionnaire asked the GOC to provide lists of the industries in China that purchase sawn wood and plywood directly, using consistent levels of industrial classification, and to:

Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use the resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.¹⁰²

The GOC did not provide this information, nor did it explain the efforts it made to compile this information. Instead, the GOC made assertions that there are a vast number of uses for sawn wood and continuously shaped wood without providing any evidentiary support.¹⁰³ The GOC stated that it “does not collect official data regarding the industries in China that purchase or consume sawn wood and continuously shaped wood,”¹⁰⁴ and instead provided an excerpt from the “Industries Classification in National Economy,” which includes all the economic activities in China and the chapter on manufacturing sectors including all the timber sectors, and an excerpt of the general categorization of all economic activities under the United Nations’ “International Standard Industrial Classification for All Economic Activities (ISIC),” which formed the basis on which the Chinese national classification standards were developed.¹⁰⁵ This information submitted by the GOC, however, is insufficient because it does not report the actual Chinese industries that purchased sawn wood and plywood, the volume and value of each industry’s respective purchases for the POI, and the prior two years, as requested, and which is necessary for our *de facto* specificity analysis. Consequently, we preliminarily determine, in

¹⁰⁰ See Memorandum, “Public Bodies Memorandum,” dated concurrently with this memorandum (Public Bodies Memorandum).

¹⁰¹ See Initial Questionnaire, Section II, at pages 16-17 and 19-20.

¹⁰² *Id.*

¹⁰³ See GOC IQR at 26 and 38.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*, at Exhibits GEN-7 and GEN-8.

accordance with sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, that necessary information is not available on the record, that the GOC withheld information that was requested of it, and that the GOC significantly impeded this proceeding, respectively. Thus, we are relying on “facts available” in making our preliminary determination.

Moreover, by refusing to provide the requested, necessary information, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we preliminarily determine that an adverse inference is warranted in selecting from among the facts available pursuant to section 776(b) of the Act. In drawing an adverse inference from among the facts available, we find that the purchasers of sawn wood and plywood provided for LTAR are limited in number, and that the program is therefore *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

GOC – Whether the Sawn Wood and Plywood Market Is Distorted

We asked the GOC several questions regarding the structure of the sawn wood and plywood industries, including requesting production and consumption information for these markets during the POI and the prior two years.¹⁰⁶ Specifically, we requested information on the number of producers, the total volume and value of Chinese domestic consumption and production, the total volume and value of imports of the input, a list of the industries that purchase these inputs, a discussion of the laws, plans or policies that address the pricing of these inputs, and the share of domestic production that is accounted for by companies in which the government maintains a majority ownership or a controlling management interest.

We request such information to inform our analysis of the degree of the GOC’s presence in the market and whether such presence results in the distortion of prices. The GOC failed to provide the number of sawn wood producers, and the total volume and value of both domestic production and consumption of sawn wood.¹⁰⁷ Instead of providing the requested information, the GOC stated that the information was not collected or compiled by the authorities.¹⁰⁸ The GOC did provide this information with respect to plywood.¹⁰⁹ However, the GOC did not provide a discussion of any laws, plans, or policies addressing the pricing of sawn wood and plywood, their levels of production, importation, exportation, or capacity development. Instead, the GOC provided the Price Law of China,¹¹⁰ and asserted that it allows for “autonomous rights in pricing when relevant prices are not subject to government pricing or government guided prices.”¹¹¹ In addition to these data, we requested that the GOC identify the total volume and value of domestic production that is accounted for by companies in which the government maintains a majority interest, along with a list of these enterprises, and conversely, additional data related to the total volume and value of production of companies in which the GOC maintains some interest that is less than a majority. The GOC stated only that it collected no such data with

¹⁰⁶ See Initial Questionnaire at 8-12.

¹⁰⁷ See GOC IQR at 23.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*, at 34-35.

¹¹⁰ *Id.*, at 24 and 37 and Exhibits GEN-4 and GEN-5.

¹¹¹ *Id.*, at 24 and 37.

respect to sawn wood,¹¹² and repeated the statement when again asked for the data.¹¹³ For plywood, the GOC indicated that 0.91 percent of the total volume of domestic production of plywood is accounted for by companies in which the government maintains a majority share, but provided no such information related to the value of the plywood production by companies in which the government holds a majority share, or a list of such companies, as requested.¹¹⁴ Furthermore, the GOC provided no information regarding the production volume and value of plywood by companies in which the GOC held an interest that was less than a majority,¹¹⁵ even after Commerce again requested this information.¹¹⁶

Because the GOC refused to provide the requested information regarding the sawn wood and plywood industries in China, we determine that information necessary for a full analysis of these markets is missing from the record, that the GOC withheld necessary information with regard to the Chinese sawn wood and plywood industries and markets for the POI, and significantly impeded the investigation, within the meaning of section 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, respectively. Therefore, we are relying on facts otherwise available.

Furthermore, we preliminarily determine that the GOC's refusal to provide the information requested constitutes a lack of cooperation under section 776(b) of the Act. The GOC has previously provided, and Commerce has verified, information from other GOC-maintained databases concerning the value and volume of production by enterprises producing input products.¹¹⁷ Specifically, Commerce has verified the operation of the GOC's "Enterprise Credit Information Publicity System," which requires that the administrative authorities release detailed information of enterprises and other entities and which is intended to bring clarity to companies registered in China.¹¹⁸ Based on this experience, we are aware that this system is a national-level internal portal that holds certain information regarding any China-registered company. Among other information, each company must upload its annual report, make public whether it is still operating, and update any changes in ownership. The GOC has stated that all companies operating within China maintain a profile in the system, regardless of whether they are private or a state-owned enterprises.¹¹⁹ Therefore, we believe that information related to the operation and ownership of companies within these industries and, thus, information regarding the domestic production and consumption levels of sawn wood and plywood are in fact available to the GOC.

¹¹² *Id.*, at 23-24.

¹¹³ See GOC SQR at 9-10.

¹¹⁴ See GOC IQR at 35.

¹¹⁵ *Id.*, at 36.

¹¹⁶ See GOC SQR at 10.

¹¹⁷ See, e.g., *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review*; 2013, 80 FR 77318 (December 14, 2015) and accompanying Issues and Decision Memorandum at Comment 2 (*Citric Acid 2013*).

¹¹⁸ See *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016) and accompanying Preliminary Decision Memorandum at 21-22, unchanged in *Countervailing Duty Investigation of Stainless Steel 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) and accompanying Issues and Decision Memorandum at 24.

¹¹⁹ *Id.*

Moreover, because the GOC refused to respond meaningfully to our request for information on laws, plans, policies specific to pricing, production, cross-border trades, and development capacity of sawn wood and plywood without substantiation or proper explanation, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information necessary for our analysis of the markets in China for these inputs, despite the fact that it was able to provide similar information on other input products in another proceeding.¹²⁰ Consequently, we find that an adverse inference is warranted in the application of facts available.¹²¹ Accordingly, as AFA, we preliminarily determine that the GOC's involvement in the sawn wood and plywood markets in China results in the significant distortion of prices in the sawn wood and plywood industries, such that they cannot be used as tier one benchmarks, and hence, the use of external benchmarks, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the provision of sawn wood and plywood for LTAR.

C. Application of AFA: Provision of Electricity for LTAR

As discussed below under, "Programs Preliminarily Determined to Be Countervailable," Commerce is investigating whether the GOC provided electricity for LTAR. The GOC did not provide complete responses to Commerce's questions regarding the alleged provision of electricity for LTAR. These questions requested information needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D)(iii) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A)(D) of the Act.

In order for Commerce to analyze financial contribution and specificity for this program, we requested that the GOC provide information regarding the roles of provinces, the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC in electricity price adjustments. Specifically, Commerce requested, *inter alia*: Provincial Price Proposals for the province in which mandatory respondents or any company "cross-owned" with those respondents is located for applicable tariff schedules that were in effect during the POI; all original NDRC Electricity Price Adjustment Notice(s) that were in effect during the POI; the procedure for adjusting retail electricity tariffs and the role of the NDRC and the provincial governments in this process; the price adjustment conferences that took place between the NDRC and the provinces, grids and power companies with respect to the creation of all tariff schedules that were applicable during the POI; the cost elements and adjustments that were discussed between the provinces and the NDRC in the price adjustment conferences; and how the NDRC determines that the provincial-level price bureaus have accurately reported all relevant cost elements in their price proposals with respect to generation, transmission and distribution.¹²² Commerce requested this information to determine the process by which electricity prices and price adjustments are derived, identify entities that manage and impact price adjustment processes, and examine cost elements included in the derivation of electricity prices in effect throughout China during the POI.

¹²⁰ See *Citric Acid 2013* and accompanying Issues and Decision Memorandum at Comment 2.

¹²¹ See section 776(b) of the Act

¹²² See Initial Questionnaire at Electricity Appendix.

In its Initial Questionnaire response, the GOC stated that the provincial price proposals are not mandated by law and that the proposals are obsolete now that the provinces have the authority to set their own prices, under the *Notice of NDRC on Lowering Coal-Fired Electricity On-Grid Price and General Industrial and Commercial Electricity Price* (Notice 3105).¹²³ According to the GOC, the creation of this new structure has eliminated the need for Provincial Price Proposals that had previously been used by the NDRC to set prices for each province.¹²⁴ Moreover, the GOC referenced its elimination of preferential rates for the fertilizer industry that went into effect under Article 4 of the *Notice of National Development and Reform Commission on Adjusting Schedule of Coal-fired Power Generation Grid Purchase Price and Sale Price of Industrial and Commercial Electricity of Each Province (District or City)* (Notice 748) as part of Notice 748's intent to equalize electricity rates between industrial and commercial users.¹²⁵

However, both Notice 3105 and Notice 748 explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Specifically, Article 1 of Notice 748 stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour.¹²⁶ Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts.¹²⁷ Article 2 indicates that the price reduction is "mainly used for reducing the price of industrial and commercial electricity."¹²⁸ Articles 3 and 4 specifically direct the reduction of the sales price for industrial and commercial electricity.¹²⁹ Articles 6 and 7 indicate that provincial pricing authorities will "develop and issue specific adjustment plan of electricity price and sales price in accordance with the average price adjustment standards of Annex 1" and will submit the adjustments to the NDRC, and further that the price adjustment will be enforced on April 20th, 2015.¹³⁰ Finally, Article 10 directs that "{l}ocal price departments shall organize and arrange carefully to put in place the electricity price adjustment measures."¹³¹ NDRC Notice 3105 also directs additional price reductions, and stipulates at Articles II and X, that local price authorities shall implement in time the price reductions included in its Annex, and must report resulting prices to the NDRC.¹³²

Neither Notice 748 nor Notice 3105 explicitly stipulates that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions, as the GOC states to be the case.¹³³ Rather, both notices indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices, by mandating average price adjustment targets with which the provinces are obligated to comply in setting their own specific prices.¹³⁴ The notices do not explicitly eliminate Provincial Price Proposals and do not define distinctions in price-setting roles between national and provincial pricing authorities. In a supplemental questionnaire, we requested that the GOC explain how the NDRC monitors compliance with the

¹²³ See GOC IQR at 54-55.

¹²⁴ *Id.*, at Exhibit ELEC-1.

¹²⁵ *Id.*

¹²⁶ *Id.*, at Exhibit ELEC-10.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*, at Exhibit ELEC-4.

¹³³ *Id.*, at 54-55.

¹³⁴ *Id.*, at Exhibit ELEC-4 and Exhibit ELEC-10.

price changes directed in Notice 748 and what action the NDRC would take were any province not to comply with the directed price changes. The GOC's response failed to explain what actions the NDRC would take in the event of non-compliance with a directed price change.¹³⁵ The GOC did, however, note that "...the provincial authorities make specific calculations of price changes using the specific data of their own provinces... {s}uch calculation results are filed with the NDRC to ensure that each price adjustment follows the established principles."¹³⁶

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

Consequently, we preliminarily determine, in accordance with sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, that information necessary to our analysis of financial contribution and specificity is not available on the record, that the GOC withheld information requested by Commerce, and that the GOC significantly impeded this proceeding. Thus, we must rely on "facts available" in making our preliminary determination.¹³⁷ Moreover, we preliminarily determine, in accordance with section 776(b) of the Act, that the GOC failed to cooperate to the best of its ability to comply with our repeated requests for information. As a result, an adverse inference is warranted in the application of facts available.¹³⁸ In applying AFA, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D)(iii) of the Act and is specific within the meaning of section 771(5A)(D) of the Act. The GOC failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments. Therefore, we are also relying on AFA in selecting the benchmark for determining the existence and amount of the benefit. The benchmark rates we selected are derived from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, *see* "Provision of Electricity for LTAR," below.

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

In response to the question in the Initial Questionnaire requesting that respondents report whether they had received assistance under any other program, Yinfeng and Mangrove identified numerous additional instances of assistance under programs not otherwise identified in our Initial Questionnaire.¹³⁹ In response to our request for information on these self-reported subsidies, the GOC responded:

The Department has requested information on numerous programs in this investigation. The respondents and the GOC have cooperated to the best of their

¹³⁵ See GOC SQR at 14.

¹³⁶ *Id.*, at 14-15.

¹³⁷ See section 776(a) of the Act.

¹³⁸ See section 776(b) of the Act.

¹³⁹ See Mangrove IQR at 29 and Yinfeng IQR at 26-27.

ability to provide the information requested. The GOC further notes that Article 11.2 of the *WTO Agreement on Subsidies and Countervailing Measures* dictates that investigations may not be initiated on the basis of “simple assertion, unsubstantiated by relevant evidence.” Sufficient evidence with regard to the existence, amount, and nature of a subsidy must be presented for the Department to initiate the investigation of another program, consistent with Article 11.2(iii). The GOC believes, therefore, that an answer to this question would not be appropriate. For more information about the subsidies received by the respondent enterprises, please refer to the respondent enterprises’ responses.¹⁴⁰

Subsequently, we issued a supplemental questionnaire requesting that the GOC provide a full response regarding the measurable “Other Subsidies” reported by Yinfeng and Mangrove. However, in its response, the GOC did not provide any of the requested information concerning the programs at issue.¹⁴¹

Based upon the foregoing, we preliminarily determine that the information necessary to analyze whether these reported “Other Subsidies” constitute a financial contribution and are specific is not available on the record and that the GOC has withheld information that was requested of it and impeded the proceeding. Thus, we must rely on facts available for purposes of this preliminary determination, in accordance with section 776(a)(1) and 776(a)(2)(A) and (C) of the Act.

Moreover, by refusing to provide the requested, necessary information, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In applying AFA, we find that the “Other Subsidies” reported by Yinfeng and Mangrove constitute financial contributions, pursuant to section 771(5)(D) of the Act, and are specific, within the meaning of section 771(5A) of the Act. For details regarding the remainder of our analysis for this program, *see* the “Other Subsidies,” section below.

VII. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.¹⁴² In the Initial Questionnaire to the GOC and the mandatory respondents, we notified the respondents to this proceeding that the AUL period would be 10 years, on the basis of U.S. Internal Revenue Service Publication 946 (2016).¹⁴³ No party submitted comments challenging this AUL period.

Furthermore, for non-recurring subsidies, we applied the “0.5 percent test,” as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of a subsidy approved under a given

¹⁴⁰ See GOC IQR at 65.

¹⁴¹ See GOC SQR at 25-26.

¹⁴² See 19 CFR 351.524(b).

¹⁴³ See 19 CFR 351.524(d)(2).

program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidy is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

B. Attribution of Subsidies

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

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

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.¹⁴⁴

Thus, Commerce's regulations make clear that we must look at the facts presented in each case to determine whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.¹⁴⁵

As discussed above, we selected Yinfeng as a mandatory respondent. Yinfeng responded to Commerce's questionnaire on behalf of itself and reported that it had two cross-owned affiliates, Mangrove and Fujian Province Youxi City Mangrove Wood Machining Co., Ltd., Xicheng

¹⁴⁴ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

¹⁴⁵ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

Branch (Xicheng).¹⁴⁶ Mangrove produced all of the subject merchandise exported by Yinfeng during the POI.¹⁴⁷ Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Yinfeng to its own sales. Additionally, because Yinfeng does not produce the subject merchandise, but acts as a trading company and exports the subject merchandise produced by Mangrove; in accordance with 19 CFR 351.525(c), benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing the subject merchandise that is sold through the trading company. Accordingly, we have attributed subsidies received by Mangrove to its own sales, and cumulated the subsidy rate calculated for Mangrove with the subsidy rate calculated for Yinfeng. Xicheng reported receiving no subsidies during the POI.¹⁴⁸

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for Yinfeng's and Mangrove's receipt of benefits under each program. As discussed in further detail below under "Programs Preliminarily Determined to Be Countervailable," where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator. Where the program has been found to be contingent upon export activities, we used the recipient's total export sales as the denominator. All sales used in our net subsidy rate calculations are net of intra-company sales. For a further discussion of the denominators used, *see* the Yinfeng Preliminary Calculation Memorandum.¹⁴⁹

VIII. BENCHMARKS AND INTEREST RATES

We are investigating non-recurring, allocable subsidies received by Yinfeng and its cross-owned producer Mangrove.¹⁵⁰ The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

A. Loan Benchmarks and Discount Rates

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, we use comparable commercial loans reported by the respondent as a benchmark.¹⁵¹ If the firm did not have any comparable commercial loans during the period, Commerce's regulations provide that we "may use a national average interest rate for comparable commercial loans."¹⁵²

¹⁴⁶ See Yinfeng AQR at 2.

¹⁴⁷ *Id.*

¹⁴⁸ See Yinfeng's Letter, "Wood Mouldings and Millwork Products from the People's Republic of China: Xicheng Branch Section III Questionnaire Response," dated April 13, 2020.

¹⁴⁹ See Memorandum, "Yinfeng Calculations for Preliminary Determination" dated concurrently with this memorandum (Yinfeng Preliminary Calculation Memorandum).

¹⁵⁰ See 19 CFR 351.524(b)(1).

¹⁵¹ See 19 CFR 351.505(a)(3)(i).

¹⁵² See 19 CFR 351.505(a)(3)(ii).

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS from China*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.¹⁵³ On July 21, 2017, Commerce conducted a reassessment of China's financial system for CVD benchmarking purposes.¹⁵⁴ Based on this reassessment, Commerce has concluded that, despite the reforms to date, the GOC's role in the system continues to fundamentally distort lending practices in China in terms of risk pricing and resource allocation, precluding the use of interest rates in China for CVD benchmarking or discount rate purposes. Consequently, we preliminarily find that we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, Commerce selected an external market-based benchmark interest rate. The use of an external benchmark is consistent with Commerce's practice.¹⁵⁵

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China* and later updated in *Thermal Paper from China*.¹⁵⁶ Under that methodology, we first determine which countries are similar to China in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from China*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, China fell in the lower-middle income category.¹⁵⁷ Beginning in 2010, however, China was classified in the upper-middle income category and remained there from 2011 to 2018.¹⁵⁸ Accordingly, as explained below, we used the interest rates of lower-middle income countries to construct the discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2018. This is consistent with Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.¹⁵⁹

¹⁵³ See *CFS from China* and accompanying Issues and Decision Memorandum at Comment 10.

¹⁵⁴ See Memorandum, "Review of China's Financial System Memorandum," dated concurrently with this memorandum at Attachment 1 "Review of China's Financial System for Countervailing Duty (CVD) Benchmarking Purposes."

¹⁵⁵ See, e.g., *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 82 FR 46754 (October 6, 2017) and accompanying Preliminary Decision Memorandum at 21, unchanged in *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018).

¹⁵⁶ See *CFS from China*, and accompanying Issues and Decision Memorandum at Comment 10; see also *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*) and accompanying Issues and Decision Memorandum at 8-10.

¹⁵⁷ See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups> (World Bank Country Classification); see also Memorandum, "Loan Interest Rate Benchmarks," dated concurrently with this memorandum (Interest Rate Benchmark Memorandum).

¹⁵⁸ See World Bank Country Classification.

¹⁵⁹ See, e.g., *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) and accompanying Preliminary Decision Memorandum at "Benchmarks and Discount Rates," unchanged in *Cast Iron Soil Pipe Fittings from the People's Republic of China:*

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

In each of the years from 2003-2009 and 2011-2018, the results of the regression analysis reflected the expected, common-sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.¹⁶⁰ For 2010, however, the regression did not yield that outcome for China's income group.¹⁶¹ This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from China* to compute the benchmarks for the years from 2001-2009 and 2011-2018. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's International Financial Statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010-2018 and "lower middle income" for 2001-2009.¹⁶² First, we did not include those economies that we considered to be non-market economies for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to the IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency-denominated instruments. Finally, for each year we calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.¹⁶³ Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.¹⁶⁴

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, Commerce developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.¹⁶⁵

Final Affirmative Countervailing Duty Determination, 83 FR 32075 (July 11, 2018) and accompanying Issues and Decision Memorandum.

¹⁶⁰ See Interest Rate Benchmark Memorandum.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ See, e.g., *Thermal Paper from China* and accompanying Issues and Decision Memorandum at 10.

In *Citric Acid from China*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question.¹⁶⁶ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.¹⁶⁷ The resulting interest rate benchmarks and discount rates used in our preliminary calculations are provided in Yinfeng Preliminary Calculation Memorandum.

B. Benchmark for Government Provision of Land-Use Rights for LTAR

As explained in detail in previous investigations, Commerce cannot rely on the use of the “tier one” and “tier two” benchmarks described above to assess the benefits from the provision of land for LTAR in China. Specifically, in *Sacks from China*, Commerce determined that “Chinese land prices are distorted by the significant government role in the market,” and hence, no usable “tier one” benchmarks exist.¹⁶⁸ Furthermore, Commerce also found that “tier two” benchmarks (world market prices that would be available to purchasers in China) are not appropriate.¹⁶⁹

On October 2, 2018, Commerce completed a memorandum analyzing developments in China’s land market since 2007.¹⁷⁰ The Land Analysis Memorandum was prepared to assess the continued application of Commerce’s land for LTAR benchmark methodology, as established in 2007 in *Sacks from China*.¹⁷¹ As discussed in the Land Analysis Memorandum, although reforms in China’s land markets have improved the land-use rights of some landholders, such improvements have not been comprehensive, and reforms have been implemented on an *ad hoc* basis.¹⁷² The reforms to date have not addressed the fundamental institutional factors that underlie the Chinese government’s monopoly control over land use, which precludes landholders from putting their land to its best use and realizing the market value of their landholdings.¹⁷³ The GOC still owns all land in China and exercises direct control over the sale of land-use rights and land pricing in the primary market and indirect control in the secondary market.¹⁷⁴

¹⁶⁶ See *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from China*) and accompanying Issues and Decision Memorandum at Comment 14.

¹⁶⁷ See Interest Rate Benchmark Memorandum.

¹⁶⁸ See, e.g., *Laminated Woven Sacks from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007), unchanged in *Laminated Woven Sacks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Sacks from China*).

¹⁶⁹ *Id.*

¹⁷⁰ See Memorandum, “Land Analysis Memo,” dated concurrently with this memorandum (Land Analysis Memorandum).

¹⁷¹ See, e.g., *Laminated Woven Sacks from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007), unchanged in *Sacks from the PRC*.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

As a result, and consistent with our methodology established in *Sacks from China*, we determine that we cannot use any first-tier, domestic Chinese land prices for benchmarking purposes. We also determine that because land is generally not simultaneously available to an in-country purchaser while located and sold out-of-country on the world market, we cannot use second-tier world prices as a benchmark for land-use rights. Finally, because land prices in China are not consistent with market principles, and they reflect the government's control and allocation of land use on an administrative basis, we will continue to use land-use prices outside of China as a third-tier benchmark. Accordingly, consistent with our past practice, we are relying on the use of so-called "tier three" benchmarks for purposes of calculating a benefit for this program.

In this investigation, Yinfeng submitted benchmark information for land prices. Specifically, Yinfeng submitted information for the cost of purchasing industrial land in Malaysia from 2014-2019 from the Malaysia Investment Development Authority as well as contemporaneous worldwide land rent prices from "Asian Marketview Reports" by CB Richard Ellis (CBRE), the same source Commerce has relied upon in prior CVD proceedings.¹⁷⁵

As Yinfeng noted, Commerce has used benchmark information to value land from "Asian Marketview Reports" by CBRE for Thailand for 2010 in *Solar Cells from China* and *Plywood from China*,¹⁷⁶ and more recently in *Steel Racks*.¹⁷⁷ We initially selected this information in the *Sacks from China* investigation after considering a number of factors, including national income levels, population density, and producers' perceptions that Thailand is a reasonable alternative to China as a location for Asian production.¹⁷⁸ We found that this benchmark is similarly suitable for this preliminary determination, based on the same considerations as were taken into account in *Sacks from China*. In this preliminary determination, consistent with previous cases, we used the data from the "Asian Marketview Reports" by CBRE for Thailand for 2010 and inflation data from the International Monetary Fund for Thailand, and relied on it for our calculation of benefits relating to purchases of land-use rights by Mangrove.

C. Benchmarks for Inputs

¹⁷⁵ See Yinfeng Submission, "Yinfeng Benchmark Submission," dated May 11, 2020 (Yinfeng Benchmarks) at Exhibits 8-10.

¹⁷⁶ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China*) and accompanying Issues and Decision Memorandum at 6 and Comment 11; see also *Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 19022 (April 25, 2017) and accompanying Preliminary Decision Memorandum at 17-18, unchanged in *Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, In Part*, 82 FR 53473 (November 16, 2017) (*Plywood from China*).

¹⁷⁷ See *Certain Steel Racks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 62297 (December 3, 2018) (*Steel Racks*) and accompanying Preliminary Decision Memorandum at 35-36.

¹⁷⁸ The complete history of our reliance on this benchmark is discussed in the above-referenced *Solar Cells from China* Issues and Decision Memorandum. In that discussion, we reviewed our analysis from the *Sacks from China* investigation and concluded the CBRE data remained a valid land benchmark.

Mangrove reported purchases of plywood and sawn wood during the POI.¹⁷⁹ 19 CFR 351.511(a)(2) sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three).¹⁸⁰

For these inputs, as discussed above under “Use of Facts Otherwise Available and Adverse Inferences,” we preliminarily determine the domestic markets are distorted under 351.511(a)(2). Therefore, prices from Mangrove’s domestic input producers are not suitable as benchmark prices. Accordingly, we determine that “tier one” prices are unavailable for benchmark purposes. Consequently, we are relying on “tier two” (world market) prices for calculating benchmarks for the provision of plywood and sawn wood, in accordance with 19 CFR 351.511(a)(2)(ii).

The petitioner submitted benchmark information for certain Harmonized Schedule (HS) categories covering plywood and sawn wood from New Zealand’s official data agency, Stats NZ Taturanga Aotearoa, as well as ocean freight rates and inland freight rates.¹⁸¹ Yinfeng provided UN Comtrade price data for certain HS categories covering plywood and sawn wood as well as inland freight costs for the POI and benchmark information for ocean freight rates.¹⁸²

These proposed benchmark values are for goods comparable to the plywood and sawn wood that Mangrove purchased, and we preliminarily calculated the benchmarks for plywood and sawn wood using the data submitted by the petitioner and Yinfeng. For the purposes of generating a benchmark reflective of the world market price, we averaged all of the benchmark data submitted for this preliminary determination. We note that parties made extensive arguments regarding the inclusion of certain benchmark data in our calculations. We have included additional detail regarding the benchmarks applied for this preliminary determination in our calculation memorandum.¹⁸³ Additionally, Commerce intends to continue to examine benchmark prices. Therefore, we intend to request specific additional benchmark information from the parties for consideration in the final determination.

Pursuant to 19 CFR 351.511(a)(2)(iv), benchmarks should reflect “delivered prices” and include import and delivery charges. Accordingly, we added international freight charges, VAT, and import duties on applicable purchases, to calculate the price that a respondent would have paid on the world market for these inputs.¹⁸⁴ The petitioner and Yinfeng both provided ocean freight rates and inland freight rates to be considered as benchmarks.¹⁸⁵ As neither Yinfeng nor the

¹⁷⁹ See Mangrove IQR at 18-19 and Exhibits 9.1 and 9.2.

¹⁸⁰ See 19 CFR 351.511(a)(2).

¹⁸¹ See Petitioner Submission, “Benchmark Pricing Information,” dated May 11, 2020 (Petitioner Benchmarks).

¹⁸² See Yinfeng Submission, “Yinfeng Benchmark Submission,” dated May 11, 2020 (Yinfeng Benchmarks).

¹⁸³ See Yinfeng Preliminary Calculation Memorandum.

¹⁸⁴ *Id.*

¹⁸⁵ See Petitioner Benchmarks at Exhibits 5 and 9A; *see also* Yinfeng Benchmarks at Exhibit 1; Yinfeng SQR1 at Exhibit SQ2-3.

petitioner provided freight benchmarks specific to the actual routes used by the respondent or actual costs for inland freight for all months of the POI, we have relied on an average of the data submitted to develop freight benchmark prices reflective of the world market.¹⁸⁶ Accordingly, for the preliminary determination, we relied on the inland freight data and the public monthly ocean freight data provided by both the petitioner and Yinfeng.

IX. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined to Be Countervailable

1. Policy Loans to the Wood Mouldings and Millwork Products Industry

The petitioner alleges that policy banks and state-owned commercial banks (SOCBs) in China make loans to millwork products producers on preferential terms as a matter of national level government policy.¹⁸⁷ Commerce has countervailed policy lending programs in previous investigations.¹⁸⁸ Mangrove reported having loans from policy banks or SOCBs that were outstanding during the POI.¹⁸⁹ When examining a policy lending program, Commerce examines whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support such objectives or goals. Where such plans or policy directives exist, then it is our practice to find that a policy lending program exists that is *de jure* specific to the targeted industry (or producers that fall under that industry) within the meaning of section 771(5A)(D)(i) of the Act. If we make such a finding, we rely upon the analysis undertaken in *CFS from China* to further conclude that national and local government control over the SOCBs render the loans a government financial contribution.¹⁹⁰

Based on our review of the record, we preliminarily determine that loans received by the millwork products industry from SOCBs were made pursuant to government directives. We determine that the GOC, through its directives, has policies in place encouraging the use of loans to encourage and support the growth of favored industries, including those using timber, which would include the millwork products industry. For instance, the Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation (No. 40 (2005)) (Decision 40) states in its preamble that “{a}ll relevant administrative departments shall speed up the formulation and amendment of policies on public finance, taxation, credit, land, import and export, etc., effectively intensify the coordination and cooperation with industrial policies, and further improve and promote the policy system on

¹⁸⁶ See Yinfeng Preliminary Calculation Memorandum.

¹⁸⁷ See CVD Initiation Checklist at 7-9.

¹⁸⁸ See, e.g., *Drawn Stainless Steel Sinks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013) and accompanying Issues and Decision Memorandum at 24-25; see also *Countervailing Duty Investigation of Plywood from China* and accompanying Issues and Decision Memorandum at 39-40.

¹⁸⁹ See Mangrove IQR at 14 and Exhibit 8.

¹⁹⁰ See *CFS from China* and accompanying Issues and Decision Memorandum at Comment 8; see also *Thermal Paper from China* and accompanying Issues and Decision Memorandum at “Government Policy Lending Program.”

industrial structure adjustment” with respect to the listed industrial categories.¹⁹¹ In Chapter II “Directions and Key Points of Industrial Structure Adjustment,” Article 4, Decision 40 additionally states that “We shall develop materials forests, timber forest bases in light of local circumstances, and raise the rate of *comprehensive utilization of timbers*” (emphasis added).¹⁹² Additionally, Chapter 13 (Adjust Raw Material Industrial Structure and Distribution) of the “Guidelines of the Eleventh Five-Year Plan for National Economic and Social Development” indicates that the industry under consideration falls within “Section 3 Promote the Sound Development of Building Material and Building Industry” category.¹⁹³ Section 3 includes the building materials industry, and it is axiomatic that millwork products are building materials.

Based on the record information described above, we preliminarily determine that the GOC has a policy in place to encourage the development and production of millwork products through policy lending. The loans to millwork products producers from policy banks and SOCBs in China constitute financial contributions from “authorities” within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.¹⁹⁴ Finally, we determine that the loans are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of the GOC’s policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the millwork products industry.

To calculate the benefit from this program, we used the benchmarks discussed under the “Benchmarks and Interest Rates” section.¹⁹⁵ On this basis, we preliminarily determine a subsidy rate of 0.19 percent *ad valorem*.

2. Export Buyer’s Credit

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, our preliminary determination regarding the GOC’s provision of export buyer’s credit is based on AFA. As AFA, we determine that the GOC’s provision of export buyer’s credit confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A)(B) of the Act, respectively. Furthermore, we determine on the basis of AFA that Yinfeng benefitted from this program during the POI within the meaning of section 771(5)(E) of the Act. Consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate of 10.54 percent *ad valorem*, a rate calculated for the same or similar program in another CVD proceeding involving imports from China.¹⁹⁶

¹⁹¹ See GOC IQR at Exhibit LOAN-10.

¹⁹² *Id.*, at Exhibit GEN-13, Article 4.

¹⁹³ *Id.*, at Exhibit LOAN-6.

¹⁹⁴ See section 771(5)(E)(ii) of the Act; *see also* 19 CFR 351.505(a)(1).

¹⁹⁵ See 19 CFR 351.505(c).

¹⁹⁶ See *Coated Paper from China Investigation Amended Final*, 75 FR at 70202 (identifying a revised *ad valorem* subsidy rate of 10.54 percent under “Preferential lending to the Coated Paper Industry”).

3. Provision of Sawn Wood and Continuously Shaped Wood for LTAR

Commerce is examining whether the GOC or other “authorities” within China provided sawn wood and continuously shaped wood for LTAR during the POI. Mangrove reported that it purchased certain sawn wood from unaffiliated domestic parties during the POI.¹⁹⁷ Mangrove reported no purchases of continuously shaped wood during the POI.¹⁹⁸

As explained in the “Use of Facts Otherwise Available and Adverse Inferences” section *infra*, we preliminarily find, based on AFA, that the domestic producers that provided sawn wood to Mangrove are “authorities” within the meaning of section 771(5)(B) of the Act, and that Mangrove received a financial contribution in the form of a provision of a good for LTAR, pursuant to section 771(5)(D)(iii) of the Act.¹⁹⁹

Additionally, for the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that the GOC is providing sawn wood to a limited number of industries and enterprises. Therefore, the subsidies under this program are *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act. As discussed in the “Benchmarks for Inputs” section above, we are relying on an external benchmark for determining the benefit from the provision of sawn wood for LTAR in accordance with 19 CFR 351.511(a)(2)(ii).

To derive the benchmark prices, we included ocean freight and inland freight costs that would be incurred to deliver inputs to Mangrove’s production facilities.²⁰⁰ We also added to the benchmark prices the appropriate import duties and VAT applicable to imports of sawn wood into China, as provided by the GOC.²⁰¹

We compared these monthly benchmark prices to the purchase prices paid by Mangrove for individual domestic transactions, including VAT and delivery charges. We determined the benefit as the difference between the benchmark prices and the prices reported. We divided the total benefits received by the appropriate sales denominator, as described in the “Subsidies Valuation” section above. On this basis, we preliminarily determine a subsidy rate of 0.23 percent *ad valorem*.²⁰²

¹⁹⁷ See Mangrove IQR at 18 and Exhibit 9.1.

¹⁹⁸ *Id.*, at 18.

¹⁹⁹ See, e.g., *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) (*OCTG 2012 Review*) and accompanying Issues and Decision Memorandum at 48-50.

²⁰⁰ See Yinfeng Preliminary Calculation Memorandum.

²⁰¹ See GOC IQR at Exhibit GEN-6. Consistent with *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014) (*Citric Acid from China; 2011 Review*) and accompanying Issues and Decision Memorandum at 90. In *Citric Acid from China; 2011 Review*, we utilized the Most Favored Nation import duty rate because it reflects the general tariff rate applicable to world trade.

²⁰² See Yinfeng Preliminary Calculation Memorandum

4. Provision of Plywood for LTAR

Commerce is examining whether the GOC or other “authorities” within China provided plywood for LTAR during the POI. Mangrove reported that it purchased plywood from unaffiliated parties during the POI.²⁰³

As explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily find, based on AFA, that the domestic producers that provided plywood to the company respondents are “authorities” within the meaning of section 771(5)(B) of the Act, and that the Yinfeng received a financial contribution in the form of a provision of a good for LTAR, pursuant to section 771(5)(D)(iii) of the Act.²⁰⁴

Additionally, as explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that the GOC is providing plywood to a limited number of industries and enterprises, and, hence, that the subsidies under this program are *de facto* specific pursuant to section 771(5A)(D)(iii) of the Act. As discussed in the “Input Benchmarks” section above, we are relying on an external benchmark for determining the benefit from the provision of plywood for LTAR under section 771(5)(E)(ii) of the Act.

To derive the benchmark prices, we included ocean freight and inland freight that would be incurred to deliver inputs to Mangrove’s production facilities.²⁰⁵ We also added to the benchmark prices the appropriate import duties and VAT applicable to imports of plywood into China, as provided by the GOC.²⁰⁶

We compared these monthly benchmark prices to the purchase prices paid by Mangrove for individual domestic transactions, including VAT and delivery charges. We determined the benefit as the difference between the benchmark prices and the prices reported. We divided the total benefits received by the appropriate sales denominator, as described in the “Subsidies Valuation” section above. On this basis, we preliminarily determine a subsidy rate of 0.28 percent *ad valorem*.²⁰⁷

5. Provision of Electricity for LTAR

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

For determining the existence and amount of any benefit under this program, we selected the highest non-seasonal provincial rates in China for each electricity category (*e.g.*, “large industry,” “general industry and commerce”) and “base charge” (either maximum demand or

²⁰³ See Mangrove IQR at 18 and Exhibit 9.2.

²⁰⁴ See *OCTG 2012 Review* and accompanying Issues and Decision Memorandum at 48-50.

²⁰⁵ See Yinfeng Preliminary Calculation Memorandum.

²⁰⁶ See GOC IQR at Exhibit GEN-6.

²⁰⁷ See Yinfeng Preliminary Calculation Memorandum.

transformer capacity, where applicable) used by Mangrove. Additionally, we identified and applied the peak, normal, and valley rates within a category, where applicable.

Consistent with our approach in *Wind Towers*, we first calculated Mangrove's variable electricity costs by multiplying the monthly kilowatt hours (kWh) consumed at each price category (e.g., peak, normal, and valley, where appropriate) by the corresponding electricity rates paid during each month of the POI.²⁰⁸ Next, we calculated the benchmark variable electricity costs by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity costs paid by Mangrove during the POI from the monthly benchmark variable electricity costs.

To measure whether Mangrove received a benefit with regard to its base rate (i.e., either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to the company by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the company's consumption quantities by the highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by Mangrove during the POI from the benchmark base rate costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from Mangrove's variable electricity payments and base rate payments. To calculate the net subsidy rate attributable to the company, we divided the benefit by the appropriate total sales denominator, as discussed in the "Subsidies Valuation" section. On this basis, we preliminarily calculated a net countervailable subsidy rate of 0.98 percent *ad valorem*.²⁰⁹

6. Provision of Land-Use Rights by the GOC to Encouraged Industries for LTAR

Commerce is examining whether the GOC has encouraged the development of the millwork products industry through the provision of land-use rights for LTAR. Mangrove reported purchasing land-use rights that were in effect during the POI.²¹⁰

In examining this program, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for preferential land pricing to support such objectives or goals. The GOC's national five-year plans (FYPs) identify the provision of land and land financing as policy tools to direct economic development for key objectives. For example, the national 13th FYP states that, "Approval procedures related to the projects and initiatives included in this plan will be streamlined and priority will be given to them in site selection, land availability, and funding arrangements."²¹¹ The 13th FYP identifies development goals for the region in which Mangrove operates as including "orderly relocation of industries" to the region and to "set up a number of centers for emerging strategic and high-tech industries, and develop a number of industrial clusters."²¹²

²⁰⁸ See *Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers*) and accompanying Issues and Decision Memorandum at 21-22.

²⁰⁹ See Yinfeng Preliminary Calculation Memorandum.

²¹⁰ See Mangrove IQR at 23-24.

²¹¹ See GOC IQR at Exhibit LOAN-6, Chapter 80-Section 2.

²¹² *Id.*, at Exhibit LOAN-6, Chapter 37-Section 3.

The 12th FYP similarly identifies land management policies as development tools, referencing the importance of the Guidance Catalogue's encouraged industries alongside implementing differential land management policy: "Modify and perfect the current industrial guidance catalogue, clarify the encouraged, limited and prohibited industrial for different principle function areas. Implement the differential land management policy, scientifically set the different land using scale, and carry out strict land use control."²¹³

The 11th FYP instructs strengthened support for industrial policy, especially for high-tech industries, alongside strengthened cooperation of land policies: "Strengthen and improve industrial policy work, reinforce the unified planning for domestic industry development and for investment introduction, strengthen the cooperation of the policies in credit, land, environmental protection, safety and science and technology with the industrial policy and use economic means to promote the development of industries. Strengthen the support for the weak links of high-tech industries and equipment manufacturing industry, mainly support research and development and foster core competitive power."²¹⁴ It further calls for giving development priority to the high-tech industry and intensive processing by enhancing the efficiency of land resources and the functions of special economic zones.²¹⁵

The GOC has identified the agriculture and forestry industry for priority development in the Guidance Catalogue, which includes the "development of technologies for wood-based composite materials and structural artificial boards," as well as the "production and comprehensive utilization of wood-based composite materials and bamboo construction materials," as encouraged.²¹⁶ Decision 40 identifies the Guidance Catalogue as "the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc."²¹⁷ Decision 40 also directs all local, provincial, and municipal governments under the Central Government's control to cooperate closely and intensify the effectiveness of implementing industrial policies, and instructs that the relevant provisions of the state will apply to other preferential policies on encouraged industry projects.

As detailed above, national and provincial level development plans provide for priority land supply and financing arrangements for priority development projects. These plans also consistently identify the wood-based industry as a target for economic development. Thus, given the evidence demonstrating the GOC's use of preferential pricing policies to develop the millwork products sector, together with evidence of similar policies in the provinces where respondents are located, we preliminarily determine there is a program to provide land for LTAR to producers of millwork products within the meaning of section 771(5A)(D)(i) of the Act. Because the Chinese government owns all land in China,²¹⁸ we preliminarily determine that the entities that provided the land to the respondents are "authorities" within the meaning of section 771(5)(B) of the Act, and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act. Given the total

²¹³ *Id.*, at Exhibit LOAN-6, Chapter 19-Section 2.

²¹⁴ *Id.*, at Exhibit LOAN-6, Part 14-Chapter 47.

²¹⁵ *Id.*, at Exhibit LOAN-6, Chapter 19-Section 4.

²¹⁶ *Id.*, at Exhibit LOAN-8, Part 53.

²¹⁷ *Id.*, at Exhibit GEN-13, Chapter III-Article 12.

²¹⁸ *Id.*, at 57.

government ownership of the land market, we preliminarily determine that the domestic market for land was distorted through the GOC's ownership.

As described above, we will continue to use land-use prices outside of China as a third-tier benchmark. To determine the benefit pursuant to section 771(5)(E)(iv) of the Act, we first multiplied the Thai industrial land benchmarks discussed above under the "Benchmarks and Discount Rates" section, by the total area of the respondent's land. We then subtracted the net price actually paid for the land to derive the total unallocated benefit. We next conducted the "0.5 percent test" of 19 CFR 351.524(b)(2) for the year(s) of the relevant land-rights agreement by dividing the total benefit for the respective year(s) by the relevant sales. For those benefits that pass the 0.5 percent test, we allocated the total benefit amounts across the terms of the land-use agreement, using the standard allocation formula of 19 CFR 351.524(d), and determined the amount attributable to the POI. We then divided this amount by the appropriate total sales denominator, as discussed in the "Subsidies Valuation" section. On this basis, we preliminarily determine a subsidy rate of 1.05 percent *ad valorem*.

7. "Other Subsidies"

Yinfeng and Mangrove self-reported various non-recurring subsidies from the GOC during the AUL.²¹⁹ The subsidies self-reported by Yinfeng and Mangrove, which conferred a measurable benefit, are as follows (rates included in parentheses):²²⁰

- (1) Industrial Enterprise Preferential Policy Fund for 2017 (Mangrove) (0.12%)
- (2) Transition and Updating Project for 2018 (Mangrove) (0.05%)
- (3) Provincial Intellectual Property Advantage Enterprise Prize for 2019 (Mangrove) (0.02%)
- (4) Enterprises Production and Efficiency Increase Awards for the First Quarter of 2019 (Mangrove) (0.01%)
- (5) Foreign Trade Cooperation and Development Fund for 2013 (Mangrove) (0.01%)
- (6) Foreign Trade Cooperation and Development Fund for 2014 (Mangrove) (0.01%)
- (7) Export Transition & Upgrade Fund for 2018 (Yinfeng) (0.07%)
- (8) Youxi County Export Prize for 2018 (Yinfeng) (0.05%)

As discussed above in the section "Use of Facts Available and Adverse Inferences," we preliminarily determine that these subsidies constitute a financial contribution under section 771(5)(D)(i) of the Act and are specific under section 771(5A) of the Act. Further, we preliminarily determine that each of these subsidies confers a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504(a). To calculate the benefit received under

²¹⁹ See Yinfeng IQR at 26-27 and Exhibit 13; Mangrove IQR at 29 and Exhibit 13. See also Yinfeng SQR1 at Exhibits SQ2-12 and SQ2-13.

²²⁰ See Yinfeng SQR1 at Exhibits SQ2-12 and SQ2-13.

these programs, we followed the methodology described in 19 CFR 351.524.

To calculate the *ad valorem* subsidy rate for these programs, we divided the benefit conferred under each of these programs by the appropriate POI sales denominator.

Based on the methodology outlined above, we preliminarily calculated a cumulative *ad valorem* subsidy rate of 0.34 percent for such “other subsidies.”²²¹

B. Programs Preliminarily Determined Not to Confer a Countervailable Benefit

1. The Provision of Water for LTAR

In the Petition, the petitioner alleged that “water pricing is highly regulated by the Chinese national government, and all water resources belong to the State...According to the Water Law of the Peoples Republic of China, the Chinese government licenses the use and pricing of water resources.”²²² The petitioner further alleged that “major national policies concerning the forestry and wood processing industries indicate that the Chinese national government provides water for LTAR to certain favored industries,” including the millwork products industry. The petitioner also alleged that “many provincial and local governments {such as in Jiangsu Province} in China also have established policies that provide preferential treatment to attract investment to their respective areas. In particular, provincial and local governments have created special economic areas that offer numerous incentives to investors.”²²³ The petitioner noted that because many millwork products producers are located in Jiangsu Province, that it is likely that Chinese “millwork products manufacturers receive preferential water rates, tax incentives and preferential water usage restrictions.”²²⁴

As an initial matter, Mangrove is located in Fujian Province,²²⁵ not Jiangsu Province, which was cited by the petitioner as a region providing preferential water rates to millwork products producers, as noted above. In its initial response, the GOC confirmed Yinfeng’s water supplier and provided the *Water Law of the People’s Republic of China (Water Law)*.²²⁶ The *Water Law* does not indicate that there is a national government program for assigning or approving water tariff rates. Rather, laws and regulations at the national level only set the general guidelines on the use of the water. More importantly, the record evidence does not demonstrate that the GOC provides water for LTAR to certain favored industries.²²⁷ Thus, we are analyzing this program at the sub-national level. We note that while there may have, in the past, been a water program in Jiangsu Province, which the petitioner relied upon as evidence of specificity, that program has been terminated.²²⁸

²²¹ See Yinfeng Preliminary Calculation Memorandum.

²²² See Petition at 57 (citing to *Water Law of the People’s Republic of China*, Decree No. 74 adopted at the 29th Meeting of the Standing Comm. of the Ninth National People’s Congress (Aug. 29, 2002)).

²²³ *Id.* at 59.

²²⁴ *Id.*

²²⁵ See Mangrove IQR at 1.

²²⁶ See GOC IQR at Exhibit WATER-4.

²²⁷ *Id.* at 55 and Exhibits WATER-2 and WATER-4.

²²⁸ See, e.g., *Multilayered Wood Flooring from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, in Part, and Intent To Rescind Review, in Part*;

As there is no national government program for assigning or approving water rates, we examined the water program both within Fujian Province and by Mangrove's specific provider in Youxi County. Specifically, the GOC provided guidelines for water rates at the national, provincial and municipal levels through the *Water Law*, the *Fujian Provincial Comprehensive Reform of Water Prices (2005)*, and the *Notice of Sanming Municipal Bureau Adjustment on Water Price (2017)*, none of which showed that there is a program that provides preferential rates to the millwork products industry.²²⁹

Mangrove reported that it paid the Youxi County water tariff rate and did not pay a preferential rate.²³⁰ During the POI, Mangrove paid for water under a category utilized by non-residential users within Mangrove's county. Mangrove did not receive a preferential water rate based on its industry or its location, and GOC guidelines for water rates at the provincial and municipal levels did not set forth guidelines for preferential pricing.²³¹ Mangrove's water usage rates are supported by source documentation from Mangrove's accounting records.²³² Consistent with our findings in *Wood Flooring 2016*, there is no evidence demonstrating that Mangrove paid for water under preferential rates for the millwork products industry at the national or local level of government.

C. Programs Preliminarily Determined Not to Have Conferred a Measurable Benefit to Yinfeng During the POI

Yinfeng reported receiving benefits under various self-reported programs that did not confer a measurable benefit.²³³ Based on the record evidence, we preliminarily determine that the benefits from Mangrove's and Yinfeng's 92 of 100 self-reported programs were fully expensed prior to the POI or are less than 0.005 percent *ad valorem* when attributed to their applicable sales, as discussed in the "Attribution of Subsidies" section above. These programs are also listed in Yinfeng Preliminary Calculation Memorandum,²³⁴ and are included in the AFA calculation reflected in the AFA Memorandum as they pertain to the non-cooperative respondent in this investigation.

D. Programs Preliminarily Determined to Be Not Used by Yinfeng/Mangrove

- Preferential Loans for State-Owned Enterprises (SOEs)
- Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
- Export Seller's Credit
- Income Tax Reductions under Article 28 of the Enterprise Income Tax

2016, 83 FR 67229 (December 28, 2018) and accompanying Preliminary Decision Memorandum at 37 (*Wood Flooring 2016*), unchanged in *Multilayered Wood Flooring from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review*; 2016, 84 FR 38221 (August 6, 2019).

²²⁹ See GOC IQR at Exhibit WATER-4 and GOC SQR at Exhibits S-10 and S-11.

²³⁰ See Mangrove IQR at 22.

²³¹ See Mangrove IQR at Exhibit 11.1; see also GOC IQR at Exhibit WATER-4 and GOC SQR at Exhibits S-10 and S-11.

²³² See Mangrove IQR at Exhibit 11.2.

²³³ See Yinfeng SQR1 at Exhibits SQ2-12 and SQ2-13.

²³⁴ See Yinfeng Preliminary Calculation Memorandum.

- Tax Offsets for Research and Development (R&D) Expenses Under the Enterprise Income Tax Law
- Preferential Income Tax Policy for Enterprises in the Northeast Region
- Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
- Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
- Import Duty Exemptions for Use of Imported Equipment
- Foreign Trade Development Fund Grants
- Export Assistance Grants
- Export Interest Subsidies
- Loan Interest Subsidies for the Forestry Industry
- Subsidies for the Development of Famous Brands and China World Top Brands
- Funds for Outward Expansion of Industries in Guangdong Province
- Provincial Fund for Fiscal and Technological Innovation
- The State Key Technology Project Fund
- Shandong Province's Special Fund for the Establishment of Key Enterprise Technology Centers
- Shandong Province's Environmental Protection Industry Research and Development Funds
- Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
- Waste Water Treatment Subsidies
- Technology to Improve Trade Research and Development Fund
- Provision of Standing Timber for LTAR
- Provision of Cut Timber for LTAR
- Provision of Veneers for LTAR
- Provision of Formaldehyde for LTAR
- Provision of Urea for LTAR
- Provision of {Urea-Formaldehyde} UF Resin for LATR
- Provision of Land-Use Rights by the GOC for LTAR in Industrial and Other Special Economic Zones
- Provision of Land to SOEs by the GOC for LTAR

X. RECOMMENDATION

We recommend that you approve the preliminary findings described above.



Agree

Disagree

6/8/2020

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

APPENDIX I

AFA Rate Calculation

A. Provision of Inputs for LTAR		Rate	Source
Provision of Standing Timber for LTAR		27.26%	Highest Rate for Similar Program Based on Benefit Type
Provision of Cut Timber for LTAR		0.22%	Highest Rate for Identical Program in a CVD Proceeding of Same Country
Provision of Veneers for LTAR		0.15%	Highest Rate for Identical Program in a CVD Proceeding of Same Country
Provision of Formaldehyde for LTAR		1.74%	Highest Rate for Identical Program in a CVD Proceeding of Same Country
Provision of Urea for LTAR		0.74%	Highest Rate for Identical Program in a CVD Proceeding of Same Country
Provision of Urea-Formaldehyde Resin for LTAR		27.26%	Highest Rate for Similar Program Based on Benefit Type
Provision of Electricity for LTAR		0.98%	Benefit Calculated
Provision of Plywood for LTAR		0.28%	Benefit Calculated
Provision of Sawn Wood and Continuously Shaped Wood for LTAR		0.23%	Benefit Calculated
B. Provision of Land for LTAR			
Provision of Land-Use Rights by the GOC to Encouraged Industries for LTAR		1.05%	Benefit Calculated
Provision of Land to SOEs by the GOC for LTAR			
Provision of Land-Use Rights by the GOC for LTAR in Industrial and Other Special Economic Zones			
C. Loans and Credit			
Policy Loans to the Wood Mouldings and Millwork Products Industry		0.19%	Benefit Calculated
Preferential Loans for SOEs			
Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program		2.05%	Highest Rate for Similar Program Based on Benefit Type

D. Grant Programs		
Foreign Trade Development Fund Grants	1.27%	Highest Rate for Similar Program Based on Benefit Type
Export Assistance Grants	1.27%	Highest Rate for Similar Program Based on Benefit Type
Export Interest Subsidies	1.27%	Highest Rate for Similar Program Based on Benefit Type
Interest Loan Subsidies for the Forestry Industry	1.27%	Highest Rate for Similar Program Based on Benefit Type
Subsidies for Development of Famous Brands and China World Top Brands	1.27%	Highest Rate for Similar Program Based on Benefit Type
Funds for Outward Expansion of Industries in Guangdong Province	1.27%	Highest Rate for Similar Program Based on Benefit Type
Provincial Fund for Fiscal and Technological Innovation	1.27%	Highest Rate for Similar Program Based on Benefit Type
State Key Technology Renovation Fund	1.27%	Highest Rate for Similar Program Based on Benefit Type
Shandong Province's Special Fund for the Establishment of Key Enterprise Technology Centers	1.27%	Highest Rate for Similar Program Based on Benefit Type
Shandong Province's Environmental Protection Industry Research and Development Funds	1.27%	Highest Rate for Similar Program Based on Benefit Type
Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises	1.27%	Highest Rate for Similar Program Based on Benefit Type
Waste Water Treatment Subsidies	1.27%	Highest Rate for Similar Program Based on Benefit Type
Technology to Improve Trade Research and Development Fund	1.27%	Highest Rate for Similar Program Based on Benefit Type

E. Income Tax Programs		
Income Tax Reductions under Article 28 of the Enterprise Income Tax	25%	Highest Rate for Similar Program Based on Benefit Type
Tax Offsets for Research and Development under the Enterprise Income Tax		Highest Rate for Similar Program Based on Benefit Type
Preferential Income Tax Policy for Enterprises in the Northeast Region		Highest Rate for Similar Program Based on Benefit Type
Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China		Highest Rate for Similar Program Based on Benefit Type
Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment		Highest Rate for Similar Program Based on Benefit Type
F. Value-Added Tax Programs		
Import Duty Exemptions for Use of Imported Equipment	9.71%	Highest Rate for Similar Program Based on Benefit Type
G. Export Credit Subsidies		
Export Seller’s Credit	4.25%	Highest Rate for Similar Program Based on Benefit Type
Export Buyer’s Credit	10.54%	Highest Rate for Similar Program Based on Benefit Type
H. Other Subsidies—Yinfeng		
Export Transition & Upgrade Fund for 2018	0.07%	Benefit Calculated
Youxi County Export Prize for 2018	0.05%	Benefit Calculated
Subsidy for import and export of goods	1.27%	Highest Rate for Similar Program Based on Benefit Type
Youxi County Export Prize for 2013	1.27%	Highest Rate for Similar Program Based on Benefit Type
Youxi County Export Prize for 2014	1.27%	Highest Rate for Similar Program Based on Benefit Type
Grant for Steady Foreign Trade Increase for 2015	1.27%	Highest Rate for Similar Program Based on Benefit Type
Trading Enterprise Prize for 2014	1.27%	Highest Rate for Similar Program Based on Benefit Type
Subsidy for the Development of Small and Medium Trading Enterprise for 2015	1.27%	Highest Rate for Similar Program Based on Benefit Type

Youxi County Export Prize for 2015	1.27%	Highest Rate for Similar Program Based on Benefit Type
Export Transition & Upgrade Fund for 2016	1.27%	Highest Rate for Similar Program Based on Benefit Type
Trading Enterprise Prize for 2017	1.27%	Highest Rate for Similar Program Based on Benefit Type
Youxi County Export Prize for 2017	1.27%	Highest Rate for Similar Program Based on Benefit Type
Youxi County Export Prize for 2016	1.27%	Highest Rate for Similar Program Based on Benefit Type
Trading Enterprise Prize for 2018	1.27%	Highest Rate for Similar Program Based on Benefit Type
Subsidy for Updating for Paperless Export Tax Refund	1.27%	Highest Rate for Similar Program Based on Benefit Type
Provincial Commercial Development Prize for 2017	1.27%	Highest Rate for Similar Program Based on Benefit Type
I. Other Subsidies—Mangrove		
Industrial Enterprise Preferential Policy Fund for 2017	0.12%	Benefit Calculated
Transition and Updating Project for 2018	0.05%	Benefit Calculated
Provincial Intellectual Property Advantage Enterprise Prize for 2019	0.02%	Benefit Calculated
Enterprises Production and Efficiency Increase Awards for the First Quarter of 2019	0.01%	Benefit Calculated
Foreign Trade Cooperation and Development Fund for 2013	0.01%	Benefit Calculated
Foreign Trade Cooperation and Development Fund for 2014	0.01%	Benefit Calculated
Small and Medium-sized Enterprise Fund for 2009	1.27%	Highest Rate for Similar Program Based on Benefit Type
Youxi County Export Prize for 2009	1.27%	Highest Rate for Similar Program Based on Benefit Type
Sanming City Export Prize for 2009	1.27%	Highest Rate for Similar Program Based on Benefit Type
Qualified Incentives for Clean Production of Sanming	1.27%	Highest Rate for Similar Program Based on Benefit Type
Tax Growth Reward for 2009	1.27%	Highest Rate for Similar Program Based on Benefit Type

Loan Interest Subsidy for Industrial Enterprises for 2009	1.27%	Highest Rate for Similar Program Based on Benefit Type
Loan Interest Subsidy for Industrial Enterprises for 2010	1.27%	Highest Rate for Similar Program Based on Benefit Type
Taxpayer Prize	1.27%	Highest Rate for Similar Program Based on Benefit Type
Disaster Subsidy for Tornado and Hail on April 11	1.27%	Highest Rate for Similar Program Based on Benefit Type
Youxi County Export Prize for 2011	1.27%	Highest Rate for Similar Program Based on Benefit Type
Disaster Subsidy to Industrial and Commercial Enterprises of Youxi County	1.27%	Highest Rate for Similar Program Based on Benefit Type
Loan Interest Subsidy for Industrial Enterprises for 2011	1.27%	Highest Rate for Similar Program Based on Benefit Type
Steady Growth Funds for 2012	1.27%	Highest Rate for Similar Program Based on Benefit Type
Disaster Subsidy from Labor Union	1.27%	Highest Rate for Similar Program Based on Benefit Type
Growth Guarantee Fund for 2012	1.27%	Highest Rate for Similar Program Based on Benefit Type
Subsidy for Export Merchandise Exhibition	1.27%	Highest Rate for Similar Program Based on Benefit Type
Youxi County Export Prize for 2012	1.27%	Highest Rate for Similar Program Based on Benefit Type
Exhibition Support Fund for 2012	1.27%	Highest Rate for Similar Program Based on Benefit Type
Provincial Foreign Trade Enterprise Support Fund	1.27%	Highest Rate for Similar Program Based on Benefit Type
International Market Development Fund to Small and Medium-Sized Enterprise Fund for 2012	1.27%	Highest Rate for Similar Program Based on Benefit Type
Supporting Fund for Export Insurance Fee for 4th Quarter of 2012	1.27%	Highest Rate for Similar Program Based on Benefit Type
Loan Interest Subsidy of Industrial Enterprises for 2012	1.27%	Highest Rate for Similar Program Based on Benefit Type
Deduction of Property Tax & Land Use Tax from November 2011 to June 2013	1.27%	Highest Rate for Similar Program Based on Benefit Type
Central Subsidies for the Development of Small and Medium-sized Enterprises of Local Special Industries for 2013	1.27%	Highest Rate for Similar Program Based on Benefit Type

Subsidy Funds for Technological Upgrading of Municipal Enterprises for 2013	1.27%	Highest Rate for Similar Program Based on Benefit Type
2013 Industrial Promotion Competition Awards	1.27%	Highest Rate for Similar Program Based on Benefit Type
Patent Award	1.27%	Highest Rate for Similar Program Based on Benefit Type
Youxi County Industrial Enterprise Power-use Quarterly Reward	1.27%	Highest Rate for Similar Program Based on Benefit Type
Youxi County Industrial Enterprise Power-use Quarterly Reward	1.27%	Highest Rate for Similar Program Based on Benefit Type
Incentives and Loan Interest Subsidy to Small and Medium-Sized Enterprises for 2014	1.27%	Highest Rate for Similar Program Based on Benefit Type
Deduction for Payment of VAT Control System Special Equipment and Technical Maintenance Expenses	1.27%	Highest Rate for Similar Program Based on Benefit Type
Youxi County Industrial Enterprise Power-use Quarterly Reward	1.27%	Highest Rate for Similar Program Based on Benefit Type
Youxi County Science and Technology Development Project Fund for the First Half Year of 2015	1.27%	Highest Rate for Similar Program Based on Benefit Type
Grant for Steady Foreign Trade Increase for 2015	1.27%	Highest Rate for Similar Program Based on Benefit Type
Fund for Transition of Foreign Trade and Updating of Export Products in 2015	1.27%	Highest Rate for Similar Program Based on Benefit Type
Patent Award	1.27%	Highest Rate for Similar Program Based on Benefit Type
Monthly Power-use Prize to Manufacturing Enterprise	1.27%	Highest Rate for Similar Program Based on Benefit Type
Monthly Power-use Prize to Manufacturing Enterprise	1.27%	Highest Rate for Similar Program Based on Benefit Type
Deduction for Payment of VAT Control System Special Equipment and Technical Maintenance Expenses	1.27%	Highest Rate for Similar Program Based on Benefit Type
Youxi County Science and Technology Development Project Fund for the Second Half Year of 2015	1.27%	Highest Rate for Similar Program Based on Benefit Type
Youxi County Export Prize for 2015	1.27%	Highest Rate for Similar Program Based on Benefit Type
Industrial Enterprise Tax Incentives for 2014	1.27%	Highest Rate for Similar Program Based on Benefit Type

Loan Interest Subsidy of Industrial Enterprises for 2014	1.27%	Highest Rate for Similar Program Based on Benefit Type
Enterprises Production and Efficiency Increase Awards for March, 2016	1.27%	Highest Rate for Similar Program Based on Benefit Type
Enterprises Returning to Work Award for February, 2016	1.27%	Highest Rate for Similar Program Based on Benefit Type
Reward Fund to Small and Micro Enterprises in Sanming City for Observing the Contracts and Keeping the Promises	1.27%	Highest Rate for Similar Program Based on Benefit Type
Deduction for Payment of VAT Control System Special Equipment and Technical Maintenance expenses	1.27%	Highest Rate for Similar Program Based on Benefit Type
2016 Prize for Key Private Industrial Enterprises Competition	1.27%	Highest Rate for Similar Program Based on Benefit Type
Patent Award	1.27%	Highest Rate for Similar Program Based on Benefit Type
Municipal Special Fund for Trade Development	1.27%	Highest Rate for Similar Program Based on Benefit Type
Youxi County Science and Technology Development Project Fund for the First Half Year of 2017	1.27%	Highest Rate for Similar Program Based on Benefit Type
Third Innovations Award for Environmental-friendly Reform on Energy-saving and Emission-reduction	1.27%	Highest Rate for Similar Program Based on Benefit Type
Export Transition & Upgrade Fund for 2016	1.27%	Highest Rate for Similar Program Based on Benefit Type
Power-use Award for Production and Efficiency Increase for the First Quarter in 2017	1.27%	Highest Rate for Similar Program Based on Benefit Type
Monthly Power-use Prize to Manufacturing Enterprise	1.27%	Highest Rate for Similar Program Based on Benefit Type
Building Famous Brand Advanced Enterprise Award (Madrid Registered Trademark Award)	1.27%	Highest Rate for Similar Program Based on Benefit Type
Sanming Famous Trademark Award for Small and Micro Enterprises (Well-known Trademark Award)	1.27%	Highest Rate for Similar Program Based on Benefit Type
Subsidy Funds for High and New Tech Enterprises Application in 2017	1.27%	Highest Rate for Similar Program Based on Benefit Type
Loan Interest Subsidy of Industrial Enterprises for 2016	1.27%	Highest Rate for Similar Program Based on Benefit Type
Technology Transformation Subsidy for 2016	1.27%	Highest Rate for Similar Program Based on Benefit Type

Patent Award	1.27%	Highest Rate for Similar Program Based on Benefit Type
Large Taxpayer of 2017 in Youxi County	1.27%	Highest Rate for Similar Program Based on Benefit Type
Employment Assistance	1.27%	Highest Rate for Similar Program Based on Benefit Type
Building Famous Brand Advanced Enterprise Award (Madrid Registered Trademark Award)	1.27%	Highest Rate for Similar Program Based on Benefit Type
Provincial Subsidy for Madrid Registered Trademark	1.27%	Highest Rate for Similar Program Based on Benefit Type
Power-use Award for Production and Efficiency Increase for the First Quarter in 2018	1.27%	Highest Rate for Similar Program Based on Benefit Type
Patent Award	1.27%	Highest Rate for Similar Program Based on Benefit Type
Provincial Foreign Trade Transition Model Fund for 2017	1.27%	Highest Rate for Similar Program Based on Benefit Type
Award for Completion of Technical Renovation and Production to the Industrial Enterprises in Sanming for 2017	1.27%	Highest Rate for Similar Program Based on Benefit Type
Provincial Energy Saving Circular Economy Fiscal Incentive Fund of Sanming City in 2018	1.27%	Highest Rate for Similar Program Based on Benefit Type
Municipal-level Enterprise Technology Funding Subsidies for 2018 (Batch # 22)	1.27%	Highest Rate for Similar Program Based on Benefit Type
Subsidy for Enterprise's R&D for 2017	1.27%	Highest Rate for Similar Program Based on Benefit Type
Provincial Intellectual Property Advantage Enterprise Prize for 2018	1.27%	Highest Rate for Similar Program Based on Benefit Type
Youxi County Patent Industrialization Fund for the Second Half Year of 2018	1.27%	Highest Rate for Similar Program Based on Benefit Type
Certified by FSC and ISO	1.27%	Highest Rate for Similar Program Based on Benefit Type
Subsidy for Participating in the First Import Exposition	1.27%	Highest Rate for Similar Program Based on Benefit Type
Intellectual Property Funding in the First Half of 2019	1.27%	Highest Rate for Similar Program Based on Benefit Type
Intellectual Property Funding in the Second Half of 2019	1.27%	Highest Rate for Similar Program Based on Benefit Type

Total AFA Rate: 245.34%