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Investigation
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August 28, 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 in the Countervailing Duty Investigation of Mattresses from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to the producers and exporters of mattresses 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 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 March 31, 2020, Brooklyn Bedding, Corsicana Mattress Company, Elite Comfort Solutions, FXI, Inc., Innocor, Inc., Kolcraft Enterprises, Inc., Legget & Platt, Incorporated, the International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (USW) (collectively, the petitioners) filed petitions with Commerce seeking the imposition of countervailing duties (CVD) on imports of mattresses from China.[1] Pursuant to section 702(b)(4)(A)(ii) of the Act, on March 31, 2020, Commerce invited the Government of China

[1] *See* Petitioner's Letter, "Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Antidumping and Countervailing Duty Petitions," dated March 31, 2020 (the Petition) at Volumes I and III (Petition, Volume III).

(GOC) for consultations with respect to the CVD Petition.[2] The GOC did not respond to Commerce's invitation. On April 8, 2020,[3] and April 14, 2020,[4] the petitioners provided additional information regarding Volume III of the Petition. On April 24, 2020, Commerce initiated a CVD investigation on mattresses from the People's Republic of China.[5]

B. Respondent Selection

In the "Respondent Selection" section of the Initiation Notice, Commerce stated that, in the event Commerce determined that the number of potential respondents is large and it cannot individually examine each company, it intended to select respondents based U.S. Customs and Border Protection (CBP) data for U.S. imports of mattresses from China during the period of investigation (POI) under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the "scope of the investigation.[6]

On May 8, 2020, Commerce determined that it was not practicable to examine all of the exporters/producers in the investigation because of the large number of identified exporters and producers relative to the resources available at Commerce. Commerce selected the two exporters/producers accounting for the largest volume of subject merchandise exported to the United States from China during the POI, based upon CBP entry data: Kewei Furniture Co Ltd (Kewei) and Zinus Xiamen (Zinus).[7]

C. Questionnaires and Responses

On May 11, 2020, Commerce issued the initial questionnaire to the GOC and requested that the GOC forward the questionnaire to the mandatory respondents.[8] On May 13, 2020, Commerce received a letter from Zinus informing us that the company has chosen not to participate in the instant investigation.[9] Moreover, Kewei did not provide a response to the questionnaire by the established deadline.

Because we did not receive a response from the two initial respondents, Commerce selected the two next largest producers or exporters, by volume, according to CBP data, Healthcare Co. Ltd

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[2] *See* Commerce's Letter, "Countervailing Duty Petition on Mattresses from the People's Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition," dated March 31, 2020.
[3] *See* Petitioners' Letter, "Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Responses to Petition Supplemental Questionnaires," dated April 8, 2020 at Volume III (Petition, Volume III SQR).
[4] *See* Petitioners' Letter, "Mattresses from China: Response to Petition Second Supplemental Questionnaire," dated April 14, 2020.
[5] *See* Memorandum, "Countervailing Duty Investigation Initiation Checklist: Mattresses from China," dated April 20, 2020 (Initiation Checklist); *see also Mattresses from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 85 FR 22998 (April 24, 2020) (*Initiation Notice*).
[6] *See Initiation Notice*.
[7] *See* Memorandum, "Countervailing Duty Investigation of Mattresses from the People's Republic of China: Respondent Selection," dated May 8, 2020 (First Respondent Selection Memorandum).
[8] *See* Commerce's Letter, Countervailing Duty Investigation of Mattresses from the People's republic of China: Questionnaire," dated May 11, 2020 (Initial Questionnaire).
[9] *See* Zinus' Letter, "Countervailing Duty Investigation of Mattresses from the People's Republic of China: Zinus" Notice of Intent Not to Participate," dated May 13, 2020 (Zinus Participation Notice).

(Healthcare) and Ningbo Megafeat Bedding Co., Ltd./Megafeat Bedding Co Ltd (Megafeat) on June 4, 2020.[10] On June 5, 2020, we notified the GOC that we had selected the two next largest respondents and requested that the GOC forward the initial questionnaire to Healthcare and Megafeat.[11] On June 6, 2020, the GOC requested assistance from Commerce with contacting Kewei,[12] and, on June 10, 2020, Commerce responded to the GOC's request for assistance and, subsequently, received no further communication from the GOC.[13] On June 16, 2020, both Healthcare and Megafeat informed us that they would not be participating in this investigation.[14]

D. Postponement of Preliminary Determination

On June 10, 2020, based on a request from the petitioners,[15] Commerce postponed the deadline for the preliminary determination until August 28, 2020, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).[16]

E. Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioners' request, we are aligning the final CVD determination in this investigation with the final determinations in the concurrent antidumping duty (AD) investigations of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socials Republic of Vietnam.[17] Consequently, the final CVD determination will be issued on the same date as the final AD determinations, which are currently scheduled to be issued no later than January 11, 2021, unless postponed.

F. Period of Investigation

The period of investigation (POI) is January 1, 2019 through December 31, 2019.

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[10] *See* Memorandum, "Countervailing Duty Investigation of Mattresses from the People's Republic of China: Selection of Additional Respondents for Individual Examination," dated June 4, 2020 (Additional Respondent Selection Memorandum).
[11] *See* Commerce's Letter, "Countervailing Duty Investigation of Mattresses from the People's Republic of China: Selection of Additional Mandatory Respondents," dated June 5, 2020.
[12] *See* Commerce's Letter, "Countervailing Duty Investigation of Mattresses from the People's Republic of China: GOC Inquiry Kewei Furniture Co Ltd," dated June 10, 2020 (Commerce Response to GOC Assistance Email) at Attachment (GOC Assistance Email).
[13] *Id*.
[14] *See* Healthcare's Letter, "Mattresses from the People's Republic of China: Notice of No Participation," dated June 16, 2020 (Healthcare Participation Notice); *see also* Megafeat's Letter, "Mattresses from the People's Republic of China: Notice of No Participation," dated June 16, 2020 (Megafeat Participation Notice).
[15] *See* Petitioners' Letter, "Mattresses from China: Request to Extend CVD Preliminary Determination," dated May 21, 2020.
[16] *See Mattresses from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 85 FR 35415 (June 10, 2020).
[17] These AD investigations were initiated at the same time as this CVD investigation. In addition, the AD investigations and this CVD investigation cover the same classes or kinds of merchandise. *See Initiation Notice*; *see also Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 23002 (April 24, 2020).

G. 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 May 21, 2020, the ITC published a preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of mattresses from China that are allegedly subsidized by the GOC.[18]

H. Diversification of China's Economy

On June 12, 2020, Commerce placed on the record of this investigation "The Extent of Diversification of Economic Activities in the People's Republic of China (China) for the Purpose of Determining Specificity of a Domestic Subsidy for Countervailing Duty (CVD)," dated September 13, 2018.[19] This information reflects a wide diversification of economic activities in China across 19 industry groups.[20]

III. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations,[21] we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, *i.e.*, scope.[22] We received comments concerning the scope of the concurrent AD and CVD investigations of mattresses, and we will address them in the preliminary determinations of the AD investigations.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are all types of youth and adult mattresses. The term "mattress" denotes an assembly of materials that at a minimum includes a "core," which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain (1) "upholstery," the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) "ticking," the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only "adult mattresses" and "youth mattresses." "Adult mattresses" are frequently described as "twin," "extra-long twin," "full," "queen," "king," or "California king" mattresses. "Youth mattresses" are typically described as "crib," "toddler," or "youth" mattresses. All adult and youth mattresses are included regardless of size or size description.

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[18] *See Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam*, 85 FR 30984 (May 21, 2020).
[19] *See* Memorandum, "Countervailing Duty Investigation of Mattresses from the People's Republic of China: Economic Diversification Memorandum," dated June 12, 2020.
[20] *Id*.
[21] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).
[22] *See Initiation Notice*, 85 FR at 22999.

The scope encompasses all types of "innerspring mattresses," "non-innerspring mattresses," and "hybrid mattresses." "Innerspring mattresses" contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as "innerspring mattresses" or "hybrid mattresses." "Hybrid mattresses" contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

"Non-innerspring mattresses" are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel-infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a "mattress foundation." "Mattress foundations" are any base or support for a mattress. Mattress foundations are commonly referred to as "foundations," "boxsprings," "platforms," and/or "bases." Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are "futon" mattresses. A "futon" is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A "futon mattress" is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as "convertible sofas," "sofa beds," "sofa chaise sleepers," "futons," "ottoman sleepers" or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from China or Vietnam. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 Fed. Reg. 7661 (Feb. 19, 2009); *Uncovered Innerspring Units From the Socialist Republic of Vietnam*, 73 Fed. Reg. 75391 (Dec. 11, 2008).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are "mattress toppers." A "mattress topper" is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a nominal height of four inches or less.

The products subject to this investigation are currently properly classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this investigation may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an 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."[23] 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."[24] At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any

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[23] *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).

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

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."[25] 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.[26] The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent 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.[27] Moreover, affirmative evidence of bad faith on the part of a respondent is not required before Commerce makes an adverse inference.[28]

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."[29] It is Commerce's practice to consider information to be corroborated if it has probative value.[30] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.[31] However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.[32] Furthermore, Commerce is not required to corroborate any countervailing subsidy rate applied in a separate segment of the same proceeding.[33]

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

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[25] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).
[26] *Id*., 337 F.3d at 1382.
[27] *Id*.
[28] *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *see also Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel*, 337 F.3d at 1382-83.
[29] *See, e.g.*, SAA at 870.
[30] *Id*.
[31] *Id.* at 869.
[32] *Id.* at 869-70.
[33] *See* section 776(c)(2) of the Act.

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.[34]

For purposes of this preliminary determination, we are applying AFA in the circumstances outlined below.

B. Application of AFA: Notification of Kewei by the GOC

As noted above, on May 8, 2020, Commerce selected mandatory respondents using CBP data,[35] and, on May 11, 2020, Commerce issued an initial questionnaire to the GOC,[36] requesting that the GOC forward copies to the mandatory respondents. The deadline for parties to notify Commerce of difficulties in responding to the initial questionnaire and to respond to Section III "Identifying Affiliated Companies" was May 26, 2020.[37] Commerce received neither requests for assistance nor responses. On June 4, 2020, Commerce selected additional mandatory respondents to replace the non-participating and non-responsive companies.[38] On June 6, 2020, the GOC emailed Commerce requesting assistance with contacting one of the mandatory respondents identified in First Respondent Selection Memorandum, Kewei, which Commerce had already determined to be non-responsive.[39] In light of the deadlines provided in the initial questionnaire, Commerce considers the request for assistance to be untimely.[40]

Furthermore, the GOC Assistance Email neither described its attempts to contact Kewei nor provided explanation for the difficulties in contacting the company.[41] Commerce notes that a company named Foshan City Kewei Furniture Co., Ltd. (Foshan City) participated in the AD investigation of mattresses from China.[42] In our response to the GOC Assistance email, we stated that, should the GOC not have attempted to contact Foshan City, we would consider the GOC to have not fulfilled its obligation with regard to forwarding the initial questionnaire to the mandatory respondent.[43] Commerce did not receive subsequent communication describing the GOC's attempts to contact Kewei.

Consequently, within the meaning of sections 776(a)(2)(A)-(C) of the Act, Commerce considers the GOC, as an interested party, to have impeded the transmission of the initial questionnaire to Kewei and, as a result, impeded the submission of the ensuing questionnaire responses by that respondent. We therefore preliminarily determine that Kewei and the GOC have withheld

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[34] *See* section 776(d)(3) of the Act.
[35] *See* First Respondent Selection Memorandum.
[36] *See* Initial Questionnaire.
[37] *Id*. at 1 and Section I "General Instructions."
[38] *See* Additional Respondent Selection Memorandum.
[39] *See* GOC Assistance Email.
[40] *See* Initial Questionnaire at 1 and Section I "General Instructions."
[41] *See* GOC Assistance Email.
[42] *See* Foshan City Kewei Furniture Co., Ltd's Letter, "Antidumping Duty Investigation of Mattresses from the People's Republic of China: Quantity & Value Response of Foshan City Kewei Furniture Co., Ltd," dated October 23, 2018.
[43] *See* Commerce Response to GOC Assistance Email.

information that was requested of them within the meaning of section 776(a)(2)(A) of the Act, and failed to provide information within the deadlines established and failed to provide information in the form and manner requested by Commerce within the meaning of section 776(a)(2)(B) of the Act. Finally, we preliminarily determine that, by not responding to our questions, Kewei and the GOC significantly impeded this investigation within the meaning of section 776(a)(2)(C) of the Act. Accordingly, given their failure to respond to Commerce's requests for information, Commerce must rely on "facts available" in making its preliminary determination with respect to all countervailable subsidy programs that Kewei could have used, in accordance with sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act. By failing to provide this information by the established deadline, May 26, 2020, the GOC and Kewei have not acted to the "best of {their} ability,"[44] and, therefore, Commerce determines that adverse inferences under section 776(b) of the Act are warranted. Thus, Commerce preliminarily finds that Kewei has been appropriately notified of the investigation by the *Initiation Notice* and is non-responsive. AFA issues related to non-responsive and non-participating companies are discussed further in section "D."

C. Application of Total AFA: GOC

The GOC did not respond to Section II of the initial questionnaire by the due date, June 17, 2020.[45] Because the GOC did not respond to the questionnaire, the information provided by the GOC regarding its provision of subsidies to producers and/or exporters, which is typically analyzed in our financial contribution and specificity findings, is not on the record, pursuant to section 776(a)(1) of the Act. Furthermore, by not responding to the questionnaire, we find that the GOC withheld information that was requested by Commerce, failed to provide such information by the established deadline, and significantly impeded this investigation, within the meaning of section 776(a)(2)(A)-(C), respectively. The only information on the record with respect to financial contribution and specificity is from the Petition.[46] Accordingly, for this preliminary determination, for our financial contribution and specificity findings, we find it appropriate to rely on information from the Petition, as facts available.[47] Moreover, by not responding to the questionnaire, we find that the GOC did not "do the maximum it is able to do," and, thus, did not cooperate to the best of its ability.[48] Therefore, we find it appropriate to resort to adverse inferences in selecting from among the facts otherwise available, pursuant to section 776(b)(1)(A) of the Act.

For this preliminary determination, we will rely on facts otherwise available in order to determine whether each program alleged is specific and provides a financial contribution. The only facts available on the administrative record with respect to these determinations are contained in the Petition.[49] Accordingly, for the preliminary determination, pursuant to section 776(b)(2)(A) of the Act, we have relied upon the Petition, as facts otherwise available, in order

[44] *See Nippon Steel,* 337 F.3d at 1382-83.
[45] *See* Initial Questionnaire at 1.
[46] *See* Petition, Volume III at 10-44.
[47] *See* Petition, Volume III.
[48] *See Nippon Steel*, 337 F.3d at 1382-83.
[49] *See* Petition, Volume III.

to determine whether each program we are investigating is specific and provides a financial contribution.

D. Application of Total AFA: Non-Participating and Non-Responsive Companies

As noted above, Commerce selected mandatory respondents using CBP data,[50] and, in light of Zinus's non-participation[51] and Kewei's lack of response to Section II "Identifying Affiliated Companies,"[52] selected additional mandatory respondents that subsequently declined to participate.[53] Accordingly, Commerce received no responses to Section III of the initial questionnaire from any of the mandatory respondents and, consequently, Commerce finds that the information necessary to calculate the benefit for the non-participating and non-responsive companies is not on the record. We also find that, by not providing responses to the initial questionnaire, the companies withheld information that was requested by Commerce, failed to provide such information by our deadline and in the form and manner requested, and significantly impeded this proceeding, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, respectively. Therefore, we are basing our determination of the subsidy rates for these companies on facts otherwise available.

Moreover, we preliminarily determine that an adverse inference is warranted in selecting from among the facts otherwise available for the non-responsive and non-participating companies pursuant to section 776(b) of the Act. Each of these companies failed to respond to the initial questionnaire and did not cooperate to the best of their ability. Accordingly, we preliminarily find that application of AFA is warranted to ensure that these companies do not obtain a more favorable result by failing to cooperate than if they had fully complied with our requests for information.

For each of the programs determined to be countervailable, pursuant to our AFA finding above, we are finding that these programs confer a benefit within the meaning of section 771(5)(B) and (E) of the Act. As AFA, we find that the non-responsive companies, in fact, used these countervailable programs during the POI. We selected an AFA rate for each of these programs,[54] based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's practice. We summed the program rates to determine the AFA rate applied to the non-responsive and non-participating companies. Commerce has previously found countervailable these or similar programs.[55] For a description of the selection of the AFA

[50] *See* First Respondent Selection Memorandum.
[51] *See* Zinus Participation Notice.
[52] *See* Initial Questionnaire at 1.
[53] *See* Healthcare Participation Notice; *see also* Megafeat Participation Notice.
[54] *See* Appendix.
[55] *See High Pressure Steel Cylinders from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017*, 84 FR 71373 (December 27, 2019), and accompanying Issues and Decision Memorandum (IDM) at 6 (*High Pressure Steel Cylinders from China*); *see also New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010) (*OTR Tires from China*), unchanged in *New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011); *Chlorinated Isocyanates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014), and accompanying IDM at 22 (*Isos from China*); *Citric*

rate and our corroboration of this rate, *see* the "Selection of the AFA Rate" and "Corroboration of the AFA Rate" sections below.

Selection of the AFA Rate

It is Commerce's practice in CVD proceedings to determine an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[56] When selecting AFA rates, section 776(d) of the Act provides that we may use a countervailable subsidy rate determined for the same or a similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates.[57] Accordingly, when selecting AFA rates, if we have cooperating respondents, we first determine if there is an identical program in the instant investigation and use the highest calculated rate for the identical program. If there are no cooperating respondents, as in this case, we then determine whether 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).[58] If no such rate exists, we then determine whether there is a similar/comparable program (based on the treatment of the benefit) in any CVD proceeding involving the same country and apply the highest calculated above-*de*

Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, 76 FR 77206 (December 12, 2011), and accompanying IDM at 12 (*Citric Acid from China*); *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), and accompanying IDM at 18 (*Woven Sacks from China*); *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010), and accompanying IDM at 10 (*MC Bricks from China)*; and *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201, 70202 (November 17, 2010) (*Coated Paper from China*).

[56] *See*, *e.g.*, *Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination with Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 83 FR 17651 (April 23, 2018), and accompanying PDM at "X: Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA: Chalco Ruimin and Chalco-SWA"; *see also Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions Final*) and accompanying IDM at "VI. Use of Facts Otherwise Available and Adverse Inferences: Application of Adverse Inferences: Non-Cooperative Companies"; *see also Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009) and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences."

[57] *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China)* and accompanying IDM at 13; *see also Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-74 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

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

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.[59]

Commerce's methodology is consistent with section 776(d)(1)(A) of the Act, which states that when applying an adverse inference in selecting from the facts otherwise available, we 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 we consider reasonable to use." Thus, section 776(d)(1)(A) of the Act expressly allows for our existing practice of using an adverse facts available 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 adverse facts available rate under section 776(d)(1)(A) of the Act described above, the provision states that we "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."[60] No legislative history accompanied this particular provision. Accordingly, we are 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.

The Act anticipates a two-step process for determining an appropriate adverse facts available 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 adverse facts available, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.[61]

In applying the adverse facts available rate provision, it is well established that when selecting the rate from among possible sources, we seek 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."[62] 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

[59] *See Shrimp from China* and accompanying IDM at 13-14.
[60] *See* Section 776(d)(2) of the Act.
[61] 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.
[62] *See* SAA at 870; *see also Essar Steel*, 678 at 1276 (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (finding that "{t}he purpose of the adverse facts statute is 'to provide respondents with an incentive to cooperate' with Commerce's investigation, not to impose punitive damages.") (*De Cecco*)).

facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin."[63] It is pursuant to this knowledge and experience that we have implemented our adverse facts available hierarchy in CVD cases to select an appropriate adverse facts available rate.[64]

In applying its adverse facts available hierarchy in CVD investigations, Commerce's goal is as follows: in the absence of necessary information from cooperative respondents, we are 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 we take 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 we can rely upon for purposes of identifying an adverse facts available rate for a particular program. In investigations for example, this "pool" of rates could include the rates for the same or similar programs used in either that same investigation, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy therefore does not focus on identifying the highest possible rate that could be applied from among that "pool" of rates; rather, it adopts the factors identified above of inducement, relevancy to the industry and to the particular program.

Under the first step of Commerce' investigation hierarchy, we apply 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 adverse facts available if that is the highest rate calculated for another cooperating respondent in the same industry for the same program.

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

[63] *See De Cecco*, 216 F.3d at 1032.
[64] We have adopted a practice of applying this hierarchy in CVD cases. *See, e.g.*, *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) and accompanying IDM at 28-31 (applying the adverse facts available hierarchical methodology within the context of CVD investigation); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015) and accompanying IDM at 11-15 (applying the adverse facts available hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, we may not always apply the AFA hierarchy. *See, e.g.*, *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016) and accompanying IDM at 7-8 (applying, outside of the adverse facts available hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

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, we apply 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.[65]

In all three steps of Commerce's adverse facts available investigation hierarchy, if we were to choose low adverse facts available 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 adverse facts available hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), we strike a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.[66]

Furthermore, we find that section 776(d)(2) of the Act applies as an exception to the selection of an adverse facts available rate under section 776(d)(1) of the Act; that is, after "an evaluation of the situation that resulted in the application of an adverse inference," we 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 applied in accordance with section 776(d)(1) of the Act should be applied as adverse facts available. As explained above, we are preliminarily applying adverse facts available because the companies chose not to cooperate by failing to provide a response to the initial questionnaire. 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.

Thus, for this preliminary determination, we are assigning an AFA rate to all non-responsive and non-participating companies. In determining the rates for these companies, we are guided by

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[65] In an investigation, unlike in an administrative review, Commerce is just beginning to develop 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.

[66] It is significant that all interested parties, since at least 2007, that choose not to provide requested information have 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 60645 (October 25, 2007) and accompanying IDM at 2, (October 17, 2007) ("As AFA in the instant case, the Department is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/producer in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed…"). Therefore, when an interested party is making a decision of 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, under its hierarchy, apply the highest rate as adverse facts available.

Commerce's methodology detailed above. Further, for all companies not selected as mandatory respondents, Commerce will apply the average of all the AFA rates as the "all-others" rate.[67]

Accordingly, we are utilizing the AFA CVD hierarchy to assign the highest applicable rates that Commerce is investigating. We are applying, where available, the highest above *de minimis* subsidy rate calculated for the same or comparable programs in a CVD proceeding involving China. For this preliminary determination, we are able to match, based on program names, descriptions, and treatment of the benefit, the following programs to the same or comparable programs from other CVD proceedings involving China:

1. Export Loans from Chinese State-Owned Banks (SOCBs)
2. Export Seller's Credit
3. Export Buyer's Credit
4. Tax Incentives for Businesses in the Guangdong Province Special Economic Zone (SEZ)[68]
5. VAT Rebates on Domestically Produced Equipment
6. Foreign Trade Fund Development Grants
7. Grants for Energy Conservation and Emission Reduction
8. SME Technology Innovation Fund
9. Provision of Land-Use Rights in SEZs for Less Than Adequate Remuneration (LTAR)
10. Provision of Electricity in Guangdong Province for LTAR

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:

11. Income Tax Reductions for High- and New-Technology Enterprises
12. Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law (EITL)
13. Income Tax Deductions/Credits for Purchase of Special Equipment
14. Tax Incentives for Businesses in the Guangdong Province SEZ[69]

The standard income tax rate for corporations in China in effect during the POI was 25 percent.[70] Thus, the highest possible benefit for income tax programs is 25 percent. Accordingly, we are applying a total 25 percent AFA rate for the combination of all these programs. Consistent with Commerce's practice, application of this AFA rate for preferential income tax programs does not

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[67] *See* section 776 of the Act (Commerce may use "any reasonable method" for assigning an all-others rate).
[68] *See* Petition, Volume III at Exhibit III-26. The program includes both income tax reductions and import tariff exemptions. Consequently, Commerce has split the program into two parts to reflect the benefits provided by both aspects.
[69] *Id*.
[70] *See Certain Corrosion Inhibitors from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 41960 (July 13, 2020), and accompanying PDM at 18 (*Corrosion Inhibitors from China*).

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.[71]

Based on the methodology described above, we preliminarily determine the AFA net countervailable subsidy rate for the non-cooperating companies to be 97.78 percent *ad valorem*. The Appendix 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."[72] The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.[73]

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.[74] 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.[75]

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.[76]

In the absence of record evidence concerning the non-responsive companies' usage of the subsidy programs at issue due to their decision not to participate in the investigation, we have reviewed the information concerning Chinese subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this investigation. The relevance of these rates is that they are actual calculated subsidy rates for Chinese programs, from which the non-responsive companies could

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[71] *See, e.g.*, *Aluminum Extrusions Final* and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."
[72] *See* SAA at 870.
[73] *Id.*
[74] *Id.* at 869-870.
[75] *See* section 776(d)(3) of the Act.
[76] *See*, *e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

actually receive a benefit. Due to the lack of participation by these companies 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) for this preliminary determination.

VI. ANALYSIS OF PROGRAMS

Programs Preliminarily Determined to be Countervailable

1. Export Loans from SOCBs

Under this program, the GOC provides preferential loans to exporters through SOCBs in order to further promote exports in an export-oriented industry.[77] The GOC's Decree No. 19, titled "Decisions on Promotion of Stable Growth of Foreign Trade by General Office of the State Council," encourages financial institutions, including SOCBs, to provide import and export credit loan services to "strengthen cooperation with export industries."[78]

For the reasons explained in the "Application of Total AFA: GOC" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b)(1)(B) of the Act, that the GOC's provision of Export Loans from SOCBs constitutes a financial contribution under section 771(5)(D)(i) of the Act and is specific under sections 771(5A)(A) and (B) of the Act. Furthermore, for the reasons explained in the "Application of Total AFA: Non-Participating and Non-Responsive Companies" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that Export Loans from SOCBs provide a benefit under section 771(5)(E)(ii) of the Act. Consistent with Commerce's AFA rate selection methodology, we preliminarily determine a countervailable subsidy rate of 10.54 percent *ad valorem* for the non-responsive and non-participating companies, a rate calculated for the same or similar program in another CVD proceeding involving imports from China.[79]

2. Export Seller's Credit

Under this program, the Export-Import Bank of China (EIBC) provides loans to Chinese companies to finance their exports of capital goods and services.[80] The EIBC provides loans "approved for foreign trade," including export credit, loans for offshore contracts and overseas investment, and concessional loans.[81]

For the reasons explained in the "Application of Total AFA: GOC" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b(1)(B)) of the Act, that the GOC's provision of Export Seller's Credit constitutes a financial contribution under section 771(5)(D)(i) of the Act and is specific under sections 771(5A)(A) and (B) of the Act. Furthermore, for the

[77] *See* Petition, Volume III at 13 and at Exhibit III-11.
[78] *See* Petition, Volume III, Exhibit III-12 at Articles 10, 12, and 13.
[79] *See Coated Paper from China* at 70202 and accompanying Ministerial Error Memorandum (MEM) at "Revised Net Subsidy Rate for the Gold Companies" (regarding "Preferential Lending to the Coated Paper Industry"). .
[80] *See* Petition, Volume III at 15-17 and at Exhibits III-14 and III-15.
[81] *See* Petition, Volume III at Exhibit III-14.

reasons explained in the "Application of Total AFA: Non-Participating and Non-Responsive Companies" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that Export Seller's Credit provides a benefit under section 771(5)(E)(ii) of the Act. Consistent with Commerce's AFA rate selection methodology, we preliminarily determine a countervailable subsidy rate of 4.25 percent *ad valorem* for the non-responsive and non-participating companies, a rate calculated for the same or similar program in another CVD proceeding involving imports from China.[82]

3. Export Buyer's Credit

Under this program, the GOC, through the EIBC, provides loans at preferential rates to companies that import Chinese products and services.[83] The EIBC advertises that it provides export buyer's credit "with the purpose of promoting the export of capital goods and services."[84]

For the reasons explained in the "Application of Total AFA: GOC" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the GOC's provision of Export Buyer's Credit constitutes a financial contribution under section 771(5)(D)(i) of the Act and is specific under sections 771(5A)(A) and (B) of the Act. Furthermore, for the reasons explained in the "Application of Total AFA: Non-Participating and Non-Responsive Companies" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that Export Buyer's Credit provides a benefit under section 771(5)(E)(ii) of the Act. Consistent with Commerce's AFA rate selection methodology, we preliminarily determine a countervailable subsidy rate of 10.54 percent *ad valorem* for the non-responsive and non-participating companies, a rate calculated for the same or similar program in another CVD proceeding involving imports from China.[85]

4. Income Tax Reductions for High and New Technology Enterprises

Under this program, the GOC provides income tax reductions, through the EITL at Article 28, decreasing income tax rates from 25 percent to 15 percent for companies engaged in high or new technology enterprises.[86] "Resources and environmental technology" are among the sectors that qualify.[87]

For the reasons explained in the "Application of Total AFA: GOC" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program constitutes a financial contribution under section 771(5)(D)(ii) of the Act and is specific under section 771(5A)(D)(i) of the Act. Furthermore, for the reasons explained in the "Application of Total AFA: Non-Participating and Non-Responsive Companies" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program provides a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). Consistent with

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[82] *See Citric Acid from China* at 12.
[83] *See* Petition, Volume III at 17-19 and Exhibits III-14 and III-15.
[84] *See* Petition, Volume III at Exhibit III-15.
[85] *See Coated Paper from China* at 70202, and accompanying MEM.
[86] *See* Petition, Volume III at 19-21 and at Exhibits III-17 and III-18.
[87] *See* Petition, Volume III at Exhibit III-18.

Commerce's AFA rate selection methodology, we preliminarily determine a combined income tax program countervailable subsidy rate of 25.00 percent *ad valorem* for the non-responsive and non-participating companies.[88]

5. Income Tax Deductions for Research and Development Expenses Under the EITL

Under this program, the GOC, through the EITL, allows income tax deductions on expenditures.[89] Article 30.1 allows companies to calculate a deduction "for researching and developing new technologies, new products and new techniques."[90]

For the reasons explained in the "Application of Total AFA: GOC" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program constitutes a financial contribution under section 771(5)(D)(ii) of the Act and is specific under section 771(5A)(D)(i) of the Act. Furthermore, for the reasons explained in the "Application of Total AFA: Non-Participating and Non-Responsive Companies" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program provides a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). Consistent with Commerce's AFA rate selection methodology, we preliminarily determine a combined income tax program countervailable subsidy rate of 25.00 percent *ad valorem* for the non-responsive and non-participating companies.[91]

6. Income Tax Deductions/Credits for Purchase of Special Equipment

Under this program, the GOC, through the EITL at Article 34, provides tax deductions to enterprises that purchase "special equipment for protecting {the} environment, saving energy, work safety, etc."[92] A percentage, approximately 10 percent, of the investment in such special equipment can be deducted from taxable income for the current year; this amount can also be carried forward and deducted over five years.[93]

For the reasons explained in the "Application of Total AFA: GOC" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program constitutes a financial contribution under section 771(5)(D)(ii) of the Act and is specific under section 771(5A)(D)(iii)(I) of the Act. Furthermore, for the reasons explained in the "Application of Total AFA: Non-Participating and Non-Responsive Companies" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program provides a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). Consistent with Commerce's AFA rate selection methodology, we preliminarily determine a combined income

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[88] *See Corrosion Inhibitors from China* at 18 (referencing the 25 percent standard income tax rate during the same POI of 2019).
[89] *See* Petition, Volume III at 21-23 and Exhibit III-17.
[90] *See* Petition, Volume III at Exhibit-17, Article 30.1.
[91] *See Corrosion Inhibitors from China* at 18 (referencing the 25 percent standard income tax rate during the same POI of 2019).
[92] *See* Petition, Volume III at Exhibit III-17.
[93] *Id*. at Exhibit III-24.

tax program countervailable subsidy rate of 25.00 percent *ad valorem* for the non-responsive and non-participating companies.[94]

7. Tax Incentives for Businesses in the Guangdong Province SEZ – Income Tax Deductions and Import Tariff Exemptions

Under this program, the GOC, through the *Regulations on Special Economic Zones in Guangdong Province* (Guangdong SEZ Regulations) at Articles 1 and 12 through 14, provides preferential tax policies such as income tax deductions and exemptions for export-oriented businesses for companies located within the cities of Shenzhen, Shuhai or Shantou.[95] The program also allows for import tariff exemptions for the costs of imported equipment and machinery.[96]

For the reasons explained in the "Application of Total AFA: GOC" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program constitutes a financial contribution under section 771(5)(D)(ii) of the Act and is specific under section 771(5A)(D)(iv) of the Act. Furthermore, for the reasons explained in the "Application of Total AFA: Non-Participating and Non-Responsive Companies" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program provides a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). For the income tax deduction portion of the program, consistent with Commerce's AFA rate selection methodology, we preliminarily determine a combined income tax program countervailable subsidy rate of 25.00 percent *ad valorem* for the non-responsive and non-participating companies.[97] For the import tariff exemption portion of the program, consistent with Commerce's AFA rate selection methodology, we preliminarily determine a countervailable subsidy rate of 9.71 percent *ad valorem* for the non-responsive and non-participating companies, a rate calculated for the same or similar program in another CVD proceeding involving imports from China.[98]

8. VAT Rebates on Domestically Produced Equipment

Under this program, the GOC refunds VAT paid by foreign-invested enterprises (FIEs) on purchases of Chinese-produced equipment when the equipment is included under a duty-free category and it is within the FIE's investment limits.[99] The program is meant to "encourage enterprises with foreign investment to use domestic equipment."[100]

For the reasons explained in the "Application of Total AFA: GOC" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program constitutes a financial contribution under section 771(5)(D)(ii) of the Act and is specific under

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[94] *See Corrosion Inhibitors from China* at 18 (referencing the 25 percent standard income tax rate during the same POI of 2019).
[95] *See* Petition, Volume III at 27-29 and Exhibit III-26.
[96] *See* Petition, Volume III at Exhibit III-26.
[97] *See Corrosion Inhibitors from China* at 18 (referencing the 25 percent standard income tax rate during the same POI of 2019).
[98] *See OTR Tires from China* at 64275.
[99] *See* Petition, Volume III at 31-32 and Exhibit III-28.
[100] *See* Petition, Volume III at Exhibit III-28.

sections 771(5A)(A) and (C) of the Act. Furthermore, for the reasons explained in the "Application of Total AFA: Non-Participating and Non-Responsive Companies" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program provides a benefit under section 771(5)(E) of the Act and 19 CFR 351.510(a)(1). Consistent with Commerce's AFA rate selection methodology, we preliminarily determine a countervailable subsidy rate of 0.51 percent *ad valorem* for the non-responsive and non-participating companies, a rate calculated for the same or similar program in another CVD proceeding involving imports from China.[101]

9. Foreign Trade Fund Development Grants

Under this program, the GOC provides funding to support trade development.[102] This program is available to companies located in Guangdong Province.[103]

For the reasons explained in the "Application of Total AFA: GOC" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program constitutes a financial contribution under section 771(5)(D)(i) of the Act and is specific under sections 771(5A)(A) and (B) and 771(5A)(D)(iv) of the Act. Furthermore, for the reasons explained in the "Application of Total AFA: Non-Participating and Non-Responsive Companies" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program provides a benefit under section 771(5)(E) of the Act and 19 CFR 351.504(a). Consistent with Commerce's AFA rate selection methodology, we preliminarily determine a countervailable subsidy rate of 1.27 percent *ad valorem* for the non-responsive and non-participating companies, a rate calculated for the same or similar program in another CVD proceeding involving imports from China.[104]

10. Grants for Energy Conservation and Emission Reduction

Under this program, the GOC provides grants for businesses that optimize energy use across sectors.[105] The GOC's Notice on Issuing the 12th Five-Year Plan for Energy Conservation and Emission Reduction calls for the "promotion of energy-saving emission reduction market-oriented mechanism" and the use of awards as financial incentives.[106]

For the reasons explained in the "Application of Total AFA: GOC" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program constitutes a financial contribution under section 771(5)(D)(i) of the Act and is specific under section 771(5A)(D)(iii)(I) of the Act. Furthermore, for the reasons explained in the "Application of Total AFA: Non-Participating and Non-Responsive Companies" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program provides a benefit under section 771(5)(E) of the Act and 19 CFR 351.504(a). Consistent with

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[101] *See MC Bricks from China* at 10.
[102] *See* Petition, Volume III at 35-36; *see also* Petition, Volume III SQR at Exhibit III-SUPP-4.
[103] *See* Petition, Volume III at Exhibit III-SUPP-4.
[104] *See High Pressure Steel Cylinders from China* at 6.
[105] *See* Petition, Volume III at 37-38 and Exhibit III-31.
[106] *See* Petition, Volume III at Exhibit III-31, 17.

Commerce's AFA rate selection methodology, we preliminarily determine a countervailable subsidy rate of 1.27 percent *ad valorem* for the non-responsive and non-participating companies, a rate calculated for the same or similar program in another CVD proceeding involving imports from China.[107]

11. SME Technology Innovation Fund

Under this program, the GOC, through the Ministry of Science and Technology and the Ministry of Finance, provides financial support to businesses involved in technological innovation.[108] Companies "shall comply with . . . national industrial policy, technology, high technology content, strong innovation, intellectual property" among other qualifying criteria.[109]

For the reasons explained in the "Application of Total AFA: GOC" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program constitutes a financial contribution under section 771(5)(D)(i) of the Act and is specific under sections 771(5A)(D)(i) and 771(5A)(D)(iii)(I) of the Act. Furthermore, for the reasons explained in the "Application of Total AFA: Non-Participating and Non-Responsive Companies" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program provides a benefit under section 771(5)(E) of the Act and 19 CFR 351.504(a). Consistent with Commerce's AFA rate selection methodology, we preliminarily determine a countervailable subsidy rate of 1.27 percent *ad valorem* for the non-responsive and non-participating companies, a rate calculated for the same or similar program in another CVD proceeding involving imports from China.[110]

12. Provision of Land-Use Rights in SEZs for LTAR

Under this program, the GOC provides land for LTAR within the Guangdong Provincial Special Economic Zone.[111] Article 12 of the *Regulations on Special Economic Zones in Guangdong Province* states that, "land to be used by investors shall be provided according to actual needs, and preferential treatment shall be given with respect to the duration of its use, the amount of the use fee and the method of payment according to the different types of business and uses."[112]

For the reasons explained in the "Application of Total AFA: GOC" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program constitutes a financial contribution under section 771(5)(D)(iii) of the Act and is specific under section 771(5A)(D)(iv) of the Act. Furthermore, for the reasons explained in the "Application of Total AFA: Non-Participating and Non-Responsive Companies" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program provides a benefit under section 771(5)(E)(iv) of the Act. Consistent with Commerce's AFA rate selection methodology, we preliminarily determine a countervailable subsidy rate of 13.36

[107] *See High Pressure Steel Cylinders from China* at 6.
[108] *See* Petition, Volume III at 38-39 and Exhibit III-32; *see also* Petition, Volume III SQR at 12-13.
[109] *See* Petition, Volume III at Exhibit III-33.
[110] *See High Pressure Steel Cylinders from China* at 6.
[111] *See* Petition Volume III at 40-42 and at Exhibit III-26; *see also* Petition, Volume III SQR at 14-15 and at Exhibit III-Supp-5.
[112] *See* Petition, Volume III at Exhibit III-26, Article 12.

percent *ad valorem* for the non-responsive and non-participating companies, a rate calculated for the same or similar program in another CVD proceeding involving imports from China.[113]

13. Provision of Electricity in Guangdong Province for LTAR

Under this program, the GOC provides electricity for LTAR to companies located in Guangdong province.[114] The prices at which the GOC sets electricity rates are "well below their true economic levels."[115]

For the reasons explained in the "Application of Total AFA: GOC" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program constitutes a financial contribution under section 771(5)(D)(iii) of the Act and is specific under section 771(5A)(D)(iv) of the Act. Furthermore, for the reasons explained in the "Application of Total AFA: Non-Participating and Non-Responsive Companies" section, we preliminarily determine, on the basis of AFA pursuant to section 776(b) of the Act, that the program provides a benefit under section 771(5)(E)(iv) of the Act. Consistent with Commerce's AFA rate selection methodology, we preliminarily determine a countervailable subsidy rate of 20.06 percent *ad valorem* for the non-responsive and non-participating companies, a rate calculated for the same or similar program in another CVD proceeding involving imports from China.[116]

VII. CALCULATION OF THE ALL-OTHERS RATE

Sections 703(d)(1)(A)(i) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

Pursuant to section 705(c)(5)(A)(ii) of the Act, if the individual estimated countervailable subsidy rates established for all exporters and producers individually examined are zero, *de minimis*, or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated subsidy rate for all-other producers or exporters. In this investigation, all rates are based entirely on facts available, pursuant to section 776 of the Act. Accordingly, we are relying on a simple average of the total AFA rates computed for the non-responsive companies as the all-others rate in this preliminary determination.

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[113] *See Woven Sacks from China* at 18.
[114] *See* Petition Volume III at 40-42 and Exhibit III-26; *see also* Petition, Volume III SQR at 14-15 and Exhibit III-Supp-5.
[115] *See* Petition, Volume III SQR at Exhibit III-SUPP-6, 52.
[116] *See Isos from China* at 22.

VIII. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

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Agree Disagree

8/28/2020

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Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

APPENDIX

Program	Subsidy Rate
Preferential Lending	
Export Loans from Chinese SOCBs	10.54%[117]
Export Credits from EIBC	
Export Seller's Credit	4.25%[118]
Export Buyer's Credit	10.54%[119]
Income Tax Programs[120]	
Income Tax Reductions for High and New Technology Enterprises	25.00%
Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law	
Income Tax Deductions/Credits for Purchase of Special Equipment	
Tax Incentives for Businesses in the Guangdong Province SEZ – Income Tax Deductions	
Indirect Tax Programs	
Tax Incentives for Businesses in the Guangdong Province SEZ – Import Tariff Exemptions [121]	9.71%
VAT Rebates on Domestically Produced Equipment[122]	0.51%
Grant Programs[123]	
Foreign Trade Fund Development Grants	1.27%
Grants for Energy Conservation and Emission Reduction	1.27%
SME Technology Innovation Fund	1.27%
Provision of Goods/Services for LTAR	
Provision of Land-Use Rights in SEZs for LTAR	13.36%[124]
Provision of Electricity For LTAR	20.06%[125]
Total	97.78%

[117] *See Coated Paper from China* at 70202, and accompanying MEM.
[118] *See Citric Acid from China* at 12.
[119] *See Coated Paper from China* at 70202, and accompanying MEM.
[120] *See Corrosion Inhibitors from China* at 18 (referencing the 25 percent standard income tax rate during the same POI of 2019). The highest possible benefit for all income tax reduction or exemption programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.,* finding that the combination of the two programs provides a total 25 percent benefit).
[121] *See OTR Tires from China* at 64275; *see also* Petition, Volume III at Exhibit III-26 (reflecting import tariff exemption section of program).
[122] *See MC Bricks from China* at 10.
[123] *See High Pressure Steel Cylinders from China* at 6.
[124] *See Woven Sacks from China* at 18.
[125] *See Isos from China* at 22.