C-570-068
POR: 3/14/2018 – 12/31/2018
Public Document
E&C/VIII: JCM

November 5, 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 Results: Administrative Review of the Countervailing Duty Order on Forged Steel Fittings from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on forged steel fittings from the People's Republic of China (China). The period of review (POR) is March 14, 2018 through December 31, 2018. We preliminarily determine that Both-Well (Taizhou) Steel Fittings, Co., Ltd. (Both-Well) received countervailable subsidies during the POR. Pursuant to section 701(f) of the Tariff Act of 1930, as amended (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 October 5, 2018, Commerce published its final determination in the CVD investigation of forged steel fittings from China.[1] On November 26, 2018, Commerce published the *Order*.[2]

On November 1, 2019, Commerce published a notice of opportunity to request an administrative review of the *Order*.[3] On November 27, 2019, we received a request from Both-Well and the

[1] *See Forged Steel Fittings from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 50342 (October 5, 2018) (*Final Determination*) and the accompanying Issues and Decision Memorandum (IDM).
[2] *See Forged Steel Fittings from the People's Republic of China: Countervailing Duty Order*, 83 FR 60396 (November 26, 2018) (*Order*).
[3] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 84 FR 58690 (November 1, 2019).

petitioners to conduct an administrative review of the *Order* with respect to Both-Well.[4] On November 27, 2018, we also received a request from the petitioners[5] to conduct an administrative review of the *Order* with respect to Both-Well and 35 other companies.[6] On January 17, 2020, Commerce initiated an administrative review of the *Order* for the period March 14, 2018 through December 31, 2018.[7]

In the *Initiation Notice*, Commerce stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of forged steel fittings from China during the POR.[8] Accordingly, on February 10, 2020, Commerce selected Both-Well, the exporter and/or producer that accounts for the largest volume of subject merchandise during the POR based on our analysis of the CBP entry data, for individual examination as the mandatory respondent in this administrative review.[9]

On February 10, 2020, Commerce issued the CVD questionnaire to the Government of China (GOC) and to Both-Well.[10] Between February and July 2020, Both-Well filed responses to Commerce's affiliation, initial, and supplemental questionnaires.[11] The GOC did not respond to Commerce's initial questionnaire.

On February 10, 2020, we also placed memoranda on the record concerning China's financial system, non-market economy (NME) status, China's economic diversification, and whether particular enterprises should be considered to be "public bodies."[12] In addition to these documents, Commerce will release with the disclosure documents a memorandum containing updated lending rate benchmarks.[13]

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[4] *See* Both-Well's Letter, "Forged Steel Fittings from China: Antidumping," dated November 27, 2019.
[5] Bonney Forge Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) (collectively, the petitioners).
[6] *See* Petitioners' Letter, "Forged Steel Fittings from China: Request for Administrative Review," dated November 27, 2019.
[7] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 3014 (January 17, 2020) (*Initiation Notice*).
[8] *See Initiation Notice* at 85 FR 3014.
[9] *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Forged Steel Fittings from the People's Republic of China: Respondent Selection," dated February 10, 2020.
[10] *See* Commerce's Letter, "{2018 Administrative Review of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Countervailing Duty Questionnaire}," dated February 10, 2020 (Initial Questionnaire).
[11] *See* Both-Well's Letters, "Forged Steel Fittings from China," dated February 24, 2020 (Both-Well AQR); "Forged Steel Fittings from China," dated March 9, 2020 (Both-Well Affiliation SQR); "Forged Steel Fittings from China," dated April 15, 2020 (Both-Well IQR); and "Forged Steel Fittings from China," dated July 12, 2020..
[12] *See* Memorandum, "Economic Diversification in China," dated February 10, 2020 (Economic Diversification Memo); *see also* Memorandum, "Asian Marketview Report," dated February 10, 2020; Memorandum, "Placing Public Bodies Documentation on the Record," dated February 10, 2020; Memorandum, "Analysis of China's Financial System," dated February 10, 2020; Memorandum, "Loan Interest Rate Benchmarks," dated February 10, 2020; Memorandum, "Land Analysis Memo," dated February 10, 2020; Memorandum, "Public Bodies Analysis Memo," dated February 10, 2020; and Memorandum, "Analysis of Banks and Trust Companies in China Memo," dated February 10, 2020.
[13] *See* Memorandum, "Revised Loan Interest Rate Benchmarks," dated concurrently with this memorandum.

On March 13, 2020, the petitioners submitted a timely-filed new subsidy allegation (NSA) in which they alleged that Both-Well may have received preferential lending through the Export Buyers' Credits program.[14] On April 7, 2020, Commerce initiated an investigation of the NSA[15] and issued questionnaires to the GOC and to Both-Well on April 8, 2020.[16] On April 21 and 22, 2020, we received timely responses to the NSA questionnaire from the GOC and Both-Well, respectively.[17] On July 16, 2020, we issued a supplemental questionnaire regarding the NSA to the GOC.[18] On July 23, 2020, the GOC submitted a response to this supplemental questionnaire.[19]

On July 22, 2020, the petitioners submitted data for Commerce to consider using as benchmarks in the less than adequate remuneration (LTAR) subsidy rate calculations.[20] On September 24, 2020, Both-Well submitted additional benchmark data.[21]

B. Postponement of the Preliminary Results

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for the preliminary results of this review until July 21, 2020.[22] On July 21, 2020, Commerce again tolled all deadlines in administrative reviews by 50 days.[23] Accordingly, the deadline for the preliminary results in this administrative review was postponed to no later than November 19, 2020.[24]

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[14] *See* Petitioners' Letter, "Forged Steel Fittings from China: New Subsidy Allegation," dated March 13, 2020 (NSA Submission).
[15] *See* Memorandum, "Countervailing Duty Administrative Review of Forged Steel Fittings from the People's Republic of China: Decision Memorandum on New Subsidy Allegation," dated April 7, 2020 (NSA Decision Memorandum).
[16] *See* Commerce's Letters, "2018 Administrative Review of the Countervailing Duty Order on Forged Steel Fittings from the People's Republic of China: New Subsidy Allegations Questionnaire for Both-Well," dated April 8, 2020, and "2018 Administrative Review of the Countervailing Duty Order on Forged Steel Fittings from the People's Republic of China: New Subsidy Allegations Questionnaire," dated April 8, 2020 (GOC NSA Questionnaire).
[17] *See* the GOC's Letter, "GOC New Subsidy Allegation Questionnaire Response: First Administrative Review of the Countervailing Duty Investigation on Forged Steel Fittings from the People's Republic of China (C-570-068)," dated April 21, 2020 (GOC NSAQR); *see also* Both-Well's Letter, "Forged Steel Fittings from China," dated April 22, 2020 (Both-Well NSAQR).
[18] *See* Commerce's Letter, "Administrative Review of the Countervailing Duty Order of Forged Steel Fittings from the People's Republic of China: GOC Supplemental Questionnaire," dated July 16, 2020 (GOC Supplemental Questionnaire).
[19] *See* the GOC's Letter, "GOC New Subsidy Allegation Supplemental Questionnaire Response: First Administrative Review of the Countervailing Duty Investigation on Forged Steel Fittings from the People's Republic of China (C-570-068)," dated July 23, 2020.
[20] *See* Petitioners' Letter, "Forged Steel Fittings from the People's Republic of China: Submission of Benchmark Data" (Petitioners' Benchmark Submission), dated July 22, 2020.
[21] *See* Both-Well's Letter, "Forged Steel Fittings from China," dated September 24, 2020.
[22] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.
[23] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.
[24] *Id.* at 2.

C. Period of Review

The POR is March 14, 2018 through December 31, 2018. However, we intend to base the assessment rate for the POR on subsidy information provided for calendar year 2018.[25] Therefore, we requested that the respondents submit information pertaining to the period of January 1, 2018 through December 31, 2018, when responding to Commerce's questionnaires.

III. SCOPE OF THE ORDER

The merchandise covered by the order is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions, and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP-79, MSS SP-83, MSS SP-97, ASTM A105, ASTM A350, and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in applicable standards and does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casting. Pursuant to the applicable specifications, subject fittings may also be machined from bar stock or machined from seamless pipe and tube.

All types of fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure rating (usually, but not necessarily expressed in pounds of pressure/PSI, *e.g.*, 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, butt weld fittings, butt weld outlets, nipples, and all fittings that have a maximum pressure rating of 300 pounds of pressure/PSI or less.

Also excluded are fittings certified or made to the following standards, so long as the fittings are not also manufactured to the specifications of ASME B16.11, MSS SP-79, MSS SP-83, MSS SP-97, ASTM A105, ASTM A350, and ASTM A182:

- American Petroleum Institute (API) API 5CT, API 5L, or API 11B
- Society of Automotive Engineering (SAE) SAE J476, SAE J514, SAE J516, SAE J517, SAE J518, SAE J1026, SAE J1231, SAE J1453, SAE J1926, J2044 or SAE AS 35411
- Underwriter's Laboratories (UL) certified electrical conduit fittings
- ASTM A153, A536, A576, or A865
- Casing Conductor Connectors 16-42 inches in diameter made to proprietary specifications
- Military Specification (MIL) MIL-C-4109F and MIL-F-3541

[25] *See* Initial Questionnaire at pdf 4.

- International Organization for Standardization (ISO) ISO6150-B

To be excluded from the scope, products must have the appropriate standard or pressure markings and/or accompanied by documentation showing product compliance to the applicable standard or pressure, *e.g.*, "API 5CT" mark and/or a mill certification report.

Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They also may be entered under HTSUS 7307.92.3010, 7307.92.3030, 7307.92.9000, and 7326.19.0010. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

IV. DIVERSIFICATION OF CHINA'S ECONOMY

On February 10, 2020, we placed the following excerpts from the China Statistical Yearbook from the National Bureau of Statistics of China on the record of this administrative review: 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.

V. 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.[27] In the Initial Questionnaire, we notified the respondents to this proceeding that the AUL period would be 15 years, pursuant to 19 CFR 351.524(d)(1) and the U.S. Internal Revenue Service Publication 946 (2018), "Appendix B – Table of Class Lives and Recovery Periods" (IRS Pub. 946).[28] The 15-year period corresponds to IRS Pub. 946 asset class, "33.4 "Manufacture of Primary Steel Mill Products." No party in this proceeding submitted comments challenging the proposed AUL period, and we therefore preliminarily determine that a 15-year period is appropriate to allocate benefits from non-recurring subsidies.

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of a subsidy approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidy is less than 0.5 percent of the relevant sales value, then the benefits are expensed to the year of receipt rather than allocated over the AUL.

[26] *See* Economic Diversification Memo.
[27] *See* 19 CFR 351.524(b).
[28] *See* U.S. Internal Revenue Service Publication 946 (2018), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides 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 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 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.[29]

Thus, Commerce's regulations make clear that the agency must look at the facts presented in each case to determine whether cross-ownership exists. The U.S. Court of International Trade 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.[30]

Both-Well identified itself as a privately-owned Chinese exporter of the subject merchandise with no Chinese parent or holding companies.[31] Both-Well did not identify any companies with which it was affiliated that were involved in the production, export, or sale of the subject merchandise.[32] Therefore, Both-Well responded to the initial questionnaire on behalf of itself, and per 19 CFR 351.525(b)(6)(i), we attributed subsidies received by Both-Well to the sales of Both-Well.[33]

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[29] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998).
[30] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600 (CIT 2001).
[31] *See* Both-Well AQR at 3.
[32] *See* Both-Well AQR at Exhibit 1; *see also* Both-Well Affiliation SQR at Exhibit Supp-2.
[33] *See* 19 CFR 351.525(b)(6)(ii)-(v).

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondent's receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to Be Countervailable" section, 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 Both-Well Preliminary Calculation Memorandum.[34]

VI. BENCHMARKS AND DISCOUNT RATES

Commerce is investigating loans from Chinese policy banks and state-owned commercial banks (SOCBs) and non-recurring, allocable subsidies received by Both-Well.[35] The derivation of the loan benchmark and discount rates used to value these subsidies is discussed below.

A. Short-Term and Long-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, Commerce uses comparable commercial loans reported by the company as a benchmark.[36] 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."[37]

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.[38] In an analysis memorandum dated July 21, 2017, Commerce conducted a reassessment of the lending system in China.[39] Based on this reassessment, Commerce concluded that, despite reforms to date, the GOC's role in the system continues to fundamentally distort lending practices in China in terms of risk pricing and resource allocation, precluding the use of interest rates in China for CVD benchmarking or discount rate purposes. Consequently, we preliminarily find that any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as

[34] *See* Memorandum, "Both-Well Calculations for the Preliminary Results," dated concurrently with this memorandum (Both-Well Preliminary Calculation Memorandum).
[35] *See* 19 CFR 351.524(b)(1).
[36] *See* 19 CFR 351.505(a)(3)(i).
[37] *See* 19 CFR 351.505(a)(3)(ii).
[38] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*), and accompanying IDM at Comment 10.
[39] *See* Memorandum, "Analysis of China's Financial System," dated June 30, 2020.

benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, Commerce is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with Commerce's practice.[40]

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China* and more recently updated in *Thermal Paper from China*.[41] 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.[42] Beginning in 2010, however, China fell within the upper-middle income category and remained there from 2011 to 2017.[43] Accordingly, as explained below, we used the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2017. This is consistent with Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.[44]

After Commerce identifies the appropriate interest rates, the next step in constructing the benchmark has been 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 2011-2017, the results of the regression analysis reflected the expected, common-sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.[45] For 2010, however, the regression does not yield that outcome for China's income group.[46] This contrary

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[40] *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 (PDM) at 21, unchanged in *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018).

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

[42] *See* World Bank Country Classification, http://data.worldbank.org/about/country-and-lending-groups; *see also* Memorandum, "Loan Interest Rate Benchmarks," dated June 30, 2020 (Interest Rate Benchmark Memorandum).

[43] *See* World Bank Country Classification, http://data.worldbank.org/about/country-and-lending-groups.

[44] *See, e.g.*, *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying PDM at 13-16, unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013).

[45] *See* Interest Rate Benchmark Memorandum.

[46] *Id.*

result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from China* to compute the benchmarks for the years from 2001-2009 and 2011-2017. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's International Financial Statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010-2017 and "lower middle income" for 2001-2009.[47] First, we did not include those economies that Commerce 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 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 Commerce 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.[48] Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.[49]

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.[50]

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.[51] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.[52]

B. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used as our discount rate the long-term interest rate calculated according to the methodology described above for the year in which the GOC

[47] *Id*.
[48] *Id*.
[49] *Id*.
[50] *See, e.g.*, *Thermal Paper from China* IDM at 10.
[51] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from China*), and accompanying IDM at Comment 14.
[52] *See* Interest Rate Benchmark Memorandum.

provided non-recurring subsidies. The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the Both-Well Preliminary Calculation Memorandum.[53]

C. Land Benchmark

Section 351.511(a)(2) of Commerce's regulations 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).

As detailed in previous CVD investigations regarding China, Commerce cannot rely on the use of so-called "first-tier" and "second-tier" benchmarks to assess the benefits from the provision of land for LTAR in China.[54] 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.[55] Furthermore, Commerce also found that "tier two" benchmarks (world market prices that would be available to purchasers in China) are not appropriate.[56] Accordingly, consistent with Commerce's past practice, we are relying on the use of "tier three" benchmarks for purposes of calculating a benefit for this program.

In the underlying investigation, we relied on the 2010 Thai benchmark information to value land from "Asian Marketview Reports" by CB Richard Ellis,[57] which was also relied upon in calculating land benchmarks in the CVD investigations of *Solar Cells from China* and *ITDCs from China*.[58]

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[53] *See* Both-Well Preliminary Calculation Memorandum at Attachment 1.

[54] *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)*.

[55] *Id*.

[56] *Id*.

[57] *See Forged Steel Fittings from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 11170 (March 14, 2018) (*Preliminary Determination*), and accompanying PDM at 20-21, unchanged in the *Final Determination*.

[58] *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 IDM at 6 and Comment 11; *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 21316 (April 11, 2016) (*ITDCs from China*), and accompanying IDM at 13.

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. We find that these benchmarks are suitable for these preliminary results, adjusted accordingly for inflation, to account for any countervailable land subsidy received by Both-Well during the AUL period.

D. Input Benchmarks

We selected benchmarks for determining the benefit from the provision of steel bar for LTAR in accordance with 19 CFR 351.511. As noted above, 19 CFR 351.511(a)(2) sets forth a three-tier hierarchy for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR.

In our initial questionnaire, we asked the GOC several questions concerning the structure of the steel bar industry to determine the appropriate benchmark for which to measure the benefits of inputs provided at LTAR under 19 CFR 351.511.[59] However, because the GOC did not respond to our initial questionnaire, we do not have the information necessary to evaluate the steel bar industry for market distortion. Therefore, as discussed below in the section entitled "Application of AFA: Steel Bar Market is Distorted," we preliminary find that the market for steel bar is distorted. Thus, to measure the adequacy of remuneration for the provision of steel bar, we are relying on world market prices as the tier-two benchmark provided for in 19 CFR 351.511(a)(2)(ii).

In the underlying investigation, we decided that this program relates to steel bar inputs that are manufactured to the following specifications, which are considered to be "special quality" or "forging quality": ASTM A-105, ASME B-16.11, ASTM A-370, ASTM A – 29, and ASTM A-751.[60] While steel bar made to these specifications is sometimes referred to as Special Bar Quality, or SBQ, bar and engineering steel, we find that the material grade and specifications are the best means to determine whether the respondents are using the input alleged in the petition to manufacture their forged steel fittings, because industry terms for one product can vary from country to country.[61]

The petitioner submitted 2018 monthly steel bar price data from the American Metal Market.[62] Both-Well also submitted the MEPS International Steel Review's price data related to merchant bar.[63] Normally, when there is more than one commercially available world market price, Commerce will average the prices to the extent practicable. However, 19 CFR 351.511(a)(2)(ii) also states that in averaging prices to the extent practicable, the Secretary will "make due allowance for factors affecting comparability." Publicly available record information indicates that SBQ bar is a specialized product and merchant bar is not made to the appropriate

[59] *See* Initial Questionnaire at II-4 through II-6.
[60] *See Final Determination* and accompanying IDM at 12-15 (Comment 2).
[61] *Id*.
[62] *See* Petitioners' Benchmark Submission.
[63] *See* Both-Well's Benchmark Submission at Exhibit 2.

specifications, and therefore does not meet the definition of SBQ."[64] Therefore, we preliminarily determine that merchant bar is not a comparable product for measuring the adequacy of remuneration for steel bar, and have not included Both-Well's prices of merchant bar as a benchmark in this preliminary determination.

The average of the export prices provided by the petitioner represents an average of commercially available world market prices for the inputs that would be available to purchasers in China. In addition, Both-Well submitted 2018 ocean freight data from Descartes for the calculation of benchmark transportation costs.[65] Using these two benchmarks, along with Both-Well's inland freight expense calculations,[66] we then derived an average of commercially available world market prices for the inputs that would be available to purchasers in China.[67]

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person withholds information that has been requested; fails to provide information within the established deadlines or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding; or 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 AFA rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."[68] 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."[69] At the same time, section

[64] *See* Memorandum, "Placing Information on the Record: Merchant Bar," dated concurrently with this memorandum.
[65] *See* Both-Well's Benchmark Submission at Exhibit 1.
[66] *See* Both-Well IQR at Exhibit II.E.1.2.
[67] *See* Both-Well Preliminary Calculation Memorandum.
[68] *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).
[69] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol. 1 (1994) at 870.

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."[70] 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.[71] 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.[72] Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.[73]

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."[74] It is Commerce's practice to consider information to be corroborated if it has probative value.[75] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.[76] However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.[77] Furthermore, Commerce is not required to corroborate any countervailing subsidy rate applied in a separate segment of the same proceeding.[78]

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

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[70] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).
[71] *Id*., 337 F.3d at 1382.
[72] *Id.*
[73] *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); *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel*, 337 F.3d at 1382-83.
[74] *See*, *e.g.*, SAA at 870.
[75] *Id.* at 870.
[76] *Id.* at 869.
[77] *Id.* at 869-870.
[78] *See* section 776(c)(2) of the Act.

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.[79] For purposes of these preliminary results, we are applying AFA for the circumstances outlined below.

B. Application of AFA: Programs Provide Financial Contribution and Are Specific

As noted above in the "Initiation and Case History" section, the GOC did not submit requested information related to Both-Well in response to Commerce's initial questionnaire. With respect to the Provision of Steel Bar for LTAR, Provision of Electricity for LTAR, Policy Loans to the Forged Steel Fittings Industry, and the Provision of Land and/or Land-Use Rights for LTAR in Jiangsu Province and the Western Region of China programs, the information requested in the initial questionnaire to the GOC concerns the implementation of each of the programs, which allows Commerce to determine whether receipt of benefits provides a financial contribution within the meaning of section 771(5)(D) of the Act and whether this financial contribution is specific within in section 771(5A) of the Act. Further, we also requested that the GOC coordinate with the respondent to answer questions related to any "Other Subsidies" Both-Well may have received. By failing to respond to the initial questionnaire, the GOC did not provide necessary information to determine whether these "Other Subsidies," also listed below, provide a financial contribution or are specific.

Consequently, we find that the GOC has withheld necessary information that was requested of it, thereby significantly impeding this administrative review, and, thus, that Commerce must rely on "facts otherwise available" for the preliminary results, pursuant to sections 776(a)(2)(A) and (C) of the Act. Moreover, we preliminarily find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that the application of AFA is warranted pursuant to section 776(b) of the Act.
As AFA, we preliminarily find that the following programs from which Both-Well reported receiving benefits during the POR provided financial contributions within the meaning of section 771(5)(D) of the Act and are specific within the meaning of section 771(5A) of the Act:

1. Technology Reward from Jiangyan Economic Development Zone
2. Reward from Financial Bureau of Jiangyan City
3. Provision of Steel Bar for LTAR
4. Provision of Electricity for LTAR
5. Provision of Land and/or Land-Use Rights for LTAR in Jiangsu Province and the Western Region of China
6. Policy Loans to the Forged Steel Fittings Industry
7. Research and Development Reward from Financial Bureau of Jiangyan City

For details on the calculation of the subsidy rate for these programs, *see* below at "Programs Preliminarily Determined to Be Countervailable."

[79] *See* section 776(d)(3) of the Act.

C. Application of AFA: Steel Bar Market Is Distorted

Because the GOC did not respond to Commerce's initial questionnaire, we do not have the information necessary to evaluate whether China's steel bar market was distorted during the POR. Specifically, Commerce requested that the GOC provide the following information for this input:

1. The total number of producers;

2. The total volume and value of Chinese domestic consumption of steel bar, and the total volume and value of Chinese domestic production of steel bar;

3. The percentage of domestic consumption accounted for by domestic production;

4. The total volume and value of imports of steel bar;

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

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

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

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

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

7. A discussion of what laws, plans or policies address the pricing of steel bar, the levels of production of steel bar, the importation or exportation of steel bar, or the development of steel bar capacity. Please state which, if any, central and subcentral level industrial policies pertain to the steel bar industry.

Commerce requested such information to determine whether the GOC is the predominant provider of this input in China and whether its presence in the market distorts all transaction prices.[80]

[80] *See* Initial Questionnaire at II-3 to II-5.

Because the GOC provided none of the requested industry data, Commerce is unable to determine the number of steel bar producers in operation during the POR, the percentage of steel bar producers in which the GOC maintained ownership interest, the share of steel bar production that is represented by GOC-affiliated producers, and the share of domestic consumption represented by domestic production versus imports. Therefore, we preliminarily determine that the GOC, having failed to provide such data, has withheld information that was requested of it, thereby significantly impeding this administrative review, and that the use of facts available is warranted, pursuant to sections 776(a)(2)(A) and (C) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information, and thus, the application of AFA pursuant to section 776(b) of the Act is warranted.

For these reasons, we preliminarily determine, as AFA, that the domestic market for steel bar is distorted through the intervention of the GOC, and we are, therefore, relying on an external benchmark for determining the benefit from the provision of steel bar at LTAR program, in accordance with 19 CFR 351.511(a)(2)(ii).

For details on the calculation of the subsidy rate for the respondent, *see* below at "Provision of Steel Bar for LTAR."

D. Application of AFA: Input Producers Are Authorities

Because the GOC did not respond to Commerce's initial questionnaire, the GOC undermined Commerce's ability to accurately determine whether Both-Well's steel bar producers are "authorities" within the meaning of section 771(5)(B) of the Act. Specifically, we asked Both-Well to provide a complete list of the suppliers and producers from which it sourced steel bar during the POR.[81] We also requested information from the GOC with which to assess the relationship between the identified producers of steel bar and the GOC.[82]

The information that Commerce sought from the GOC included basic ownership structure registration information of the suppliers, information tracing the ownership of the producers back to the ultimate individual or state owners of the companies, articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, and articles of association.[83] We also requested information regarding the role of Chinese Communist Party (CCP) officials in the management and operations of the steel bar producers, specifically information on the owners, members of the board of directors, or managers of the steel bar producers who were also government or CCP officials or representatives during the POR.[84] The GOC refused to provide this information, undermining Commerce's ability to accurately determine whether the steel bar producers are "authorities."

[81] *Id.* at III-10 to III-11.
[82] *Id.* at II-6 to II-7.
[83] *Id.* at Input Producer Appendix.
[84] *Id.* at Input Producer Appendix.

We preliminarily find that the GOC has withheld necessary information that was requested of it, thereby significantly impeding this administrative review, and, thus, that Commerce must rely on "facts otherwise available" for the preliminary results, pursuant to sections 776(a)(2)(A) and (C) of the Act. Moreover, we preliminarily find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that AFA is warranted pursuant to section 776(b) of the Act. As AFA, we preliminarily find that the producers from whom respondents purchased steel bar and for whom the GOC failed to provide complete information necessary for our financial contribution analysis are "authorities" within the meaning of section 771(5)(B) of the Act. Accordingly, we further find preliminarily that, as such, these producers provided a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.

For details on the calculation of the subsidy rate for the respondent, *see* below at "Provision of Steel Bar for LTAR."

E. Application of AFA: Export Buyer's Credit

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

In our questionnaire regarding the NSA, we requested that the GOC provide the information requested in the Standard Questions Appendix "with regard to all types of financing provided by the China ExIm under the Buyer Credit Facility."[85] The Standard Questions Appendix requested information that Commerce requires in order to analyze the specificity and financial contribution of this program, including the following: translated copies of the laws and regulations pertaining to the program, identification of the agencies and types of records maintained for administration of the program, a description of the program, the application process, eligibility criteria, and the program usage data.[86] Rather than responding to the questions in the Appendix, the GOC stated that it had confirmed that Both-Well had not applied for, used, or benefitted from the alleged program during the POR and that, therefore, responding to the Standard Questions Appendix was not necessary.[87] In a supplemental questionnaire, we again requested that the GOC respond to the Standard Questions Appendix regarding this program.[88] In its supplemental response, the GOC, again, refused.[89]

In the GOC NSAQR, the GOC provided the "Rules Governing Export Buyers' Credit of the Export-Import Bank of China," implemented in 2000.[90] The rules state that the Export Import

[85] *See* GOC NSA Questionnaire at Standard Questions Appendix.
[86] *Id*.
[87] *See* GOC NSAQR at 1.
[88] *See* GOC Supplemental Questionnaire at 3.
[89] *See* GOC NSA SQR at 1.
[90] *Id.* at Exhibit 2.

Bank of China (the China Ex-Im Bank) strictly limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million.[91] In response to our request in the NSA Questionnaire, the GOC placed a copy of the 7th Supplemental Questionnaire Response in the Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China.[92] The information in that document indicates that the GOC revised this program in 2013 to eliminate the USD 2 million minimum requirement.[93] In the GOC NSAQR, the GOC did not provide the 2013 revisions cited by the GOC in the Silica Fabric 7th SQR, even though we asked the GOC to provide original and translated copies of any laws, regulations or other governing documents.[94] We therefore requested that the GOC provide the 2013 revisions.[95] In its supplemental questionnaire response, the GOC again refused to provide the requested documents, stating that the 2013 Administrative Measures are internal to the bank, non-public, and not available for release.[96]

Both the 2013 Revisions and the Standard Questions Appendix are necessary for Commerce to analyze how the program functions. By refusing to provide the requested information, the GOC impeded Commerce's understanding of how this program operates and how it can be properly verified.

Additional information in the GOC NSAQR also indicated that the China Ex-Im Bank may disburse export buyer's credits directly or through a third-party partner and/or correspondent banks.[97] Specifically, this record information indicates that customers can open loan accounts for disbursements through this program with other banks.[98] The funds are first sent from the China Ex-Im Bank to the importer's account, which could be at the China Ex-Im Bank or other banks, and then these funds are sent to the exporter's bank account.[99] Given the complicated structure of 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 China Ex-Im Bank, significantly impeded Commerce's ability to conduct its analysis of this program.

In the GOC NSA Questionnaire, we requested that the GOC provide a list of partner/correspondent banks involved in the program.[100] In response, the GOC claimed that none of Both-Well's customers used this program and that question is "both an overly broad question and an unnecessary one."[101] We requested this information again in our supplemental

[91] *Id*.
[92] *Id.* at Exhibit 1.
[93] *Id.*
[94] *Id.* at 2.
[95] *See* GOC Supplemental Questionnaire at 3.
[96] *See* GOC NSA SQR at 2.
[97] *See* GOC NSAQR at Exhibit 1.
[98] *Id.* at Exhibit 2.
[99] *Id.* at Exhibit 1 and 2.
[100] *See* GOC NSA Questionnaire at 4.
[101] *See* GOC NSAQR at 3.

questionnaire,[102] and the GOC again refused to provide the list of partner or correspondent banks involved in the program.[103] Thus, in its initial and supplemental questionnaire responses, the GOC refused to provide any information concerning the 2013 program revision and the partner or correspondent banks, which is necessary for Commerce to analyze how the program functions.

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.

In its response to the GOC NSA Questionnaire regarding the steps it took to determine that no customers of mandatory respondents have used the program, the GOC explained that it obtained a list of Both-Well's customers and provided the list to the China Ex-Im Bank, who searched for these companies in a credit management system database.[104] According to the China Ex-Im Bank, the search results did not show any records that Both-Well's customers used this program.[105] The GOC also provided screenshots of the database search results.[106] The GOC also referred Commerce to affidavits from Both-Well's customers stating that they have not used the program.[107]

As discussed above, the GOC refused to provide information about the internal administration of the program. The GOC is the only party that can answer questions about the internal administration of this program, and, thus, its failure to provide the requested information further undermines Commerce's ability to verify claims of non-use. Commerce cannot verify non-use at the China Ex-Im Bank without a complete set of administrative measures on the record that would provide guidance to Commerce in querying the records and electronic databases of the China Ex-Im Bank. In that regard, in the context of this program, credit management system database screenshots are insufficient for Commerce to find this program to be not used. As explained above, without understanding how this program operates we cannot ascertain what a proper database search entails. For example, we do not know whether the searches should have been performed using the U.S. customers' names or on other entities (for example, the partner/correspondent banks that worked with the U.S. customers rather than the U.S. customers themselves). In addition, we do not know whether there are different electronic systems for different types of credits and, as a result, we cannot ascertain that the screen shots are for searches of the proper system. Similar to the obstacles we would face in attempting to verify usage at the exporter or U.S. customer, Commerce would not know what indicia to look for in searching for usage or even what records or databases we need to examine in conducting the

[102] *See* GOC Supplemental Questionnaire at 3.
[103] *See* GOC NSA SQR at 1.
[104] *See* GOC NSAQR at 3.
[105] *Id.*
[106] *Id.* at Exhibit 4.
[107] *Id.* at 3-4.

verification (*i.e.*, without a complete set of laws, regulations, administrative measures, Commerce would not even know what books and records the China Ex-IM Bank maintains in the ordinary course of its operations). Essentially, Commerce is unable to verify the little information on the record indicating non-usage (*e.g.*, the claims and screen shots of the GOC and emails and certifications from U.S. customers),[108] with the exporters, U.S. customers, or at the China Ex-Im Bank itself given the refusal of the GOC to provide the 2013 revisions and a complete list of correspondent/partner/intermediate banks.

Pursuant to sections 776(a)(2)(A) and (a)(2)(C) of the Act, when an interested party withholds information requested by Commerce and/or significantly impedes a proceeding, Commerce uses facts otherwise available to reach a determination. Because the GOC withheld the requested information described above, thereby impeding this proceeding, we preliminarily determine that the use of facts available is appropriate.

Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of not providing this information to Commerce, failed to cooperate by not acting to the best of its ability. Accordingly, we find that the application of AFA is warranted. Specifically, the GOC has not provided complete information concerning the administration and operation of the program, including how loans are disbursed (*e.g.*, the 2013 Revisions), such as through intermediate or correspondent banks, the identities of which the GOC has withheld from Commerce, or whether the China ExIm Bank employs threshold criteria, such as minimum USD 2 million contract value. This information is necessary to understand fully how the Export Buyer's Credit program operates and is, therefore, critical to Commerce's ability to verify the operation of the program and the accuracy of the GOC's claims, including with respect to the 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."[109] Therefore, we determine that the GOC has not cooperated to the best of its ability and, as AFA, find that Both-Well used and benefited from this program.

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 China.[110] In addition, the program was alleged by the petitioner as a possible export subsidy.[111] Finally, Commerce has found this program to be an export subsidy in past CVD proceedings

[108] Both-Well submitted declarations from its U.S. customers claiming non-use of this program. *See* Both-Well NSAQR at Exhibit NSA-2.
[109] *See Nippon Steel*, 337 F. 3d at 1382.
[110] *See* GOC NSAQR at 4-5 and 1-3.
[111] *See* NSA Submission at pdf page 4.

involving China.[112] 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.

Selection of AFA Rate

Consistent with section 776(d) of the Act and our established practice, we applied our CVD hierarchy to determine the AFA rate for the Export Buyer's Credit Program.[113] Under the first step of Commerce's CVD AFA hierarchy for administrative reviews, Commerce applies the highest non-*de minimis* rate calculated for the identical program in any segment of the same proceeding. If there is no identical program match within the same proceeding, or if the rate is *de-minimis*, under step two of the hierarchy, Commerce applies the highest non-*de minimis* rate calculated for a similar program within any segment of the same proceeding. If there is no non-*de minimis* rate calculated for a similar program within the same proceeding, under step three of the hierarchy, Commerce applies the highest non-*de minimis* rate calculated for an identical or similar program in another CVD proceeding involving the same country. Finally, if there is no non-*de minimis* rate calculated for an identical or similar program in another CVD proceeding involving the same country, under step four, Commerce applies the highest calculated rate for any program from the same country that the industry subject to the review could have used.[114]

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, 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 rate for a subsidy program 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 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."[115] No legislative history accompanied this provision. Accordingly, Commerce is left

[112] *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 IDM at Comment 16.
[113] *See, e.g.*, *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM at 13; *see also Essar Steel Ltd. v. United States*, 753 F. 3d 1368, 1373-1374 (Fed. Cir. 2014) (*Essar Steel*) (upholding "hierarchical methodology for selecting an AFA rate for an uncooperative respondent").
[114] *See* section 776(d) of the Act; *see also SolarWorld Americas, Inc. v. United States*, CIT No. 15-00232 (CIT 2017) (*Solar World*) (sustaining Commerce's CVD AFA hierarchy and selection of AFA rate for CVD reviews).
[115] *See* section 776(d)(2) of the Act

to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself. We find that the Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: (1) Commerce may apply its hierarchy methodology and (2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.[116]

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."[117] 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."[118] It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.[119]

In applying its AFA hierarchy in CVD reviews, 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 review 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 or review (*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.

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[116] 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.

[117] *See* SAA at 870, reprinted in 1994 U.S.C.C.A.N 4040, 4090; *see also Essar Steel*, 678 F. 3d 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) (*De Cecco*) (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.'").

[118] *See De Cecco*, 216 F. 3d at 1032.

[119] Commerce has adopted a practice of applying its hierarchy in CVD cases. *See, e.g.*, *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at Comment 4 at 28-31 (applying the AFA hierarchical methodology within the context of CVD investigation); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. *See, e.g.*, *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

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 reviews, for example, this "pool" of rates could include a non-*de minimis* rate calculated for the identical program in any segment of the proceeding, a non-*de minimis* rate calculated for a similar program in any segment of that proceeding, 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.

Thus, 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.[120]

While there is a similar program, Policy Loans to the Forged Steel Fittings Industry, under consideration in this administrative review, the subsidy rate for that program is *de minimis*. Therefore, 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.[121] 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 Amended Final* proceeding, as the rate for the respondent.[122] Additionally, based on the methodology described below 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.

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

[120] *See* section 776(d)(3) of the Act.
[121] *See*, *e.g.*, *Shrimp from China* IDM at 13; *see also Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").
[122] *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 Amended Final*) (revised rate for "Preferential Lending to the Coated Paper Industry" program).

merchandise."[123] The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.[124]

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.[125] 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.[126]

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.[127]

In the absence of sufficient record evidence concerning Both-Well's usage of the subsidy program at issue due to the GOC's decision not to submit certain information that Commerce has requested, we have reviewed the information concerning Chinese subsidy programs in other cases. Where we have a program-type match, we find that, because this is the same or similar program, it is relevant to the program in this administrative review. The relevance of this rate is that it is an actual calculated subsidy rate for a Chinese program, from which the respondent company could actually receive a benefit. Due to the insufficient response from the GOC and the resulting lack of certain information concerning this program, we have corroborated the rate we selected to use as AFA to the extent practicable pursuant to section 776(c)(1) of the Act for these preliminary results.

Because certain information relied upon for our "facts otherwise available" analysis is derived from the NSA Submission, and, consequently, is based upon secondary information, Commerce must corroborate this information to the extent practicable. In this administrative review, we determined that the information alleged in the NSA Submission regarding the program for which we have calculated a rate is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the NSA Submission during our pre-initiation analysis and for purposes of these preliminary results.[128]

Based on our examination of the information, as discussed in detail in the NSA Decision Memorandum, we consider the petitioners' information pertaining to the financial contribution and specificity of program for which we calculated a rate to be reliable. Because we obtained no

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[123] *See* SAA at 870.
[124] *Id*.
[125] *Id.* at 869-870.
[126] *See* section 776(d) of the Act.
[127] *See, e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).
[128] *See* NSA Submission; *see also* NSA Decision Memorandum.

other information that calls into question the validity of the sources of information, based on our examination of the aforementioned information, we preliminarily consider the information in the NSA Submission to be reliable.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal to determine whether there are circumstances that would render the information relied upon not relevant. Because there is incomplete information on the record from the GOC regarding the program that we are countervailing, we relied upon the information in the NSA Submission in certain respects, which is the only information regarding this program reasonably, and currently, at Commerce's disposal. Accordingly, Commerce preliminarily determines that the information alleged in the NSA Submission pertaining to the program for which Commerce is determining financial contribution and specificity has probative value. Commerce has corroborated this information to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the information: (1) was determined to be reliable in the pre-initiation analysis of the NSA (and there is no record information indicating otherwise); and (2) is relevant to the mandatory respondent.[129]

F. Application of AFA: Electricity for LTAR

As noted above, the GOC failed to provide responses to our request for information needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act and whether this financial contribution was specific within the meaning of section 771(5A) of the Act. However, the GOC, by not responding to the initial questionnaire, also failed to provide certain information necessary for the determination of benefit under section 771(5)(E) of Act. Specifically, we asked Both-Well to identify its electricity supppliers during the POR and to report the rates it paid, by month, during the POR.[130] We also asked the GOC to provide all electricity rate schedules in effect during 2018 for all provinces and municipalities within China.[131] Additionally, we asked the GOC questions 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 National Development and Reform Commission and provincial governments. Therefore, we are also drawing an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.

We preliminarily determine, in accordance with section 776(a)(2)(A) of the Act, that the GOC withheld information that was requested of it for our analysis of benefit. We also preliminarily determine that by withholding this information, the GOC has significantly impeded this administrative review within the meaning of section 776(a)(2)(C) of the Act. Thus, Commerce must rely on facts available in making its preliminary analysis.[132] Moreover, we preliminarily determine, in accordance with section 776(b) of the Act, that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. We find, based on AFA, that the GOC's provision of electricity constitutes a benefit within the meaning of section

[129] *See* section 776(c) of the Act; and 19 CFR 351.308(c) and (d).
[130] *See* Initial Questionnaire at III-11.
[131] *Id.* at Electricity Appendix.
[132] *See* section 776(a)(2)(A) of the Act.

771(5)(E) of the Act. Further, as discussed above in section "Application of AFA: Programs Provide Financial Contribution and Are Specific," we preliminarily determine that the Provision of Electricity for LTAR provides a financial contribution within the meaning of section 771(D) of the Act and is specific within the meaning of section 771(5A) of the Act.

As discussed above, under section 776(d)(1)(A) of the Act, Commerce's methodology for selecting an AFA rate in administrative reviews 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 rate for a subsidy program 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 AFA hierarchy in selecting a rate "among the facts otherwise available" in CVD cases, should the facts warrant such a selection. Under this hierarchy, Commerce may select a rate from the following sources in descending order: [133]

(1) The highest non-*de minimis* rate calculated for the identical program in any segment of the same proceeding;
(2) The highest non-*de minimis* rate calculated for a similar program within any segment of the same proceeding;
(3) The highest non-*de minimis* rate calculated for an identical or similar program in another CVD proceeding involving the same country; or
(4) The highest calculated rate for any program from the same country that the industry subject to the review could have used.

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.[134]

The GOC failed to provide the electricity rate schedules required for Commerce to calculate a benefit for Both-Well. Therefore, consistent with section 776(b) of the Act, we selected as the AFA rate Both-Well's calculated rate for the identical program from the investigation, another segment within this proceeding, which is the first step under the methodology for selecting an AFA rate in administrative reviews. Thus, the AFA rate for this program is 0.69 percent *ad valorem*.[135] Additionally, because we are using a calculated rate from the investigation, Commerce is not required to corroborate the countervailing duty rate for this program, pursuant to section 776(c)(2) of the Act.

VIII. ANALYSIS OF PROGRAMS

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

[133] *See* section 776(d) of the Act; *see also Solar World*.
[134] *See* section 776(d)(3) of the Act.
[135] *See* Both-Well IQR at Exhibit IA.

A. Programs Preliminarily Determined to Be Countervailable

1. Import Tariff and VAT Exemptions on Imported Equipment for Encouraged Industries

In the underlying investigation, Commerce found that Both-Well used this program to purchase certain equipment.[136] We found that these exemptions constituted a financial contribution in the form of revenue forgone by the GOC pursuant to section 771(5)(D)(ii) of the Act and provide a benefit to the recipient in the amount of VAT and tariff savings, pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1).[137] We also determined that the VAT and tariff exemptions afforded by the program are specific under section 771(5A)(D)(i) of the Act, because the program is expressly limited to certain enterprises, *i.e.*, domestic enterprises involved in "encouraged" projects.[138] No new evidence has been presented in this review to cause us to alter our financial contribution and specificity findings.

Both-Well claims that it did not receive any import tariff or VAT exemptions through this program during the POR, and that it has previously reported to Commerce all exemptions it received prior to the POR.[139] However, because these exemptions are provided for, or tied to, the capital structure or capital assets of a firm, Commerce treated them as a non-recurring benefit and applied its standard methodology for non-recurring subsidies to calculate the subsidy rate.[140] Under our methodology for non-recurring benefits, any benefit from past exemptions under this program may continue to be allocable to the POR.

To determine the benefit, we conducted the "0.5 percent test" pursuant to 19 CFR 351.524(b)(2). Specifically, where the benefits exceeded 0.5 percent of the relevant sales of that year, we allocated the amount of the VAT and/or tariff exemptions over the AUL.[141] In the years that Both-Well's benefits did not exceed 0.5 percent of relevant sales for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described in the section "Subsidies Valuation" above to calculate the amount of the benefit allocable to the POR. We then divided the benefits allocated to the POR by the total POR sales. On this basis, we preliminarily determine a subsidy rate of 0.77 percent *ad valorem* for Both-Well.[142]

2. VAT Refunds for Foreign Invested Enterprises (FIEs) on Purchases of Chinese – Made Equipment

[136] *See Preliminary Determination* PDM at 27, unchanged in the *Final Determination*.
[137] *Id*.
[138] *Id*.
[139] *See* Both-Well IQR at 5-6.
[140] *See* 19 CFR.351.524(b).
[141] *See* 19 CFR 351.524(c)(2)(iii) and (d)(2).
[142] *See* Both-Well Preliminary Calculation Memorandum.

In the underlying investigation, Commerce found that Both-Well used this program to purchase certain equipment.[143] We found that these refunds constituted a financial contribution in the form of revenue forgone by the GOC pursuant to section 771(5)(D)(ii) of the Act and provide a benefit to the recipient in the amount of VAT refunds, pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1).[144] We also determined that the VAT refunds afforded by the program are specific under section 771(5A)(A) and (C) of the Act, as the VAT refunds were contingent upon the use of domestic goods over imported goods.[145] No new evidence has been presented in this review to cause us to alter our financial contribution and specificity findings.

Both-Well claims that it did not receive any VAT refunds through this program during the POR, and that it has previously reported to Commerce all refunds it received prior to the POR.[146] However, because these exemptions are provided for, or tied to, the capital structure or capital assets of a firm, Commerce treated them as a non-recurring benefit and applied its standard methodology for non-recurring subsidies to calculate the subsidy rate.[147] Under our methodology for non-recurring benefits, any benefit from past exemptions under this program may continue to be allocable to the POR.

To determine the benefit, we conducted the "0.5 percent test" pursuant to 19 CFR 351.524(b)(2). Specifically, where the benefits exceeded 0.5 percent of the relevant sales of that year, we allocated the amount of the VAT exemptions over the AUL.[148] In the years that Both-Well's benefits did not exceed 0.5 percent of relevant sales for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described in the section "Subsidies Valuation" above to calculate the amount of the benefit allocable to the POR. We then divided the benefits allocated to the POR by the total POR sales. On this basis, we preliminarily determine a subsidy rate of 0.14 percent *ad valorem* for Both-Well.[149]

3. Provision of Steel Bar for LTAR

As noted above in the "Input Benchmarks" section, we decided in the investigation that this program relates to steel bar inputs that are manufactured to the following specifications, which are considered to be "special quality" or "forging quality": ASTM A-105, ASME B-16.11, ASTM A-370, ASTM A – 29, and ASTM A-751.[150] While steel bar made to these specifications is sometimes referred to as Special Bar Quality, or SBQ, bar and engineering steel, we find that the material grade and specifications are the best means to determine whether the respondents are using the input alleged in the petition to manufacture their forged steel fittings, because industry terms for one product can vary from country to country.[151]

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[143] *See* Memorandum, "Post-Preliminary Analysis of Countervailing Duty Investigation: Forged Steel Fittings from the People's Republic of China," dated May 25, 2018 at 4-6, unchanged in the *Final Determination*.
[144] *Id*.
[145] *Id*.
[146] *See* Both-Well IQR at 6.
[147] *See* 19 CFR.351.524(b).
[148] *See* 19 CFR 351.524(c)(2)(iii) and (d)(2).
[149] *See* Both-Well Preliminary Calculation Memorandum.
[150] *See Final Determination* IDM at 12-15 (Comment 2).
[151] *Id*.

Both-Well reported purchases of steel bar during the POR.[152] As described in the "Use of Facts Otherwise Available and Adverse Inferences" section, Commerce determines that the GOC failed to cooperate to the best of its ability in responding to our requests for information. Therefore, we preliminarily determine, as AFA, that the producer of steel bar purchased by Both-Well is an "authority" within the meaning of section 771(5)(B) of the Act and, as such, that the provision of special quality bar constitutes a financial contribution under section 771(5)(D)(iii) of the Act. We also preliminarily determine, as AFA, that this program is specific within the meaning of section 771(5A)(D)(iii) of the Act.

Additionally, as discussed in the "Application of AFA: Steel Bar Market Is Distorted" section, we preliminarily determine, as AFA, that the GOC plays a significant, distortive role in the steel industry, rendering tier one benchmarks inappropriate for the benefit analysis. Commerce is, accordingly, selecting external benchmark prices, *i.e.*, "tier two" or world market prices, for this LTAR analysis consistent with Commerce's regulations.[153] The external benchmarks are derived through the method discussed in the "Input Benchmarks" section above.

As explained in the Both-Well Preliminary Calculation Memorandum, Commerce adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv). Regarding delivery charges, we included ocean freight and inland freight charges that would be incurred to deliver steel bar to Both-Well's production facility. Because information regarding VAT and import duty rates would normally be provided by the GOC in response to the Initial Questionnaire, which the GOC did not do in this review, we incorporated import duty and VAT rates from the underlying investigation into our calculations for this administrative review.[154] In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding in amounts for ocean freight and import duties. We compared these monthly benchmark prices to Both-Well's reported purchase prices for individual domestic transactions, including VAT and delivery charges.[155]

Based on this comparison, we preliminarily determine that steel bar was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark prices and the prices Both-Well paid.[156] We divided the total benefits by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section, and in the Both-Well Preliminary Calculation Memorandum.

On this basis, we preliminarily determine a subsidy rate for Both-Well of 10.00 percent *ad valorem*.[157]

4. Provision of Electricity for LTAR

[152] *See* Both-Well IQR at 9 and Exhibit II.E.1.1.
[153] *See* 19 CFR 351.511.
[154] *See* Both-Well Preliminary Calculation Memorandum at Attachment 1; *see also* Both-Well IQR at Exhibit IA.
[155] *See* Both-Well Preliminary Calculation Memorandum.
[156] *Id.*
[157] *Id*.

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our determination regarding the GOC's provision of electricity for LTAR on AFA. Therefore, we 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.

Further, because the GOC failed to provide the electricity rate schedules required for Commerce to calculate a benefit, we selected Both-Well's rate for the identical program from the investigation as AFA, consistent with section 776(b) of the Act. For this program we are using an AFA rate of 0.69 percent *ad valorem*.

5. Provision of Land and/or Land-Use Rights for LTAR in Jiangsu Province and the Western Region of China

In the underlying investigation, Commerce found that Both-Well purchased land-use rights in the relevant regions in 2004, 2007, 2008, and 2010.[158] We found, as AFA, that these land purchases constituted a financial contribution within the meaning of section 771(5)(D)(iii) of the Act, and were specific under sections 771(5A)(D)(i) and (iii)(I) of the Act because preferential land-use rights at LTAR are provided to a limited number of industries or enterprises.[159] No new evidence has been presented in this review to cause us to alter our financial contribution and specificity findings. Both-Well claims that the company did not purchase or lease land-use rights in the locations identified above during 2018 and has previously reported to Commerce all purchases and leases of land-use rights in this location prior to the POR.[160] However, pursuant to 19 CFR 351.524(b) and (c), any benefit from past provisions of land under this program may continue to be allocable to the POR.

To determine the benefit pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we first multiplied the Thai industrial land benchmarks discussed above under the "Benchmarks and Interest Rates" section, by the total land areas of the land-use rights held by Both-Well. 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" provided for under 19 CFR 351.524(b)(2) for the years of the relevant land-rights agreements by dividing the total unallocated benefit by the appropriate sales denominators. As a result, we found that the benefits were greater than 0.5 percent of relevant sales and, therefore, allocated the benefits to the POR. We allocated the total benefit amounts across the terms of the land-use agreements, using the standard allocation formula as laid out in 19 CFR 351.524(d), and determined the amounts attributable to the POR. We divided this amount by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section. On this basis, we preliminarily determine a subsidy rate of 3.63 percent *ad valorem* for Both-Well.

6. Policy Loans to the Forged Steel Fittings Industry

[158] *See Preliminary Determination* PDM at 15-16 and 26, unchanged in the *Final Determination*.
[159] *Id*.
[160] *See* Both-Well IQR at 12.

As discussed under the section "Application of AFA: Programs Provide Financial Contribution and Are Specific," Commerce preliminarily determines that the use of AFA is warranted in determining the countervailability of Both-Well's loans because the GOC did not provide the requested information needed to allow Commerce to fully analyze this program.

When examining a policy lending program, Commerce looks to whether the 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. Once that finding is made, we rely upon the analysis undertaken in *CFS from China* to further conclude that national and local government control over the state-owned commercial banks render the loans a government financial contribution.[161]

In response to our initial questionnaire, Both-Well reported loans that the company received from government entities during the POR.[162] However, because the GOC did not provide the requested information, Commerce does not have the information to determine whether a policy directive applies to Both-Well's loans. As discussed in the "Application of AFA: Programs Provide Financial Contribution and Are Specific" section above, we preliminarily find, as AFA, that the GOC bestowed a financial contribution pursuant to section 771(5)(D)(i) of the Act and provided a benefit pursuant to section 771(5)(E)(ii) of the Act. Further, we preliminarily find that benefits from Both-Well's loans are specific within the meaning of section 771(5A)(D)(i) of the Act.

To determine whether a benefit was conferred under section 771(5)(E)(ii) of the Act, we compared the amount of interest paid during the POR on Both-Well's loans to the amount of interest the company would have paid on comparable commercial loans.[163] In conducting this comparison, we used the interest rate benchmarks described above in the section "Benchmarks and Interest Rates." On this basis, we preliminarily calculated a countervailable subsidy of 0.01 percent *ad valorem* for this program.[164]

7. Research and Development Reward from Financial Bureau of Jiangyan City

Both-Well reported receiving benefits from this program during the POR.[165] As described in the "Use of Facts Otherwise Available and Adverse Inferences" section, Commerce determines that the GOC failed to cooperate to the best of its ability in responding to our requests for information. Therefore, we preliminarily determine as AFA, that this grant provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act and is specific within the meaning of section 771(5A) of the Act.

[161] *See CFS from China* IDM at Comment 8.
[162] *See* Both-Well IQR at Exhibit III.
[163] *See* 19 CFR 351.505(a).
[164] *See* Both-Well Preliminary Calculation Memorandum.
[165] *See* Both-Well IQR at Exhibit IV.

Because this grant provides a non-recurring benefit, we applied our standard methodology for non-recurring grants to calculate the subsidy rate.[166] Specifically, where the benefits exceeded 0.5 percent of the relevant sales of that year, we allocated the amount of the grant over the AUL.[167] In the years that the benefits received by the respondent under this program did not exceed 0.5 percent of relevant sales for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described in the section "Subsidies Valuation" above to calculate the amount of the benefit allocable to the POR. The amount of the benefit expensed or allocated to the POR was then used as the basis for calculating the net subsidy rate, which we calculated by dividing the total POR benefit by the total sales denominator.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.12 percent *ad valorem* for this program.[168]

8. Export Buyer's Credit

Through this program, the China Ex-Im Bank provides loans at preferential rates for the purchase of exported goods from China.[169] For the reasons explained in the "Application of AFA: Export Buyer's Credits" section above, for this administrative review we preliminarily determine that the program constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, pursuant to sections 776(a) and (b) and of the Act. We also preliminarily determine that the program is specific because the credits are contingent upon export performance under sections 771(5A)(A) and (B) of the Act.

Applying AFA, we preliminarily determine that this program confers a benefit to Both-Well pursuant to section 771(5)(E) of the Act. Consistent with Commerce's AFA rate selection methodology, we preliminarily determine a countervailable subsidy rate of 10.54 percent *ad valorem*, a rate calculated for a similar program in another CVD proceeding involving imports from China.[170]

B. Programs Preliminarily Determined Not Used or Not to Have Conferred a Measurable Benefit during the POR

We preliminarily determine that Both-Well did not apply for, or receive, benefits during the POR under the programs listed below:

1. Export Loans
2. Treasury Bond Loans
3. Preferential Lending to Forged Steel Fittings Producers and Exporters Classified as "Honorable Enterprises"
4. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
5. Preferential Income Tax Reductions for High and New Technology Enterprises

[166] *See* 19 CFR.351.524(b).
[167] *See* 19 CFR 351.524(c)(2)(iii) and (d)(2).
[168] *See* Both-Well Preliminary Calculation Memorandum.
[169] *See* NSA Submission at 3.
[170] *See Coated Paper from China Amended Final*.

6. Preferential Deduction of Research and Development (R&D) Expenses for High and New Technology Enterprises
7. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
8. Preferential Income Tax Policy for Enterprises in the Northeast Region
9. Reductions in or Exemption from Fixed Assets Investment Orientation Regulatory Tax
10. Income Tax Benefits for Domestically Owned Enterprises Engaging in R&D
11. VAT and Tariff Exemptions for Purchasers of Fixed Assets Under the Foreign Trade Development Fund
12. VAT Refunds for Foreign Invested Enterprises (FIEs) on Purchases of Chinese – Made Equipment
13. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
14. Import Tariff and VAT Exemptions on Imported Equipment for Encouraged Industries
15. The State Key Technology Fund
16. Foreign Trade Development Fund Grants
17. Export Assistance Grants
18. Export Interest Subsidies
19. Grants for Energy Conservation and Emission Reduction
20. Grants for the Retirement of Capacity
21. Grants for Relocating Production Facilities
22. Technology Innovation Reward from Financial Bureau of Jiangyan
23. High-Technology Reward from Government
24. Technology Reward from Jiangyan Economic Development Zone[171]
25. Reward from Financial Bureau of Jiangyan City[172]

[171] This program did not confer a measurable benefit during the POR. *See* Both-Well Preliminary Calculation Memorandum.
[172] This program did not confer a measurable benefit during the POR. *See* Both-Well Preliminary Calculation Memorandum.

IX. CONCLUSION

Based on our analysis, we recommend that you approve the preliminary findings described above. If this recommendation is accepted, we will publish the preliminary results of review in the *Federal Register*.

☒	☐
Agree	Disagree

11/5/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance