C-570-120
Investigation
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January 4, 2021

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 Final Affirmative Determination and Final Negative Critical Circumstances Determination in the Countervailing Duty Investigation of Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain vertical shaft engines between 225cc and 999cc, and parts thereof (VSE) from the People's Republic of China (China), as provided in section 705 of the Tariff Act of 1930, as amended (Act). The petitioners in this case are the Coalition of American Vertical Engine Producers and its individual members[1] (the petitioners). The mandatory respondents subject to this investigation are Loncin Motor Co. (Loncin)[2] and Chongqing Zongshen General Power Machine Co., Ltd. (Zongshen).[3] As a result of our analysis, we made changes to the subsidy rate calculations. Below is the complete list of issues in this investigation for which we received comments from interested parties.

General Issues

Comment 1: Export Buyer's Credit Program
Comment 2: Policy Loans to the VSE Industry

[1] Individual members are Kohler Co. and Briggs & Stratton Corporation.
[2] Loncin's cross owned affiliates are: Loncin Group Co. Ltd. (Loncin Group); Loncin Holdings Co. (Loncin Holdings); Chongqing Loncin Casting Co., Ltd. (Loncin Casting); Chongqing Lightweight Automotive Components Co., Ltd. (Lightweight); Chongqing Saiyi Plastic Products Co., Ltd. (Saiyi); and Chongqing Loncin Engine Co., Ltd. (Loncin Engine).
[3] Zongshen's cross-owned affiliates are: Chongqing Zongshen Power Machinery Co., Ltd. (Zongshen Power); Chongqing Zongshen High Speed Boat Development Co., Ltd. (Zongshen High Speed); Zong Shen Industrial Group (Zong Shen Group); Chongqing Zongshen Automobile Air Intake System Manufacturing Co., Ltd. (Zongshen Air); and Chongqing Zong Shen Electrical Appliance Co., Ltd. (Zongshen Appliance).

Comment 3: Electricity for LTAR Program
Comment 4: Whether Input Suppliers are Authorities
Comment 5: Income Tax Deduction for R&D Expenses
Comment 6: Uncreditworthiness Findings
Comment 7: Benchmark for Unwrought Aluminum
Comment 8: Inland Freight Rates for the Unwrought Aluminum Benchmark
Comment 9: Critical Circumstances

Issues Related to Zongshen

Comment 10: Denominators and Attribution of Subsidies for Zongshen Affiliates
Comment 11: Alleged Error in Zongshen's Policy Lending Calculations
Comment 12: Zongshen Power's Electricity Calculations
Comment 13: Minor Corrections for Export Seller's Credits and Policy Loans to the VSE Industry Programs
Comment 14: Alleged Error in Zongshen's Export Seller's Credits Program Calculations
Comment 15: Zongshen's Land-Use Rights for LTAR
Comment 16: Zongshen's Consolidated Sales Denominators

Issues Related to Loncin

Comment 17: Income Tax Deduction for R&D Expenses Program
Comment 18: Whether Loans Received by Loncin Group and Loncin Holdings are Policy Loans to the VSE Industry
Comment 19: Loncin's Loan Calculations
Comment 20: Loncin's Unwrought Aluminum Calculations
Comment 21: Loncin's Other Subsidies
Comment 22: Loncin's Policy Loans
Comment 23: Loans from DBS Bank China
Comment 24: Alleged Errors in Loncin's Electricity for LTAR Calculations
Comment 25: Loncin's Sales Denominators
Comment 26: Loncin's Land-Use Rights for LTAR Calculations

II. BACKGROUND

A. Case History

On June 19, 2020, Commerce published in the *Federal Register* the *Preliminary Determination* of this investigation.[4] On June 29, 2020, the petitioners timely alleged that Commerce made a ministerial error in the *Preliminary Determination* with regard to the denominator used in the calculation of Zongshen's Export Seller's Credit Program. On June 30, 2020, Zongshen timely alleged that Commerce made ministerial errors in the *Preliminary Determination* with regard to

[4] *See Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 37061 (June 19, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

the denominators used in the Export Seller's Credit Program, Policy Lending Program and the Interest Payment Subsidy Program, as well as additional errors with regard to the Policy Lending Program and the Provision of Electricity for Less Than Adequate Remuneration (LTAR).[5] On July 14, 2020, Commerce issued new subsidy allegation (NSA) questionnaires to Loncin, Zongshen, and the GOC.[6] On July 23, 2020, the petitioners filed uncreditworthiness allegations regarding certain cross-owned affiliates of Loncin and Zongshen.[7] From July 28, 2020, through July 31, 2020, Loncin, Zongshen and the GOC filed timely responses to Commerce's NSA questionnaires.[8] On July 29, 2020, Commerce issued a memorandum finding no significant ministerial errors within the meaning of 19 CFR 351.224.[9] On September 18, 2020, Commerce initiated uncreditworthiness investigations of Zongshen affiliate Zong Shen Group for 2016 through 2019, Loncin affiliate Loncin Holdings for 2017 through 2019, and Loncin affiliate Loncin Group for 2017.[10] On September 22, 2020, Commerce issued uncreditworthiness questionnaires to Loncin and Zongshen.[11] Zongshen and Loncin responded to the questionnaires on October 6 and 19, 2020, respectively.[12] On November 4, 2020, Commerce issued a Post-Preliminary Analysis regarding the NSA and uncreditworthiness allegations.[13] On November

[5] *See* Kohler's Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof ('CVSEs') from the People's Republic of China: Ministerial Error Comments," dated June 29, 2020; and Zongshen's Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China; CVD Investigation; Chongqing Zongshen Significant Ministerial Error Comments," dated June 30, 2020. On July 6, 2020, Kohler also submitted rebuttal comments regarding Zongshen's ministerial error comments, however, pursuant to 19 CFR 351.224(c)(3), Commerce will not consider replies to comments in connection with a preliminary determination.

[6] *See* Commerce's Letters, "Countervailing Duty Investigation of Certain Vertical Shaft Engines from the People's Republic of China: New Subsidy Allegation Questionnaire," and "Countervailing Duty Investigation of Certain Vertical Shaft Engines from the People's Republic of China: New Subsidy Allegation Questionnaire and Supplemental Questionnaire," dated July 14, 2020.

[7] *See* Petitioners' Letter, "Certain Vertical Shaft Engines from the People's Republic of China: Allegation of Respondents' Uncreditworthiness," dated July 23, 2020 (Uncreditworthiness Allegation).

[8] *See* GOC's Letter, "GOC Response to New Subsidy Allegation Questionnaire in the Countervailing Duty Investigation on Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof from the People's Republic of China (C-570-120)," dated July 28, 2020 ; *see also* Loncin's Letter, "Loncin Response to New Subsidy Allegation Questionnaire in the Countervailing Duty Investigation on Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof from the People's Republic of China (C-570-120)," dated July, 28, 2020; and Zongshen's Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China; CVD Investigation; Chongqing Zongshen NSA and 4th Supplemental Questionnaire Response," (Zongshen 4th SQR) dated July 31, 2020.

[9] *See* Memorandum, "Allegation of Ministerial Errors in the *Preliminary Determination* with Regard to Chongqing Zongshen General Power Machine Co., Ltd.," dated July 29, 2020.

[10] *See* Memorandum, "Countervailing Duty Investigation of Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Initiation of Uncreditworthy Investigation," dated September 18, 2020.

[11] *See* Commerce's Letter, "Countervailing Duty Investigation of Certain Vertical Shaft Engines from the People's Republic of China: Uncreditworthy Investigation Supplemental Questionnaire," dated September 22, 2020.

[12] *See* Zongshen's Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China; CVD Investigation; Creditworthiness Supplemental Response," dated October 6, 2020; *see also* Loncin's Letter "Loncin Creditworthiness Supplemental Response Resubmission in the Countervailing Duty Investigation on Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof from the People's Republic of China (C-570-120)," dated October 19, 2020.

[13] *See* Memorandum, "Post-Preliminary Analysis of Countervailing Duty Investigation of Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China," dated November 4, 2020.

19, 2020, interested parties submitted case briefs.[14] On December 2, 2020, interested parties submitted rebuttal briefs.[15] MTD Products Inc. (MTD) and The Toro Company and Toro Purchasing Company (collectively, Toro) submitted letters in lieu of rebuttal briefs on December 2, 2020.[16]

B. Period of Investigation

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

III. FINAL NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

In the *Preliminary Determination* we determined that critical circumstances did not exist with regard to imports of VSE.[17] Based on the information used in the *Preliminary Determination* we find that critical circumstances do not exist with regard to imports of VSE for these final results. *See* Comment 9.

IV. SCOPE COMMENTS

On September 18, 2020, Toro submitted scope comments.[18] On September 25, 2020, the petitioners filed rebuttal scope comments.[19] Commerce addressed these comments in its Final Scope Determination Memorandum.[20] We have not changed the scope of the investigation.

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[14] *See* GOC's Letter, "*GOC Administrative Case Brief* – Countervailing Duty Investigation on Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof from the People's Republic of China (C-570-120)," dated November 19, 2020 (GOC Case Brief); Petitioners' Letter, "*Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China*: Case Brief," dated November 19, 2020 (Petitioners Case Brief); Loncin's Letter, "Loncin Administrative Case Brief: Countervailing Duty Investigation on Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof from the People's Republic of China (C-570-120)," dated November 20, 2020 (Loncin Case Brief); and Zongshen's Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China; CVD Investigation; Chongqing Zongshen Case Brief," dated November 20, 2020 (Zongshen Case Brief).

[15] *See* Loncin's Letter, "Loncin Rebuttal Brief: Countervailing Duty Investigation on Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof from the People's Republic of China (C-570-120)," dated December 3,2020 (Loncin Rebuttal Brief); GOC's Letter, "GOC Rebuttal Brief in the Countervailing Duty Investigation on Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof from the People's Republic of China (C-570-120)," dated December 2, 2020 (GOC Rebuttal Brief); Petitioners' Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Rebuttal Brief," dated December 2, 2020 (Petitioners Rebuttal Brief); and Zongshen's Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China; CVD Investigation; Chongqing Zongshen Rebuttal Brief," dated December 2, 2020 (Zongshen Rebuttal Brief).

[16] *See* MTD's Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China: Letter in Lieu of Case Brief," dated December 2, 2020 (MTD Letter); and Toro's Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc from China: Letter in Lieu of Rebuttal Brief," dated December 2, 2020 (Toro Letter).

[17] *See Preliminary Results* PDM at 4-5.

[18] *See* Toro's Letter, "Certain Vertical Shaft Engines from the People's Republic of China: Letter in Lieu of Brief on Scope Issues," dated September 18, 2020.

[19] *See* Petitioners' Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc from the People's Republic of China: Letter in Lieu of Scope Rebuttal Brief," dated September 25, 2020.

[20] *See* Memorandum, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China: Final Scope Decision Memorandum," dated concurrently with this final determination.

V. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, primarily for riding lawn mowers and zero-turn radius lawn mowers. Engines meeting this physical description may also be for other non-hand-held outdoor power equipment such as, including but not limited to, tow-behind brush mowers, grinders, and vertical shaft generators. The subject engines are spark ignition, single or multiple cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 225 cubic centimeters (cc) and a maximum displacement of 999cc. Typically, engines with displacements of this size generate gross power of between 6.7 kilowatts (kw) to 42 kw.

Engines covered by this scope normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of this proceeding. Engines that may be certified under both 40 CFR part 1054 as well as other parts of subchapter U remain subject to the scope of this proceeding.

For purposes of this investigation, an unfinished engine covers at a minimum a sub-assembly comprised of, but not limited to, the following components: crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as an oil pan, manifold, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of this investigation. The inclusion of other products such as spark plugs fitted into the cylinder head or electrical devices (*e.g.*, ignition modules, ignition coils) for synchronizing with the motor to supply tension current does not remove the product from the scope. The inclusion of any other components not identified as comprising the unfinished engine subassembly in a third country does not remove the engine from the scope.

The engines subject to this investigation are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 8407.90.1020, 8407.90.1060, and 8407.90.1080. The engine subassemblies that are subject to this investigation enter under HTSUS 8409.91.9990. Engines subject to this investigation may also enter under HTSUS 8407.90.9060 and 8407.90.9080. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

VI. SUBSIDIES VALUATION

A. Allocation Period

We made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation methodology used in the *Preliminary Determination*. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination.*[21]

B. Attribution of Subsidies

We made no changes to the methodology underlying our attribution of subsidies in the *Preliminary Determination.* For a description of the methodology used in this final determination *see* the *Preliminary Determination.*[22]

C. Denominators

We have revised the denominators used for Zongshen's affiliates to use consolidated sales data and to remove intercompany sales. We relied on data submitted in Zongshen's July 31, 2020, supplemental response for Zongshen's affiliates denominators.[23] *See* Comment 10 and 16.

We have also revised Loncin's denominators for the final determination. *See* Comment 26.

D. Benchmarks and Interest Rates

Based on our determination that Loncin affiliate Loncin Holdings was uncreditworthy during the years 2017 through 2019, that Loncin affiliate Loncin Group was uncreditworthy in 2017, and that Zongshen affiliate Zong Shen Group was uncreditworthy during the years 2016 through 2019, we have revised the benchmark interest rates to reflect uncreditworthy premiums for the relevant years for these companies.

We have revised the benchmark used to determine adequate remuneration for unwrought aluminum for both Loncin and Zongshen. *See* Comment 7 and 8.

We have revised the benchmark used to determine adequate remuneration for electricity. *See* Comment 3.

[21] *Id.* at 8.
[22] *Id.* at 8-10.
[23] *See* Zongshen's Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China; CVD Investigation; Chongqing Zongshen NSA and 4th Supplemental Questionnaire Response," dated July 31, 2020 at Exhibits S4-1 and S4-3.

VII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Policy Loans to the VSE Industry

Loncin and Zongshen provided comments regarding the calculations used in the *Preliminary Determination* for this program, which are addressed in Comments 11, 13 and 19. We have revised the calculations for both Loncin and Zongshen.

We note that Loncin reported that certain loans outstanding during the POI had payments deferred until after the POI and that others had an option exercised by Loncin whereby interest payments could be paid in a lump sum at the end of the life of the loan (which appears to be simply another type of deferral). Should we conduct an administrative review of Loncin, our determination of the benefit for such loans will be based on a benchmark interest payment covering the entire life of the loan after the last interest payment, including any deferral period. If further deferrals are indicated in the administrative review, Commerce may consider whether the loans have been forgiven and determine a benefit equal to the forgiven principal plus the amount of interest that should have been charged after the last interest payment, including interest that should have been charged during any deferral period.

- 1.20 percent *ad valorem* for Loncin.
- 4.40 percent *ad valorem* for Zongshen.

2. Export Seller's Credits

Zongshen provided comments regarding this program which are addressed in Comments 14 and 15. We have revised the subsidy rate calculation for this program for Zongshen.

- 1.69 percent *ad valorem* for Loncin.
- 0.79 percent *ad valorem* for Zongshen.

3. Export Buyer's Credits

Interested parties provided comments on this program which are addressed in Comment 1. We have not changed our methodology for calculating subsidy rates for the respondents for this program.

- 10.54 percent *ad valorem* for Loncin.
- 10.54 percent *ad valorem* for Zongshen.

4. Provision of Unwrought Aluminum for LTAR

In response to Loncin's and the petitioners' comments, we have revised the benchmark for unwrought aluminum for both respondents and revised Loncin's subsidy rate calculation to fix certain clerical errors. *See* Comment 20.

- 2.77 percent *ad valorem* for Loncin.
- 1.85 percent *ad valorem* for Zongshen.

5. Provision of Land-Use Rights for LTAR to VSE Producers

The petitioners provided comments on this program. *See* Comments 15 and 26. We have revised our methodology for calculating the subsidy rate for Loncin for this program. *See* Comment 26. We have not revised our methodology for Zongshen.

- 0.16 percent *ad valorem* for Loncin.
- 0.17 percent *ad valorem* for Zongshen.

6. Provision of Electricity for LTAR

We have revised the calculation for the provision of electricity for LTAR for Loncin. We have used the information Loncin reported in its June 11, 2020, supplemental response[24] to allocate the benefit between Loncin and cross-owned affiliates Lightweight and Loncin Casting. In response to the petitioners' comments, we have revised the formula to calculate the benefit for District A. *See* Comment 24.

Zongshen provided comments on this program. We have revised our calculation of the subsidy rate for this program based on Zongshen's comments. *See* Comment 12.

- 0.03 percent *ad valorem* for Loncin.
- 0.22 percent *ad valorem* for Zongshen.

7. Income Tax Deductions for Research and Development (R&D) Expenses Under the Enterprise Income Tax Law

As discussed in Comment 17, we have revised the benefit amounts used to calculate the subsidy rate for Loncin and Loncin Engine for the Income Tax Deduction for R&D Expenses under the Enterprise Income Tax Law (Income Tax Deduction for R&D Expenses).

- 0.13 percent *ad valorem* for Loncin.
- 0.40 percent *ad valorem* for Zongshen.

8. Import Tariff and VAT Exemptions for Foreign Invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

No parties provided comments regarding this program. We have not changed our methodology for calculating subsidies rates under this program.

[24] *See* Loncin's Letter, "Loncin's Second Supplemental Questionnaire Response in the Countervailing Duty Investigation on Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof from the People's Republic of China (C-570-120)," dated June 11, 2020 (Loncin June 11, 2020 SQR) at Exhibit P.E. 4.1.02.

- 0.03 percent *ad valorem* for Loncin.
- 0.00 percent *ad valorem* for Zongshen.

9. Subsidy Fund for Foreign Trade Development

No parties provided comments regarding this program. We have not changed our methodology for calculating subsidies rates under this program.

- 0.02 percent *ad valorem* for Loncin.

10. Interest Payment Subsidies

No parties provided comments regarding this program. We have not changed our methodology for calculating subsidies rates under this program.

- 0.06 percent *ad valorem* for Zongshen.

11. Other Subsidies

The petitioners provided comments regarding the calculation performed to determine whether to allocate subsidies over the AUL for Loncin. As a result, we have corrected errors in the allocation determinations for Loncin. *See* Comment 22. We have not revised our methodology for Zongshen.

- 1.19 percent *ad valorem* for Loncin.
- 0.85 percent *ad valorem* for Zongshen.

B. Programs Determined Not to Be Used or Not to Confer a Measurable Benefit During the POI

1. Export Loans
2. Government Directed Debt Restructuring
3. Subsidies Under the State Capital Operating Budget
4. Provision of Pig Iron for LTAR
5. Provision of Steam coal for LTAR
6. Income Tax Reductions for High or New Technology Enterprises
7. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
8. Export Assistance Grants
9. State Key Technology Fund Grants
10. GOC and Sub-Central Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands
11. Grants for Retiring Outdated Capacity/Industrial Restructuring
12. Provision of Hot-Rolled Steel for LTAR

VIII. ANALYSIS OF COMMENTS

General Issues

Comment 1: Export Buyer's Credit Program

GOC Comments

- Commerce's application of AFA to the Export Buyer's Credit Program (EBCP) is unlawful and unsupported by substantial evidence.[25]
- In a contemporaneous remand redetermination involving a CVD review of *New Pneumatic Off-the-Road Tires from the People's Republic of China*, Commerce reversed its AFA finding for the EBCP and properly found that the program was not used based on non-use declarations submitted by the respondents' customers. Commerce should find the same here.[26]
- It is not Commerce's practice to assign an AFA rate to a respondent in CVD proceedings based solely on the fact that the foreign government failed to participate to the best of its ability. Rather, in instances in which the foreign government fails to adequately respond to Commerce's questionnaires, it is Commerce's practice to apply AFA and assume that the alleged subsidy constitutes a financial contribution and is specific. In such instances, Commerce calculates the benefit by relying on the information supplied by the respondent firms. However, if the information on the record indicates that the respondent did not use the program, Commerce will find the program was not used, regardless of whether the foreign government participated to the best of its ability.[27]
- The courts have also embraced this legal principle. For example, in *Fine Furniture*, the Court of International Trade (CIT) stated that "{w}e do not treat the GOC and Fine Furniture as a joint entity in making our determination; rather, we acknowledge that, in the context of a CVD investigation, an inference adverse to the interests of a non-cooperating government respondent may collaterally affect a cooperative respondent. While such an inference is permissible under the statute, it is disfavored and should not be employed when facts not collaterally adverse to a cooperative party are available."[28]
- The CIT has also noted that it would be "inappropriate for Commerce to apply AFA for no reason other than to deter the {government's} non-cooperation in future proceedings when relevant evidence existed elsewhere on the record."[29]
- The court has ruled out the reasonableness of the application of AFA in the face of exculpatory evidence provided by the company respondent where the government did not respond.[30]

[25] *See* GOC Case Brief at 8.
[26] *Id.* at 9.
[27] *Id.* at 11 (citing *Certain In-Shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty New Shipper Review*, 73 FR 9993 (February 25, 2008)).
[28] *Id.* at 12 (citing *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254 (CIT 2012) (*Fine Furniture*)).
[29] *Id.*
[30] *Id.* at 13 (citing *Guizhou Tyre Co. Ltd. v. United States*, 348 F. Supp. 3d 1270, (CIT 2019) ("To apply AFA in circumstances where relevant information exists elsewhere on the record – that is, solely to deter non-cooperation or 'simply to punish' – would make the agency's determination based on an incomplete (and therefore, inaccurate) account of the record; that is a fate this court should sidestep.")).

- None of the information Commerce deems as missing actually creates a material gap in the record concerning usage. The information that was not provided goes to the countervailability of the EBCP; it neither impacts the evaluation of the program nor the determination of usage of the program.[31]
- Record evidence demonstrates that the EBCP was not used by the mandatory respondents' customers. The GOC stated that the respondents' customers did not use the program and provided screen shots of the GOC's database search and the respondents provided statements of non-use in their initial responses after confirmation with their U.S. customers and submitted customer declarations.[32]
- If there was a gap in the record, it is Commerce's failure to review the reported non-use statements provided by the GOC and the respondents and to ask the appropriate questions. Commerce could have attempted to verify claims of non-use at the respondents' U.S. customers' offices but chose not to.[33]

Loncin and Zongshen Comments

- Record evidence shows non-use of the EBCP by Loncin or Zongshen.[34]
- There is no gap in the record that warrants the use of AFA for this program.[35]
- Commerce may not apply AFA if doing so would adversely impact a cooperating party, and relevant evidence exists elsewhere on the record.[36]
- If Commerce continues to find the EBCP to be used, it should use either the Export Seller's Credit rate or Preferential Lending Program rate calculated in this investigation as AFA.[37]
- There have been multiple cases that have rejected Commerce's position that AFA is required for the EBCP and that the 10.54 percent rate is warranted.[38]

Petitioners Rebuttal Comments

- Commerce correctly decided in the *Preliminary Determination* that AFA was warranted because the GOC did not provide information needed to allow Commerce to analyze the EBCP program.[39]
- The assertion that there is no "gap" in the record fails to acknowledge that the respondents have not provided sufficient verifiable evidence to demonstrate non-use of the EBCP.[40]
- Zongshen's argument that Commerce selected the incorrect AFA rate is meritless and inconsistent with the statute.[41]

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[31] *Id.* at 15.
[32] *Id.* at 18.
[33] *Id.*
[34] *See* Loncin Case Brief at 17-20; and Zongshen Case Brief at 8-12.
[35] *See* Loncin Case Brief at 14-17; and Zongshen Case Brief at 13-14.
[36] *See* Zongshen Case Brief at 19.
[37] *Id.* at 20-28.
[38] *See* Loncin Case Brief at 20-21.
[39] *See* Petitioners Rebuttal Brief at 8-9.
[40] *Id.* at 11.
[41] *Id*. at 12-13.

Commerce Position: We continue to find that the record evidence of the instant investigation does not support a finding of non-use of the EBCP by Loncin or Zongshen. We next describe the evolution of Commerce's treatment of the program.

Solar Cells from China Initial Investigation of the EBCP

Commerce first investigated and countervailed the EBCP in the 2012 investigation of Solar Cells from China. Our initiation was based on, among other information, the China Ex-Im Bank's 2010 annual report, demonstrating that the credits provided under this program are "medium – and long-term loans, and have preferential, low interest rates. Included among the projects that are eligible for such preferential financing are energy projects." Commerce initially asked the GOC to complete the "standard questions appendix" for the EBCP. The appendix requests, among other information, a description of the program and its purpose, a description of the types of relevant records the government maintains, the identification of the relevant laws and regulations, and a description of the application process (along with sample application documents). The standard questions appendix is intended to help Commerce understand the structure, operation, and usage of the program.

The GOC provided none of the information requested by Commerce in the ensuing investigation, despite being given multiple opportunities to do so, and instead simply stated that "{n}one of the respondents or their reported cross-owned companies applied for, used, or benefited from the alleged programs during the POI." In response to a request from Commerce for information concerning the operation of the EBCP and how we might verify usage of the program, the GOC stated that none of the respondents' customers had used the program either. The GOC added: "{t}he GOC understands that this program, including the buyer's credit cannot be implemented without knowledge of the exporters because the program has a substantial impact on the exporter's financial and foreign exchange business matters." Although asked, the GOC provided no additional information concerning exactly how an exporter's financial and foreign exchange matters would be affected. Commerce then gave the GOC another opportunity to provide the information requested. The GOC again refused to provide sample application documents, regulations, or manuals governing the approval process, and instead provided only a short description of the application process which gave no indication of how an exporter might be involved in the provision of export buyer's credits, how it might have knowledge of such credits, or how such credits might be reflected in a company's books and records.

Based on the GOC's responses, Commerce's understanding was that, under this program, loans were provided directly from the China Ex-Im Bank to the borrowers (*i.e.*, a respondent's customers), with no involvement of third parties, such as exporters, or third-party banks. Accordingly, Commerce made clear its understanding that the only way to establish non-use of the program was through the GOC and not the respondent companies. Additionally, Commerce concluded that, even if the respondent company might have some knowledge of loans provided to its customers through its involvement in the application process, such information is not the type Commerce would examine to verify that the claim of non-use at issue was complete and accurate:

> {E}ven if the {respondent exporter} might have been involved in, or might have received some notification of, its customer's application for receiving such export credits, such information is not the type of information that {Commerce} needs to examine in order to verify that the information is complete and accurate. For verification purposes, {Commerce} must be able to test books and records in order to assess whether the questionnaire responses are complete and accurate, which means that we need to tie information to audited financial statements, as well as to review supporting documentation for individual loans, grants, rebates, *etc*. If all a company received was a notification that its buyers received the export credits, or if it received copies of completed forms and approval letters, we have no way of establishing the completeness of the record because the information cannot be tied to the financial statements. Likewise, if an exporter informs Commerce that it has no binder (because its customers have never applied for export buyer's credits), there is no way of confirming that statement unless the facts are reflected in the books and records of the respondent exporter.

On this basis, Commerce concluded that usage of the program could not be confirmed at the respondent exporters in a manner consistent with its long-standing verification methods. These methods are comparable to those of an auditor, attempting to confirm usage or claimed non-usage by examining books and records which can be traced to audited financial statements, or other credible official company documents, such as tax returns, that provide a credible and complete picture of a company's financial activity for the period under examination. A review of ancillary documents, such as applications, correspondence, emails, *etc*., provides no assurance to Commerce that it has seen all relevant information.

This "completeness" test is an essential element of Commerce's verification methodology. If Commerce were attempting to confirm whether and to what extent a respondent exporter had received loans from a state-owned bank, for example, its first step would be to examine the company's balance sheets to derive the exact amount of lending outstanding during the period of examination. Second, once that figure was confirmed, Commerce would examine subledgers or bank statements containing the details of all individual loans. Because Commerce could tie or trace the subledgers or bank statements to the total amount of outstanding lending derived from the balance sheets, it could be assured that the subledgers were complete and that it therefore had the entire universe of loan information available for further scrutiny. After examining the subledgers for references to the state-owned banks (for example, "Account 201-02: Short-term lending, Industrial and Commercial Bank of China"), Commerce's third step would be to select specific entries from the subledger and request to see underlying documentation, such as applications and loan agreements, in order to confirm the accuracy of the subledger details. Thus, confirmation that a complete picture of relevant information is in front of the verification team, by tying relevant books and records to audited financial statements or tax returns, is critical.

In the Solar Cells from China investigation, however, despite Commerce's repeated requests for information, the GOC failed to offer any guidance as to how Commerce could search for EBCP lending in the respondent exporters' books and records that could be tied to financial statements, tax returns, or other relevant company documents. Therefore, Commerce concluded in that

investigation that it could not verify usage of the program at the respondent exporters and instead attempted verification of usage of the program at the China Ex-Im Bank itself because it "possessed the supporting records needed to verify the accuracy of the reported non-use of the EBC program {and} would have complete records of all recipients of export buyer's credits." We noted our belief that "{s}uch records could be tested by {Commerce} to check whether the U.S. customers of the company respondents had received export buyer's credits, and such records could then be tied to the {China} Ex-Im Bank's financial statements." However, the GOC refused to allow Commerce to query the databases and records of the China Ex-Im Bank. Furthermore, there was no information on the record of Solar Cells from China from the respondent exporters' customers.

Chlorinated Isos Investigation of the EBCP

Two years later, in the *Chlorinated Isocyanurates Investigation* (*Chlorinated Isos*),[42] the respondents submitted certified statements from all customers claiming that they had not used the EBCP. This was the first instance of respondents submitting such customer certifications. At that point in time, as explained in detail above, based on the limited information provided by the GOC in earlier investigations, it was Commerce's understanding that the EBCP provided medium – and long-term loans and that those loans were provided directly from the China Ex-Im Bank to the borrowers (*i.e.*, the respondent exporters' customers) only. Because the respondents' customers were participating in the proceeding, verification of non-use appeared to be possible through examining the financial statements and books and records of the U.S. customers for evidence of loans provided directly from the China Ex-Im Bank to the U.S. customers pursuant to verification steps similar to the ones described above. Based on the GOC's explanation of the program, we had expected to be able to verify non-use of this program through review of the participating U.S. customers' subledgers themselves. Therefore, despite being "unable to conduct a complete verification of non-use of this program at China Ex-Im,…{w}e conducted verification... in the United States of the customers of {the respondents}, and confirmed through an examination of each selected customer's accounting and financial records that no loans were received under this program."

2013 Amendments to the EBCP

Our understanding of the operation of the EBCP began to change after *Chlorinated Isos* was completed in September 2014. In Citric Acid 2012, Commerce began to gain a better understanding of how the Ex-Im Bank disbursed funds under the program and the corresponding timeline; however, Commerce's attempts to verify the program's details, and to obtain accurate statements concerning the operation and use of the program, were thwarted by the GOC. In subsequent proceedings, Commerce continued to investigate and evaluate this program.

For example, in the Silica Fabric Investigation conducted in 2016-2017, based on what we had learned in Citric Acid 2012, we asked the GOC about certain changes to the EBCP, including changes in 2013 that eliminated the USD 2 million minimum business contract requirement. In response, the GOC stated that there were three relevant documents pertaining to the EBCP: (1)

[42] *See Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos*), and accompanying IDM.

"Implementing Rules for the Export Buyer's Credit of the {China Ex-Im Bank}" which were issued by the China Ex-Im Bank on September 11, 1995 (referred to as "1995 Implementation Rules"); (2) "Rules Governing Export Buyer's Credit of the {China Ex-Im Bank}" which were issued by the China Ex-Im Bank on November 20, 2000 (referred to as "2000 Rules Governing Export Buyer's Credit" or "Administrative Measures"); and (3) 2013 internal guidelines of the China Ex-Im Bank. According to the GOC, "{t}he {China Ex-Im Bank} has confirmed to the GOC that... its 2013 guidelines are internal to the bank, non-public, and not available for release." The GOC further stated that "those internal guidelines do not formally repeal or replace the provisions of the {Administrative Measures} which remain in effect."

However, we found the GOC's responses incomplete and unverifiable, explaining:

> Through its response to {Commerce's} supplemental questionnaire, the GOC has refused to provide the requested information or any information concerning the 2013 program revision, which is necessary for {Commerce} to analyze how the program functions.
>
> We requested the 2013 Administrative Measures revisions (2013 Revisions) because information on the record of this proceeding indicated that the 2013 Revisions affected important program changes. For example, the 2013 Revisions may have eliminated the USD 2 million contract minimum associated with this lending program. By refusing to provide the requested information, and instead asking {Commerce} to rely upon unverifiable assurances that the 2000 Rules Governing Export Buyer's Credit remained in effect, the GOC impeded {Commerce}'s understanding of how this program operates and how it can be verified.
>
> Additional information in the GOC's supplemental questionnaire response also indicated that the loans associated with this program are not limited to direct disbursements through the EX-IM Bank. Specifically, the GOC stated that customers can open loan accounts for disbursements through this program with other banks. The funds are first sent from the EX-IM Bank to the importer's account, which could be at the EX-IM Bank or other banks, and that these funds are then sent to the exporter's bank account. Given the complicated structure of loan disbursements for this program {Commerce's} complete understanding of how this program is administrated is necessary. Thus, the GOC's refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administrated by the EX-IM Bank, impeded {Commerce's} ability to conduct its investigation of this program.

Further, we determined that we could not rely on declarations from customers claiming non-use of the program because "we are unable to verify the accuracy of these documents as the primary entity that possesses such supporting records is the Export Import Bank of China."

Additionally, we explained that "we now have information on the record that demonstrates the GOC updated certain measures of the program, but the GOC refused to provide the updated measures{, }" and "{b}ecause the GOC withheld critical information regarding this program, we are unable to determine how the program now operates, and, thus, we cannot verify ACIT's declarations as submitted."

The Instant Investigation

As explained in the *Preliminary Determination*, information on the record indicates that the GOC issued revised administrative measures in 2013 for the EBCP.[43] In response to our request that it provide the documents pertaining to the 2013 program revisions (2013 Revisions), the GOC refused to provide them, stating that "{b}ased on the information available to the GOC at this stage, the GOC confirms that none of the Respondents' customers applied for, used, or benefited from the alleged program during the POI. Thus, this question is not a necessary one."[44] As a result, the GOC refused to provide the requested information, which is necessary for Commerce to analyze how the program functions.

Moreover, record information also indicates that the credits and funds associated with the program are not limited to direct disbursements from the Ex-Im Bank.[45] Specifically, the record information indicates that customers can open loan accounts for disbursements through other banks.[46] The funds are first sent from the Ex-Im Bank to the importer's account, which could be at the Ex-Im Bank or a partner bank and then sent to the exporter's bank account.[47] Given this complicated structure of loan disbursements under the program, a complete understanding of how it operates is necessary. Thus, the GOC's refusal to provide the 2013 Revisions, which provide internal guidelines for how the program is administered, impeded Commerce's ability to conduct its investigation of the program.

Importantly, the GOC also refused to provide a list of all partner/correspondent banks involved in the disbursement of credits and funds under the program, informing Commerce, "{b}ased on the information available to the GOC at this stage, the GOC confirms that none of the Respondents' customers applied for, used, or benefited from the alleged program during the POI. Thus, a list of all partner/correspondent banks around the world that are involved in the disbursement of funds under this program is both an overly broad question and an unnecessary one."[48] Commerce cannot verify claims of non-usage, in terms of any lending to either 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.*, the loan) or the cash disbursement made pursuant to the credit. Given the participation of partner/correspondent banks, for which the GOC refused identifying information, even where there is no account in the name "Ex-Im Bank" in the books and records (*e.g.*, subledger, tax return, bank statements) of either the exporter or the U.S. customer, Commerce could not confirm that no loans were provided under the program.

Pursuant to sections 776(a)(2)(A) and (2)(C) of the Act, when an interested party withholds information requested by Commerce or significantly impedes a proceeding, Commerce uses facts

[43] *See* Memorandum, "Placing Documents on the Record," dated June 15, 2020 (Additional Documents Memorandum).
[44] *See* GOC's Letter, "GOC First Supplemental Questionnaire Response in the Countervailing Duty Investigation on Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof from the People's Republic of China (C-570-120)," dated June 8, 2020 (GOC June 8, 2020 SQR) at 3.
[45] *See* Additional Documents Memorandum.
[46] *Id*.
[47] *Id*.
[48] *See* GOC June 8, 2020 SQR at 3.

otherwise available in reaching the applicable determination. We find that the use of facts otherwise available is appropriate in light of the GOC's refusal to provide the 2013 Revisions. Further, section 776(b) of the Act section 776(b) of the Act provides that Commerce may use an adverse inference in applying 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. Pursuant to section 776(b), we find that the GOC, by virtue of its withholding of information and significantly impeding this proceeding, failed to cooperate and act to the best of its ability. Accordingly, the application of AFA is warranted.

Specifically, the GOC has not provided complete information concerning the administration and operation of the program, such as how exactly loans are disbursed under the program (*e.g.*, the 2013 Revisions), possibly through intermediate or correspondent banks, the identities of which the GOC has withheld from Commerce, or whether the Ex-Im Bank employs threshold criteria, such as a minimum USD 2 million contract value.[49] Such information is critical to understanding how the EBCP operates, and thereby is also critical to Commerce's ability to verify and determine usage of this program.

We disagree with the GOC, Loncin and Zongshen that Commerce has not identified any gap in the record resulting from missing information.[50] As an initial matter, we cannot simply rely on the GOC's assurances that it has checked its records. We have no way of verifying such statements without the GOC providing us with the requested documents which would allow us to then properly examine its claims of non-use. Further, given the constraints on Commerce resulting from the GOC's failure to provide all of the necessary information to fully understand the program's operation, Commerce reasonably determined that it would be unable to examine each and every loan obligation of each of the company respondents' customers and that, even if such an undertaking were possible, it would be meaningless, as Commerce would have no idea as to what documents it should look for, or what other *indicia* there might be within a company's loan documentation, regarding the involvement of the China Ex-Im Bank.

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 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 Ex-Im Bank.[51]

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[49] *See* GOC's Letter, "Government of China Initial Questionnaire Response in the Countervailing Duty Investigation on Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof from the People's Republic of China (C-570-120)," dated May 4, 2020 IQR at 27, Question 5 (Commerce asks specifically for the "2013 internal guidelines," as well as other laws and regulations; the GOC provides the other documents, but not the 2013 internal guidelines).

[50] *See* GOC Case Brief at 15; Loncin Case Brief at 15; and Zongshen Case Brief at 13.

[51] Commerce also notes the GOC has a history of refusing to provide Commerce with adequate access to its books and records relevant to understanding this program. *See, e.g., Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014), and accompanying IDM at 92 ("At verification, the GOC repeatedly denied {Commerce} officials the opportunity to examine the basis for the GOC's contention that none of the company respondents in this investigation, or their customers, used this program during the POI... Despite

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

For all the reasons explained above, we continue to find that necessary information is missing from the record, the GOC withheld information that was requested, and significantly impeded this proceeding, pursuant to sections 776(a)(1) and (2) of the Act, and that the GOC has failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act. Thus, Commerce's use of an adverse inference when selecting from among the facts otherwise available is reasonable and supported by substantial evidence on the record.

Finally, regarding the respondents' argument that we should rely on a calculated rate from this investigation as the AFA rate for the EBCP (if we continue to find it used), instead of the 10.54 percent rate used as the AFA rate for this program in all of Commerce's investigations, we disagree. Commerce has previously elaborated at length on its choice of the 10.54 percent rate as the AFA rate for this program in investigations.[52] We have also explained at length why we follow a different AFA rate hierarchy for investigations than for reviews.[53] Our explanations have been upheld in full by the CIT.[54]

Comment 2: Policy Loans to the VSE Industry

Petitioners Comments

- Commerce should apply AFA to the Policy Loans to the VSE Industry program.
- The GOC failed to report critical information regarding this subsidy program and did not cooperate to the best of its ability. Because of the GOC's failure to cooperate to the best of its ability, the record is missing information necessary to determine an accurate subsidy rate for Policy Loans to the VSE Industry program and other subsidy programs.[55]
- In its initial questionnaire, Commerce requested information regarding the largest loan outstanding for each respondent during the POI from a state-owned commercial bank (SOCB). The GOC replied that the information requested contained proprietary information but failed to provide redacted versions. The GOC stated in its response that Commerce should request this information from the respondents directly. Commerce

repeated requests to verify the basis of statements made on the record of this investigation, the GOC refused to allow {Commerce}to query the databases and records of the Ex-Im Bank to establish the accuracy of its non-use claim.").
[52] *See, e.g., Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 11962 (February 28, 2020) IDM at Comment 3.
[53] *Id.*
[54] *See, e.g., SolarWorld Americas, Inc. v. United States*, 229 F. Supp. 3d 1362 (2017).
[55] *See* Petitioners Case Brief at 6.

provided the GOC with a second opportunity to submit the information, and again the GOC "refused to respond substantially" to Commerce's request.[56]

- The GOC failed to comply with Commerce's instructions or section 782(c)(1) of the Act regarding notifying the "administering authority" of its inability to submit requested information.[57]
- The GOC's "command" to Commerce to request the loan documents from the respondents is "particularly egregious, and it demonstrates the GOC had no intention of cooperating" with Commerce. Commerce requested internal bank documentation, meaning this was internal documentation of the SOCBs. SOCBs are entities Commerce has found to be under GOC control, and hence government authorities. By directing Commerce to seek the information from respondents, the GOC demonstrated it had no intention of cooperating to the best of its ability.[58]
- The GOC's failure to provide the requested documentation was not a harmless omission, as these documents were essential for an analysis of whether the GOC intended to benefit specific products through subsidized financing. The GOC's refusal to cooperate prevented Commerce from examining whether the GOC intended to benefit product categories at a more specific level than the broad "automobile and motorcycle" category. Record evidence shows the GOC's intent in providing subsidized policy loans may be to benefit specific product categories.[59]
- Parent and holding companies of the respondents had loans outstanding under this program during the POI which were attributable to the respondents under 19 CFR 31.525(b)(6)(iii). The GOC's refusal to provide the SOCBs' internal lending documents prevents Commerce from determining whether benefits under the program are tied to specific products, such as VSEs.[60]
- The GOC's refusal to provide loan documentation will result in circumvention of the CVD law if Commerce does not apply an "appropriate remedy."
- Commerce should determine as AFA that benefits from policy loans are tied to the respondents' sales of subject merchandise, in accordance with 19 CFR 351.525(b)(5)(i). Should Commerce erroneously determine not to tie the benefit from this program to the respondent's VSE sales as AFA, then Commerce should apply the same 10.54 percent AFA rate it applied to the EBCP.[61]

Loncin Rebuttal Comments

- To apply AFA, the statute dictates that necessary information must be missing from the record, creating a gap that must be filled by facts available. This requirement is missing from the petitioners' argument.
- In the *Preliminary Determination*, Commerce found the program *de jure* specific based on evidence on the record. In accordance with Commerce practice in every CVD case since 2007 that involved a policy lending allegation, Commerce found this program was

[56] *Id.* at 8-9.
[57] *Id.* at 10.
[58] *Id.* at 11.
[59] *Id.* at 11-13.
[60] *Id.* at 14 -15.
[61] *Id.* at 19-20.

not tied to specific products and attributed benefits received to the respondents' total sales.[62]

- Despite Commerce following the petitioners' allegation that this program was *de jure* specific to the VSE industry, the petitioners now state that there is insufficient evidence on the record for Commerce's preliminary finding and that AFA is necessary.
- Specifically, the petitioners argue that facts on the record, plus the absence of underlying loan documentation, demonstrate the policy lending program is specific to subject merchandise.[63] At no point during the investigation did the petitioners argue that the program was targeted to VSE production. If the allegation was made at the beginning of the case, Commerce and the respondents would have approached the program differently.[64]
- The GOC has not failed to provide any information related to *de jure* specificity. Commerce did not seek any information from the GOC regarding *de facto* specificity. Since Commerce did not solicit this information, it cannot be missing from the record.[65]
- Commerce has never found any policy loan program tied to subject merchandise. For the loan program to be tied to subject merchandise it would need to be provided solely to fund the production and sale of subject merchandise. There is no evidence on the record to support such a claim.[66]
- Commerce has rejected similar claims regarding inputs for LTAR in several cases.[67]
- There is no evidence on the record to find, as AFA, that loans to Loncin Holding and Loncin Group should be tied to subject merchandise.[68]

Zongshen Rebuttal Comments

- The petitioners' claim that the GOC's failure to provide SOCB internal lending documentation for one loan for each respondent is "crucial" to Commerce's ability to determine if the preferential lending benefits can be tied to subject merchandise has no merit and is a disguised attempt to undermine the clear regulations on subsidy attribution.[69]
- Commerce, based on the Petition, initiated the policy lending program premised on the entire VSE industry, not limited to subject merchandise.[70]
- Commerce properly attributed this program in the *Preliminary Determination.*

GOC Rebuttal Comments

- Without evidence that the GOC can obtain internal documents from Chinese Banks there is no basis to conclude the GOC failed to cooperate to the best of its ability.[71]

[62] *See* Loncin Rebuttal Brief at 3-4.
[63] *Id.* at 4.
[64] *Id.*
[65] *Id.* at 5.
[66] *Id.* at 5-6.
[67] *Id.* at 6-7.
[68] *Id.* at 7-8.
[69] *See* Zongshen Rebuttal Brief at 18-19.
[70] *Id.* at 19
[71] *See* GOC Rebuttal Brief at 8.

- Since Commerce has not attempted to analyze whether the policy loan program is specific to certain products, the documents the petitioners claim as missing do not create a gap in the record regarding specificity.[72]
- It has been Commerce's consistent practice to accept the GOC's explanation that it cannot provide loan documentation, and not apply total AFA to the policy loan program.[73]
- Finding specificity to certain products contradicts Commerce's analysis of the same program in the ongoing investigation of VSE between 99cc and 225cc.[74]

Commerce Position: We disagree with the petitioners that the GOC's failure to provide certain loan documentation from SOCBs warrants the application of AFA in determining whether loan subsidies are tied to VSE pursuant to 19 CFR 351.525(b)(5). We agree with Loncin and Zongshen that there is no record information to tie this program to particular products and the petitioners did not attempt to make such an allegation in the Petition. Furthermore, as Loncin explains in its rebuttal brief, Commerce has a long history of attributing GOC policy lending to the total sales of the respondents, and not to any particular products,[75] and, in general, does not tie a subsidy (whether loans, inputs provided for LTAR, *etc*.) to a particular product simply because the subsidy is specific to the product, or the industry that produces the product, on either a *de jure* or *de facto* basis. Specificity and attribution are not always the same thing. For purposes of specificity, Commerce considers whether a subsidy is limited to specific industries or enterprises, but, in determining whether to attribute a subsidy to a particular product, Commerce considers whether "the intended *use* is known to the subsidy giver and so acknowledged prior to, or concurrent with, the bestowal of the subsidy."[76] There is no evidence of such acknowledgements (*e.g.*, no agreements on subsidy usage, restrictions, commitments, *etc*.) on the record. Thus, even if additional information were to demonstrate that the policy loans at issue were targeted to VSE rather than to the broader category of "automobile and motorcycle," this would not lead Commerce to a different determination regarding the attribution of the subsidy. Finding that the GOC "targets" particular products such as VSE for policy lending simply means that the loans are limited to a particular product (*i.e.*, that the loans are "specific" within the meaning of the Act), not that they are "tied" to a particular product within the meaning of 19 CFR 351.525(b)(5). Therefore, consistent with Commerce practice, we continue to attribute the subsidy to total sales for this final determination.

Comment 3: Electricity for LTAR Program

Petitioners Comments

- In the *Preliminary Determination*, Commerce found that the GOC failed to act to the best of its ability to provide information on the Provision of Electricity for LTAR program. The GOC's failure to cooperate impacts the program's benefit calculation.

[72] *Id.* at 9.
[73] *Id.*
[74] *Id.* at 11.
[75] *See* Loncin Rebuttal Brief at 5-8.
[76] *See Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014), and accompanying IDM at Comment 4.

- Commerce should apply an overall AFA rate to this program because of the GOC's failure to cooperate.
- Commerce describes the use of provincial electricity schedules from the GOC's questionnaire response as the application of adverse inferences. However, the prices in these schedules are the very prices for which the GOC failed to provide necessary supporting information. The GOC also failed to provide information specific to the provinces where the respondents are located.[77]
- Use of the GOC's provincial price schedules as benchmarks is an application of neutral facts available, not adverse inferences.[78]
- Commerce should assign as AFA the highest rate from another proceeding for the same program, which is 20.06 percent from *Chlorinated Isos from China.*[79]
- Should Commerce not apply this AFA rate, then it should compare the prices that the respondents paid to the highest non-residential electricity rate on the record to preserve the use of an adverse inference.[80]

Loncin Rebuttal Comments

- It is well established that when a government fails to cooperate the application of AFA is limited to the countervailability of the program and does not impact the respondents' reported benefit.[81]
- Loncin fully cooperated in this investigation with regard to electricity. The petitioners provide no valid reason to reject Loncin's data.

GOC Rebuttal Comments

- The GOC has provided the information the petitioners claim is missing.[82]
- Commerce may not apply AFA to the GOC because it never advised the GOC that its responses were deficient as required by statute.[83]
- In previous cases, when Commerce has applied AFA to the Electricity for LTAR program, its practice has not been to apply the highest rate of 20.06 percent as AFA.[84]

Commerce Position: We disagree with the petitioners' assertion that use of the GOC's provincial price schedules is an application of "neutral" facts available. Commerce has, as AFA, inferred from the record that adequate remuneration for electricity purchased by the respondent is reflected in the *highest* rate charged by the GOC in any province in China as indicated by the record. This is in keeping with Commerce's conclusion, as AFA, that the GOC provides electricity for LTAR to certain provinces, thus making the highest rates charged by the GOC the best indication of adequate remuneration or the commercial value of electricity.[85] Commerce has never concluded that electricity prices are, as a rule, for LTAR throughout China. In other

[77] *See* Petitioners Case Brief at 25.
[78] *Id.* at 25-26.
[79] *Id.* at 27.
[80] *Id.* at 27-28.
[81] *See* Loncin Rebuttal Brief at 12-14.
[82] *See* GOC Rebuttal Brief at 12.
[83] *Id.* at 13.
[84] *Id.* at 15.
[85] *See Canadian Solar Inc. v. United States*, Slip Op. 20-149 (October 19, 2020) at 10-13.

words, Commerce concludes that the amount of the benefit is the amount by which lower prices fall short of the highest prices. Moreover, as Loncin notes, Commerce in general relies on the respondents' own information when determining the benefit provided by a program, even when the government at issue fails to cooperate. In keeping with Commerce's practice, we continue to apply AFA to the Provision of Electricity for LTAR Program as described in the *Preliminary Determination*, measuring the benefit as the amount by which the prices paid by the respondents fall short of the highest prices charged by the GOC in any province.[86]

Regarding the petitioners' argument that there is no information supporting the particular rate category we examined in selecting the highest provincial rates, the record indicates clearly that Loncin and Zongshen fall within the "Large industrial" "10KV" user category.[87] We mistakenly used the "110KV" user category in the *Preliminary Determination* in determining benchmarks. We have revised the benchmarks using the "10KV" user category for this final determination.

Comment 4: Whether Input Suppliers are Authorities

GOC Comments

- In the *Preliminary Determination*, Commerce found, as AFA, that each of the respondents' input suppliers were government authorities. This finding is not based on substantial evidence and is otherwise not in accordance with the law.[88]
- Commerce found each of the mandatory respondents' primary aluminum suppliers to be "government authorities" despite the fact that many are wholly-owned by individuals.[89]
- Commerce determined that AFA was warranted because the GOC did not sufficiently answer questions regarding the Chinese Communist Party (CCP) and the "nine entities." However, record evidence demonstrates that even if one of the owners or managers of these individually-owned companies were part of the nine entities or if they had primary party organizations, this would not convert the companies into government authorities.
- The logic, analysis, and conclusion in Commerce's Public Bodies Memorandum,[90] which forms the basis of its *Preliminary Determination*, is incorrect. The CCP is not a government authority. Political parties in China are independent entities unrelated to any government functions.[91]
- There is no record evidence indicating that the CCP participates in any way with the private suppliers involved in this case that could support the conclusion that they are authorities.[92]

Petitioners Rebuttal Comments

- Commerce did not find that the GOC failed to provide information on the role of the CCP only. The GOC did not provide documents requested that are necessary to determine

[86] *See Preliminary Results* PDM at 21-24.
[87] *See, e.g.*, Loncin June 11, 2020 SQR at Exhibit P.E.4.1.03.
[88] *See* GOC Case Brief at 2.
[89] *Id.*
[90] *See* Memorandum, "Public Bodies Memorandum," dated June 15, 2020 (Public Bodies Memorandum).
[91] *See* GOC Case Brief at 3-4.
[92] *Id.* at 7.

corporate structure and ownership. Without this information the appropriate conclusion is that the relevant entities are government authorities.[93]

- The GOC disputes the conclusions of the Public Bodies Memorandum and CCP Memorandum but offers no evidence to reverse Commerce's findings.[94]
- In previous cases Commerce has rejected the GOC's contention that questions regarding the CCP are "irrelevant because the information is no longer 'necessary' under the statute."[95]
- The GOC has not provided any justification for Commerce to modify its well-established policy and practice in this investigation; therefore, Commerce should continue to find as AFA that input producers are government authorities.[96]

Commerce's Position: In the *Preliminary Determination*, we found, based on facts otherwise available, that the producers of unwrought aluminum purchased by the mandatory respondents are "authorities" within the meaning of section 771(5)(B) of the Act. We made this decision due to a lack of complete information from the GOC in response to our questions. Therefore, the premise of the GOC's argument that Commerce wrongly applied AFA on this issue in the *Preliminary Determination* is incorrect. For the reasons detailed below, for the final determination, we continue to find that the producers of unwrought aluminum purchased by the mandatory respondents are "authorities" within the meaning of section 771(5)(B) of the Act and, thus, that such producers provided a financial contribution in supplying these inputs to the respondents within the meaning of section 771(5)(D)(i) of the Act. However, rather than being based on neutral facts available, due to the GOC's failure to respond to our requests for information, for the final determination, we find that an adverse inference is also warranted in selecting from among the facts otherwise available in reaching our determination on this issue.

As discussed in the *Preliminary Determination* under "Application of Facts Available: Input Producers are 'Authorities, '" in order to analyze whether the domestic producers that supplied unwrought aluminum to the mandatory respondents are "authorities" within the meaning of section 771(5)(B) of the Act, we sought information regarding the ownership of the input producers identified by the mandatory respondents. Such information included articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, articles of association, business group registrations, business licenses, and tax registration documents. Moreover, we requested information concerning whether any individual owners, board members, or senior managers involved with these producers were either government or CCP officials, and the role of any CCP primary organization within the producers. Specifically, to the extent that the owners, managers, or directors of a producer are CCP officials or are otherwise influenced by certain CCP-related entities, Commerce requested information regarding the means by which the GOC may exercise control over company operations and other CCP-related information.

The GOC has objected to Commerce's questions regarding the role of CCP officials and organizations in the management of and operations of input suppliers. However, we have

[93] *See* Petitioners Rebuttal Brief at 5.
[94] *Id.* at 7.
[95] *Id.*
[96] *Id.* at 8.

explained our understanding of the CCP's involvement in China's economic and political structure. Commerce has determined that "available information and record evidence indicates that the CCP meets the definition of the term 'government'... for the limited purpose of applying the U.S. CVD law to China."[97] Additionally, publicly available information indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a controlling influence in the company's affairs.[98]

The GOC's response to our requests for information, or lack thereof, is fully described in the *Preliminary Determination*. Regarding the input producers identified by the mandatory respondents, the GOC did not provide a complete response to Commerce's questions regarding these producers. When asked to provide detailed information (*e.g.*, company by-laws, articles of incorporation, licenses, capital verification reports, *etc*.) for all majority government-owned enterprises that produced unwrought aluminum purchased by the mandatory respondents during the POI, the GOC only provided partial information (*i.e*., basic registration and shareholder structure.)

The GOC stated in its initial questionnaire response that the information obtained from the Enterprise Credit Information Publicity System (ECIPS) "is authoritative evidence of the ownership structure of enterprises in China," suggesting this was sufficient to understand the ownership structure of these producers. However, the ownership structure and basic registration information that the GOC provided does not indicate whether the owners and shareholders of the companies have any CCP involvement. And while the GOC provided a long narrative explanation of the role of the CCP, when asked to identify any owners, members of the board of directors, or managers of the input producers who were government or CCP officials during the POI, the GOC explained that there is "no central informational database to search for the requested information." Furthermore, in its initial questionnaire response, the GOC stated that "the facts below and related WTO jurisprudence demonstrates that the 'nine entity' questions are irrelevant to this proceeding and do not get to whether the suppliers at issue are 'public bodies' for the purposes of {Commerce}'s LTAR analysis." However, based on our analysis of these responses, we find that these responses lack the necessary information Commerce requested and hinder Commerce's ability to determine whether the producers constitute "authorities."

The information we requested regarding the role of CCP officials in the management and operations of these producers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. Commerce considers information regarding the CCP's involvement in China's economic and political structure to be relevant because public information suggests that the CCP exerts significant control over activities in China and is part of the governing structure in China. As explained in the Public Bodies Memorandum, record evidence demonstrates that producers in China that are majority-

[97] *See* Memorandum, "The Relevance of the Chinese Communist Party for the Limited Purpose of Determining Whether Particular Enterprises Should be Considered to be 'Public Bodies' Within the Context of a Countervailing Duty Investigation," dated May 18, 2012 at 33.

[98] *See* Memorandum, "Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS379," dated May 18, 2012 at 35.

owned by the government, possess, exercise, or are vested with, governmental authority. Record evidence also demonstrates that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.

Therefore, we determine that necessary information is not available on the record, and that the GOC withheld information that was requested of it with regard to purchases by the mandatory respondents. Accordingly, in accordance with section 776(a)(1) and (a)(2)(A) of the Act, Commerce must rely on facts otherwise available in reaching a determination in this respect. Furthermore, we find that the GOC failed to cooperate by not acting to its ability to comply with requests for information regarding the ownership and CCP and government involvement in the management of producers of unwrought aluminum from whom the mandatory respondents purchased said inputs during the POI. Consequently, in accordance with section 776(b) of the Act, we find that an adverse inference in selecting from the facts available is warranted in the application of facts available. As AFA, and in light of our prior findings and the GOC's failure to provide rebuttal information to the contrary, we determine that any majority government-owned input producers that supplied Guangdong Loncin and Zongshen are "authorities" within the meaning of section 771(5)(B) of the Act.

In prior CVD proceedings, we found that the GOC was able to obtain the requested information independently regarding the companies involved, and thus we found that statements from company respondents, rather than from the GOC, were insufficient.[99] In the instant case, however, we have received responses regarding CCP involvement only from the mandatory respondents, and not from the GOC.

In addition, we disagree with the GOC that it provided Commerce with sufficient information to determine whether any of the mandatory respondents' input producers are privately-owned entities. We explained in the *Preliminary Determination* that the GOC's responses to the Input Producer Appendix for the inputs being investigated were deficient, and that the information supplied from ECIPS was not sufficient for our analysis of whether the input producers identified by the mandatory respondents are "authorities" under the Act. While the GOC asserted that the information provided from ECIPS was sufficient for our analysis, it is for Commerce, not the GOC, to determine what information is necessary in order for Commerce to complete its analysis. For the reasons described above, for the final determination, we find that the GOC failed to provide on the record information necessary for Commerce to analyze whether the respondents' input producers are authorities.

Therefore, we find that necessary information is missing from the record, and that the GOC withheld necessary information that was requested of it and significantly impeded this proceeding, pursuant to section 776(a)(1) and (a)(2)(A) and (C) of the Act. Therefore, we must rely on facts otherwise available in conducting our analysis of the respondents' input producers. Moreover, as a result of incomplete responses to Commerce's supplemental questionnaire, we also find that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, we determine that an adverse inference is warranted

[99] *See Citric Acid and Certain Citrate Salts: Final Review of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014), and accompanying IDM at Comment 5.

in selecting from the facts available, pursuant to section 776(b)(1)(A) of the Act. As AFA, we find that CCP officials are present in each of the respondents' privately-owned input producers as individual owners, managers, and members of boards of directors, and that this gives the CCP, as the government, meaningful control over the companies and their resources. As explained in the Public Bodies Memorandum, an entity with significant CCP presence on its board, or in management, or in party committees may be controlled such that it possesses, exercises, or is vested with governmental authority. Thus, for the final determination, we continue to find, as AFA, that the producers of unwrought aluminum purchased by the respondents are "authorities" within the meaning of section 771(5)(B) of the Act.

Comment 5: Income Tax Deduction for R&D Expenses

GOC Comments

- In the *Preliminary Determination*, Commerce found the Income Tax Deduction for R&D Expenses program *de facto* specific because it is limited to "those with R&D in eligible high technology sectors." This program is a widely available tax deduction that is not specific to certain industries or sectors and, therefore, is not countervailable.[100]
- According to the Subsidies and Countervailing Measures Agreement (SCM Agreement) of the World Trade Organization (WTO), setting generally applicable tax rates cannot be deemed specific.[101]

Petitioners Rebuttal Comments

- The GOC inaccurately argues that the Income Tax Deduction for R&D Expenses program is not specific because it is widely available and countervailing the program would violate the SCM Agreement.
- The GOC misunderstands Commerce's role, which is to analyze questions of U.S. law, not international agreements.[102]
- In the *Preliminary Determination*, Commerce recognized the program is specific because it is limited to certain enterprises. Commerce has repeatedly countervailed this program and should continue to do so in the final determination.[103]

Commerce Position: In the *Preliminary Determination*, we found this program specific under section 771(5A)(D)(i) of the Act because it is limited as a matter of law to certain enterprises.[104] Commerce has previously countervailed this program in previous investigations,[105] and the criteria and conditions for eligibility are not "objective," as they favor "new technology, new

[100] *See* GOC Case Brief at 7.
[101] *Id.* at 8.
[102] *See* Petitioners Rebuttal Brief at 13-14.
[103] *Id.* at 14.
[104] *See Preliminary Results* PDM at 4.
[105] *See Certain Collated Steel Staples from the People's Republic of China Preliminary: Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 61021 (November 12, 2019), and accompanying IDM at 30, unchanged in *Certain Collated Steel Staples from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 85 FR 33626 (June 2, 2020).

products and new crafts."[106] Moreover, as the petitioners note, there is no attempt by the GOC to base an argument in U.S. law, instead it references the SCM Agreement exclusively. We therefore continue to countervail this program in the final determination.

Comment 6: Uncreditworthiness Findings

Zongshen Comments

- The preliminary finding that Zong Shen Group was uncreditworthy during the years 2016-2019 was unfounded and unsupported by evidence on the record.
- Commerce's reliance on the current and quick ratios without considering Zong Shen Group's holding company status and other factors was "rigid and a fallacy."
- Commerce should follow its practice to consider the larger corporation at the parent company level as it did in *Coated Paper from China*.
- The record indicates that Zong Shen Group has many subsidiaries, including Zongshen, and that they interact through inter-company financial transactions. Accordingly, Commerce should follow its practice to examine Zong Shen Group's creditworthiness at the consolidated parent level.
- The record evidence shows, at the consolidated parent level, Zong Shen Group's current and future financial status is healthy and does not warrant a finding of uncreditworthiness. The quick and current ratios at the consolidated level were not "significantly below" financial norms for 2016-2019; the consolidated data show positive retained cash flow for the years in question. Moreover, Commerce "erroneously" determined the Chinese banking ratings are not "indicative of the company's true financial situation."
- The record information shows Zong Shen Group had no issues paying its debts and was not a default risk. Commerce should revise its *Preliminary Determination* and find Zong Shen Group is creditworthy in the final determination.
- Zongshen requests that Commerce release its calculations for the loans received by Zong Shen Group using uncreditworthy benchmarks in advance of the final determination to allow interested parties to comment.
- If Commerce continues to find Zong Shen Group is uncreditworthy in the final determination, it should only apply uncreditworthy benchmarks interest rates to Zong Shen Group's long-term loans.

Loncin Comments

- Commerce failed to conduct a proper creditworthy analysis according to its regulations and should find Loncin Holdings creditworthy for the years 2017 through 2019 and Loncin Group creditworthy for 2017.[107]
- Despite regulatory requirements, Commerce did not take into consideration indicators which invalidate Commerce's analysis.[108]

[106] *See* GOC's Letter, "Government of China Initial Questionnaire Response in the Countervailing Duty Investigation on Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof from the People's Republic of China (C-570-120)," dated May 4, 2020 at Exhibits II.C1.A.1 (article 30) and II.C1.A.2 (article 95).
[107] *See* Loncin Case Brief at 10.
[108] *Id.* at 11.

- There is nothing in Commerce's analysis that indicates Loncin Group or Loncin Holdings financial ratios are not consistent with other manufacturers of VSE. Applying a "one size fits all" approach when considering current and quick ratios does not account for special market conditions specific to an industry or provide a direct indication that a company could not have obtained commercial loans.[109]
- Commerce's findings that Loncin Holdings' declining account receivables turnover ratio is an indication that the firm could not have obtained long-term loans is not supported by the record.[110]
- Commerce's statements that Loncin Holdings had a negative cash flow in 2017 and 2018 is incorrect. Commerce failed to consider consolidated information which shows that Loncin Holdings had significant positive cash flow.
- Commerce ignored other positive financial information (significant net profits and high inventory turnover ratios) which indicates Loncin Holdings is creditworthy for the years in question.[111]
- There is no record evidence that Loncin Group's account receivables turnover ratio or debt-to-equity ratio indicate uncreditworthiness.[112]
- Commerce failed to consider other record evidence (loans from DBS Bank, credit ratings) that indicate creditworthiness.[113]
- There is no record evidence that Loncin Group or Loncin Holdings were uncreditworthy. At a minimum, there is no evidence these companies were uncreditworthy in 2017.[114]
- Any use of uncreditworthy benchmarks should be limited to long-term loans.[115]

Petitioners Rebuttal Comments

- Commerce should continue to find Zong Shen Group was uncreditworthy from 2016-2019.
- Zongshen claims Commerce failed to analyze Zong Shen Group's financial health as a parent holding company. Zongshen did not specify how Commerce's analysis should have differed other than using consolidated financial statements. Zong Shen Group is still uncreditworthy on a consolidated financial statement basis.[116]
- Consistent with the post-preliminary analysis, Commerce should find Loncin Group was uncreditworthy in 2017 and Loncin Holdings was uncreditworthy from 2017 to 2019.
- Commerce should reject Loncin's suggestion that Commerce's standard benchmarks for quick and current ratios are not reliable indicators of a firm's creditworthiness. Loncin provided no basis for Commerce to depart from its practice of using quick and current ratios as indicators of creditworthiness.[117]
- Loncin points to inventory turnover ratios and net profits as indicators of creditworthiness. Commerce typically looks at the quick, current and debt-to-equity

[109] *Id.*
[110] *Id.* at 12.
[111] *Id.*
[112] *Id.*
[113] *Id.* at 13.
[114] *Id.*
[115] *Id.*
[116] *See* Petitioners Rebuttal Brief at 30-31.
[117] *Id. at* 27.

ratios as indicators of creditworthiness. Relative strength in inventory turnover ratios and net profits do not outweigh the clear weakness in other indicators of credit worthiness for Loncin Holdings and Loncin Group.[118]

- Loncin argues that Commerce should limit the use of uncreditworthy benchmarks to long-term loans. Under Commerce's regulations, 19 CFR 351.505(a)(3)(iii), Commerce uses uncreditworthy interest rates for allocating benefits from non-recurring subsides over the AUL period. Commerce should use uncreditworthy benchmarks for long-term loans and these discount rates.[119]

Commerce Position: Commerce is making no changes to the *Preliminary Determination* regarding the uncreditworthiness of the respondents. First of all, there is no requirement that Commerce must determine that each and every piece of information weighs in favor of a finding of uncreditworthiness in order to find that a company was uncreditworthy during a period of time. Like many issues, Commerce must weigh the relevant information for and against such a finding. In this instance, while there may be certain facts that favor a contrary conclusion, Commerce determined that the totality of the evidence weighs in favor of a conclusion that each company was uncreditworthy during certain years. In doing so, Commerce examined all ratios and other information provided by the respondents, but ultimately concluded the low quick and current ratios, the declining pace of account receivables turnover, advancing debt to equity ratios, and negative cash flow indicated uncreditworthiness. While the respondents characterize our reliance on these ratios as "unsupported by the record" (meaning there is no factual linkage between the information and a conclusion that the companies are uncreditworthy), our analysis is based on obvious inferences drawn from each piece of information. Low quick and current ratios mean a company is not generating enough revenue to service short-term, operational debt. Declining account receivables turnover means the company is having a harder and harder time collecting payment from its customers. Increasing debt-to-equity ratios can mean the company is having to rely on debt to cover expenses instead of on revenue. Negative cash flow also means that while a company might have adequate recorded income it is short on actual cash to cover expenses. As the petitioners note, Commerce's emphasis on the quick and current ratios is based on precedent and reasoning on which we elaborated in the *Solar Cells* investigation.[120]

Regarding the respondents' arguments that we should have attempted to compare the various ratios with industry benchmarks, Commerce issued a questionnaire to both respondents requesting information concerning their creditworthiness. Neither respondent offered such benchmark information. Neither respondent offered much more than the particular ratios Commerce asked them to calculate and credit rating reports from Chinese credit rating agencies. In addition, as just explained, Commerce believes the significance of many of the ratios can be analytically determined based on inferences (*e.g.*, increasing debt-to-equity ratios mean you're becoming increasingly reliant on debt, even if the ratio for one particular year might be completely normal for your industry).

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[118] *Id.* at 28.
[119] *Id.* at 29.
[120] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China*, 77 FR 63788 (October 17, 2012) (*Solar Cells*), and accompanying IDM at 56.

Commerce also explained in the *Preliminary Determination* why it was not relying on the reports of the credit rating agencies. We explained that in keeping with our overall determination that the banking sector in China does not operate according to market principles, assessments of participants in that sector are unlikely to be reliable indications of the respondents' creditworthiness due to the extensive involvement of the GOC in banking. Ultimately, Commerce is interested in determining what interest rate the respondents would pay if such rates were determined solely through commercial settings.

Regarding whether we should rely instead on information taken from the consolidated financial statements of the respondents, rather than on the individual statements of the companies subject to the allegation, Commerce notes again that while there may be some information weighing in favor of creditworthiness, our finding is a totality of circumstances finding and, as such, we have based our decision on the record information we find to be the most persuasive. There is no rule in Commerce practice requiring creditworthiness analysis to be based on consolidated or unconsolidated finances. We have done the analysis on both bases in the past, depending on the case-specific circumstances. In the investigation of solar cells, we made decisions using consolidated information, but we explained why it made sense in that particular set of circumstances.[121] In that investigation, the affiliated companies were all involved in solar production and essentially worked together as one respondent. In the *Coated Paper from China*, cited by Zongshen, we articulated the same basis for relying on consolidated financial statements: cross-owned affiliates linked together for a common commercial purpose. Indeed, there we determined that "{a}ll the cross-owned enterprises are part of a larger group of companies that is involved to varying degrees in the pulp and paper industry."[122] That same case also notes that the decision to rely on consolidated financial statements should be made on a case-by-case basis.[123] In contrast, in this proceeding, the record demonstrates that both respondents have numerous members within their groups, most of whom have not been found cross-owned with the companies at issue within the meaning of 19 CFR 351.525(b)(6)(vi), and whose operations have nothing to do with subject merchandise.[124] Therefore, we think it is reasonable to conclude that financing would not necessarily flow freely among members of the groups. Moreover, as indicated in the solar cells investigation, an important question is whether a commercial bank would consider the assets and cash flow of the consolidated group to be available for serving the debt of the particular company applying for the loan.[125] The respondents have not provided information indicating that this is the case with the particular companies subject to the uncreditworthiness allegations.

Finally, we disagree with the respondents' arguments that we should rely on the uncreditworthy benchmarks solely for benchmarking long-term loans, rather than for discount rates also. Commerce's regulations at 19 CFR 351.524(d)(3)(ii) are clear that Commerce will use the

[121] *See Solar Cells Investigation* IDM at 56-58.
[122] *See Coated Paper from China* IDM at 108.
[123] *Id*.
[124] *See* Loncin's Letter, "Loncin's Response to Section III Identifying Affiliated Companies in the Countervailing Duty Investigation on Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof from the People's Republic of China (C-570-120)," dated April 6, 2020 at Exhibit 1; *see also* Zongshen's Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China; CVD Investigation; Chongqing Zongshen Affiliation Response," (Zongshen Affiliation Response) dated April 6, 2020 at Exhibit 1.
[125] *See Solar Cells Investigation* IDM at 56 and footnote 158.

uncreditworthy benchmark rate as the discount rate. Moreover, 19 CFR 351.524(d)(3)(i)(A) makes clear that the goal of selecting a discount rate is to select a rate reflecting what the company's cost of capital would be absent the effects of subsidized lending; the goal is not to select a rate based on the company's actual (and distorted) cost of capital.

Comment 7: Benchmark for Unwrought Aluminum

Petitioners Comments

- In the *Preliminary Determination*, Commerce used Comtrade price data for HTS codes 7601.10 and 7601.20 as a benchmark for unwrought aluminum.
- The petitioners submitted an alternative benchmark. Commerce should use the petitioners' alternative benchmark, or at minimum average the alternative benchmark with Comtrade data.[126]
- The proposed alternative benchmark reflects the price that a purchaser would pay to take possession of unwrought aluminum on a given day and is representative of prices for inputs used to cast engine parts.[127]
- Given the lack of record information on the types of unwrought aluminum purchased, the proposed alternative benchmark provides the most appropriate benchmark.[128]
- Record information shows that the more appropriate classification used for VSE parts is under HTS code 7601.20 (not 7601.10). If Commerce averages the proposed alternative benchmark with Comtrade data, it should use only HTS code 7601.20. If Commerce uses only Comtrade data, it should use only prices for HTS code 7601.20.[129]

Loncin Rebuttal Comments

- Commerce has consistently rejected the petitioners' proposed benchmark in prior proceedings.[130]
- The petitioners' proposed benchmark represents theoretical prices, unlike Comtrade data, which reflects actual transactions.[131]
- Commerce should reject the petitioners' proposal to exclude HTS code 7601.10 as not supported by precedent or record evidence. Commerce's practice is to select benchmarks which are similar, but not necessarily identical. There is no evidence that Loncin purchased only one type of aluminum during the POI.[132]
- Commerce should continue to use the benchmarks used in the *Preliminary Determination* in the final determination.

Zongshen Rebuttal Comments

- Record evidence shows the petitioners' proposed benchmarks are grossly inflated, and should, therefore, be rejected by Commerce.

[126] *See* Petitioners Case Brief at 39.
[127] *Id.* at 39-40.
[128] *Id.* at 41.
[129] *Id.* at 41 and 44.
[130] *See* Loncin Rebuttal Brief at 16.
[131] *Id.* at 17.
[132] *Id.* at 18-19.

- Zongshen placed information on the record regarding LME price premiums for East Asia, which show that the petitioners' proposed benchmark is grossly overstated.

Commerce Position: We continue to base our benchmark for unwrought aluminum on Comtrade data. As the respondents note, the petitioners' data do not constitute a "world" price, as required by 19 CFR 351.511(a)(2)(ii), but are limited to Germany, and rebuttal information provided by Zongshen indicates the German data are not reflective of global prices. By contrast, the Comtrade data include exports from countries across all regions. While the petitioners argue that German data are likely a good match for the unwrought aluminum purchased by the respondents, because Germany is the leading producer of automobiles and VSE are considered part of the automobile and motorcycle industry, Commerce believes this reasoning is insufficiently convincing to serve as a basis for departing from reliance on a global price, as called for by our regulations.

Finally, we agree with the petitioners that the record supports excluding HTS code 7601.10 from the Comtrade data calculation. HTS code 7601.10 is for "unwrought aluminum" and HTS code 7601.20 is for "unwrought aluminum alloy." The petitioners correctly note that BPI information on the record indicates clearly that Zongshen purchased unwrought aluminum *alloy*, rather than "pure" aluminum.[133] Additional analysis of standard product codes used by both respondents provided by the petitioners in their case brief indicates that Loncin purchased the same inputs.[134] Based on this analysis, Commerce believes it is reasonable to conclude that respondents produced VSE using unwrought aluminum alloy.

While Commerce agrees that it may rely on broad or general categories of merchandise in determining a benchmark for inputs used by respondents (*i.e.*, Commerce does not have an obligation to find a price for the precise input used), we disagree with the respondents' apparent suggestion that we have a *preference* for relying on broad or general categories of merchandise.[135] There are often administrative reasons why we cannot select a precise benchmark (*e.g.*, prices for the exact input are not readily available, it would be unduly burdensome to require the respondents to provide a detailed description of each purchase, *etc*.). Here, however, the record indicates HTS code 7601.20 is the better fit based on information provided by the respondents. While Loncin insinuates that the petitioners are cherry-picking the record and that they have only demonstrated some of the inputs purchased are aluminum alloy, Loncin references no information at all suggesting the petitioners' analysis is incorrect, *i.e.*, Loncin has identified no record information indicating purchases of non-alloy or pure aluminum.

[133] *See* Petitioners Case Brief at 43.
[134] *Id.*
[135] Commerce acknowledges that we have relied on both HS 7601.10 and 7601.20 to benchmark unwrought aluminum in previous cases (*see* Loncin Case Brief at 18). However, while using both categories may have been appropriate in other cases it does not reason that it must therefore be appropriate in this case also. It may have been in the prior cases that the record did not enable Commerce to determine whether one of the two categories was a better match than the other for what the respondents actually purchased.

Comment 8: Inland Freight Rates for the Unwrought Aluminum Benchmark

Petitioners Comments

- The petitioners submitted inland freight rates for container shipments into China during the POI based on the World Bank's *Doing Business 2020* report for shipments from the Port of Shanghai and Port of Tianjin to Chongqing.[136]
- In the *Preliminary Determination*, Commerce only used the respondents' reported inland freight expenses.
- The rates reported by the respondents are not representative of what the respondents would have paid if they actually imported unwrought aluminum.
- Loncin reported expenses for transporting products from Chongqing Cuntan Port to Loncin's factory. Chongqing Cuntan Port is a river port, not a seaport. Loncin claimed that Chongqing Cuntan Port is a "first class port" that allows goods to enter and exit the country directly. Information provided by Loncin only establishes that goods can clear Chinese customs in Chongqing Cuntan Port, not that vessels can enter the Yangtze river directly from the East China Sea. Record information indicates that shipping containers directly to the Chongqing Cuntan Port is not possible.[137]
- In the final determination Commerce should use inland freight rates provided by the petitioners for the unwrought aluminum benchmark.
- Zongshen provided an inland freight quotation for Guangxi Qizhou Port for an unrelated product. The inland freight rates provided by Zongshen are not representative of what an importer would have paid for unwrought aluminum.[138]
- Commerce should use the inland freight rates for shipping imported containers from Shanghai to Chongqing for the final determination.
- Using company specific inland freight may be appropriate for instances where a respondent actually imported the input in question during the POI. In cases where respondents did not import the input, this practice limits Commerce to considering information submitted by respondents, even if the information they report is not representative.[139]
- At a minimum, Commerce should average the rates the petitioners provided with the other rates on the record, consistent with 19 CFR 351.511(a)(2)(ii).

Loncin Rebuttal Comments

- Loncin complied with Commerce's request to report inland freight expenses incurred in exporting and importing from the port of export. Loncin submitted information demonstrating that Chongqing Cuntan Port is the nearest port at which Loncin's exports shipped, as well as information that Chongqing Cuntan Port is a "first class port" open to foreign vessels. The record demonstrates there is no difference between a "first class" "sea port" and "first class" "river port."[140]

[136] *See* Petitioners Case Brief at 44.
[137] *Id.* at 46-47.
[138] *Id.* at 47-48.
[139] *Id.* at 48.
[140] *See* Loncin Rebuttal Brief at 20.

- It is Commerce's longstanding practice to use company-specific information in calculating Tier 2 benchmarks.[141]
- Petitioners' suggested benchmark is not company-specific, does not represent the company's actual costs of inland freight, and therefore does not constitute the best information on the record. Commerce should continue to use Loncin's company-specific freight rates in the final determination.[142]

Zongshen Rebuttal Comments

- The petitioners have acknowledged Commerce has a long-standing practice to use respondent-specific freight expenses in the calculation of tier 2 benchmarks. The petitioners' suggestion that Commerce should disregard this practice is without merit because the freight rates they suggest are not representative of the actual experience of Zongshen.[143]
- The petitioners' argument that Commerce should use an average of the rates reported by Zongshen and the World Bank's *Doing Business 2020* should also be rejected. The petitioners misconstrue 19 CFR 351.511(a)(2)(ii) which only references averaging commercially available world market prices, not averaging inland freight rates.[144]

Commerce Position: We are revising the inland freight rates used in our unwrought aluminum calculations to include the *Doing Business 2020* data provided by the petitioners. While Commerce has a practice of basing inland freight expenses on what was *actually* paid by respondents on imports, such information is not on the record of this investigation. The information submitted by the respondents is based on quotes for hypothetical imports that they claim would come through the Chongqing Cuntan Port. Such information is useable in the absence of information concerning actual expenses incurred by the respondents in transporting imported materials to their factories, but it is not "superior" to the information provided by the petitioners, which is from a publication designed to assist business in estimating expenses in China and which reasonably assumes global imports would enter through Shanghai. Thus, given that Commerce cannot distinguish any of the information in terms of "quality" or by the degree it accurately represents the costs of importing, Commerce is averaging the information provided by all interested parties, consistent with 19 CFR 351.511(a)(2)(ii).

Comment 9: Critical Circumstances

Petitioners Comments

- In the *Preliminary Determination*, Commerce determined that critical circumstances did not exist because there were not massive imports when comparing imports from September 2019-December 2019 with January 2020-April 2020.
- Commerce failed to explain why it disregarded the seasonality of imports of subject merchandise, which its regulations require it to consider. Commerce dismissed

[141] *Id.* at 20-21.
[142] *Id.* at 21.
[143] *See* Zongshen Rebuttal Brief at 26.
[144] *Id.* at 28.

seasonality in one sentence, "Commerce disagrees that these alternative time periods are appropriate."[145]

- In the final determination, Commerce should consider the seasonality of the subject merchandise, as well as the impact of Section 301 duties, and determine that the time periods provided in the Petition are appropriate. If Commerce should continue to "erroneously determine the same months to be appropriate time periods without considering seasonality," Commerce is required to provide a detailed explanation regarding the reasons seasonality is not relevant.[146]
- Commerce should make a final determination that critical circumstances exist.

Loncin Rebuttal Comments

- The petitioners' claim that Commerce failed to explain why it disregarded seasonality is inaccurate and ignored Commerce's analysis.
- Commerce explained that the comparison period must be when producers, exporters, or producers became aware of the possibility that cash deposits might be imposed from a CVD determination. The petitioners have provided no information that producers, exporters, or producers would have knowledge of impending cash deposits during 2019.[147]
- The petitioners are asking for relief from a surge of imports due to a section 301 exemption rather than impending CVD duties.[148]
- Commerce explained that the petitioners failed to provide record information that would have imputed knowledge that provisional measures would be imposed during June through November 2019. Consequently, Commerce should not adjust its critical circumstances for the final determination.

Zongshen Rebuttal Comments

- The petitioners' claim that Commerce did not offer a proper explanation as to why it disregarded seasonality is contradicted by the record. The record shows that Commerce explained in detail the standard applied in its selection of the comparison time period, and why the petitioners' proposed time period is inappropriate.[149]
- The petitioners point to no record evidence to demonstrate that their proposed time period consists of a time after which the respondents became aware of potential cash deposits, nor do they cite any authority Commerce has to disregard its standards in the selection of a comparison time period.[150]
- Commerce should reaffirm its negative critical circumstances finding in the final determination.

MTD and Toro Comments

- Commerce should affirm its negative preliminary critical circumstances determination.[151]

[145] *See* Petitioners Case Brief. at 50.
[146] *Id.*
[147] *See* Loncin Rebuttal Brief at 22.
[148] *Id.*
[149] *See* Zongshen Rebuttal Brief at 24.
[150] *Id.* at 25.
[151] *See* MTD Letter at 2.

- The petitioners have not introduced any new factual information or legal arguments relating to their allegation of critical circumstances following the *Preliminary Determination*.[152]
- If there is no information on the record indicating that importers, exporters, or producers had early knowledge of an impending petition, the comparison period must begin the month after the filing of the petition, and must be compared to a base period of equal duration beginning immediately prior to the filing of the Petition.[153]
- There is no legal basis for using the petitioners' convoluted multi-year methodology.[154]
- Imports of subject merchandise did not in fact increase by at least 15 percent when utilizing four-month, five-month, or even six-month base and comparison periods.[155]

Commerce Position: Commerce disagrees with the petitioners that it failed to perform relevant seasonality analysis or failed to offer an adequate explanation for reaching its *Preliminary Determination* of no critical circumstances. As explained in the PDM, "the comparison period must consist of a time after importers, exporters, or producers became aware of the possibility that cash deposits might be imposed in the near future."[156] Consideration of seasonality cannot override consideration of whether importers, exporters, or producers had reason to believe that a proceeding was likely. There is no record evidence of prior knowledge of the proceeding which would justify the petitioners' proposed alternative time periods.

The petitioners' arguments appear to be based on fundamental misunderstandings of the purpose of critical circumstances analysis and of seasonality analysis. As indicated in the *Preliminary Determination*, Commerce is attempting to determine whether, in a rush to beat impending cash deposits, parties are importing subject merchandise at an unusually high rate before the imposition of provisional measures (*i.e.*, preliminary cash deposits). Such a goal necessitates that the comparison period (the "after" period) take place entirely after "importers, exporters, or producers" had knowledge that provisional measures were a possibility. Simply put, any surge in imports that took place before parties had such knowledge cannot be attributed to an attempt to "beat the system," and thus the retroactive application of cash deposits is unwarranted. Thus, first and foremost, in suggesting alternative base and comparison periods, the petitioners must explain why knowledge of impending provisional measures was imparted at a date preceding, or at the very beginning of, their suggested comparison period. They made no attempt to do that. Instead, they proposed a comparison period that begins *several months before* the filing of the Petition, which is when Commerce presumes knowledge of impending duties to have been imparted (a presumption that can be rebutted, but the petitioners attempted no rebuttal). Once a proper comparison period is established, then Commerce considers whether a "massive surge" in imports between the base and comparison periods might be attributable to seasonality rather than an attempt to avoid provisional measures (or, by the same token, whether the lack of evidence of a "massive surge" might be attributable to seasonality, rather than a lack of interest in avoiding provisional measures). Seasonality analysis is not a method of avoiding the basic objective of determining whether a surge in imports is the result of impending provisional measures. In this

[152] *Id.* at 3.
[153] *Id.* at 5; and Toro Letter at 2-3.
[154] *Id.* at 6.
[155] *Id.* at 10 and Toro Letter at 5.
[156] *See Preliminary Results* PDM at 6.

instance, after establishing proper comparison and base periods, as explained in the *Preliminary Determination*, Commerce saw no indication that the lack of a "massive surge" (*i.e.*, an increase in imports of more than 15 percent) was the result of seasonality, as there was no evidence of a seasonality pattern between the base and comparison periods (likewise, Commerce explained that the imposition of 301 duties could have had no effect on shipments between the base and comparison periods). Therefore, Commerce is maintaining its negative determination of critical circumstances for this final determination

Issues Related to Zongshen

Comment 10: Denominators and Attribution of Subsidies for Zongshen Affiliates

Zongshen Comments

- In the final determination Commerce should attribute benefits received by Zongshen Industrial Group (Zong Shen Group) and Zongshen Power Machinery Co., Ltd. (Zongshen Power) to the consolidated sales data reported by Zongshen for the two companies. Specifically, Commerce should rely on consolidated sales data in its calculation of government policy lending, export seller's credit, interest payment subsidy, provision of unwrought aluminum for LTAR, provision of electricity for LTAR, and other grant programs for Zong Shen Group and Zongshen Power.[157]
- Commerce's own regulations and established practice require a subsidy received by a holding company to be attributed to the holding company and its subsidiaries.
- Commerce's statements during the course of this investigation indicate its intent to allocate subsidies received by Zong Shen Group and Zongshen Power over the entire consolidated sales of the holding/parent companies.[158]

Petitioners Rebuttal Comments

- More than one attribution rule under 19 CFR 551.525(b)(6) applies to Zongshen Power and Zong Shen Group. Record facts do not support the use of Zongshen Power's and Zong Shen Group's consolidated sales in the attribution of subsidies.[159]
- Two attribution rules apply to Zongshen Power. Zongshen Power is not only a parent company, but also a supplier of inputs to Zongshen's production of subject merchandise.[160]
- When more than one attribution rule comes into play, Commerce will apply the rules as "harmoniously as possible." With regard to Zongshen Power, the facts show that the subsidies are not properly attributable to Zongshen Power's consolidated sales, given Zongshen Power's status as an input supplier. Commerce should follow its past practice with regard to the attribution of subsidies to cross-owned input suppliers and attribute the benefit from subsidies Zongshen Power received to the unconsolidated sales of Zongshen and Zongshen Power.[161]

[157] *See* Zongshen Brief at 3.
[158] *Id.* at 5-6.
[159] *See* Petitioners Rebuttal Brief at 21.
[160] *Id.* at 24.
[161] *Id.* at 25.

- Regarding Zong Shen Group, Commerce should not attribute policy loans or the provision of land-use rights for LTAR to Zong Shen Group's consolidated sales. For policy loans, Commerce should apply AFA and tie the benefit to Zongshen's sales of subject merchandise because of the GOC's failure to cooperate (*see* Comment 2). For land-use rights, Commerce should treat the benefit as a transfer of a subsidy under 19 CFR 351.525(b)(6)(v) if it does not apply AFA to Zongshen for its failure to report complete information.[162]

Petitioners Comments

- In the *Preliminary Determination*, Commerce used the combined consolidated sales of Zongshen Power and Zongshen to calculate the benefit for subsidies provided to Zongshen Power.
- After the *Preliminary Determination*, citing 19 CFR351.525(b)6(iii), Commerce requested the consolidated sales of Zongshen Power.
- It is unclear if Commerce intended to use the combined unconsolidated sales of Zongshen and Zongshen Power in the *Preliminary Determination*; regardless, these were correctly used.[163]
- Subsidies to Zongshen Power, as a cross-owned input supplier to Zongshen, are attributable to the combined unconsolidated sales of the input supplier and subject merchandise producer pursuant to 19 CFR 351.525(b)(6)(iv). Commerce has stated that it does not use consolidated sales in the attribution of subsidies to cross-owned input suppliers.[164]

Zongshen Rebuttal Comments

- The petitioners' reasoning based on *Coated Paper from China* is "misplaced." In *Coated Paper from China*, Commerce attributed the subsidies to the consolidated sales of the parent company.[165]
- Commerce has consistently used consolidated parent sales values as the denominator in attributing benefits received by a company, pursuant to 19 CFR 351.525.(b)(6)(iii), and should continue to do so in the final determination.[166]

Commerce Position: In the *Preliminary Determination*, Commerce stated its intent to rely on consolidated sales when determining the subsidy rate for subsidies provided to holding companies Zong Shen Group and Zongshen Power under 19 CFR 351.525(b)(6)(iii).[167] Commerce erred in the *Preliminary Determination* by not using the intended denominators for Zong Shen Group and Zongshen Power.[168] Commerce agrees with Zongshen, and will use

[162] *Id.* at 26.
[163] *See* Petitioners Case Brief at 29.
[164] *Id.* (citing *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China*, 75 FR 59212, (September 27, 2010) (*Coated Paper from China*), and accompanying IDM at 113).
[165] *See* Zongshen Rebuttal Brief at 6.
[166] *Id.* at 7.
[167] *See Preliminary Results* PDM at 9.
[168] *See* Memorandum, "Allegation of Ministerial Errors in the Preliminary Determination with Regard to Chongqing Zongshen General Power Machine Co., Ltd.," dated July 29, 2020.

consolidated sales as the denominators for subsidies provided to Zong Shen Group and Zongshen Power for the final determination.

Our regulations provide for attributing subsidies received by parent companies, including parent companies with their own operations, to the consolidated sales of each parent company: "If the firm that received a subsidy is a holding company, including a parent company with its own operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries."[169] As the petitioners note, Zongshen Power is both a parent company and an input supplier (*i.e.*, it has its own operations). The possibility that a parent company might also be a producer of subject merchandise or a supplier of inputs, however, is contemplated by the regulations as indicated by the language just quoted, which notes specifically that a parent might have its own operations. Accordingly, the fact that Zongshen Power is an input producer does not automatically negate application of the parent company attribution rule.[170] Instead, Commerce, in keeping with the *CVD Preamble*, must determine how to apply the attribution rules "as harmoniously as possible."[171] Given the specific facts of this case, we believe Zongshen Power is best characterized as a parent for purposes of applying the attribution rules. The record indicates Zongshen Power's consolidated holdings include manufacturing operations, in addition to its own operations and the operations of Zongshen, that may benefit from the subsidies at issue. Moreover, as discussed below in response to Comment 16, Commerce is reducing Zongshen Power's consolidated sales denominator by the amount of revenue unrelated to sales of manufactured products. Thus the use of consolidated sales in keeping with the parent rule is appropriate.

Regarding subsidies provided to Zong Shen Group, Zong Shen Group is simply a holding company, with no productive operations; *i.e.*, it does not act as an input supplier or subject merchandise producer in addition to being a holding company/parent company. Thus, Commerce does not see any reason for not applying the "holding company/parent company" rule under 19 CFR 351.525(b)(6)(iii).

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[169] *See* 19 CFR 351.525(b)(6)(iii).

[170] While the parties cite a number of cases, none of them are precisely on point. Zongshen cites, for example, an administrative review of aluminum extrusions, but that case only establishes the general principle that Commerce attributes subsidies to parent or holding companies to the consolidated sales of that parent or holding company and all of its consolidated subsidiaries, which is clearly called for by 19 CFR 351.525(b)(6)(iii). *See Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at 13. The issue here, however, is whether there should be an exception to that rule when the holding company/parent company is also an input supplier. The cases cited by the petitioners, on the other hand, involve situations where multiple rules under 19 CFR 351.525(b)(6) could apply, but the holding companies/parent companies under examination are not the direct recipients of the subsidy. In other words, here the question is how to attribute subsidies received by a holding company/parent company to other affiliates. In the cases cited by the petitioners, the question is what denominator to use when the subsidy to one company is attributed to an affiliate that is both a holding company/parent company and a producer. *See, e.g., Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014), and accompanying IDM at 67 (determining that subsidies to affiliates should be attributed to the unconsolidated sales of Sinochem Xi'an, a parent company and a producer of subject merchandise).

[171] *See CVD Preamble*, 63 FR at 65400.

Regarding land obtained by Zong Shen Group, while 19 CFR 351.525(b)(6)(iii) provides an exception to the "holding company/parent company" rule when there is evidence that the holding company is acting merely as a conduit for a subsidy transferred to particular subsidiaries (in which case consolidated sales would not be an appropriate denominator), there is no evidence of in this case that the land subsidy has been transferred. The record indicates, in fact, that the land is occupied by Zong Shen Group and several subsidiaries; thus, the consolidated sales total of Zong Shen Group is the appropriate denominator for land as it is for the other subsidies received by Zong Shen Group. Finally, although the petitioners note that several of the subsidiaries appear not to be engaged in production, including Zong Shen Group, Commerce is already making an adjustment to the consolidated sales total of Zong Shen Group, per the arguments of the petitioner, as explained in response to Comment 16 below. In addition, the petitioners note that several of the subsidiaries are engaged in operations unrelated to VSE production. However, we have not found the provision of land to be "tied" to VSE production and the petitioners have not alleged or demonstrated that it is.

Comment 11: Alleged Error in Zongshen's Policy Lending Calculations

Zongshen Comments

- The benefit in the Policy Lending program calculation was overstated in the *Preliminary Determination.*
- For "Loan 2," Zongshen reported two dates for principal repayments and zero in the column "Amount(s) of Interest Paid" in the first two lines of its Excel spreadsheet.[172]
- The zeros entered in the interest paid column were meant to indicate that interest payments were not applicable at the time of the principal repayments.[173]
- The benefit calculated for the first two lines of this loan should therefore be zero.[174]

Commerce Position: Our examination of Zongshen's loan worksheet[175] indicates that its claims are correct. The relevant interest payment was reported in a third line for the Loan 2. Commerce therefore agrees with Zongshen and has removed the benefit calculated for the first two lines.

Comment 12: Zongshen Power's Electricity Calculations

Zongshen Comments

- Commerce inadvertently double-counted the total kilowatt hours (KWH) used by Zongshen Power for each month of the POI. Zongshen Power paid two electricity rates per KWH and reported the associated payments in two separate lines in its Excel exhibit. Zongshen Power reported the total monthly KWH in each of these lines. Commerce inadvertently included the total KWH reported in both lines for each month in its

[172] *See* Zongshen Case Brief at 35.
[173] *Id.*
[174] *Id.*
[175] *See* Zongshen's Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China; CVD Investigation; Chongqing Zongshen Section III Response," dated May 12, 2020 (Zongshen IQR) at Exhibit I-13.

benchmark payment calculations, which resulted in doubling the total KWH consumed by Zongshen Power.[176]

- Commerce should exclude the double counted KWH during each month of the POI from its benefit calculation.

Commerce Position: Our examination of the relevant Excel spreadsheet[177] indicates that the same KWH totals are reported twice, once for each applicable rate. They do not represent two separate purchases of electricity. Commerce has therefore revised its electricity calculation for Zongshen and eliminated any double-counting from the benefit calculation.

Comment 13: Minor Corrections for Export Seller's Credits and Policy Loans to the VSE Industry Programs

Zongshen Comments

- While preparing its response to the initial questionnaire, Zong Shen Group mistakenly excluded one loan from its commercial loans worksheet and included this loan in its exhibit for the Export Seller's Credits instead.[178]
- Usually, on or before verification, Commerce will allow parties to submit minor corrections.[179]
- Zongshen requests that Commerce accept this minor correction, as it would have done had it conducted verification, and reflect this minor correction in its calculation of benefits for the Policy Loans to the VSE Industry Program and the Export Seller's Credits Program.[180]

Commerce Position: Commerce does not consider this correction to constitute the submission of new information. The loan information was already on the record, submitted in response to the original questionnaire. The loan was simply included in the wrong Excel spreadsheet. Moreover, the information necessary to conclude that it was included in the wrong spreadsheet was also already on the record. An examination of the information (BPI) cited on page 38 of Zongshen's case brief[181] clearly indicates that the loan should not be grouped with Export Seller's Credits. Therefore, Commerce does not believe it is necessary to consider whether this constitutes a "minor correction" or whether a minor correction should be accepted in this investigation in the absence of a verification. Thus, we have reclassified the loan accordingly for this final determination.

[176] *See* Zongshen Case Brief. at 36.
[177] *See* Zongshen IQR at Exhibit II-18.
[178] *Id.* at 37-38.
[179] *Id.* at 37.
[180] *Id.* at 39.
[181] *See* Zongshen IQR at Exhibit III-13 and Exhibit III-12.

Comment 14: Alleged Error in Zongshen's Export Seller's Credit Program Calculations

Petitioners Comment
For one loan, Zongshen reported an incorrect amount in the "Principal Balance to Which Interest Payment Applies" field. Commerce should use the original balance of the loan when calculating the benchmark interest payment for this loan.[182]

Commerce Position: Commerce agrees with the petitioners and has revised the benefit calculation for this loan for this final determination. An examination of the Excel spreadsheet submitted by Zongshen indicates the amount reported in this field for this loan is clearly incorrect and the right amount is evident from adjacent information.[183]

Comment 15: Zongshen's Land-Use Rights for LTAR

Petitioners Comments
- After the *Preliminary Determination*, Commerce provided Zongshen with a second opportunity to correctly report its purchases of land-use rights.
- Record information demonstrates that Zongshen's response is deficient.[184] Information submitted in Zongshen's fourth supplemental questionnaire response is not consistent with information in its initial questionnaire response.[185]
- Despite having two opportunities, Zongshen failed to report complete information on its land-use rights in the form and manner requested. Because of the extent of the deficiencies in Zongshen's reporting, Commerce cannot calculate an accurate subsidy rate for this program. Moreover, Zongshen's contradictory statements demonstrate that it did not cooperate to the best of its ability.[186]
- Commerce should follow its AFA hierarchy and assign an AFA rate to Zongshen for this program.
- If Commerce should not apply AFA, it should treat the subsidy benefit as transferred from Zong Shen Group to Zongshen and two other affiliates pursuant to 19 CFR 351.52(b)(6)(v).[187]

Zongshen Rebuttal Comments
- The alleged "inconsistencies" in Zongshen's fourth supplemental response are in fact due to the conditions Commerce stipulated in its questionnaire.[188]
- Commerce has not identified any "missing" or "conflicting" information in this proceeding.[189]

[182] *See* Petitioners Case Brief at 60.
[183] *See* Zongshen IQR at Exhibit III-13.
[184] *See* Zongshen's 4th SQR at Exhibit S4-18.
[185] *See* Petitioners Case Brief at 31.
[186] *Id.* at 32.
[187] *Id.* at 33-36.
[188] *See* Zongshen Rebuttal Brief at 11-14.
[189] *Id.* at 12.

- There is no information that is missing from the record that Zongshen withheld; therefore, the petitioners' claim that Commerce should apply AFA should be rejected.[190]
- Commerce should also disregard the petitioners' alternative argument to use a revised denominator for land-use for LTAR. As there is no substantive change in the record evidence and as the petitioners have identified no ministerial error, Commerce should continue to find that only Zongshen High Speed benefited from this program.[191]

Commerce Position: Zongshen initially reported all land acquisitions within the AUL period by its reporting affiliates (*i.e.*, the cross-owned affiliates that have provided questionnaire responses for this investigation). The transactions that it reported were often intercompany transfers. For example, affiliate A acquired land from affiliate B. However, because Commerce is countervailing land provided by the GOC, not land provided by private parties or affiliated parties, Commerce instructed Zongshen to make significant revisions to its response in order to determine details of the original acquisitions from the local land bureau.[192] In other words, if affiliate A acquired land from affiliate B, and affiliate B acquired land from the local land bureau, we needed to know the details concerning the transaction between affiliate B and the local land bureau, in addition to the details concerning the transaction between affiliate A and affiliate B. Moreover, we needed to be able to link such transactions. In addition, we asked Zongshen to make revisions to its response in order to determine which of the numerous tracts of land at issue were countervailable and to consolidate the information in a manner that would avoid countervailing the same tract twice. While the requested revisions may have resulted in a complicated record, they were prompted by Commerce's supplemental questionnaire and we do not see any evidence on the record that the supplemental response[193] is incorrect. For example, Commerce countervailed land provided to Zongshen High Speed in the *Preliminary Determination* based on its conclusion that the tract was purchased during the AUL and after the "cutoff date" for measuring subsidies in China (December 2001). The petitioners note that Zongshen High Speed is not included among the occupants of land that Zongshen reported in response to our supplemental questionnaire. Further review of the documentation provided in response to the first questionnaire, however, specifically Exhibit V-12,[194] indicates that the tract was in fact purchased from a local land bureau before the 2001 cutoff date. Thus, the tract was properly excluded from the list of countervailable tracts that Zongshen was instructed to compile in the supplemental questionnaire.

Comment 16: Zongshen's Consolidated Sales Denominators

Petitioners Comments
Commerce should remove values "not related to production" from the denominators of Zong Shen Group and Zongshen Power.[195]

[190] *Id.* at 14-15.
[191] *Id.* at 15.
[192] *See* Letter, "Countervailing Duty Investigation of Certain Vertical Shaft Engines from the People's Republic of China: New Subsidy Allegation Questionnaire and Supplemental Questionnaire," dated July 14, 2020.
[193] *See* Zongshen's Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China; CVD Investigation; Chongqing Zongshen NSA and 4th Supplemental Questionnaire Response," dated July 31, 2020.
[194] *See* Zongshen IQR at V-12.
[195] *See* Petitioners Case Brief at 36-37.

Zongshen Rebuttal Comments

- Commerce should use the consolidated sales value for Zong Shen Group and Zongshen Power without further adjustment.
- The petitioners' "reliance" on Zong Shen Group's "product diversity" to suggest that certain values be removed from the sales denominator is unsupportable and the petitioners' suggested changes to Zong Shen Group's denominator should be rejected.[196]
- No record evidence shows that the values identified by the petitioners are unrelated to the products produced by Zongshen Power.

Commerce Position: In the investigation of seamless pipe from China, Commerce reduced the consolidated sales denominator of TPCO, a holding company/parent company, by the amount of revenue not related to production:

> At verification TPCO explained that its reported consolidated sales total included amounts for rental fees, and "bidding services," fees the company collects from companies entering bids for service and supply contracts with TPCO Group. 19 CFR 351.525 directs {Commerce} to attribute subsidies to "all products sold by a firm." Accordingly, because these are amounts are not related to production, we are deducting consolidated revenue reported for rental income and bidding services from TPCO's sales denominator for the final determination.[197]

Section 351.525(a) of the regulations, which provides the fundamental rule for determining a subsidy rate, states that the amount of the benefit should be divided by "the sales value during the same period of the *product or products* to which the Secretary attributes the subsidy under paragraph (b) of this section" (emphasis added). In this investigation, the petitioners correctly claim that the creditworthiness questionnaire response of Zongshen indicates significant sales revenue under several sales headings that are unrelated to sales of product.[198] Zongshen's reported sales revenue unrelated to sales of product are akin to the rental fees and bidding services removed from the denominator of TPCO in the seamless pipe investigation.[199] Moreover, Zongshen reported that Zongshen Group "does not involve {itself} in any production and sales," meaning the unconsolidated operations of Zongshen Group do not involve sales of merchandise.[200] Therefore, Commerce is reducing the consolidated sales denominator of Zongshen Group by the amounts reported for revenue unrelated to production.

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[196] *See* Zongshen Case Brief at 7.
[197] *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2020) IDM at 123-124.
[198] *See* Memorandum, "Final Determination Calculations for Chongqing Zongshen General Power Machine Co., Ltd," (Zongshen Calculation Memorandum) dated concurrently with this memorandum at 1-2.
[199] *See* Zongshen's Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China; CVD Investigation; Creditworthiness Supplemental Response," dated October 6, 2020 at Exhibit S5-4.
[200] *See* Zongshen Affiliation Response at 4.

Likewise, the consolidated income statement of Zongshen Power reports a sales revenue amount[201] that is clearly separated from the sales revenue earned on sales of products.[202] Therefore, Commerce is also reducing the consolidated sales denominator of Zongshen Power by the amount reported for revenue unrelated to production.

We disagree with Zongshen that the adjustments are unsupported by the record or that there is any ambiguity in the facts cited by the petitioners such that the adjustments are unreasonable. The information supporting the adjustments is taken from Zongshen's own questionnaire responses and clearly denotes sales revenue unrelated to the sales of manufactured products. In particular, Zongshen suggests that perhaps the consolidated income figures reported for Zongshen Group and Zongshen Power have already excluded these amounts. However, for Zongshen Power, the supporting financial statement notes submitted by Zongshen show that the consolidated sales denominator ties directly to total operating income, which clearly includes the revenue amount the petitioners argue should be removed.[203] Similarly, for Zongshen Group, the consolidated sales denominator ties directly to total operating income, which excludes only a relatively small amount of "other income" and "investment income," much smaller than the amounts referred to by the petitioners.[204]

Therefore, for this final determination, we are excluding certain items from the consolidated sales denominators for Zongshen Group and Zongshen Power. In order to ensure the adjustment for Zongshen Group is not excessive, we are lowering the amount of the reduction by the "other income" and "investment income" amounts reported in Zongshen Group's income statement, based on the inference that those amounts overlap the amount of sales revenue unrelated to production.

Issues Related to Loncin

Comment 17: Income Tax Deduction for R&D Expenses Program

Loncin Comments
Commerce used the wrong benefit amount when calculating the rate for Loncin and Loncin Engines for the income tax deduction for R&D expenses program. Commerce mistakenly used the reduction in taxable income as the benefit, rather than the reduction in taxes.[205]

Commerce Position: Commerce agrees with Loncin that there was an error in the determination of the benefit amounts used to calculate rates for this program, for the reasons stated by Loncin. We have revised the calculation with the correct benefit amounts for this final determination.

[201] *See* Zongshen Calculation Memorandum at 1-2.
[202] *See* Zongshen 4th SQR at 3-4.
[203] Compare Zongshen 4th SQR Exhibit S4-1 (consolidated sales denominators) with S4-2.c. (notes to income statements).
[204] *See* Zongshen Calculation Memorandum at 1-2.
[205] *See* Loncin Case Brief at 3.

Comment 18: Whether Loans Received by Loncin Group and Loncin Holdings are Policy Loans to the VSE Industry

Loncin Comments

- In this investigation only Loncin's ultimate parent/holding company, Loncin Group, and intermediate parent/holding company, Loncin Holdings, received loans. Neither Loncin Group nor Loncin Holdings produce subject merchandise or inputs.[206]
- Commerce should revise its finding that Loncin received a benefit and financial contribution from loans received by Loncin Group and Loncin Holdings.[207]
- There is no evidence that the loans are specific to the VSE industry. Neither Loncin nor any affiliated input producers received any form of loan.[208]
- There is no record evidence Loncin received any benefit from loans received by Loncin Group or Loncin Holdings.[209]
- Financing received by Loncin Group and Loncin Holdings was not obtained to finance or support Loncin and its affiliated responding companies "in any way" and should not have been part of the alleged Policy Loans program.[210]

Petitioners Rebuttal Comments

- Under 19 CFR 351.525(b)(6)(iii), Commerce normally attributes a holding company's subsidies to the consolidated sales of the holding company and its subsidiaries. Commerce does not trace the use of subsidies after receipt.[211]
- The record lacks information to properly attribute benefits under the policy loans program.[212]
- Pursuant to the *CVD Preamble*, Commerce analyzes the purpose of a subsidy at the time of bestowal and does not trace the subsidies through a respondent's books and records.[213]
- As a result of the GOC's failure to cooperate to the best of its ability, Commerce should apply AFA to this program (*see* Comment 2).

Commerce Position: Commerce explained at length its findings regarding the existence of a program of preferential lending to the VSE industry in the *Preliminary Determination*.[214] There is no explicit evidence of such a program in the specific lending received by Loncin or its affiliates is immaterial. The findings in the *Preliminary Determination* were not based on an examination of the particular loans disbursed to Loncin Group and Loncin Holdings, but on an analysis of policy documents disseminated by the GOC, provided by the GOC in its questionnaire response and by the petitioners in the Petition.[215] There is nothing unreasonable

[206] *Id*. at 8.
[207] *Id*.
[208] *Id*. at 8-9.
[209] *Id*. at 9.
[210] *Id*. at 10.
[211] *See* Petitioners Case Brief at 18.
[212] *Id*. at 19.
[213] *Id*. at 20.
[214] *See Preliminary Results* PDM at 25-26.
[215] *See* Petitioners' Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Certain

about drawing conclusions about a loan program specific to the VSE industry from such "macro" level documents and no legal requirement or Commerce practice that requires that conclusions regarding the countervailability of a loan program be based only on the facts particular to the respondents under investigation. Therefore, the fact that the loans were provided to holding companies/parent companies that are not directly involved in the production of VSE does not disprove the existence of a specific program nor is it evidence that the respondents did not use the program. It is perfectly reasonable to infer that a bank would follow the directives of the GOC to provide preferential lending to the VSE industry when lending to the parent of a VSE producer. In fact, it would seem unreasonable to assume that a bank would follow such directives only when lending directly to the VSE producer itself.

Comment 19: Loncin's Loan Calculations

Loncin Comments

- In the *Preliminary Determination*, Commerce erroneously attributed the combined interest payments of three Loncin Group loans to one loan, while attributing no interest payments to two loans. This resulted in an inflated benefit calculation for Loncin Group.[216]
- Loncin reported three separate loans from one bank. Loncin Group also reported that it made a single lump sum interest payment for these three loans. Commerce incorrectly treated the reported payment as if it were only for one loan.[217]
- To correct this error, Commerce should total the three calculated benchmark interest payments before computing the benefit from the three loans.[218]

Petitioners Rebuttal Comments

If Commerce does not apply AFA to Loncin's Policy Loan Program, it should include the entire benefit for the combined interest payment in its subsidy rate calculation.[219]

Commerce Position: Commerce agrees with Loncin and has revised the loan calculation to combine the benchmark interest payments and calculate one benefit amount for the three loans.

Comment 20: Loncin's Unwrought Aluminum Calculations

Loncin Comments

- In the *Preliminary Determination* Commerce made four ministerial errors in its calculation of unwrought aluminum for LTAR.
- Commerce applied an incorrect VAT rate to unwrought aluminum. Commerce applied a VAT rate of 17 percent in the *Preliminary Determination;* however, the 17 percent rate was not in effect for unwrought aluminum during the POI. Record evidence shows that

Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China," dated January 15, 2020 at Volume III at Exhibit III-3 (*Notice of Guidelines on Accelerating the Adjustment of Aluminum Industry Structure*) and Exhibit III-4 (*Nonferrous Metal Industry Development Plan* (2016-2020)); *see also* GOC May 4, 2020 IQR at Exhibit II.B.3, Article VIII of the "encouraged" category (Non-Ferrous Metal).

[216] *See* Loncin Case Brief at 4.

[217] *Id*. at 5.

[218] *Id*.

[219] *See* Petitioners Case Brief at 14-15.

the VAT rate for unwrought aluminum was 16 percent from January through March of 2019 and 13 percent April through December of 2019. Commerce should revise its benchmark calculation with the appropriate VAT rates for 2019 in the final determination.[220]

- The inland freight amounts for June and December used in the benchmark calculation appears to contain an unintended typo. These amounts should be corrected in the final determination.[221]
- Commerce applied the incorrect benchmarks to Lightweight's purchases of unwrought aluminum due to an error in the Excel formula. This should be corrected in the final determination.[222]
- Commerce inadvertently transposed Loncin Castings and Lightweight's sales denominators when calculating the unwrought aluminum LTAR rate. This should be corrected in the final determination.[223]

Petitioners Rebuttal Comments

- If Commerce does not use the inland freight rates from the World Bank's *Doing Business in China 2020* report, it should use the values in the "Unit Price per Run" column of Loncin's Exhibit P.E.1.4 of Loncin's IQR.[224]
- The Unit Price per Run value represent the per-metric ton cost of transportation from the port to Loncin's factory, rather than per-kilometer values used in the *Preliminary Determination.*[225]
- The error that Loncin describes regarding the monthly benchmarks calculation for unwrought aluminum is not in Lightweight's calculation, and therefore the Commerce should not make any changes to Lightweight's calculation.[226]
- Commerce did not transpose denominators the denominators for Loncin Casting and Lightweight. Commerce should make no adjustment to the denominator based on Loncin's claim, but rather adjust the denominators based on the petitioners' arguments (*see* Comment 26).[227]

Commerce Position: Commerce agrees with Loncin that there were errors in the preliminary benefit calculation for Loncin under the unwrought aluminum for LTAR program. We have revised the benchmark to use the 16 percent VAT rate for January through March 2019 and 13 percent for April through December 2019 for both Loncin and Zongshen. We have revised the calculation to use the correct denominators for Loncin Casting and Lightweight and have revised the monthly benchmarks applied to Lightweight.

[220] *See* Loncin Case Brief at 6-7.
[221] *Id.* at 7.
[222] *Id.*
[223] *Id.* at 7-8.
[224] *See* Petitioners Rebuttal Brief at 16.
[225] *Id.* at 16.
[226] *Id.*
[227] *Id.* at 17-18.

We agree with the petitioners that we should use the per-metric ton cost of inland freight, rather than the per-kilometer values used in the *Preliminary Determination.* We will use these in the revised in-land freight rates (*see* Comment 8).

Comment 21: Loncin's Other Subsidies

Petitioners Comments

- In conducting the 0.5 percent test to determine whether to allocate the benefit for "other subsidies," Commerce made a clerical error regarding certain subsidies received by Loncin. Commerce failed to convert the results of the 0.5 percent test to percentages for certain programs. As a result, Commerce identified these subsidies as "expensed" rather than "allocated," and did not include these programs in Loncin's subsidy rate for "other programs."

Commerce Position: Commerce agrees with the petitioners. Accordingly, we have revised the allocation table and allocated additional subsidies received by Loncin across the AUL, consistent with 19 CFR 351.524(b).

Comment 22: Loncin's Policy Loans

Petitioners Comments

- In its creditworthiness questionnaire response, Loncin reported discovering an additional loan and submitted a revised loan exhibit. Commerce rejected this submission for containing unsolicited new factual information and had Loncin resubmit its response without the revised loan exhibit.[228]
- Based on its acknowledgement in its creditworthiness questionnaire response that it omitted a loan from its original submission, the record shows that Loncin reported incomplete loan data in its initial and supplemental questionnaire responses.[229]
- Consistent with its practice, Commerce should apply an AFA rate to Loncin for the policy lending program.
- Commerce should use the policy lending program rate calculated for Zongshen as AFA in accordance with its AFA hierarchy.[230]

Loncin Rebuttal Comments

- There is no evidence on the record that Loncin failed to report a countervailable loan during the POI. While the petitioners reference Loncin's creditworthiness response, Commerce requested that Loncin remove the exhibit which included the additional loan and resubmit its creditworthiness response. Thus, there is no evidence on the record regarding whether this loan was a loan that was required to be reported. Record evidence demonstrates this was not a reportable loan, as this was a loan for which no interest was paid during the POI.[231]

[228] *See* Petitioners Brief at 21.
[229] *Id.*
[230] *Id.* at 22.
[231] *See* Loncin Rebuttal Brief at 9.

- If Commerce believed the information regarding this alleged loan was necessary, it was required to notify Loncin of the deficiency and permit Loncin an opportunity to cure the deficiency.[232]
- The alleged loan cannot be the basis for total AFA because it would have been accepted as a minor correction had verification taken place.
- The petitioners have not demonstrated that the application of AFA under the statue is necessary for Loncin's loans. One small piece of information, that has no impact on the CVD rate, cannot be the basis for AFA.

Commerce Position: As Loncin notes, Commerce rejected the additional loan information from the record.[233] Specifically, we required Loncin to resubmit the questionnaire at issue without the revised loan spreadsheet it had attached as an exhibit, but did not ask Loncin to revise the narrative discussing the loan in broad terms.[234] That narrative discussion is the only information concerning the loan still on the record of this investigation. The discussion indicates clearly that the loan is part of a group of loans Loncin received for which payments were deferred until after the POI.[235] Loncin reported all such loans for the sake of completeness at the request of Commerce despite the fact that they would not provide a benefit during the POI. Therefore, the record indicates that the omitted loan was immaterial to the subsidy rate calculation for the POI and, for that reason, we have determined that use of AFA is not warranted.

Comment 23: Loans from DBS Bank China

Loncin Comments

- In the *Preliminary Determination*, Commerce countervailed a loan received from DBS Bank (China) Co., Ltd. Chongqing Branch (DBS Bank China).
- There is no record information that this bank is controlled by the GOC, or that the loan received is a government-provided loan pursuant to 19 CFR 351.505. DBS Bank China is a private bank located in China and operates independently of the GOC.
- There is no basis to countervail loans from DBS Bank China.

Petitioners Rebuttal Comments

- Loncin's argument that there is no record evidence that DBS Bank China is controlled by the GOC misconstrues Loncin's burden in this investigation, and Commerce's default presumption of control.[236]
- Pursuant to Commerce's "Analysis of Banks and Trust Companies in China" Memorandum, Commerce treats all banks in China as authorities. Parties may

[232] *Id.* at 9-10.
[233] *See* Commerce's Letter, "Countervailing Duty Investigation of Certain Vertical Shaft Engines from China: Creditworthiness Supplemental Rejection and Request for Resubmission," dated October 16, 2020.
[234] *Id.*
[235] *See* Loncin's Letter, "Loncin Creditworthiness Supplemental Response Resubmission in the Countervailing Duty Investigation on Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof from the People's Republic of China (C-570-120)," dated October 19, 2020 at 4.
[236] *See* Petitioners Rebuttal Brief at 29.

demonstrate with record evidence that the GOC has no ownership or control over a bank.[237]

- The burden is not on Commerce to prove affirmative control. Neither Loncin nor the GOC provided evidence that DBS Bank China operates independently of the GOC. Commerce should continue to countervail the loans received from DBS Bank China in the final determination.[238]

Commerce Position: As stated in the *Preliminary Determination,* Commerce finds that "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."[239] "Chinese banks" does not necessarily mean "banks owned by the Chinese government." As the petitioners indicate, the issue is whether the respondent can demonstrate that the bank at issue, despite its location in China, is not subject to the wide-spread control and distortive policies of the GOC as described in the Commerce memorandum, "Analysis of Banks and Trust Companies in China," placed on the record of this investigation. The assertion that a bank is a "foreign bank," meaning its ownership is outside of China, is not enough, even if accurate. Ancillary issues must still be addressed, such as whether the particular subsidiary bank operating in China accepted a Chinese co-owner as a partner, whether the bank had to make other concessions to the GOC in order to operate in China, whether it is subject to the same laws as a domestically headquartered bank such that it must follow the same directives that distort lending in China generally, and whether it is affected by the presence of other GOC influences, such as board members nominated by the GOC or by a GOC state-owned bank. Therefore, we are continuing to countervail loans provided by DBS Bank China.

Comment 24: Alleged Errors in Loncin's Electricity for LTAR Calculations

Petitioners Comments

- The formula Commerce used in Loncin's Electricity for LTAR calculation was not consistent with Commerce's stated intention to determine a benefit where benchmark payments exceeded payments made by Loncin.[240]
- Commerce reversed the formula and conferred a benefit where payments made by Loncin exceeded the benchmark.[241]
- Commerce should modify the formula to calculate a benefit for months with prices below the benchmark and a benefit of zero for months with prices above the benchmark.

Commerce Position: We agree with the petitioners that there was an error in the Electricity for LTAR calculation for Loncin. We have revised the calculation formula to correct the error in this final determination.

Comment 25: Loncin's Sales Denominators

[237] *Id.*
[238] *Id.* at 30.
[239] *See Preliminary Determination* PDM at 11.
[240] *See* Petitioners Case Brief at 55.
[241] *Id.*

Petitioners Comments

- Commerce did not exclude inter-company transactions from Loncin's sales denominators in the *Preliminary Determination* despite its stated intent to do so.
- In the final determination Commerce should adjust the denominators for Loncin and subsidiaries Loncin Casting and Lightweight.[242]

Loncin Rebuttal Comments

- Commerce should use consolidated sales revenue for Loncin and Loncin Casting, in accordance with its regulations regarding subsidies received by a parent or holding company.[243]
- For Lightweight and Loncin Casting, the petitioners suggested revisions to the denominators remove intercompany sales with all companies. The only intercompany sales excluded should be those that pertain to the company receiving the subsidy and the company to which the subsidy is being attributed.[244]

Commerce Position: As explained in response to similar comments addressed above regarding Zongshen's sales denominators, the attribution regulations followed by Commerce are clear that subsidies received by a holding or parent company must be attributed to the consolidated sales of the holding/parent company, even when that company has its own productive operations. Therefore, we are revising our calculations to rely on Loncin's consolidated sales total as the denominator for subsidies received by Loncin. Because the amount is a consolidated sales total, there is no need for further adjustments to remove the intercompany sales between Loncin, Loncin Casting, and Lightweight, with the latter two companies being subsidiaries of Loncin included in its consolidated accounts.

For subsidies received by Lightweight, which is also a holding company/parent company, in addition to being an input supplier to Loncin, we are relying on Lightweight's consolidated revenue, plus the unconsolidated sales of Loncin (pursuant to 19 CFR 351.525(b)(6)(iv) – the input suppliers rule), minus the intercompany sales between the two, as the sales denominator in attributing subsidies received by Lightweight to Loncin, the respondent and subject merchandise producer.

For subsidies received by Loncin Casting, also an input supplier to Loncin, we are relying on Loncin Casting's unconsolidated sales (it is not a holding/parent company), plus the unconsolidated sales of Loncin, minus the intercompany sales between the two, as the sales denominator in attributing subsidies received by Loncin Casting to Loncin.

Comment 26: Loncin's Land-Use Rights for LTAR Calculations

Petitioners Comments

[242] *Id.* at 58.
[243] *See* Loncin Rebuttal Brief at 24 and 26.
[244] *Id*. at 25-26.

- In the *Preliminary Determination*, Commerce stated that it conducted the 0.5 percent test by dividing the total benefit for the respective years by the relevant sales. This is consistent with the *CVD Preamble* and Commerce's past practice.[245]
- In the preliminary calculations for Loncin, Commerce incorrectly conducted the 0.5 percent test separately for each of Loncin's purchases and removed individual purchases that did not pass the 0.5 percent test. Commerce should have grouped together all land purchases in each year and performed the 0.5 percent test on the combined amount. The entire amount should then be either expensed or allocated depending on the results of test.

Loncin Rebuttal Comments

- Commerce correctly applied the 0.5 percent test to each tract of land individually and should continue to do so for the final determination.
- The purchase of each tract of land was separately negotiated, and thus each entailed a separate financial contribution and benefit (akin to grants given in a given year).[246]
- Commerce generally treats land for LTAR differently than other non-recurring programs. Commerce allocates the benefits over the specific duration of the land-use rights for each tract of land. This demonstrates that each issuance of a land-use right is a distinct countervailable event requiring separate analysis.
- For the reasons cited above, Commerce was incorrect in *Truck and Bus Tires from China.* Commerce correctly applied the 0.5 percent test in the *Preliminary Determination* and should continue to do so in the final determination.

Commerce Position: We agree with the petitioners that the 0.5 percent test should be applied to the total subsidy amount in each year in accordance with the *CVD Preamble* and Commerce practice. Commerce considers each tract of land to have been provided pursuant to a single program, which was described in the *Preliminary Determination*, notwithstanding the fact that the price and other terms for each tract might be negotiated separately. Therefore, we have revised the Land for LTAR calculation for Loncin accordingly.

[245] *See* Petitioners Case Brief at 59 (citing *Truck and Bus Tires from the People Republic of China*, 82 FR 8606 (January 27, 2017) (*Truck and Bus Tires from China*).
[246] *Id.*; *see also* Loncin Rebuttal Brief at 27.

IX. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the ITC of our determination.

☒	☐
Agree	Disagree

1/4/2021

X 

Signed by: JEFFREY KESSLER

z_____
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance