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Administrative Review
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July 1, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the
Administrative Review of the Countervailing Duty Order on Certain
Steel Wheels (12-16.5 inches diameter) from the People's Republic
of China

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on certain steel wheels (12-16.5 inches diameter) (steel wheels) from the People's Republic of China (China).¹ The period of review (POR) is February 25, 2019, through December 31, 2019. We have preliminarily applied facts otherwise available with an adverse inference with respect to Shanghai Yata Industry Co., Ltd (Shanghai Yata), Xiamen Topu Imports & Export Co., Ltd, (Xiamen Topu), and Zhejiang Jingu Company Limited (Zhejiang Jingu), and preliminarily find that these companies received countervailable subsidies during the POR.

II. BACKGROUND

On September 3, 2019, Commerce published in the *Federal Register* the order on certain steel wheels from China.² On September 1, 2020, we published a notice of "Opportunity to Request Administrative Review" of the *Order* for the POR February 25, 2019, through December 31,

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 68840 (October 30, 2020) (*Initiation Notice*)

² See *Certain Steel Trailer Wheels 12 to 16.5 Inches from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders*, 84 FR 45952 (September 3, 2019) (*Order*).

2019.³ On September 30, 2020, Commerce received requests for administrative review of certain producers and/or exporters of subject merchandise from Rimco Inc. (Rimco), Trailstar LLC (Trailstar), and Trans Texas Tire, LLC (TTT).⁴ On October 30, 2020, Commerce initiated this review for five companies.⁵ This is the first administrative review of the *Order*.

In the *Initiation Notice*, we stated our intention to select respondents based on entry data sourced from U.S. Customs and Border Protection (CBP).⁶ On November 6, 2020, we released the CBP data and invited comments regarding respondent selection.⁷ From January 27 to 28, 2021, we placed on the record the following memoranda: (1) Loan Interest Rate Benchmarks;⁸ (2) Analysis of Banks and Trust Companies in China Memo;⁹ (3) Analysis of China's Financial System;¹⁰ (4) Land Analysis Memo;¹¹ (5) Analysis of Public Bodies Memo;¹² and (7) CCP Memorandum.¹³

On January 14, 2021, we selected Xingmin Intelligent Transportation Systems (Group) (Xingmin Intelligent) and Zhejiang Jingu as mandatory respondents.¹⁴ We sent a CVD questionnaire to the Government of China (GOC) on January 21, 2021, with instructions to forward a copy to the respondent companies identified in the cover letter.¹⁵ On January 15, 2021, TTT timely withdrew its request for an administrative review of Xingmin Intelligent.¹⁶ On January 28, 2021, Trailstar timely withdrew its request for an administrative review of Zhejiang Jingu.¹⁷ On February 5, 2021, Dexstar Wheel, a domestic interested party and the petitioner in the underlying investigation, requested that Commerce select replacement mandatory respondents.¹⁸ On February 12, 2021, Commerce selected Xiamen Topu as a replacement mandatory respondent.¹⁹ On February 16,

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 54349 (September 1, 2020).

⁴ See Rimco's Letter, "Request for a First Administrative Review," dated September 30, 2020; see also Trailstar's Letter, "Request for Administrative Review of the Countervailing Duty Order on Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People Republic of China," dated September 30, 2020; and TTT's Letter, "Request for Administrative Review of the Countervailing Duty Order on Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People Republic of China," dated September 30, 2020.

⁵ See *Initiation Notice*.

⁶ *Id.*

⁷ See Memorandum, "Release of U.S. Customs and Border Protection Data," dated November 6, 2020.

⁸ See Memorandum, "Loan Interest Rate Benchmarks," dated January 27, 2021.

⁹ See Memorandum, "Analysis of Banks and Trust Companies in China Memo," dated January 28, 2021.

¹⁰ See Memorandum, "Analysis of China's Financial System," dated December 21, 2020.

¹¹ See Memorandum, "Land Analysis Memo," dated January 27, 2021.

¹² See Memorandum, "Placing Documents on the Record," dated January 28, 2021, containing Memoranda, "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 (Analysis of Public Bodies Memo); and "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 (CCP Memorandum).

¹³ *Id.*

¹⁴ See Memorandum, "Respondent Selection," dated January 14, 2021.

¹⁵ See Commerce's Letter, "Countervailing Duty Questionnaire," dated January 21, 2021 (Initial Questionnaire).

¹⁶ See TTT's Letter, "Withdrawal of Request for Administrative Review of the Countervailing Duty Order on Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People Republic of China," dated January 15, 2021.

¹⁷ See Trailstar's Letter, "Withdrawal of Request for Administrative Review of the Countervailing Duty Order on Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People Republic of China," dated January 28, 2021.

¹⁸ See Dexstar's Letter, "Requests for Selection of Replacement Mandatory Respondents and Verification," dated February 5, 2021.

¹⁹ See Memorandum, "Respondent Selection: Selection of Replacement Mandatory Respondent," dated February 12, 2021.

2021, Commerce issued a letter to the GOC, notifying it of the selection of a replacement respondent and requested that it forward the Initial Cover Letter and Questionnaire to Xiamen Topu.²⁰ On April 22, 2021, Commerce selected Shanghai Yata as an additional mandatory respondent, and issued a letter to the GOC.²¹ Commerce did not receive initial questionnaire responses from Shanghai Yata, Xiamen Topu, or the GOC. On May 6, 2021, Zhejiang Jingu and Shanghai Yata withdrew from participation in this administrative review.²²

On May 11, 2021, the petitioners submitted pre-preliminary comments.²³ On May 27, 2021, Commerce extended the deadline for the preliminary results of this review by 30 days.²⁴ Accordingly, the deadline for the preliminary results of this review was extended to July 2, 2021.

III. INTENT TO RESCIND ADMINISTRATIVE REVIEW, IN PART

It is Commerce's practice to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended. Normally, upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period. Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct CBP to liquidate at the calculated countervailing duty assessment rate calculated for the review period.

According to the CBP import data, Hangzhou Antego Industry Co. Ltd did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended. Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR, we intend to rescind the review with respect to Hangzhou Antego as explained above, in accordance with 19 CFR 351.213(d)(3).

²⁰ See Commerce's Letter, "Selection of Replacement Mandatory Respondent," dated February 16, 2021.

²¹ See Memorandum, "Respondent Selection: Selection of Replacement Mandatory Respondent," dated April 22, 2021; see also Commerce's Letter, "Selection of Additional Replacement Respondent," dated April 22, 2021. During the CVD investigation of certain steel wheels from China, Commerce determined that Zhejiang Jingu and Shanghai Yata were cross-owned companies. While the company that requested a review of Zhejiang Jingu withdrew its request for review of Shanghai Yata remained in the administrative review because the company that filed a request for review of Shanghai Yata did not withdraw its request for review. Thus, because Shanghai Yata was still subject to the administrative review, we issued an initial questionnaire to Shanghai Yata. All cross-owned companies of Shanghai Yata were required to file a response to the questionnaire, including Zhejiang Jingu, if the companies remained cross-owned during the POR.

²² See Zhejiang Jingu's Letter, "Notice Regarding Participation in Administrative Review," dated May 6, 2021 (Notice Regarding Participation). In the investigation, Commerce found that Shanghai Yata was affiliated through cross-ownership with Zhejiang Jingu. Commerce also determined that four other Chinese companies were cross-owned with Zhejiang Jingu: Shangdong Jingu Auto Parts Co., Ltd.; An'Gang Jingu (Hangzhou) Metal Materials Co., Ltd.; Zhejiang Wheel World Co., Ltd.; and Hangzhou Jingu New Energy Development Co. Ltd.; see *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances*, 84 FR 32723 (July 9, 2019) (*Final Investigation Determination*), and accompanying Issues and Decisions Memorandum (IDM).

²³ See Dexstar's Letter, "Certain Steel Wheels 12 to 16.5 Inch in Diameter from China, 2019 Review, Petitioner's Pre-preliminary Comments," dated May 11, 2021.

²⁴ See Memorandum, "Extension of Deadline for the Preliminary Results of Countervailing Duty Administrative Review; 2019," dated May 27, 2021.

IV. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

We received a timely withdrawal of the request for review, for which no other party requested a review, for Xingmin Intelligent. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the *Order* with respect to Xingmin Intelligent.

For Xingmin Intelligent, countervailing duties shall be assessed at rates equal to the rates of cash deposits for estimated countervailing duties required at the time of entry, or withdrawn from warehouse, for consumption, during the period February 25, 2019, through December 31, 2019, in accordance with 19 CFR 351.212(c)(2).

V. SCOPE OF THE ORDER

The products covered by the *Order* are certain on-the-road steel wheels, discs, and rims for tubeless tires with a nominal wheel diameter of 12 inches to 16.5 inches, regardless of width. Certain on-the-road steel wheels with a nominal wheel diameter of 12 inches to 16.5 inches within the scope are generally for road and highway trailers and other towable equipment, including, inter alia, utility trailers, cargo trailers, horse trailers, boat trailers, recreational trailers, and towable mobile homes. The standard widths of certain on-the-road steel wheels are 4 inches, 4.5 inches, 5 inches, 5.5 inches, 6 inches, and 6.5 inches, but all certain on-the-road steel wheels, regardless of width, are covered by the scope.

The scope includes rims and discs for certain on-the-road steel wheels, whether imported as an assembly, unassembled, or separately. The scope includes certain on-the-road steel wheels regardless of steel composition, whether clad or not clad, whether finished or not finished, and whether coated or uncoated. The scope also includes certain on-the-road steel wheels with discs in either a “hub-piloted” or “stud-piloted” mounting configuration, though the stud-piloted configuration is most common in the size range covered.

All on-the-road wheels sold in the United States must meet Standard 110 or 120 of the National Highway Traffic Safety Administration's (NHTSA) Federal Motor Vehicle Safety Standards, which requires a rim marking, such as the “DOT” symbol, indicating compliance with applicable motor vehicle standards. See 49 CFR 571.110 and 571.120. The scope includes certain on-the-road steel wheels imported with or without NHTSA's required markings.

Certain on-the-road steel wheels imported as an assembly with a tire mounted on the wheel and/or with a valve stem or rims imported as an assembly with a tire mounted on the rim and/or with a valve stem are included in the scope of this *Order*. However, if the steel wheels or rims are imported as an assembly with a tire mounted on the wheel or rim and/or with a valve stem attached, the tire and/or valve stem is not covered by the scope.

The scope includes rims, discs, and wheels that have been further processed in a third country, including, but not limited to, the painting of wheels from China and the welding and painting of rims and discs from China to form a steel wheel, or any other processing that would not otherwise remove the merchandise from the scope of the *Order* if performed in China.

Excluded from this scope are the following:

(1) Steel wheels for use with tube-type tires; such tires use multi piece rims, which are two-piece and three-piece assemblies and require the use of an inner tube;

(2) aluminum wheels;

(3) certain on-the-road steel wheels that are coated entirely in chrome. This exclusion is limited to chrome wheels coated entirely in chrome and produced through a chromium electroplating process, and does not extend to wheels that have been finished with other processes, including, but not limited to, Physical Vapor Deposition (PVD);

(4) steel wheels that do not meet Standard 110 or 120 of the NHTSA's requirements other than the rim marking requirements found in 49 CFR 571.110S4.4.2 and 571.120S5.2;

(5) steel wheels that meet the following specifications: Steel wheels with a nominal wheel diameter ranging from 15 inches to 16.5 inches, with a rim width of 8 inches or greater, and a wheel backspacing ranging from 3.75 inches to 5.5 inches; and

(6) steel wheels with wire spokes.

Certain on-the-road steel wheels subject to this *Order* are properly classifiable under the following category of the Harmonized Tariff Schedule of the United States (HTSUS): 8716.90.5035 which covers the exact product covered by the scope whether entered as an assembled wheel or in components. Certain on-the-road steel wheels entered with a tire mounted on them may be entered under HTSUS 8716.90.5059 (Trailers and semi-trailers; other vehicles, not mechanically propelled, parts, wheels, other, wheels with other tires) (a category that will be broader than what is covered by the scope). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

VI. USE OF FACTS OTHERWISE AVAILABLE AND APPLICATION OF ADVERSE INFERENCES

A. Legal Standard

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act) provide that Commerce shall, subject to section 782(d) of the Act, select from the “facts otherwise available” if necessary information is not on the record, or an interested party or any other person: (A) withholds information that has been requested; fails provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from 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. In doing so, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.²⁵ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information,

²⁵ See section 776(b)(1)(B) of the Act.

Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Commerce with complete and accurate information in a timely manner."²⁶ Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."²⁷

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that, while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."²⁸ Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the Federal Circuit noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.²⁹ The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.³⁰ Moreover, further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.³¹

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."³² It is Commerce's practice to consider information to be corroborated if it has probative value.³³ In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.³⁴ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.³⁵ Moreover, under section 776(c)(2) of the Act, Commerce is not required to corroborate any CVD rate applied in a separate segment of the same proceeding.

Finally, under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if

²⁶ See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from China*); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

²⁷ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (1994) (SAA) at 870.

²⁸ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

²⁹ *Id.*, 337 F.3d at 1382.

³⁰ *Id.*

³¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel*, 337 F.3d at 1382-83.

³² See SAA at 870.

³³ *Id.*

³⁴ *Id.* at 869.

³⁵ *Id.* at 869-870.

there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.³⁶

For purposes of these preliminary results, we are applying AFA in the circumstances outlined below.

B. Application of AFA to the GOC and Non-Responsive Mandatory Respondents Shanghai Yata, Xiamen Topu, and Zhejiang Jingu

As discussed in the “Background” section above, the GOC and mandatory respondents, Shanghai Yata and Xiamen Topu, have not participated in this review or responded to Commerce’s initial questionnaire. In the investigation, we determined that Shanghai Yata was cross-owned with Zhejiang Jingu.³⁷ There is no information on the record of this administrative review that would lead Commerce to reconsider that determination. Accordingly, we continue to preliminarily determine that Shanghai Yata was cross-owned with Zhejiang Jingu during the POR. In addition, on May 6, 2021, Zhejiang Jingu informed Commerce that it and Shanghai Yata did not intend to participate in the administrative review.³⁸ Therefore, we find that the GOC, Shanghai Yata, Xiamen Topu, and Zhejiang Jingu withheld information that had been requested and failed to provide information within the established deadlines. By not responding to the initial questionnaire, the GOC, Shanghai Yata, Xiamen Topu, and Zhejiang Jingu also significantly impeded this proceeding. Thus, for these preliminary results, pursuant to sections 776(a)(1) and 776(a)(2)(A) through (C) of the Act, we are basing our findings regarding each program on the facts otherwise available.

Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because by not responding to the initial questionnaire, the GOC, Shanghai Yata, Xiamen Topu, and Zhejiang Jingu did not cooperate to the best of their ability to comply with Commerce’s requests for information in this review. Accordingly, we preliminarily find that the application of AFA is warranted to ensure that the GOC, Shanghai Yata, Xiamen Topu, and Zhejiang Jingu do not obtain a more favorable result by failing to cooperate than if they had fully complied with Commerce’s requests for information.

As a result of the GOC’s non-cooperation, we preliminarily find, as AFA, that each of the subsidy programs in this administrative review constituted a financial contribution under sections 771(5)(B) and (D) of the Act and is specific under section 771(5A) of the Act. Further, as AFA, we preliminarily find that Shanghai Yata, Xiamen Topu, and Zhejiang Jingu used and benefitted from each program being examined during the POR, and we selected program-specific AFA rates pursuant to Commerce’s CVD AFA hierarchy for administrative reviews, as discussed below.

C. Selection of the AFA Rates

Consistent with section 776(d) of the Act, it is Commerce’s practice in CVD proceedings to apply an AFA rate for a non-cooperating company using the highest calculated program-specific rates

³⁶ See section 776(d)(3) of the Act.

³⁷ See *Final Investigation Determination*.

³⁸ See Notice Regarding Participation.

determined for the identical or similar programs.³⁹ Specifically, under the first step Commerce’s CVD AFA hierarchy for administrative reviews, Commerce applies the highest non-*de minimis* rate calculated for the identical program in any segment of the same proceeding.⁴⁰ If there is no identical program match within the same proceeding, or if the rate is *de minimis*, under step two of the hierarchy, Commerce applies the highest non-*de minimis* rate calculated for a similar program within any segment of the same proceeding. If there is no non-*de minimis* rate calculated for a similar program within the same proceeding, under step three of the hierarchy, Commerce applies the highest non-*de minimis* rate calculated for an identical or similar program in another CVD proceeding involving the same country. Finally, if there is no non-*de minimis* rate calculated for an identical or similar program in another CVD proceeding involving the same country, under step four, Commerce applies the highest calculated rate for any program from the same country that the industry subject to the review could have used.⁴¹

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

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances, in deriving an AFA rate under section 776(d)(1)(A) of the Act described above; section 776(d)(2) of the Act states that Commerce “may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available.” No legislative history accompanied this provision of the Trade Preferences Extension Act of 2015. Accordingly, Commerce is left to interpret this “evaluation by the administering authority of the situation” language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

In the instant case, the record does not suggest that we should apply a rate other than the highest rate envisioned under the appropriate step of the hierarchy, pursuant to section 776(d)(1) of the Act for all programs included in the AFA rate for the mandatory respondents. As explained above, the mandatory respondents did not respond to Commerce’s questionnaires and Shanghai Yata and Zhejiang Jingu withdrew their participation in the administrative review, and, as such, they have

³⁹ See, e.g., *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review*; 2014, 82 FR 27466 (June 15, 2017) (*Chlorinated Isocyanurates from China*; 2014), and accompanying IDM at “Use of Facts Otherwise Available and Adverse Inferences”; and *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013), and accompanying IDM at 13.

⁴⁰ For purposes of selecting AFA program rates, we normally consider rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at “1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program” and “2. Grant Under the Elimination of Backward Production Capacity Award Fund.”

⁴¹ See section 776(d) of the Act; see also *SolarWorld Americas, Inc. v. United States*, 229 F. Supp. 3d 1362 (CIT 2017) (sustaining Commerce’s CVD AFA hierarchy and selection of AFA rate for CVD reviews).

failed to cooperate to the best of their ability. Additionally, pursuant to section 776(d)(2) of the Act, we find that the record does not support the application of an alternative rate.

Section 776(d)(1) of the Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: (1) Commerce may apply its hierarchical methodology; and (2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.⁴²

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴³ Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.”⁴⁴ It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.⁴⁵

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

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a “pool” of available rates that Commerce can rely upon for purposes of identifying an AFA rate for a particular program. In reviews, for example, this “pool” of rates could include a non-*de minimis*

⁴² This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B). Under that provision, “any dumping margin from any segment of the proceeding under the applicable antidumping order” may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

⁴³ See SAA at 870; see also *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012) (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (finding that “[t]he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate with Commerce’s investigation, not to impose punitive damages.’”) (*De Cecco*)).

⁴⁴ See *De Cecco*, 216 F.3d at 1032.

⁴⁵ Commerce has adopted a practice of applying its hierarchy in CVD cases. See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at 28-31 (applying the AFA hierarchical methodology within the context of a CVD investigation); and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of a CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. See, e.g., *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

rate calculated for the identical program in any segment of the proceeding, a non-*de minimis* rate calculated for a similar program in any segment of that proceeding, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy therefore does not focus on identifying the highest possible rate that could be applied from among the “pool” of rates; rather, it adopts the factors identified above of inducement, relevancy to the industry and to the particular program.

In selecting AFA rates for Shanghai Yata, Xiamen Topu, and Zhejiang Jingu, we are guided by Commerce’s methodology detailed above. For the income tax reduction or exemption programs, we are applying an adverse inference that Shanghai Yata, Xiamen Topu, and Zhejiang Jingu paid no income taxes during the POR. The standard income tax rate for corporations in China in effect during the POR was 25 percent.⁴⁶ Thus, the highest possible benefit for all income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis to certain programs identified below.⁴⁷ Consistent with past practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and value-added tax (VAT) exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.⁴⁸ For other programs listed below, we selected, as AFA, the highest calculated program-specific non-*de minimis* rates in prior segments of this proceeding (*e.g.*, the final determination in the underlying investigation). For programs where there were no above *de minimis* subsidy rates calculated in previous reviews or the investigation for the identical or similar programs, we applied the highest above *de minimis* subsidy rate calculated in another China proceeding for the identical program (where possible) or similar program.

Loans and Credits Programs

- Government Policy Lending Program
- Preferential Loans to State-Owned Enterprises (SOEs)
- Discounted Loans for Export-Oriented Enterprises
- Preferential Loans for Key Projects and Technologies
- Treasury Bond Loans
- Loans & Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
- Export Seller’s Credit
- Export Buyer’s Credit
- Export Credit Insurance Subsidies
- Export Credit Guarantees
- Provision of Hot-Rolled Steel For LTAR

⁴⁶ See *Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission in Part, and Intent to Rescind in Part*; 2018, 85 FR 82437 (December 18, 2020), and accompanying PDM at 14, unchanged in *Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review*; 2018, 86 FR 21275 (April 22, 2021), and accompanying IDM at 7.

⁴⁷ These programs are: Income Tax Reductions for High- And New-Technology Enterprises (HNTes), Enterprise Income Tax Law, Research and Development (R&D) Program, Income Tax Reduction for Advanced Technology FIEs, Preferential Income Tax Policy for Enterprises in The Northeast Region, and Forgiveness of Tax Arrears for Enterprises Located in The Old Industrial Bases of Northeast China.

⁴⁸ See, *e.g.*, *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 84 FR 5989 (February 25, 2019), and accompanying PDM at 28-29, unchanged in *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances*, 84 FR 32723 (July 9, 2019).

- Provision of Land-Use Rights to Steel Wheel Producers
- Government Provision of Land to SOEs
- Provision of Land for LTAR To Foreign-Invested Enterprises (FIEs)
- Provision of Land-Use Rights in Certain Industrial and Other Special Economic Zones
- Provision of Electricity For LTAR
- Provision of International Shipping Services for LTAR

Other Tax Programs

- Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs
- Income Tax Credits for Domestically Owned Companies Purchasing Domestically-Produced Equipment
- Fixed Assets Investment Orientation Regulatory Tax Reduction or Exemption
- Income Tax Reductions for High- And New-Technology Enterprises (HNTes)
- Enterprise Income Tax Law, Research and Development (R&D) Program
- Income Tax Reduction for Advanced Technology FIEs
- Preferential Income Tax Policy for Enterprises in The Northeast Region
- Forgiveness of Tax Arrears for Enterprises Located in The Old Industrial Bases of Northeast China
- Import Duty Exemptions for Imported Equipment
- VAT Exemptions for Imported Equipment
- VAT Refunds for FIEs On Purchases of Chinese-Made Equipment
- VAT Exemptions and Deductions for Northeast Region

Grant Programs

- Famous Brands Program
- SME International Market Exploration Fund
- Export Assistance Grants
- Grants for Export Credit Insurance
- Export Interest Subsidies for Enterprises Located in Zhejiang Province
- Foreign Trade Development Fund Program Grants
- Special Fund for Energy-Saving Technology Reform
- The Clean Production Technology Fund
- Emission Reduction Award
- State Special Fund for Promoting Key Industries and Innovation Technologies
- State Key Technology Renovation Project Fund Program
- Initial Public Offering (IPO) Grants from the Hangzhou Prefecture
- IPO Grants from the City of Fuyang
- Fuyang City Government Grant for Enterprises Paying Over RMB 10 Million in Taxes
- Fuyang and Hangzhou City Government Grants for Enterprises Operating Technology and Research and Development Centers
- Hangzhou City Government Grants Under the Hangzhou Excellent New Products/Technology Award
- Fuyang City Government Grants Under the Export of Sub-Contract Services Program
- Export Contingent Grants Provided by the Fuyang City Government

- Investment Grants from Fuyang City Government for Key Industries

Based on the methodology described above, we preliminarily determine the net AFA countervailable subsidy rate for Shanghai Yata, Xiamen Topu, and Zhejiang Jingu to be 388.31 percent *ad valorem*.

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁴⁹ The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.⁵⁰

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.⁵¹ Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁵²

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.⁵³

In the absence of record evidence concerning the non-responsive companies’ usage of the subsidy programs at issue, due to their decision not to participate in this review, we have reviewed the information concerning Chinese subsidy programs in past proceedings of this case, as well as other China CVD cases. For all programs where we selected the program-specific rates from the underlying investigation, Commerce is not required to corroborate the AFA rates for these programs because the selected program-specific rates are from a prior segment of this proceeding.⁵⁴ For other programs where we selected rates from other China CVD cases, we find that, because these are the same or similar programs, they are relevant to the programs in this review. The relevance of these rates is that they are actual calculated subsidy rates for Chinese programs, from which the non-responsive companies could actually receive a benefit. Due to the lack of

⁴⁹ See SAA at 870.

⁵⁰ *Id.*

⁵¹ *Id.* at 869-870.

⁵² See section 776(d)(3) of the Act.

⁵³ See, e.g., *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017), and accompanying IDM at 14 (citing *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996)).

⁵⁴ See section 776(c)(2) of the Act.

participation by these companies and the resulting lack of record information concerning these programs, we have corroborated the rates we selected to use as AFA to the extent practicable pursuant to section 776(c)(1) for these preliminary results.

VII. CONCLUSION

We recommend that you approve the preliminary findings described above.



Agree

Disagree

7/1/2021

X



Signed by: CHRISTIAN MARSH

Appendix

Total AFA Rate

Program Name	Rate	Source
Preferential Lending		
Government Policy Lending Program	10.54%	<i>See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 75 FR 70201 (November 17, 2010) (Coated Paper from China).</i>
Preferential Loans to State-Owned Enterprises (SOEs)		
Discounted Loans for Export-Oriented Enterprises	10.54%	<i>Coated Paper from China</i>
Preferential Loans for Key Projects and Technologies	10.54%	<i>Coated Paper from China</i>
Treasury Bond Loans	10.54%	<i>Coated Paper from China</i>
Loans & Interest Subsidies Provided Pursuant to The Northeast Revitalization Program	10.54%	<i>Coated Paper from China</i>
Export Credit Subsidies		
Export Seller's Credit	10.54%	<i>Coated Paper from China</i>
Export Buyer's Credit	10.54%	<i>Coated Paper from China</i>
Export Credit Insurance Subsidies	10.54%	<i>Coated Paper from China</i>
Export Credit Guarantees	10.54%	<i>Coated Paper from China</i>
Provision of Goods and Services for Less Than Adequate Remuneration (LTAR)		
Provision of Hot-Rolled Steel For LTAR	44.91%	<i>Certain Steel Grating From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 32362 (June 8, 2010), and accompanying IDM at "Government Provision of Hot-Rolled Steel for Less Than Adequate Remuneration" (the underlying rate was calculated in Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order, 73 FR 42545 (July 22, 2008)).</i>

Provision of Land-Use Rights to Steel Wheel Producers	13.36%	<i>Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances</i> , 73 FR 35639 (June 24, 2008) (<i>Sacks from China</i>).
Government Provision of Land to SOEs	13.36%	<i>Sacks from China</i>
Provision of Land for LTAR To Foreign-Invested Enterprises (FIEs)	13.36%	<i>Sacks from China</i>
Provision of Land-Use Rights in Certain Industrial and Other Special Economic Zones	13.36%	<i>Sacks from China</i>
Provision of Electricity For LTAR	20.06%	<i>Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination</i> ; 2012, 79 FR 56560 (September 22, 2014), and accompanying IDM at "Electricity for LTAR."
Provision of International Shipping Services for LTAR	5.34%	<i>Calcium Hypochlorite</i> and accompanying IDM at 10 (where we used this as the AFA rate for the same program. The underlying rate was for "Provision of Electricity for LTAR" calculated in <i>Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review</i> ; 2011, 78 FR 49475 (August 14, 2013), and accompanying IDM at 19).
Direct Tax Exemptions and Reductions		
Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs	1.68%	<i>Steel Grating</i>).
Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment	1.68%	<i>Steel Grating</i> and accompanying IDM at 14.

Fixed Assets Investment Orientation Regulatory Tax Reduction or Exemption	9.71%	<i>See New Pneumatic Off-the-Road Tires from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review, 75 FR 64268, 64275 (October 19, 2010) (“C. VAT and Import Duty Exemptions on Imported Material”), unchanged in New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review, 76 FR 23286 (April 26, 2011) (OTR Tires from China).</i>
Income Tax Reductions for High- And New-Technology Enterprises (HNTEs)	25.00%	The standard income tax rate for corporations in China during the period of investigation was 25 percent. Thus, the highest possible benefit for all income tax reduction or exemption programs combined is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (i.e., finding that the five programs, combined, provide a 25 percent benefit)
Enterprise Income Tax Law, Research and Development (R&D) Program		
Income Tax Reduction for Advanced Technology FIEs		
Preferential Income Tax Policy for Enterprises in The Northeast Region		
Forgiveness of Tax Arrears for Enterprises Located in The Old Industrial Bases of Northeast China		
Indirect Tax Exemptions and Reductions		
Import Duty Exemptions for Imported Equipment	9.71%	<i>OTR Tires from China</i>
VAT Exemptions for Imported Equipment	9.71%	<i>OTR Tires from China</i>
VAT Refunds for FIEs On Purchases of Chinese-Made Equipment	9.71%	<i>OTR Tires from China</i>
VAT Exemptions and Deductions for Northeast Region	9.71%	<i>OTR Tires from China</i>
Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring	9.71%	<i>OTR Tires from China</i>
Grants		
Famous Brands Program	0.62%	<i>See Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014, 82 FR</i>

		27466 (June 15, 2017) (<i>Isos from China-2014</i>).
SME International Market Exploration Fund	0.62%	<i>Isos from China-2014</i>
Export Assistance Grants	0.62%	<i>Isos from China-2014</i>
Grants for Export Credit Insurance	0.62%	<i>Isos from China-2014</i>
Export Interest Subsidies for Enterprises Located in Zhejiang Province	0.62%	<i>Isos from China-2014</i>
Foreign Trade Development Fund Program Grants	0.62%	<i>Isos from China-2014</i>
Special Fund for Energy-Saving Technology Reform	0.62%	<i>Isos from China-2014</i>
The Clean Production Technology Fund	0.62%	<i>Isos from China-2014</i>
Emission Reduction Award	0.62%	<i>Isos from China-2014</i>
State Special Fund for Promoting Key Industries and Innovation Technologies	0.62%	<i>Isos from China-2014</i>
State Key Technology Renovation Project Fund Program	0.62%	<i>Isos from China-2014</i>
Initial Public Offering (IPO) Grants from the Hangzhou Prefecture	0.62%	<i>Isos from China-2014</i>
Initial Public Offering (IPO) Grants from the City of Fuyang	0.62%	<i>Isos from China-2014</i>
Fuyang City Government Grant for Enterprises Paying Over RMB 10 Million in Taxes	0.62%	<i>Isos from China-2014</i>
Fuyang And Hangzhou City Government Grants for Enterprises Operating Technology and Research and Development Centers	0.62%	<i>Isos from China-2014</i>
Hangzhou City Government Grants Under the Hangzhou Excellent New Products/Technology Award	0.62%	<i>Isos from China-2014</i>
Fuyang City Government Grants Under the Export of Sub-Contract Services Program	0.62%	<i>Isos from China-2014</i>
Export Contingent Grants Provided by the Fuyang City Government	0.62%	<i>Isos from China-2014</i>

Investment Grants from Fuyang City Government for Key Industries	0.62%	<i>Isos from China-2014</i>
Total AFA Rate for Shanghai Yata, Xiamen Topu, and Zhejiang Jingu:	388.31%	