UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-570-037
Investigation
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DATE: January 4, 2017

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China: Issues and Decision Memorandum for the Final Affirmative Determination

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I. SUMMARY

The Department of Commerce (the "Department") determines that countervailable subsidies are being provided above the de minimis level to producers and exporters of certain biaxial integral geogrid products ("geogrids") from the People's Republic of China ("PRC"), as provided for in section 705 of the Tariff Act of 1930, as amended (the "Act"). Below is a complete list of issues in this investigation for which we received comments from interested parties:

Issues:

General Issues:
Comment 1: Whether the Export Buyer's Credit Program was Used by Respondents
Comment 2: Policy Loans for Geogrids Industry
Comment 3: Whether the Provision of Polypropylene for LTAR is Specific
Comment 4: Whether to Attribute Polypropylene LTAR Benefits to Only Polypropylene Products
Comment 5: Whether to Use a Different Polypropylene Benchmark
Comment 6: Whether to Remove Certain Freight Expenses from the Polypropylene Benchmark
Comment 7: Whether to Exclude Non-Production Related Income from the Denominator
Comment 8: Whether to Exclude Negative Offsets in the Benefit Calculation for Electricity

BOSTD Specific Issues:
Comment 9: Whether to Apply AFA to BOSTD's Electricity
Comment 10: Whether to Include Certain Loans in the Subsidy Calculations
Comment 11: Whether to Include Certain Electricity Funds
Comment 12: Whether the Department's Finding of Critical Circumstance for BOSTD is Contrary to Law

Taian Modern Specific Issue:
Comment 13: Land-Use Rights for LTAR, Plant and Equipment for LTAR, and Installment Plans for Land-Use Rights

II. BACKGROUND

A. Case History

On June 24, 2016, we published the Preliminary Determination for this investigation.[1] On July 26, 2016, we published our Amended Preliminary Determination.[2] In the Preliminary Determination and Amended Preliminary Determination, we calculated above de minimis rates for BOSTD[3] and Taian Modern.[4] Twenty-five companies did not respond to our request for information,[5] and as a result we applied a rate based on adverse facts available ("AFA") to these companies. The all-others rate was calculated using a simple average of the rates of BOSTD and Taian Modern. We conducted verifications of the questionnaire responses submitted by BOSTD, Taian Modern, and the Government of China ("GOC"), between October 12 and 20, 2016.[6] On November 21, 2016, we issued a post-preliminary analysis memorandum.[7] We received a case brief from Petitioners,[8] the GOC, BOSTD, and Taian Modern on November 29, 2016.[9] On December 5, 2016, we received rebuttal briefs from Petitioner, BOSTD and Taian Modern.[10]

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[1] See Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China: Preliminary Determination and Alignment of Final Determination with Final Antidumping Duty Determination, 81 FR 41292 (June 24, 2016) ("Preliminary Determination") and accompanying Preliminary Decision Memorandum ("PDM").
[2] See Certain Biaxial Integral Geogrid Products from the People's Republic of China: Amended Preliminary Results of Countervailing Duty Investigation, 81 FR 48384 (July 26, 2016) and accompanying Ministerial Error Memorandum ("Amended Preliminary Determination").
[3] BOSTD Geosynthetics Qingdao Ltd. ("BOSTD Qingdao") and Beijing Orient Science & Technology Development Co., Ltd. ("BOSTD Beijing"), collectively ("BOSTD").
[4] Taian Modern Plastic Co., Ltd. ("Taian Modern").
[5] Hereafter referred to as the "Non-Responsive Companies."
[6] See Memoranda to the File, through Catherine Bertrand, Program Manager, Office V, from Bob Palmer, Ryan Mullen, and Amanda Brings, International Trade Analysts, re: "Verification Report: Taian Modern Plastic Co., Ltd." ("Taian Modern Verification Report"), dated November 1, 2016, and "Verification of the Questionnaire Responses of BOSTD Geosynthetics Qingdao Ltd. ("BOSTD")" ("BOSTD Verification Report"), dated November 1, 2016, and "Verification of the Questionnaire Responses Submitted by the Government of China," dated November 8, 2016 ("GOC Verification Report").
[7] See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, re: "Post-Preliminary Analysis of Countervailing Duty Investigation: Certain Biaxial Integral Geogrids from the People's Republic of China," dated November 21, 2016, ("Post-Preliminary Analysis").
[8] Tensar Corporation ("Petitioners").
[9] See Letter to the Department from Tensar Corporation, "Countervailing Duty Investigation of Certain Biaxial Integral Geogrids from the People's Republic of China," dated November 29, 2016, ("Petitioner's Case Brief"), and Letter to The Honorable Penny Pritzker, re: "Certain Biaxial Integral Geogrids from the People's Republic of China: Case Brief," dated November 29, 2016, ("Taian Modern's Case Brief"), and Letter to The Honorable Penny Pritzker, re: "BOSTD Administrative Case Brief: Countervailing Duty Investigation on Biaxial Integral Geogrid Products from the People's Republic of China," dated November 29, 2016, ("BOSTD's Case Brief") and Letter to The Honorable Penny Pritzker, re:

We did not receive any comments in the case and rebuttal briefs regarding the memorandum that we issued in the Preliminary Determination analyzing certain comments received on the scope of this investigation.[11] Thus, the scope of this investigation remains unchanged for the final determination.

B. Period of Investigation

The period of investigation ("POI") is January 1, 2015, through December 31, 2015.

III. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

The Department preliminarily determined that critical circumstances existed for imports of the merchandise under consideration from BOSTD and "all-other" exporters or producers.[12] Based on our examination of the data on the record, we continue to determine that critical circumstances exist for BOSTD and "all-other" exporters or producers, but do not exist for Taian Modern. See also below at Comment 12.

IV. SCOPE OF THE INVESTIGATION

The products covered by the scope are certain biaxial integral geogrid products. Biaxial integral geogrid products are a polymer grid or mesh material (whether or not finished, slit, cut-to-length, attached to woven or non-woven fabric or sheet material, or packaged) in which four-sided openings in the form of squares, rectangles, rhomboids, diamonds, or other four-sided figures predominate. The products covered have integral strands that have been stretched to induce molecular orientation into the material (as evidenced by the strands being thinner in width toward the middle between the junctions than at the junctions themselves) constituting the sides of the openings and integral junctions where the strands intersect. The scope includes products in which four-sided figures predominate whether or not they also contain additional strands intersecting the four-sided figures and whether or not the inside corners of the four-sided figures are rounded off or not sharp angles. As used herein, the term "integral" refers to strands and junctions that are homogenous with each other. The products covered have a tensile strength of greater than 5 kilonewtons per meter ("kN/m") according to American Society for Testing and Materials ("ASTM") Standard Test Method D6637/D6637M in any direction and average overall flexural stiffness of more than 100,000 milligram-centimeter according to the ASTM D7748/D7748M Standard Test Method for Flexural Rigidity of Geogrids, Geotextiles and Related Products, or other equivalent test method standards.

"GOC Administrative Case Brief: Countervailing Duty Investigation on Biaxial Integral Geogrid Products from the People's Republic of China," dated November 29, 2016, ("GOC's Case Brief").

[10] See Letter to the Department from Tensar Corporation, "Countervailing Duty Investigation of Certain Biaxial Integral Geogrids from the People's Republic of China," dated December 5, 2016, ("Petitioner's Rebuttal Brief"), and Letter to The Honorable Penny Pritzker, re: "Certain Biaxial Integral Geogrids from the People's Republic of China: Rebuttal Case Brief," dated December 5, 2016, ("Taian Modern's Rebuttal Brief"), and Letter to The Honorable Penny Pritzker, re: "BOSTD Rebuttal Brief: Countervailing Duty Investigation on Biaxial Integral Geogrid Products from the People's Republic of China," dated December 5, 2016, ("BOSTD's Rebuttal Brief").

[11] See Memorandum to the File, from Bob Palmer, International Trade Analyst, re: "Scope Comments and Preliminary Scope Memo," dated August 19, 2016, at Attachment 3.

[12] See PDM at 5-6.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise further processed in a third country, including by trimming, slitting, coating, cutting, punching holes, stretching, attaching to woven or non-woven fabric or sheet material, or any other finishing, packaging, or other further processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the biaxial integral geogrid.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under the following subheading: 3926.90.9995. Subject merchandise may also enter under subheadings 3920.20.0050 and 3925.90.0000. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

V. APPLICATION OF THE COUNTERVAILING DUTY LAW TO IMPORTS FROM THE PRC

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.[13] In CFS from the PRC, the Department found that:

> . . . given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.[14]

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.[15] Furthermore, on March 13, 2012, Public Law 112-99 was enacted which confirms that the Department has the authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as the PRC.[16] The effective date of the enacted legislation makes clear that this provision applies to this proceeding.[17]

Additionally, for the reasons stated in CWP from the PRC, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of this CVD investigation.[18]

VI. SUBSIDIES VALUATION

[13] See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) ("CFS from the PRC").
[14] Id., at Comment 6.
[15] See, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008) ("CWP from the PRC") and accompanying Issues and Decision Memorandum ("IDM") at Comment 1.
[16] Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.
[17] See Public Law 112-99, 126 Stat. 265 §1(b).
[18] See CWP from the PRC, and accompanying IDM at Comment 2.

A. Allocation Period

The Department has made no changes to the allocation period and the allocation methodology used in the Preliminary Determination and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology. For a description of the allocation period and the methodology used for this final determination, see the Preliminary Determination.[19]

B. Attribution of Subsidies

The Department has made no changes to the methodologies used in the Preliminary Determination for attributing subsidies and no issues were raised by interested parties in case briefs regarding the attribution of subsidies. For descriptions of the methodologies used for this final determination, see the Preliminary Determination.[20]

C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, e.g., to the respondent's export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the Final Analysis Memoranda, prepared for this final determination.[21] As a result of verification, and in consideration of comments received in case briefs,[22] we have revised the 2015 total sales value for BOSTD and Taian Modern to incorporate the corrected 2015 free on board ("FOB") total sales, and to calculate the subsidy rates in this final determination.

[19] See PDM at 7.

[20] Id.

[21] See Memorandum to the File, through Catherine Bertrand, Program Manager, from Ryan Mullen, Case Analyst, "Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China : Taian Modern Plastic Co., Ltd. Final Calculation Memo," dated concurrently with this memorandum ("Taian Modern Calculation Memo"), and Memorandum to the File, through Catherine Bertrand, Program Manager, from Bob Palmer, Case Analyst, "Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China: BOSTD Geosynthetics Qingdao Ltd. Final Calculation Memo," dated concurrently with this memorandum ("BOSTD Calculation Memo") (collectively, "Final Analysis Memoranda").

[22] See below at Comment 7.

VII. BENCHMARKS AND DISCOUNT RATES

The Department made no changes to the benchmarks or discount rates used in the Preliminary Determination. For a description of the benchmarks and discount rates used for this final determination, see the Preliminary Determination and the Final Analysis Memoranda.

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

The Department relied on "facts otherwise available," including AFA, for several findings in the Preliminary Determination and the Post-Preliminary Analysis. With one exception, the Department has not made any changes to its use of facts otherwise available and AFA from the Preliminary Determination and Post-Preliminary Analysis. For a description of these decisions, see the Preliminary Determination and Post-Preliminary Analysis.[23] In the single change from the Preliminary Determination and Post-Preliminary Analysis, we are now relying on AFA in finding that BOSTD and Taian Modern used and benefited from Export Buyer's Credits (discussed below).

Export Buyer's Credit from the Export-Import Bank of China

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.[24]

Section 776(b) of the Act further provides that the Department may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) 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.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent

[23] See Attachment for the subsidy rates used to calculate the AFA rate for non-cooperating companies.
[24] On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this investigation.

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."[25] The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.[26] In analyzing whether information has probative value, it is the Department's practice to examine the reliability and relevance of the information to be used.[27] However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.[28]

Finally, under the new section 776(d) of the Act, the Department may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use. Additionally, when selecting an AFA rate, the Department is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[29] Consistent with section 776(d) of the Act and our established practice, we selected the highest calculated rate for the same or similar program as AFA.[30]

When selecting rates, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program (excluding zero rates). If there is no identical program above zero in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding rates that are de minimis). If no identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated rate for the similar/comparable program. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program in a CVD case involving the same country, but we do not use a rate from a program if the industry in the proceeding cannot use that program.[31]

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[25] Id., at 870.
[26] Id.
[27] See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).
[28] See SAA at 869-870.
[29] See section 776(d)(3) of the Act.
[30] See, e.g., Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 78 FR 50391 (August 19, 2013) ("Shrimp from the PRC"), and accompanying IDM at 13; see also Essar Steel Ltd. v. United States, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").
[31] See Shrimp from the PRC, and accompanying IDM at 13-14.

The Department has concluded that the use of AFA is warranted in determining the countervailability of Export Buyer's Credits from the Export-Import Bank of China. As discussed below in response to Comment 1, the GOC did not provide the requested information needed to allow the Department to verify this program. Pursuant to sections 776(a)(2)(C) and (2)(D) of the Act, when an interested party significantly impedes a proceeding and/or does not provide information that can be verified, the Department uses facts otherwise available. Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its actions at verification as described in Comment 1, failed to cooperate by not acting to the best of its ability. Accordingly, the Department may select from the available facts using an adverse inference. Relying on AFA, we find, as discussed below under Comment 1, that BOSTD and Taian Modern used and benefited from this program. Based on that, we are applying the rate of 10.54 percent ad valorem, the highest rate determined for a similar program in a prior PRC proceeding, as the rate for BOSTD and Taian Modern.[32]

With regard to the reliability aspect of corroboration, we note that the rate on which we are relying is a subsidy rate calculated in another PRC CVD proceeding. Further, the calculated rate was based on information about the same or similar programs. Moreover, no information has been presented that calls into question the reliability of the calculated rate that we are applying for this program. Finally, 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 corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate, the Department will not use it.[33] As discussed below, due to the failure of the GOC to cooperate to the best of its ability, the Department relied on information concerning PRC subsidy programs from other proceedings. In light of the above, the Department corroborated the rate it selected to use as AFA for this program to the extent practicable for this final determination. Because this rate reflects the actual behavior of the GOC with respect to similar subsidy programs, and lacking adequate verified information from the GOC, BOSTD, and Taian Modern demonstrating otherwise, the Department corroborated the rate that it selected to the extent practicable.

In determining the AFA rate we will apply to each of the non-responsive companies, we are guided by the Department's methodology detailed above. We have selected, as AFA, the highest calculated program-specific above-zero rates determined for the cooperating respondents in the instant investigation. Because the Department has made certain changes to BOSTD's and Taian Modern's calculated rates as described below, we have made changes to the applicable subsidy rate calculated for BOSTD Qingdao or Taian Modern for the following programs:

- Foreign Trade Promotion Fund
- High Tech Base Support Grant
- Installment Plans for Land-Use Rights

[32] See Preliminary Determination, at 23.
[33] See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996).

- Local Small and Medium Enterprise Program
- Policy Loans to the Geogrids Industry
- Preferential Deduction of Research and Development ("R&D") Expenses for HNTES
- Preferential Income Tax Program for High or New Technology Enterprise ("HNTE")
- Product Line Change Grant
- Provision of Electricity for LTAR
- Provision of Land Use Rights for LTAR
- Provision of Polypropylene for LTAR

As noted in the Preliminary Determination, we applied an adverse inference that each of the non-responsive companies paid no income tax during the POI:

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- Feicheng Zone Income Tax Subsidy
- Income Tax Benefits for Domestically-Owned Enterprises Engaging in R&D
- Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment
- Preferential Income Tax Subsidies for High or New Technology FIEs
- Preferential Income Tax Subsidies for Productive FIEs
- Preferential Tax Programs for Export-Oriented FIEs
- Reduction In or Exemption From Fixed Assets Investment Orientation Regulatory Tax
- Taishan Zone Income Tax Program

With respect to income tax programs, we apply an adverse inference that the Non-Responsive Companies paid no income taxes during the POI. The standard corporate income tax rate in China is 25 percent. We, therefore, find the highest possible benefit for all income tax exemption and reduction programs combined is 25 percent (i.e., the income tax programs combined provide a countervailable benefit of 25 percent). Consistent with past practice, the 25 percent AFA rate does not apply to income tax credit and rebate, accelerated depreciation, or import tariff and value add tax exemption programs because such programs may not affect the tax rate.[34]

For all other programs not mentioned above, we are applying, where available, the highest above-de minimis subsidy rate calculated for the same or comparable programs in a PRC CVD investigation or administrative review. For this final determination, we are able to match, based on program names, descriptions, and benefit treatments, the following programs to the same programs from other PRC CVD proceedings:

- Export Seller's Credits from the Export-Import Bank of China[35]

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[34] See, e.g., Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 18521 (April 4, 2011) at "Application of Adverse Inferences: Non-Cooperative Companies."

[35] See Certain Coated Paper Suitable for High Quality Print Graphics Using Sheet Fed Presses from the People's Republic of China: Amended Final Countervailing Duty Determination and Countervailing Duty Order, 75 FR 70201, 70202 (November 17, 2010) ("Coated Paper Investigation Amended Final") and accompanying IDM; see also, Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of

- Export Buyer's Credits from the Export-Import Bank of China[36]
- GOC and Sub-Central Government Subsidies for the Development of Famous Brands and World Top Brands[37]
- Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries[38]
- Provision of Land to SOEs for LTAR[39]
- Preferential Loans for SOEs[40]
- State Key Technology Project Fund[41]

We are able to match, based on program type and benefit treatment, the following programs to similar/comparable programs from other PRC CVD proceedings:

- Administrative Fee Reductions and Waivers[42]
- Export Credit Insurance[43]
- Export Assistance Grants[44]
- Export Credit Guarantees[45]
- Exemptions from Urban Infrastructure Support Fees[46]
- Exemptions and Waivers of Fees for Supporting Facilities of Infrastructure[47]
- Feicheng Zone Infrastructure Fee Exemption[48]
- Grants from District Income Tax Funds[49]

China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part, 80 FR 34888 (June 18, 2015) and accompanying IDM.

[36] See New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Review, 75 FR 64268 (October 19, 2010), unchanged in the final determination, 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) ("Off-the-Road Tires from the PRC CVD Review").

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

[38] 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) at "C: VAT and Import Duty Exemptions on Imported Material," unchanged in final, 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) ("Tires from the PRC Final Results").

[39] See Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008) ("Sacks from the PRC") at 2. Government Provision of Land for Less Than Adequate Remuneration."

[40] See Coated Paper Investigation Amended Final and accompanying IDM.

[41] See Chlorinated Isocyanurates and accompanying IDM.

[42] See Certain Uncoated Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination 81 FR 3110 (January 20, 2016) ("Uncoated Paper 2016") and IDM.

[43] See Chlorinated Isocyanurates and accompanying IDM.

[44] Id.

[45] Id.

[46] See Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 74 FR 683 (January 7, 2009) ("Shelving and Racks") and accompanying IDM.

[47] Id.

[48] Id.

- Grants to Top Listed Enterprises[50]
- Industrial Park Relocation Fund[51]
- Interest Subsidies for SOEs[52]
- Ling County Economic Development Zone and Geosynthetics Production Base Grants
- "One Project, One Discussion" Program[53]
- Plant and Equipment Provided for LTAR[54]
- Taishan Qingchun Development Zone Incentives[55]
- Taishan Zone Infrastructure Fee Exemption[56]
- Taishan Zone Fiscal Charge Exemptions and Reductions[57]
- Taishan Zone Grants for Fixed Assets[58]
- Taishan Zone Collection of Charges Exemption[59]

Accordingly, we determine the AFA countervailable subsidy rate is 152.50 percent ad valorem.[60]

IX. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

The Department made no changes to the Preliminary Determination or Post-Preliminary Analysis with regard to the methodology used to calculate the subsidy rates for the following programs. For the descriptions, analyses, and calculation methodologies of these programs, see the Preliminary Determination and Post-Preliminary Analysis. Except where noted, no issues were raised by interested parties in case briefs regarding these programs. Therefore, the only changes in the final company-specific program rates from the Preliminary Determination for each of the following programs is the incorporation of BOSTD's and Taian Modern's corrected denominators.[61] The final BOSTD and Taian Modern program rates are as follows.

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[49] Id.
[50] Id.
[51] Id.
[52] See Chlorinated Isocyanurates and accompanying IDM.
[53] See Shelving and Racks and accompanying IDM.
[54] See Uncoated Paper 2016 and accompanying IDM.
[55] See Shelving and Racks and accompanying IDM
[56] Id.
[57] Id.
[58] See Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part, 80 FR 34888 (June 18, 2015) and accompanying IDM.
[59] See Shelving and Racks and accompanying IDM.
[60] See Attachment.
[61] See Final Analysis Memoranda

1. *Policy Loans to the Geogrids Industry*

The GOC and Taian Modern submitted comments in their case briefs regarding this program.[62] As explained below, the Department has not changed its methodology for calculating the subsidy rates for this program from the Preliminary Determination.

BOSTD: 1.88 percent ad valorem
Taian Modern: 0.70 percent ad valorem

2. *Land-Use Rights for LTAR*

Taian Modern submitted comments in its case brief regarding this program.[63] As explained below, the Department has not changed its methodology for calculating the subsidy rates for this program from the Preliminary Determination.

Taian Modern: 1.75 percent ad valorem

3. *Electricity for LTAR*

Petition and BOSTD submitted comments in their case briefs regarding this program.[64] As noted below in Comment 8, we will exclude negative offsets in the electricity calculations. Further, as noted in Comment 11, we included certain fund charges in BOSTD electricity calculation.[65]

BOSTD: 0.52 percent ad valorem
Taian Modern: 1.34 percent ad valorem

4. *Income Tax Reduction for High and New Technology Enterprises ("HNTES")*

BOSTD: 0.25 percent ad valorem
Taian Modern: 1.74 percent ad valorem

5. *Preferential Deduction of R&D Expenses for HNTES*

BOSTD: 0.20 percent ad valorem

6. *High Tech Base Support Grant*

BOSTD: 0.13 percent ad valorem

7. *Local Small and Medium Enterprise Program*

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[62] See Comment 2.
[63] See Comment 13.
[64] See Comments 8, 9, and 11.
[65] See Comment 11 and BOSTD's Final Analysis Memo.

BOSTD: 0.11 percent ad valorem

8. *Foreign Trade Promotion Fund*

BOSTD: 0.08 percent ad valorem

9. *Product Line Change Grant*

BOSTD: 0.11 percent ad valorem

10. *Provision of Polypropylene for LTAR*

The GOC, BOSTD and Taian Modern submitted comments in their case briefs regarding this program.[66] As explained below, the Department has not changed its methodology for calculating the subsidy rates for this program from the Preliminary Determination.

BOSTD: 1.69 percent ad valorem
Taian Modern: 16.54 percent ad valorem

11. *Plant and Equipment Provided for LTAR*

The Taian Modern submitted comments in its case brief regarding this program.[67] As explained below, the Department has not changed its methodology for calculating the subsidy rates for this program from the Post-Preliminary Analysis.

Taian Modern: 22.32 percent ad valorem

12. *Installment Plans for Land-Use Rights*

The Taian Modern submitted comments in its case brief regarding this program.[68] As explained below, the Department has not changed its methodology for calculating the subsidy rates for this program from the Post-Preliminary Analysis.

Taian Modern: 1.31 percent ad valorem

The Department made changes to its Preliminary Determination decision with regard to the following program based on comments submitted in the case and rebuttal briefs:

13. *Export Buyer's Credits from the Export Import Bank of China*

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[66] See Comments 3, 4, 5, and 6.
[67] See Comment 13.
[68] See Comment 13.

Through this program, the Export Import Bank of China provides loans at preferential rates for the purchase of exported goods from the PRC. The Department found that this program was not used by BOSTD and Taian Modern in the Preliminary Determination.[69] However, the Department was not able to verify the reported non-use of export buyer's credits during verification with the GOC.[70] As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we determine, based upon AFA, that BOSTD and Taian Modern used this program during the POI. We also determine, based upon AFA, that the program provides a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. Our determination regarding the countervailability of this program, our reliance on AFA, and our selection of the appropriate rate to apply to this program are explained in further detail under Comment 1, below. On this basis, we determine a countervailable subsidy rate of 10.54 percent ad valorem for BOSTD and Taian Modern.

C. *Programs Determined Not to Have Conferred a Measureable Benefit or Not to Have Conferred a Benefit During the POI*

1. Administrative Fee Reductions and Waivers
2. Exemptions and Waivers of Fees for Supporting Facilities of Infrastructure
3. Exemptions from Urban Infrastructure Support Fees
4. Export Assistance Grants
5. Export Credit Guarantees
6. Export Credit Insurance
7. Feicheng Zone Income Tax Subsidy
8. GOC and Sub-Central Government Subsidies for the Development of Famous Brands and World Top Brands
9. Grants from District Income Tax Funds
10. Grants to Top Listed Enterprises
11. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
12. Income Tax Benefits for Domestically-Owned Enterprises Engaging in R&D
13. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment
14. Industrial Park Relocation Fund
15. Interest Subsidies for SOEs
16. "One Project, One Discussion" Program
17. Preferential Income Tax Subsidies for High or New Technology FIEs
18. Preferential Income Tax Subsidies for Productive FIEs
19. Preferential Loans for SOEs
20. Preferential Tax Programs for Export-Oriented FIEs
21. Provision of Land to SOEs for LTAR
22. Reduction In or Exemption From Fixed Assets Investment Orientation Regulatory Tax
23. State Key Technology Project Fund
24. Taishan Qingchun Development Zone Incentives

[69] See PDM at 37.
[70] See GOC Verification Report; see also Comment 1.

25. Taishan Zone Collection of Charges Exemption
26. Taishan Zone Fiscal Charge Exemptions and Reductions
27. Taishan Zone Grants for Fixed Assets
28. Taishan Zone Income Tax Program
29. Taishan Zone Infrastructure Fee Exemption

X. ANALYSIS OF COMMENTS

<u>**General Issues**</u>

Comment 1: Whether the Export Buyer's Credit Program was Used by Respondents

GOC's Comments:

- The Department's verification report does not reflect what actually occurred at verification, and instead portrays events as they had occurred at previous Export-Import Bank verifications. The request to verify was made very late and occurred during a holiday when government offices were closed. The last minute nature impeded both the Department's and the Export-Import Bank's ability to prepare.
- Although the verification report states that it does not draw conclusions, it does in fact draw conclusions and make statements that are not reflective of events as they occurred. The report states that the bank's refusal to provide sample documentation inhibited the Department's understanding, but this concern has not been expressed in the many other times the database has been viewed. The Department did not ask any questions regarding unclear information.
- The report also suggests that the Export-Import Bank might have shown the Department something other than the database of Export Buyer's Credit users. This is unfounded and unsupported by any evidence. The Department has viewed the database in previous cases and had a translator who could read the entire database. The Department states that it was unclear what the drop down fields on the search page represented, but failed to ask any questions.
- The bank performed numerous searches on the names of the respondents' customers, which returned zero results. However, the Department's verification report states that because the officials did not provide an explanation of the record maintenance process, it was unclear what information was queried during the search. This has nothing to do with the veracity of the bank's database, and the Department did not ask any questions regarding the time period.
- The Department also requested that the Export-Import Bank demonstrate that the system was live by means of a search without any parameters, and the bank complied with this request. Although the search results showed that the program was used by numerous companies in the world, the Department's report concludes that because there was not a demonstration of the record maintenance process, it was unclear whether the search result related to a certain time period. This assertion cannot be supported, as the Department did not ask any questions related to this issue.
- The verification report goes on to state that the bank failed to reconcile the Buyer's Credit program to its 2015 financial statements, adding that the GOC did not prepare a verification package with that information. However, the verifiers did not ask for a package and appeared satisfied by the explanation of how the loans flowed into the bank's financial statements.
- While the Department might have questions regarding how the program operates, the verification unambiguously showed that the respondents did not use the program. The Department queried

the Export Buyer's Credit database in multiple ways to determine whether the respondent's customers used the program. As these searches showed non-use, there is no gap to fill through AFA. Moreover, the respondents submitted declarations from all U.S. customers certifying that they did not use the program. This identical information has been sufficient to establish non-use, even when the Export-Import Bank was found to be uncooperative at verification.[71] The Department has an obligation to avoid an adverse impact on a cooperating party if relevant information exists elsewhere on the record.[72] In this case, the Department has information on the record that allows it to make a decision on usage that is not adverse to the respondents.

Petitioner's Rebuttal Comments:

- The GOC has failed to cite to any evidence that would call into question the accuracy of the Department's findings as reflected in the verification report. While the GOC might have allowed incrementally more access, it still failed to act to the best of its ability to provide the information that the Department had repeatedly requested. The verifiers were unable to verify the completeness of the database because the GOC did not demonstrate the time period encompassed. Moreover, although the GOC suggests that the Department did not ever request verification exhibits, the verification outline clearly stated that this supporting documentation should be made available prior to verification. By failing to comply with these instructions, the GOC did not act to the best of its ability to comply with the Department's requests.

BOSTD's Rebuttal Comments:

- The Department should accept BOSTD's customer declarations as definitive evidence of the non-use of the Export Buyer's Credit Program.
- In Solar AR 2,[73] the Department faced almost identical facts to the facts in this case and found that, notwithstanding the GOC's perceived non-cooperation, the program was not used by respondents because the respondents submitted declarations from all of their U.S. customers attesting to the fact that the customers did not use this program. As in Solar AR 2, the Department has sufficient information in this case to determine that the Export Buyer's Credit was not used by BOSTD.

Department Position: The Department determines that the use of AFA is warranted in determining the countervailability of the Export Buyer's Credit Program because the GOC did not provide the requested documentation needed to allow the Department to fully analyze this program and verify non-use. In prior proceedings in which we have examined this program, we have found that, as the lender, the Ex-Im Bank is the primary entity that possesses the supporting records the Department needs to verify the accuracy of the claimed non-use of the program.[74]

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[71] See GOC Case Brief at 18 (citing Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2013, 81 FR 46904 (July 19, 2016) ("Solar AR 2")).

[72] See GOC Case Brief at 19 (citing Archer Daniels Midland Co. v. United States, 917 F. Supp. 2d 1331, 1342 (CIT 2013); Fine Furniture (Shanghai) Ltd. v. United States, 865 F. Supp. 2d 1254 (CIT 2012)).

[73] See BOSTD's Rebuttal Brief at 14 (citing Solar AR 2 and accompanying IDM at Comment 1).

[74] See, e.g., Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part, 81 FR 35308 (June 2, 2016) ("PRC CORE"), and accompanying IDM at Comment 6; Countervailing Duty Investigation of

On October 11, 2016, the Department provided the GOC with a verification outline, detailing the type of documentation related to the Export Buyer's Credit Program needed to verify each item on the verification outline.[75] The Department stated that the purpose of the verification was to ensure the completeness and accuracy of all databases, file systems, etc. from which the Ex-Im Bank obtained data to determine that the respondent, or its customers, had not received export buyer's credits.[76] The Department explained it was the responsibility of the GOC to be fully prepared to support all information relevant to the case, and that the documentation requested in the outline was to be prepared prior to the verifiers' arrival.[77] The outline specifically stated that any deficiencies in documentation or denial of access to appropriate personnel would be noted for the record in the verification report and may be relevant to the Department's determination in this case.[78] The verification occurred on October 20, 2016.[79] The GOC did not indicate prior to, or at the outset of verification, that it had any concerns with the clear requests in the verification outline or that it had lacked sufficient time to prepare for the verification.

In this case, the Ex-Im Bank expressly denied access to requested documentation at verification which was needed to fully understand and substantiate: 1) the GOC's initial questionnaire response, 2) the Ex-Im Bank official's statements regarding the Export Buyer's Credit Program's application process, 3) post-lending management process, 4) lending verification process, and 5) how funds from the program are distributed.[80] Further, the Ex-Im Bank expressly denied access to requested documentation at verification needed to substantiate the Ex-Im Bank official's statements regarding which types of borrowers qualify under the program and the process by which the bank secures guarantees for the loans.[81] The Ex-Im Bank expressly denied access to requested documentation demonstrating how records are maintained for the program and integrated into Ex-Im Bank's electronic database system, which inhibited the Department's ability to verify the completeness of the database system.[82] The GOC did not indicate prior to or at the outset of verification that it had any concerns with the clear requests for the requested documentation in the verification outline.

The Department's ability to review the requested verification documentation to fully understand the Export Buyer's Credit Program is particularly relevant where, as here, there are discrepancies between the GOC's questionnaire responses and information provided at verification. In its questionnaire response, the GOC stated that for a business contract to be supported by the export buyer's credit, the contract amount must be more than two million U.S. dollars, that this contract amount requirement is strictly implemented, and that no business contract can be approved for loan

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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 16.

[75] See Letter to the Government of the People's Republic of China re: "Countervailing Duty Investigation of Certain Biaxial Integral Geogrids from the People's Republic of China: Government Verification Outline," dated October 11, 2016 ("GOC Verification Outline").

[76] Id. at 4.

[77] Id. at 1-2.

[78] Id. at 4.

[79] See GOC Verification Report.

[80] Id. at 3-5.

[81] Id. at 6.

[82] Id. at 6-8.

support through the program without identifying the amount.[83] At verification, however, the Ex-Im Bank official stated that in order to qualify for loan support, export contracts must reach a certain threshold amount and that this threshold amount is not a fixed amount, and adjustments are made based on the economic situation and risks the bank faces in making the loans.[84] The Ex-Im Bank official noted that the threshold amount can be relatively fixed for a certain period of time, but she would not provide information related to the threshold amount for contracts entered into during the POR.[85] Further, in its questionnaire response, the GOC stated that the exporter itself is the entity that actually receives the money directly from Ex-Im Bank.[86] At verification, however, the Ex-Im Bank official explained that the Bank disburses the money directly to the borrower and that, normally, under the loan contract, the borrower authorizes Ex-Im Bank to then transfer these funds to the Chinese exporter's Ex-Im Bank account.[87] The GOC's express refusal to provide sample documentation impeded the Department's ability to fully understand the Export Buyer's Credit Program and substantiate statements made by the GOC and Ex-Im Bank.[88]

Regarding the GOC's argument that the last minute nature of the verification request impeded Ex-Im Bank's ability to prepare for the verification, we disagree. On October 11, 2016, the Department provided the GOC with a verification outline, detailing the documentation that would be needed to verify each item on the verification outline.[89] The verification occurred on October 20, 2016.[90] The GOC did not indicate prior to, at the outset of, or at any time during the verification that it had any concerns with the clear requests in the verification outline or that it lacked sufficient time to prepare the documentation requested for verification.

Regarding the GOC's argument that the Department's verification report does not reflect what actually occurred at verification, we disagree. The GOC argues that because the Department did not specifically request reconciliation documentation at verification, the verification report inaccurately stated that the GOC did not prepare documentation reconciling the Buyer's Credit Program to its 2015 financial statements.[91] In this case, the request for the Ex-Im Bank to tie its internally reported export buyer's credits to its financial statements was the last item the Department sought to verify.[92] Up until this point, the Ex-Im Bank official had expressly denied access to the internal documentation, despite the Department's numerous requests.[93] Although the Department verifiers did not specifically request reconciliation documentation, the verification report shows the futility of such a request in light of the Ex-Im Bank official's repeated and express refusal to provide requested documentation for the prior verification items.[94] The GOC also argues that the verification report

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[83] See Letter to the Secretary of Commerce re: "GOC Initial CVD Questionnaire Response- Remaining Questions- : Countervailing Duty Investigation on Certain Biaxial Integral Geogrids Products from the People's Republic of China (C-570-037)," dated April 28, 2016 ("GOC Remaining Questions Response"), at 1-2.
[84] See GOC Verification Report, at 3.
[85] Id.
[86] See GOC Remaining Questions Response, at 3.
[87] See GOC Verification Report, at 5.
[88] Id.
[89] See GOC Verification Outline.
[90] See GOC Verification Report.
[91] See GOC's Case Brief, at 15.
[92] See GOC Verification Report, at 8.
[93] Id. at 3-8.
[94] Id.

draws unnecessary conclusions as a result of the Department's failure to ask follow up questions.[95] In this case, the Department's inability to fully understand the Export Buyer's Credit Program arises from the GOC's express refusal to provide documentation requested in the verification outline necessary to substantiate the GOC's questionnaire responses and the Ex-Im Bank official's responses. Responses to additional follow up questions would not have remedied the Ex-Im Bank's failure to provide the requested documentation necessary to substantiate the GOC's questionnaire responses Ex-Im Bank official's responses.

Regarding the GOC's argument that the Ex-Im Bank's failure to demonstrate the record maintenance process or provide sample documentation has nothing to do with the veracity of the database searched, we disagree. The verification report specifically requested that the GOC be prepared to explain and demonstrate how records are maintained for this program, including demonstrating how an application is processed, whether the information is entered into the database, and how the Ex-Im Bank tracks the application, approval process, and post-disbursement management.[96] The Ex-Im Bank is the primary entity that possesses the supporting records that the Department needs to verify the accuracy of the claimed non-use of the program.[97] Here, however, the Ex-Im Bank refused to explain or demonstrate how records are maintained for the program, which substantially impeded the Department's ability to determine how records and information are maintained and integrated into the electronic database system used by the Ex-Im Bank.[98] Accordingly, we also disagree with the GOC's arguments that the database query demonstrated non-use, and that the level of cooperation regarding the other questions or outstanding documentation are irrelevant to the question of use.[99] Because we were not able to verify which records are maintained for the Export Buyer's Credit Program and how they are maintained, and which records are integrated into the electronic database system and how they were integrated, we were not able to verify the veracity and accuracy of the electronic database queried or the parameters that were searched. The GOC appears to argue that if the Department had any uncertainty regarding the database, then it should have asked the Ex-Im Bank official follow up questions.[100] However, responses to additional follow-up questions would not have remedied the Ex-Im Bank's failure to provide the requested documentation necessary to understand the record maintenance process and completeness of the electronic database.

Regarding the GOC's argument that the Department has information on the record that allows it to make a decision on usage that is not adverse to the respondents, we disagree. The GOC argues that that under Archer Daniels Midland Co. and Fine Furniture, the Department has an obligation to avoid an adverse impact on a cooperating party if relevant information exists elsewhere on the record.[101] Here, the GOC argues that the relevant information that exists on the record is the respondents' declarations from their U.S. customers certifying that they did not use the Export Buyer's Credit Program.[102] The Ex-Im Bank, however, is the primary entity that possesses the supporting records that the Department needs to verify the accuracy of the claimed non-use of the

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[95] See GOC's Case Brief, at 12-15.
[96] See GOC Verification Outline, at 6.
[97] See PRC CORE and accompanying IDM at Comment 6;
[98] See Verification Report, at 6-7.
[99] See GOC's Case Brief, at 16-18.
[100] Id., at 13-14.
[101] Id., at 19.
[102] Id.

program, because it is the lender. Although the respondents in this case did provide declarations from customers regarding the program, they would not have documentation of loans their customers received and thus this information could not be verified at Taian Modern or BOSTD. Moreover, while Taian Modern submitted a list of all their U.S. customers, BOSTD did not, and therefore the Department is unable to confirm whether BOSTD submitted affidavits from all their U.S. customers.[103] Because the GOC did not provide the requested documentation needed to allow the Department to fully analyze this program and verify non-use, contrary to the GOC's assertion, we do not have the necessary information on the record to find non-use of the program.

Regarding the arguments of the GOC and BOSTD that the Department should find non-use because the search query demonstrated non-use, and the respondents submitted declarations from their U.S. customers certifying that they did not use the program, we disagree. GOC and BOSTD argue that identical information was sufficient to establish non-use in Solar AR 2, even when the Ex-Im Bank was found to be similarly uncooperative at verification.[104] The GOC argues that the Department must follow its past precedent and treat this identical factual circumstance as it did in Solar AR 2 because, as explained in Sunpower v. Corp. v. United States, an agency determination is arbitrary if it treats similar situations in dissimilar ways.[105] In Solar AR 2, we specifically stated that even though we found the record in that proceeding supported a conclusion of non-use, we intended to continue requesting the GOC's cooperation on this program in future proceedings and would base subsequent evaluations of this program on the record of each respective proceeding.[106] Our knowledge of how the Export Buyer's Credit program works has developed over several cases, and as we have closely examined the facts in this case, we see that banks other than the Ex-Im Bank can act as the lenders of these export buyer's credits that these other banks receive from the Ex-Im Bank.[107] Because the record does contain information on who those banks are, we cannot reliably verify with BOSTD or Taian Modern's U.S. customers that these customers have not received credits from these unnamed banks.

Accordingly, we find that necessary information is not available on the record, that the GOC significantly impeded this proceeding by failing to comply with the Department's requests at verification, and that the GOC provided information that could not be verified as provided in section 782(i) of the Act. Thus, we find that the use of the facts available is warranted under sections 776(a)(2)(C) and (2)(D) of the Act. We further find that by not providing the requested information at verification, the GOC failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information within the meaning of section 776(b) of the Act. The GOC's refusal to provide the requested documentation significantly impeded the Department's ability to fully analyze and understand the Export Buyer's Credit Program and to verify the accuracy and reliability of information pertaining to non-use.

As explained above in Section VIII, we are relying on AFA and find that BOSTD and Taian Modern used and benefited from this program. As facts available, we are applying a rate of 10.54 percent ad

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[103] See BOSTD's Questionnaire Response, dated April 28, 2016, at .pdf page 7 and Exhibit P.A.2.
[104] See GOC's Case Brief, at 18; BOSTD's Rebuttal Brief, at 14.
[105] See GOC's Case Brief, at 21 (citing Sunpower Corp. v. United States, 179 F. Supp. 3d 1286, 1295 (June 8, 2016).
[106] See Solar AR 2, and accompanying IDM at Comment 1.
[107] See GOC's Submission, dated April 28, 2016, at Exhibit 1, page 2, Article 6.

valorem, the highest rate determined for a similar program in a prior PRC proceeding, as the rate for BOSTD and Taian Modern.

Comment 2: Policy Loans for Geogrids Industry
Taian Modern Comments:

- The Department erred by finding that policy loans were provided to the geogrids industry. The Catalogue of Major Industries relied on by the Department was previously terminated. In addition, the Department refers to a section of the Industrial Restructuring Guidance Catalogue which states that soil erosion control technologies are an encouraged industry, but does not provide any evidence that geogrids fall within this category.

GOC Comments:

- The Department found that policy lending existed in this case because geogrids is an encouraged industry. However, Department practice dictates that policy lending exists only when the evidence shows both that the industry is encouraged, and that there are policy directives to support lending to that industry.[108] In this case, the Department did not find evidence of lending support for the industry.

Petitioners Rebuttal Comments:

- In past cases, the Department has repeatedly found that GOC directives including Five Year Plans and Catalogues of Major Industries, and Directory Catalogues on Readjustment of Industrial Structure show a policy of preferential lending. As found in previous cases, Chinese banks are required to carry out their loan business under the guidance of state industrial policies.[109] The implementation of these policies is delegated to the local governments, and thus the Department should continue to countervail these GOC loan programs. Thus, the policies pertaining to the geogrids industry as set forth in national and sub-national industrial policies are clearly linked to preferential lending to this industry.

Department Position: We agree with Petitioner and continue to find that lending from state-owned commercial banks ("SOCBs") constitutes a financial contribution, pursuant to sections 771(5)(B) and 771(5)(D)(i) of the Act, that the PRC lending market is distorted, and that external benchmarks should be used to determine any benefits from this program. Additionally, we continue to find that loans provided to BOSTD and Taian Modern are specific within the meaning of section 771(5A)(D)(i) of the Act.

The record of this investigation indicates that policy considerations are a significant factor in lending decisions. For instance, the Industrial Restructuring Guidance Catalogue (2011) ("Catalogue") indicates that the industry under consideration falls within the "Encouraged" category;[110] under the general "Agriculture and Forestry" heading, the Catalogue enumerates numerous subgroupings

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[108] See GOC Case Brief at 9 (citing Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Affirmative Determination, 81 FR 13337 (March 14, 2016) and accompanying IDM at Comment 16).
[109] See Petitioner's Rebuttal Brief at 21 (citing Utility Scale Wind Towers from the People's Republic of China, 778 FR 75798 (December 26, 2012) and accompanying IDM).
[110] See GOC Initial Questionnaire Response, dated April 14, 2016, ("GOC IQR") at Exhibit 7.

related to Agriculture and Forestry, such as "development and application of soil erosion control technologies," as encouraged sectors.[111] Despite Taian Modern's contention that there is no evidence that geogrids fall within soil erosion control technologies, evidence on the record describes polypropylene geogrids that are "especially designed for soil stabilization and reinforcement applications.[112] Moreover, in the Preliminary Determination, we found that the geogrids industry falls within the "Encouraged" category.[113] Under the general "petrochemical industry" heading, it enumerates numerous subgroupings related to geogrids production, such as "Production of engineering plastics and new plastic alloys," and "Production of geosynthetic raw materials" as encouraged sectors.[114] Geogrids production is clearly contemplated within these encouraged categories, and several others as well.

Decision 40 states in the preamble that "{a}ll relevant administrative departments shall speed up the formulation and amendment of policies on public finance, taxation, credit, land, import and export, etc., effectively intensify the coordination and cooperation with industrial policies, and further improve and promote the policy system on industrial structure adjustment" with respect to the listed industrial categories.[115] Decision 40 explicitly references the Catalogue and describes how "encouraged" projects will be considered under government policies. For the "encouraged" projects, Decision 40 outlines several support options available to the government, including financing. In addition to establishing eligibility for certain benefits from the central government, the *Catalogue* also gives provincial and local authorities the discretion to implement their own policies to promote the development of favored industries.

Additionally, the 10th 5-year plan indicates that industrial development in the Eastern region (where BOSTD and Taian Modern are located) would be especially favored in terms of lending.[116] The plan explains that "{w}e should optimize the industry structure; give priority to new and high-tech industry, modern service industry and export trade. We should develop export-oriented economy; broad participat{ion} in international economic competition."[117]

That these various government directives and plans encourage lending to the geogrids industry is significant. As the Department has previously found, commercial banks in the PRC follow the "guidance" of central planning authorities. Specifically, the Department has found that "Article 34 of Law of the People's Republic of China on Commercial Banks (Banking Law) states that banks should carry out their loan business 'under the guidance of the state industrial policies.' ... {Therefore} the Banking Law, in some measure, stipulates that lending procedures be based on the guidance of government industrial policy."[118] Thus, contrary to the GOC's arguments, there exists a link between the GOC's industrial policies and lending. Because of this, the Department continues

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[111] Id.
[112] See Petition at 14 and Exhibit I-53-58.
[113] See GOC IQR at Exhibit 6.
[114] Id.
[115] Id.
[116] Id.
[117] Id. at Exhibit 4.
[118] See Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination, 74 FR 64045 (December 7, 2009) and accompanying Issues and Decision Memorandum ("OCTG IDM") at Comment 21.

to find that the loans provided to the respondents are made pursuant to GOC policies to support the geogrids industry and are countervailable.

Comment 3: Whether the Provision of Polypropylene for LTAR is Specific

Taian Modern Comments:

- The Department's AFA determination that polypropylene producers are authorities was incorrect. Because the Department did not conduct a verification, it must assume that factual information in the questionnaire response is correct. Although the GOC did not provide certain information about the companies at issue, the GOC explained that this information was not available. Sufficient information was provided about company ownership structure as well as legal information stating that the companies operate independently of the government, which established that the companies were not authorities. Even if the producers were SOEs, this does not meet the requisite standard to show the entities are "public bodies." At the least, the Department should exclude from its calculation those companies specifically identified as private.
- This program should not be found specific because polypropylene is consumed by a wide variety of industries, including automobiles, consumer products, packaging, construction, and clothing. In PRC Chlorinated Isos,[119] the Department found that urea was not specific due to the variety of industries, even though agriculture accounted for over 70 percent of use.

GOC Comments:

- The requirement that a subsidy program be specific exists to ensure that subsidies that are distributed very widely throughout an economy are not countervailable.[120] The Department typically finds LTAR programs in the PRC to be specific because the actual recipients of the subsidy, on either an enterprise or industry basis, are limited in number.[121] A subsidy program where users represent "numerous and diverse" industries cannot be specific.
- The GOC provided publicly available evidence which showed that there are five distinct product types made with polypropylene that are used by numerous industries. It also provided evidence of polypropylene usage broken out into similar industrial uses.
- Although the Department relied on Steel Sinks[122] and Citric Acid[123] for it specificity determination, polypropylene is significantly different from the input products in those cases. Polypropylene is used to create at least five different product types with distinct uses and properties, while stainless steel sheet has only limited product types and similar uses. The various industries that use polypropylene do so in a manner that is distinct. Not only is the polypropylene used in different forms, but the industries that use the input are also diverse. In

[119] See Chlorinated Isocyanurates and accompanying IDM.
[120] See GOC' Case Brief at 2-3 (citing Countervailing Duties; Final Rule, 63 FR 65348, 65357 (November 25, 2008)).
[121] Id., at 3 (citing section 771(5A)(D)(iii)(I) of the Act).
[122] Id., at 7 (citing Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 78 FR 13017 (February 26, 2013), and accompanying IDM at Comment 8)).
[123] See GOC' Case Brief at 7 (citing Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013, 80 FR 77318 (December 14, 2015), and accompanying IDM ("Citric Acid IDM") at Comment 1).

Steel Sinks and Citric Acid, the inputs were used by similar types of industries, or one industry predominantly used the input. In this case, industries range from agriculture to clothing, and geogrid products are not a major user.

Petitioners Rebuttal Comments:

- The GOC did not provide the requested information regarding ownership and control of polypropylene producers even though it was able to provide relevant information in past cases. The GOC did not explain its attempts to obtain the information or propose alternative methods to provide the information. Although Taian Modern claims that an adverse inference is inappropriate because the company does not control the information, past cases do not consider collateral effects in the application of adverse inferences. While Taian Modern did provide basic ownership information, the Department requires detailed information on the role of the GOC and CCP, and this was not provided.
- The GOC failed to act to the best of its ability to provide specific information requested by the Department regarding the consumption of polypropylene. The information on the record showed that three industries accounted for 82 percent of total consumption of polypropylene, and the Department also found that the GOC promoted the production of polypropylene in order to develop the geogrids industry. Moreover, the Act directs the Department to consider the industry, not the different product types developed.[124]

Department Position: Based on the facts on the record in this case, we find the provision of polypropylene at LTAR to be specific. The GOC states that the main sectors using polypropylene are: (1) woven products (34.5 percent), (2) plastic injection products (29.5 percent), and (3) Biaxially Oriented Polypropylene (18 percent).[125] Moreover, the record evidence shows that the GOC specifically promoted production of polypropylene in order to foster the development and production of engineering plastics and other advanced structural materials. These product groupings include geogrids.[126]

The GOC's contention that the broad range of applications for polypropylene undermines a finding of specificity is not persuasive. The Department previously considered, and rejected, the arguments here made by the GOC. For instance, in Steel Sinks from the PRC, the Department noted that simply because an input is consumed by multiple industries, does not undermine a finding of specificity.[127] There, the Department explained that where "potential users of stainless steel products fall into 20 or 32 different industry classifications using ISIC {International Standard Industry Classification} and Chinese national economy industry classifications {'NEIC'}," the stainless steel input could still be considered specific to the industry in question.[128] Similarly, in

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[124] See Petitioner's Case Brief at 2 (citing section 771(5A)(D)(iii)(I) of the Act).
[125] See GOC submission, dated May 18, 2016, at Exhibits 6 and 7.
[126] See Petition for the Imposition of Antidumping and Countervailing Duties, dated January 13, 2016, ("Petition") at Exhibit III-9.
[127] See Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 77 FR 46717 (August 6, 2012) ("Steel Sinks from the PRC") (unchanged in Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 78 FR 13017 (February 26, 2013)).
[128] Id.

Citric Acid from the PRC, the Department considered whether sulfuric acid, steam coal, and calcium carbonate were specific to the industry under consideration.[129] As it does here, the GOC argued then that these inputs "are sold to a broad spectrum of industries for a wide variety of uses." The GOC argued that this undermines a finding of specificity.[130] However, the Department rejected that argument in Citric Acid from the PRC, stating that a number of broad industry classifications were predominant users of such inputs. For example, with respect to sulfuric acid, the Department found that fertilizer producers and the "chemical industry" were predominant users of the input; accordingly, the Department found that sulfuric acid was specific to the industry in question.[131]

The evidence provided by the GOC to support its claim that polypropylene is used by various industries contains a list of users that are not well defined, are at various levels of aggregation, and may overlap each other, such as "woven products," "packaging," and "daily necessities."[132] The SAA instructs the Department to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies that truly are broadly available and widely used throughout an economy. The specificity test was intended to function as a rule of reason and to avoid the imposition of countervailing duties in situations where, because of the widespread availability and use of a subsidy, the benefit of the subsidy is spread throughout an economy.[133] The GOC has provided no evidence that the use of subsidized polypropylene is spread widely throughout the Chinese economy.

Consistent with these cases and the SAA, the evidence as described above shows that users of polypropylene are limited in number. This, together with the government promotion of polypropylene for use in geogrids shown above, leads us to continue to determine that the GOC's provision of polypropylene is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Comment 4: Whether to Attribute Polypropylene LTAR Benefits to Only Polypropylene Products

Petitioner's Comments:

- To calculate BOSTD's and Taian Modern's subsidy rate for Polypropylene for LTAR, the Department should apply the polypropylene benefit (i.e., numerator) to a denominator which is comprised of products only produced using polypropylene.
- In Softwood Lumber from Canada, the Department has found that matching the numerator and denominator is essential in ensuring the accuracy of an input subsidy rate, because to attribute an input subsidy to a respondent's sales of products that could not and did not benefit from that input, would artificially and inaccurately dilute the benefit.[134]

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[129] See Citric Acid IDM at Comment 1.
[130] Id.
[131] Id., at Comment 1.A.
[132] See GOC submission, dated May 18, 2016, at Exhibit 7.
[133] See SAA at 913-914.
[134] See Petitioner's Case Brief at 13-14 (citing Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 73448 (December 12, 2005) ("Softwood Lumber from Canada") and accompanying IDM at Comment 9).

- Using BOSTD's and Taian Modern's total sales of all products as the denominator fails to comply with the statutory requirement to calculate a respondent's ad valorem subsidy rate as accurately as possible.[135]

BOSTD's Rebuttal Comments:

- The Department should reject Petitioner's argument because the Department has rejected this argument since CVD began being applied to the PRC.[136]
- In order to limit the denominator of a certain subsidy, the Department must conclude that the benefit is tied to a specific product. For this tying analysis, the focal point of the analysis is not on how a subsidy benefit is used but rather on the purpose of the subsidy based on information available at the point of bestowal.[137] In Kitchen Racks from the PRC, the Department addressed this identical argument.[138]
- Absent evidence that from the time of bestowal to suggest that the subsidy was intended to only benefit BOSTD's polypropylene products, reliance only on the fact that BOSTD sold products that included polypropylene and some that did not improperly trace the benefit from this program through BOSTD's production is not permitted or required.[139]

Taian Modern's Rebuttal Comments:

- The Department should reject Petitioner's argument because the Department did not request and the petition did not ask the Department to request respondents to separately report its products. The record is inadequate for the Department to make such a calculation. Further, the Department has rejected this argument many times before.[140]

Department's Position: The Department will not attribute the polypropylene benefit numerator to products produced using only polypropylene. As noted by BOSTD and Taian Modern, the Department has previously examined the question of whether subsidies associated with particular inputs are tied to the merchandise made from those inputs.[141] As the preamble to the Department's

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[135] Id. at 15-16 (citing Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1991 (Fed. Cir. 1990)).

[136] See BOSTD's Rebuttal Brief at 7 (citing Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) ("Coated Paper from the PRC") and accompanying IDM at Comment 18).

[137] Id., (citing Countervailing Duties; Final Rule, 63 FR 65348, 65402-403 (November 25, 1998)).

[138] Id., at 8 (citing Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009) ("Kitchen Racks from the PRC"), and accompanying IDM at Comment 10; see also Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review, 77 FR 21744 (April 11, 2012) ("Kitchen Racks from the PRC AR"), and accompanying IDM at Comment 6).

[139] Id., at 9 (citing Coated Paper from the PRC and accompanying IDM at Comment 18).

[140] See Taian Modern's Rebuttal Brief at 2-3 (citing Kitchen Racks from the PRC; Kitchen Racks from the PRC AR; Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010) ("PC Strand from the PRC") and accompanying IDM at Comment 17; Coated Paper from the PRC and accompanying IDM at Comment 18, and; Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008) ("Pipe and Tube from the PRC") and accompanying IDM at Comment 8).

[141] See Kitchen Racks from the PRC and accompanying IDM at Comment 10; Kitchen Racks from the PRC AR and accompanying IDM at Comment 6; PC Strand from the PRC and accompanying IDM at Comment 17; Coated Paper

regulations makes clear, our analysis of whether a subsidy is tied to particular products focuses on the "stated purpose of the subsidy or the purpose we evince from the record evidence at the time of bestowal."[142] As part of that analysis, the Department considered whether the input could or could not have been used to produce the products in question, i.e., products made using polypropylene and additional inputs.[143] Applying that analysis here, there is no information on the record which demonstrates that polypropylene was intended only for BOSTD's and Taian Modern's products made using only polypropylene. Further, there is no evidence that polypropylene could not be used to produce the merchandise under consideration, and, indeed, BOSTD's and Taian Modern's submissions show that polypropylene is used to produce the merchandise under consideration.[144] Therefore, we do not find the benefits conferred by the polypropylene LTAR are limited to polypropylene products. Accordingly, we have countervailed the respondents purchases of polypropylene for LTAR and have attributed that subsidy to BOSTD's and Taian Modern's total sales.

Petitioner contends that in Softwood Lumber from Canada, the Department found that matching the numerator and denominator is essential in ensuring the accuracy of an input subsidy rate, because to attribute an input subsidy to a respondent's sales of products that could not, and did not, benefit from that input, would artificially and inaccurately dilute the benefit.[145] However, the methodology employed by the Department is specific to that case, and the facts here are distinguishable. The Department does not tie the subsidy to an input, but rather to a manufacturing process.[146] Here, the Petitioner does not claim that polypropylene is tied to a manufacturing process which does not produce the merchandise under consideration, but moreover, the record does not support such a finding. Thus, we have countervailed the respondents purchases of polypropylene for LTAR and have attributed that subsidy to BOSTD's and Taian Modern's total sales.

Comment 5: Whether to Use a Different Polypropylene Benchmark

Petitioner's Comments:

- The Department should not use ICIS Chemicals for "raffia grade" polypropylene as a benchmark despite BOSTD's assertion that "raffia grade" polypropylene was used in its production process.
- Both BOSTD and Taian Modern have failed to establish that the ICIS Chemical prices for "raffia grade" polypropylene are the best or only sources of benchmark prices for polypropylene.
- The Department should use the IHS Chemical information identified in the Petition.[147] This information represents world market prices for polypropylene which are available to purchasers in the PRC and is similar to the type of polypropylene used by respondents.

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from the PRC and accompanying IDM at Comment 18; and Pipe and Tube from the PRC and accompanying IDM at Comment 8.

[142] See CVD Preamble, 63 FR at 65403.

[143] See CFS from the PRC and accompanying IDM at Comment 18.

[144] See BOSTD's IQR at Exhibit G.4. and Taian Modern's IQR at Exhibit A-2.

[145] See Petitioner's Case Brief at 13-14 (citing Softwood Lumber from Canada and accompanying IDM at Comment 9).

[146] See Softwood Lumber from Canada and accompanying IDM at Comment 9.

[147] See Petitioner's Case Brief at 17 (citing Petition at Exhibit III-66 and Exhibit III-150).

BOSTD's Rebuttal Comments:

- The Department should reject Petitioner's arguments because they have not established that "raffia grade" polypropylene is not the type used by BOSTD.
- The Department should reject the IHS Chemical polypropylene prices because this information was not submitted in accordance with 19 CFR 351.301(c)(3) and BOSTD never had an opportunity to submit factual information to rebut this information. Additionally, the IHS Chemical prices are for "inj. Molding homopolymer" and there is no record evidence that this the type of polypropylene used by BOSTD. Moreover, this pricing data appears to be contract prices rather than actual pricing.

Taian Modern's Rebuttal Comments:

- The Department should reject Petitioner's arguments that the polypropylene benchmark should be revised and replaced by the IHS Chemical prices submitted with the petition.
- While Petitioner claims that Taian Modern failed to establish that "raffia grade" polypropylene is used in the company's production process, Petitioner has not previously challenged this fact and did not request that the Department collect evidence regarding the grades used by the respondents. Nor do the documents collected at verification establish that Taian Modern uses the grades reflected in the IHS Chemical prices submitted with the petition. Absent contrary record evidence, the Department should continue to use the benchmarks submitted by respondents to value their polypropylene.

Department's Position: We disagree with Petitioner and will continue to use the ICIS Chemical benchmarks to value polypropylene. The Department's practice is to derive benchmark prices by grade when such data are available and when the record evidence indicates that the respondent firm purchases the good in question on a grade specific basis.[148] We find that the Petitioner has not sufficiently demonstrated that the chemical grade of the polypropylene BOSTD and Taian Modern purchased from its PRC suppliers is not similar to the grade of polypropylene derived from the IHS Chemicals benchmark grade. There is no requirement that the benchmark used in the Department's LTAR analysis be identical to the good sold by the foreign government.[149]

The record contains IHS Chemical information contained within the Petition and ICIS Chemical information placed on the record by respondents.[150] With respect to the IHS Chemical benchmark source, we note that the prices are identified as "Contract Inj. Molding Homopolymer,"[151] whereas the ICIS Chemical prices are identified as "PP Homopolymer Raffia FOB NEW Assessment Spot."[152] Under 19 CFR 351.511(a)(2)(ii), the Department is to compare the government price to a world market price where it is reasonable to conclude such a price would be available to purchasers in the country under examination. Because the contract price identified in the IHS Chemicals value would not be available to BOSTD or Taian Modern, the spot prices identified in the ICIS Chemical

[148] See e.g., Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 77 FR 17017 (March 23, 2012), and accompanying IDM at Comment 15.
[149] See section 771(5)(E)(iv) of the Act and 19 CFR 351.511.
[150] See Letter from Taian Modern, re: "Factual Information Submission," dated May 18, 2016, at Exhibit 1, see also, Letter from BOSTD, re: "BOSTD Benchmark Submission,' dated May 18, 2016, at Attachment 1.
[151] See Petition at Exhibit III-66.
[152] See Letter from Taian Modern, re: "Factual Information Submission," dated May 18, 2016, at Exhibit 1, see also, Letter from BOSTD, re: "BOSTD Benchmark Submission,' dated May 18, 2016, at Attachment 1.

data is the appropriate benchmark source to value the polypropylene input used by BOSTD or Taian Modern. Further, because the information on the record does not support finding that "PP Homopolymer Raffia" is not similar to the grade of polypropylene use by BOSTD or Taian Modern, we continue to use the ICIS Chemical benchmark prices to value BOSTD's and Taian Modern's polypropylene input.

Comment 6: Whether to Remove Certain Freight Expenses from the Polypropylene Benchmark

BOSTD's Comments:

- The Department should exclude the ocean freight cost from the United States to the PRC (Houston to Qingdao) in its final benchmark calculation, because none of the polypropylene prices used as a benchmark in this case were from the United States.
- The primary goal in determining the most appropriate benchmark, based upon the statute and the regulation, is to identify a benchmark that would result in a comparison between the allegedly subsidized price and a market price, so long as that market price would be reasonably available to the respondent purchaser.[153]
- The Department used polypropylene prices from Russia and North West Europe, it is therefore inappropriate to use higher freight prices from the United States to the PRC. Placing a freight expense from a different region than the source of the input price creates a benchmark price that could not be available to purchasers in the PRC.[154]

Petitioner's Rebuttal Comments:

- The Department should not use the ICIS Chemical prices as the benchmark prices for polypropylene because BOSTD has not established that these benchmark prices are appropriate benchmarks for the polypropylene for LTAR subsidy. Accordingly, the ICIS Chemical prices provide no basis to reject the use of the Houston to Qingdao ocean freight prices.
- The ocean freight prices in question reflect the market-determined per metric ton cost to transport polypropylene from world market sources to the PRC during the POI. The record contains world market pricing that is more appropriate to use than the ICIS Chemical prices used in the Preliminary Determination. Using the world market prices provided by Petitioner, the use of the Houston to Qingdao ocean freight prices would not violate the statute or the Department's regulations.

Department's Position: We did not exclude the international freight rates for any ports for the final results. We disagree that it would be appropriate to exclude international freight rates from the freight benchmark for ports which BOSTD deems to be inappropriate. The Department addressed a similar argument in Containers from the PRC, where a respondent argued that the ports on which certain ocean freight rates were based did not match the source of the steel benchmarks used, stating:

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[153] See BOSTD's Case Brief at 5 (citing section 771(5)(E) of the Act and 19 CFR 351.511(a)(2)(ii)).

[154] Id., at 5-6 (citing Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 79 FR 62694 (October 20, 2014) and accompanying Issues and Decisions Memorandum at Comment 16 (explaining that "Because these {ocean freight} prices are for shipping acidspar/fluorspar from the countries included in our benchmark to the PRC, the prices are appropriate to include in our benchmark")).

> We disagree with Singamas that the Department should exclude ocean freight values from North America (i.e., Long Beach and Vancouver) because the Department did not rely on any steel benchmarks specifically from North America in calculating the steel benchmarks used in the Preliminary Determination. We would disregard freight quotes from North America only if there was evidence that North American HRS is not available for purchase/import by Chinese companies or if we used data sources which would allow the Department to match the freight sources with the sources for the steel benchmarks. We do not have that evidence on the record, so we are retaining all the Steel Wire Rod from China ocean freight benchmarks in our calculation of the ocean freight benchmark.[155]

Similar to Containers from the PRC, there is no evidence on the record of this case that the polypropylene shipped from these ports is not available for purchase/import by companies in the PRC. Moreover, we did not use data sources for the benchmarks for these inputs which would allow us to match the freight rate sources with the sources of these benchmarks. Therefore, we continued to include ocean freight rates for all ports in our freight benchmark calculations for the final results. This approach is consistent with our practice in other cases where we determined that "so long as the ocean freight costs are reflective of market rates for ocean freight, and representative of the rates an importer – and not necessarily the respondent specifically – would have paid, then the prices are appropriate to include in our benchmark."[156]

Comment 7: Whether to Exclude Non-Production Related Income from the Denominator

Petitioner's Comments:

- The Department's regulation 19 CFR 351.525 directs the Department to attribute subsidies to the product or products sold by a firm. Accordingly, the Department should exclude non-production income and freight related charges from the denominator in the ad valorem subsidy rate calculations for BOSTD and Taian Modern.[157]
- At verification, Taian Modern presented minor corrections which demonstrate that freight expenses for shipping its products were inadvertently not deducted from total sales and certain other amounts were included in its total sales.[158] The Department should remove these certain other amounts not related to Taian Modern's sales of geogrids from its denominator.
- At verification, BOSTD's chart of accounts and financial records show it earned non-production income, specifically the sale of services and sales from another facility, which should be removed from BOSTD's total sales denominator.[159]

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[155] See 53-Foot Domestic Dry Containers from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 80 FR 21209 (April 17, 2015), ("Containers from the PRC") and accompanying IDM at Comment 6D.
[156] 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, 2010) ("PRC Seamless Pipe"), and accompanying IDM at Comment 9C.
[157] See Petitioner's Case Brief at 1 (citing PRC Seamless Pipe and accompanying IDM at Comment 29.c).
[158] Id., at 2 (citing Taian Modern Verification Report at Exhibit 1).
[159] Id., at 3-4 (citing BOSTD Verification Report at VE-4).

BOSTD's Rebuttal Comments:

- The Department should reject Petitioner's argument to remove "non-production" income from the sales denominator because this argument is without merit.
- In accordance with the Department's regulations, the Department does not and has never excluded the sales of goods produced by unaffiliated parties from the denominator[160] and has applied an inconsistent practice regarding the sale of services.[161]
- Petitioner's claims that sales identified in BOSTD's sales reconciliation made from another location were potentially sales unrelated to BOSTD's own production or were potentially an unreported production facility are without merit. Further, Petitioner's claims that it was incumbent upon BOSTD to provide support for including income related to its other facility and that it failed to do so because it never mentioned this facility until verification are unfounded. The sales from this location were completely verified by the Department.
- Finally, there is no evidence that this facility is a separate legal entity or that this facility was a company at all. If it were, it would have been identified in the BOSTD's financial statement.

Taian Modern's Rebuttal Comments:

- The Department should reject Petitioner's arguments claiming that certain other amounts not related to sales of any products should not be included in the denominator. Petitioner's claims that this amount was first revealed at verification is incorrect.[162]
- Further, Petitioner also points to no record evidence demonstrating that the amounts at issue were unrelated to the company's production or sales and it is not the Department's practice to always exclude such revenue from the denominator.[163]

Department's Position: We agree with Petitioner in part. 19 CFR 351.525(b)(3) directs the Department to attribute subsidies to "all products sold by a firm." Additionally, the Department has deducted from the sales denominators the amounts that are not related to production of goods.[164]

Taian Modern is correct that it previously reported the certain other amounts identified by Petitioner.[165] Further, despite Petitioner's contention that the certain other amounts are not related to income, there is no information on the record to support the argument that this revenue is service income. Accordingly, we will continue to include this revenue in Taian Modern's sales denominator.

With respect to BOSTD, Petitioner asserts that the Department should deduct from BOSTD' sales denominator, sales made from another location, as well as services. As noted above, 19 CFR 351.525(b)(3) directs the Department to attribute subsidies to "all products sold by a firm." Here, BOSTD's Verification Report identifies sales of products sold from this other location.[166] Whether the products were produced by BOSTD or an unaffiliated company, consistent with 19 CFR

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[160] See BOSTD's Rebuttal Brief at 3 (citing 19 CFR 351.525(c)).
[161] Id., at 3 (citing Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination, 77 FR 75975 (December 26, 2012) and accompanying IDM at Comment 13).
[162] See Taian Modern's Rebuttal Brief at 1 (citing Taian Modern's Initial Questionnaire Response, dated April 7, 2016, at Exhibit B-1).
[163] Id., at 2 (citing OCTG IDM at Comment 36).
[164] See PRC Seamless Pipe and accompanying IDM at Comment 29.c.
[165] See Taian Modern Initial Questionnaire Response, dated April 7, 2016, at Exhibit B-1.
[166] See BOSTD's Verification Report at VE-4.

351.525(b)(3), we will continue to include these product sales in BOSTD's sales denominator, because BOSTD sold the products.

With respect to the service income, we note that this income is related to the sale of a service, accordingly because this service income is not related to production of goods, we are deducting this income from BOSTD's sales denominator for the final determination.[167]

Comment 8: Whether to Exclude Negative Offsets in the Benefit Calculation for Electricity

Petitioner's Comments:

- The Department should total only the purchases for which it has calculated a positive benefit, because the Department has noted that in a subsidy analysis, a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked by negative benefits from other transactions.[168]

No Other Interested Parties Commented on This Issue.

Department's Position: As stated in Lumber from Canada 03-04 IDM at Comment 43, "in a subsidy analysis, a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked by negative benefits from other transactions."[169] Additionally, as noted in Lumber from Canada 03-04, the law does not contemplate that the Department should provide a respondent with a credit for instances in which the government does not provide a benefit (i.e., instances where a respondent pays adequate remuneration for a good). The Department's position has not changed since Lumber from Canada 03-04, and, accordingly, we will not provide a credit for purchases of electricity above the benchmark rates in the final determination.

BOSTD Specific Issues

Comment 9: Whether to Apply AFA to BOSTD's Electricity

Petitioner's Comments:

- At verification, BOSTD reported earnings associated with another location.[170] However, BOSTD had not reported the existence of this facility or the activities which occur at that location, prior to verification.
- Because BOSTD did not provide data regarding the electricity that would have been used at this other facility, the Department should apply AFA to BOSTD's electricity purchases, because it failed to report all its electricity purchases as requested and therefore, BOSTD failed to act to the best of its ability.

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[167] See PRC Seamless Pipe at Comment 29.c.
[168] See Petitioner's Case Brief at 7 (citing OCTG IDM at Comment 14).
[169] See Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 73448 (December 12, 2005) ("Lumber from Canada 03-04") and accompanying IDM at Comment 43.
[170] See Petitioner's Case Brief at 7 (citing BOSTD Verification Report at VE-4). The location of BOSTD facility is business proprietary information, see BOSTD Verification Report at VE-4.

BOSTD's Rebuttal Comments:

- The Department should reject Petitioner's argument because their claim is without merit and unsupported by record evidence.
- The Department did not identify any evidence that this facility is owned by BOSTD for which it must pay electricity; Petitioner's claims are based on the description of an account in BOSTD's sales ledger, not on any costs in BOSTD's accounting system or other evidence.
- The application of AFA has statutory requirements which must be based on substantial evidence[171] and speculation and the absence of evidence cannot be the basis for AFA.[172]
- Because this facility was not a separate legal entity, any cost associated with the warehouse would already be recorded in BOSTD's accounting system. Thus, when the Department verified BOSTD's monthly electricity purchases and viewed the ledgers that contained electricity purchases, any electricity purchase in the facilities location would also be recorded in those accounts. The Department did not identify any such unreported electricity purchases.

Department's Position: We disagree with Petitioner that we should apply AFA to BOSTD's electricity. As noted by BOSTD, the Act provides that the Department can apply AFA when a respondent: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, (C) significantly impedes a proceeding; or (D) provides information that cannot be verified.[173]

In the Preliminary Determination, we applied AFA to the provision of electricity for LTAR because the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information.[174] As AFA, we found that the GOC's provision of electricity constitutes a financial contribution and is specific.[175] Additionally, we also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.[176] This AFA finding applies to BOSTD's receipt of electricity for LTAR, including its Qingdao location. We received no comments on that finding.

While BOSTD did not disclose the facility until verification, there is no evidence on the record which supports finding that this facility is owned or affiliated with BOSTD.[177] Accordingly, as there

[171] See BOSTD's Rebuttal Brief at 5 (citing Seah Steel Vina Corp. v. United States, 2016 Ct. Intl. Trade LEXIS 87 (August 31, 2016)).
[172] Id. (citing Lucent Technologies, Inc. v. Gateway, Inc., 580 F.3d 1301, 1327 (Fed. Cir. 2009) and Wash. Int'l Ins. Co. v. United States, 33 C.I.T. 1023 (2009)).
[173] On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this investigation.
[174] See PDM at 15.
[175] Id.
[176] Id.
[177] See BOSTD IQR at Exhibits G.3 and G.4, see also BOSTD Verification Report at VE-3.

is no evidence that BOSTD received electricity for LTAR at the other location, there is no record support for finding that the GOC withheld, or failed to provide information by the deadlines, or significantly impeded this proceeding, or has not provided information that cannot be verified. As such, we find it is not appropriate to apply AFA to BOSTD's electricity benefit calculation for the final determination, with respect to the other location.

Comment 10: Whether to Include Certain Loans

Petitioner's Comments:

- Despite BOSTD's claims that its long term loan from the Qingdao Finance Bureau was issued in 2001, the Department should include this loan in BOSTD's loan subsidy calculation.
- Information on the record demonstrates that this loan was renegotiated between BOSTD and the Qingdao Finance Bureau and re-signed in 2007.[178] Accordingly, this loan is still outstanding during the POI. In OTR Tires, the Department found countervailable several loans that had been provided to a company prior to the December 11, 2001, cut-off date, but had been renegotiated after that date.[179]
- BOSTD's attempted reliance on the December 11, 2001, cut-off date is baseless. The CIT has repeatedly found that the Department "must investigate each subsidy program and allocate subsidies beginning on the first date it could identify and measure the subsidy considering the particular program in question and the impact of relevant economic reforms on that program."[180] BOSTD has failed to demonstrate why the date of the PRC's accession to the World Trade Organization is relevant in this analysis.
- Further, the Department should consider that the portion of interest forgiven amounts to a grant to BOSTD from the Qingdao Finance Bureau in the amount of interest forgiven.

BOSTD's Rebuttal Comments:

- The Department should reject Petitioner's argument that this loan should be countervailable because it was "renegotiated." In the OTR Tires case cited by Petitioner, the Department treated long-term loans disbursed before the AUL and cut-off date, whose due dates had lapsed in two different ways. The Department countervailed loans whose "material terms…, including repayment period" were renegotiated during the AUL because this resulted in a new financial contribution being provided.[181] The Department did not countervail the loans whose material terms were not renegotiated because no new financial contribution was provided during the AUL.[182]
- While Petitioner contends this loan was renegotiated, the loan was re-signed and the actual payments and loan agreements show that the payment terms for this loan remain constant from

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[178] See Petitioner's Case Brief at 18-19 (citing Petitioner's Comments on BOSTD's Questionnaire Response, dated April 28, 2016, at Exhibit 1 and BOSTD Verification Report at VE-6).
[179] See Petitioner's Case Brief at 19-20 (citing Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 FR 40480 (July 15, 2008) and accompanying IDM at Comment E.6 ("OTR Tires")).
[180] See Petitioner's Case Brief at FN 67 (citing TMK IPSCO V. United States, 179 F.Supp.3d 1328 (CIT 2016) ("TMK IPSCO") and GPX Intl Tire Corp v. United States, 893 F. Supp. 2d 1296 (CIT 2013) ("GPX 2013")).
[181] See BOSTD's Rebuttal Brief at 12 (citing OTR Tires).
[182] Id.

one agreement to the next and that BOSTD was always responsible for this loan.[183] Because none of the material terms of this loan have ever been renegotiated and because the loan was issued prior to the AUL, there is no basis on which to countervail this loan

- The Department should reject Petitioner's argument that a portion of interest forgiven amounts to a grant to BOSTD from the Qingdao Finance Bureau. BOSTD explained this auditor adjustment to the Department fully at verification and it was not forgiven interest.[184] This adjustment was based on the difference between how BOSTD kept track of the outstanding interest internally and the actual interest owed based on the Qingdao Finance Bureau's Demand notice.[185]

Department's Position: In the Preliminary Determination, the Department did not countervail BOSTD's loan which was issued before December 11, 2001. For the final determination, the Department continues to find this loan not countervailable.

Consistent with previous PRC CVD determinations,[186] we continue to find that it is appropriate and desirable to identify a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law, and have adopted December 11, 2001, the date on which the PRC became a member of the WTO, as that date.

As BOSTD reported, and the Department verified, the loan in question was signed in November 2001, between BOSTD Qingdao's largest shareholder, ETSONG (Qingdao) Industrial Co., Ltd. ("ETSONG") and the Qingdao Finance Bureau.[187] ETSONG then transferred the loan to Qingdao ETSONG Special Grille Co., Ltd. (as BOSTD Qingdao was known at the time)[188] with the same material contract terms as the loan agreement with the Qingdao Finance Bureau.[189] In November 2006, ETSONG transferred all of its shares in BOSTD Qingdao to BOSTD Beijing. ETSONG was no longer eligible to represent BOSTD Qingdao in the loan agreement due to the equity transfer.[190] Article 10 of the loan agreement between the Qingdao Finance Bureau and BOSTD Qingdao indicates the effective term starts in 2001, and further indicates that the loan was not renegotiated but rather contains the same original material agreement terms.[191] Further, the record demonstrates that BOSTD is responsible for the outstanding balance. Accordingly, we find that this loan is the same loan issued before December 2001.

Petitioner cites to GPX 2013 and TMK IPSCO as support that the Department "must investigate each subsidy program and allocate subsidies beginning on the first date it could identify and measure the subsidy considering the particular program in question and the impact of relevant economic

[183] Id. at 13 (citing BOSTD's First Supplemental Questionnaire Response, dated May 16, 2016, ("BOSTD SQR") at Exhibit S1-4 through 6).
[184] Id. at 13 (citing BOSTD's Verification Report at VE-6).
[185] Id.
[186] See, e.g., Drill Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 75 FR 33245 (June 11, 2010) and accompanying IDM at Comment 4 and OCTG IDM at Comment 3.
[187] See BOSTD SQR at 7 and Exhibit S1-4.
[188] See BOSTD IQR at Exhibit G.4, (describing the company's history).
[189] See BOSTD SQR at 7 and Exhibit S1-5.
[190] Id. and BOSTD IQR at Exhibit G.4, (describing the company's history).
[191] Id. at 7 and Exhibit S1-6.

reforms on that program."[192] However, we note that TMK IPSCO is ongoing, and as we stated in Coils from Mexico, "the Department's determinations are frequently challenged in the courts and other venues, and if the Department were to speculate about the potential outcome of litigation concerning various administrative reviews…the administrative process would turn into a futility."[193] Similarly, here, we decline to make final determinations here, based on speculating as to the outcome of ongoing litigation. Further, we note that the CIT waived this issue in GPX 2013. Therefore, for the final determination, we continue to find that this loan was established before the December cut-off date and we continue to find that this loan is not countervailable.

Comment 11: Whether to Include Certain Electricity Funds

BOSTD's Comments:

- In the Preliminary Determination, the Department calculated a benefit for BOSTD's electricity usage by comparing the per unit price BOSTD paid, multiplied by BOSTD's usage amount, to per unit prices reported in other provinces. At verification, BOSTD demonstrated that the per unit price BOSTD paid was exclusive of certain fund amounts[194] BOSTD was required to pay, and it demonstrated that these funds are included in the per unit price in the Shandong price schedule.[195] However, the per unit benchmark price used in the comparison from Zhejiang Province also includes fund amounts.[196]
- The Department did not make an apples-to-apples comparison, as is required by its past practice.[197] Accordingly, the Department should use the revised electricity chart provided at verification and compare BOSTD's fund inclusive rates to the fund inclusive benchmark rates.

Petitioner's Rebuttal Comments:

- BOSTD's claim that the Zhejiang Province benchmark rates should be reduced because they purportedly contain certain "fund amounts" that were not included in BOSTD's own electricity payments should be rejected.
- BOSTD's claim relies on untimely new factual information presented for the first time at verification. This information purports to show how electricity prices in the PRC are established and the various cost components that make up these prices; information the Department had requested from the GOC but which the GOC had refused to provide. It would be highly prejudicial for the Department rely on this information.
- Without information from the GOC on the accuracy and relevance of the "fund amounts" in

[192] See TMK IPSCO at 1344.
[193] See Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of the Five-Year ("Sunset") Review of Antidumping Duty Order, 75 FR 81221 (December 27, 2010), and accompanying PDM at page 14, unchanged in Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of the Five-Year ("Sunset") Review of the Antidumping Duty Order, 76 FR 25668 (May 5, 2011) ("Coils from Mexico").
[194] These funds are urban public utility surcharge, post-relocation support funds for reservoirs, loan for rural grid, national water conservancy, renewable energy surcharge (collectively "other charges"). See GOC IQR at Exhibit 25, see also BOSTD Verification Report at Exhibit 8.
[195] See BOSTD's Case Brief at 6 (citing Verification Report at VE-8).
[196] Id.
[197] See BOSTD's Case Brief at 7 (citing Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination, 81 FR 75037 (October 28, 2016) ("Mechanical Drive Components") and accompanying IDM at Comment 8).

question and how electricity prices in China are actually determined, the Department has no basis to assume that the "fund amounts" in question should be deducted.

- Mechanical Drive Components fails to provide support for BOSTD's claim. In that case, based on information provided by the GOC, the Department determined that it was appropriate to compare the electricity prices paid by the company respondent to the electricity benchmark rates inclusive of value added tax.[198] Here, the GOC failed to provide any information on the cost elements comprising the Zhejiang Province electricity price benchmarks.

Department's Position: We agree with BOSTD that we should include the funds identified on its electricity bill. As an initial matter, we believe that Petitioner appears to have misconstrued BOSTD's argument. BOSTD is not arguing to reduce the Zhejiang Province benchmark rate by the other funds amount, but rather that we should include these other funds in BOSTD's electricity calculation because they are included in the Zhejiang Province benchmark rate.[199] Further, we note that none of the information contained within VE-8 of BOSTD's Verification Report is new information. Specifically, the Zhejiang and Shandong schedules of rates were placed on the record by the GOC.[200] Moreover, Petitioner is correct that we are applying AFA to the electricity for LTAR, in so much as the GOC did not provide the information necessary to determine how its base rates are established. These "other" charges are not part of the base rates charged by the electric company to its customers, rather these are other charges beyond the base rate. Accordingly, information regarding the "other" charges is not new information pertaining to the construction of the electricity rate, rather it is information which exists on the record indicating other charges to include in addition to the base rate charged to customers.

As BOSTD stated at page 7 of its Case Brief, BOSTD reported its "other" charges in a separate column in the IQR. However, BOSTD has demonstrated through record information that the other charges are part of the overall time period-specific electricity charges that BOSTD paid during the POI.[201] For its time period-specific electricity charges, we verified that BOSTD paid its standard and other charges.[202] The sum of the standard and "other" charges equals the rates on the Zhejiang and Shandong rate schedules for different time period categories.[203] Therefore, consistent with PRC Cylinders, we have incorporated these other charges into BOSTD's time period-specific electricity expenses for the POI.[204]

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[198] See Petitioner's Rebuttal Brief at 26-27 (citing Mechanical Drive Components" and accompanying Issues and Decisions Memorandum at Comment 8).
[199] See BOSTD's Case Brief at 6-7. See also, GOC Initial Questionnaire Response, dated April 14, 2016, ("GOC IQR") at Exhibit 25.
[200] See GOC IQR at Exhibit 25.
[201] See BOSTD's Case Brief at 6-7 and BOSTD's IQR at Exhibit P.D.6.
[202] See BOSTD Verification Report at VE-8.
[203] See GOC IQR at Exhibit 25.
[204] See High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 26738 (May 7, 2012) and accompanying IDM at Comment 11.

Comment 12: Whether the Department's Finding of Critical Circumstance for BOSTD is Contrary to Law

BOSTD's Comments:

- The Department should reverse its finding of affirmative critical circumstances because the Department based its preliminary finding on a single export subsidy that is de minimis and was received before the POI
- If the only export subsidy is de minimis, then no countervailable subsidy is in place because a countervailable subsidy requires a benefit. As noted by the Department in Softwood Lumber from Canada,[205] where preliminary determinations resulted in negative CVD findings, critical circumstances were also negative. Thus, the benefit level is contemplated by the statute.
- The Department cannot bootstrap a critical circumstances finding by using affirmative rates calculated for domestic subsidies, because the statute is clear that only export subsidies violate the WTO Agreement on Subsidies and Countervailing Measures (the "SCM Agreement").
- The benefit from domestic subsidies can be used to make an affirmative critical circumstances finding where there would not be one if export subsidies alone were used, it renders the export subsidy requirement meaningless.[206]
- The export subsidy used in the critical circumstance decision was received in 2009. While the statute is silent with regard to the time the subsidy was received, basing a critical circumstances finding that relates to a very specific time period on a subsidy received several years before that period, frustrates the purpose of the statute and is contrary to law.

Petitioner's Rebuttal Comments:

- The Department should continue to find critical circumstances exist, because the Department recently rejected the identical argument in OCTG from Turkey.[207]
- In this case, similar to OCTG from Turkey, BOSTD received a subsidy that was contingent upon export performance and, therefore, inconsistent with the SCM Agreement. The record also shows clearly that there were massive imports of the subject merchandise over a relatively short period and that the countervailable subsidies provided to BOSTD far exceed one percent ad valorem.

Department's Position: We agree with Petitioner. Section 703(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect: (A) that "the alleged countervailable subsidy" is inconsistent with the SCM agreement of the WTO, and (B) that there have been massive imports of the subject

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[205] See BOSTD's Case Brief at 3 (citing Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products From Canada, 66 FR 43186, 43189-90 (August 17, 2001); and Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada, 67 FR 36070 (May 22, 2002) (the unchanged final determination) ("Softwood Lumber from Canada").

[206] See BOSTD's Case Brief at 3-4 (citing FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000) (explaining that statutes are not to be interpreted in a manner that would render other provisions of the same statute superfluous)).

[207] See Petitioner's Rebuttal Brief at 37 (citing Certain Oil Country Tubular Goods from Turkey, 79 FR 41964 (July 18, 2014) and accompanying Issues and Decisions Memorandum at Comment 15).

merchandise over a relatively short period. The SCM Agreement prohibits "subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance." We found that BOSTD received subsidies from one program contingent upon export performance and countervailable, as well as "massive imports" of geogrids over a relatively short period of time.[208]

For the final determination section 705(a)(2) of the Act states that "if the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 703(e), shall also contain a finding as to whether (A) the countervailable subsidy is inconsistent with the Subsidies Agreement, and (B) there have been massive imports of the subject merchandise over a relatively short period."

The final determination is affirmative, as the aggregate of the net countervailable subsidies determined at the final determination is over one percent ad valorem. We continue to determine that critical circumstances exist for BOSTD, and all other producers and exporters. We find that BOSTD received benefits from subsidies inconsistent with the SCM Agreement and that there have been massive imports of the subject merchandise over a relatively short period.

Although BOSTD argues that the benefit percentage of the export subsidies inconsistent with the SCM Agreement is less than one percent, the statute does not provide a specific benefit percentage required for export subsidies. The statute only states that the determination of critical circumstances "contain a finding" of an inconsistent countervailable subsidy. To determine a de minimis countervailable subsidy, section 705(a)(3) of the Act refers to section 703(b)(4) after defining how to determine critical circumstances in a final determination. Section 703(b)(4) states that "a countervailable subsidy is de minimis if the administering authority determines that the aggregate of the net countervailable subsidies is less than 1 percent ad valorem." However, for the Preliminary Determination, the aggregate of the net countervailable subsidies was more than one percent ad valorem. Therefore, the Act's requirements for an affirmative critical circumstances determination are satisfied because the Department has determined that there are countervailable subsidies inconsistent with the SCM Agreement, massive imports of the subject merchandise over a relatively short period, and there is an affirmative final determination with an aggregate of the net countervailable subsidies greater than one percent ad valorem.

Taian Modern Specific Issues

Comment 13: Land-Use Rights for LTAR, Plant and Equipment for LTAR, and Installment Plans for Land-Use Rights

Taian Modern Comments:

- The Department should not countervail any of the programs related to land, plant, equipment, or installment payments, because the sellers were not authorities. The Department used an adverse inference to determine that the sellers were government authorities because the GOC did not provide all of the information requested in the questionnaires. However, Taian Modern provided sufficient evidence to establish that the entities were not authorities. At the least, the Department should exclude the land purchased from the two private companies. Moreover, a Village

[208] See PDM at 5.

Committee should not be considered an authority because it is a "self-organized entity" and thus not part of the government of China. Under Article 95 of the Constitutional Law of China, the government is established at the minimum level of county or town, and there is no government body set up at the "village" level.

- There is not sufficient evidence that these programs exist. The Department's initiation notice states that the Petitioner provided a government source supporting it allegation. However, the source for this allegation was a Hong Kong website with no connection to the GOC.
- The use of an adverse inference for the provision of Plant and Equipment for LTAR was unreasonable. The Department requested third-party appraisals or company documentation related to the purchase of plants and equipment, which Taian Modern did not provide. Although the Department found that a reasonable economic actor would have made an assessment of the asset's value prior to purchase, a third party appraisal was not needed because the company had already used the land and plants for several years on a rental basis. Thus, there is no gap in the record. Even if the Department finds a gap in the record, an adverse inference should not be imposed because the company's explanation that the information did not exist does not demonstrate a refusal to provide information.
- Basing the benefit for Plant and Equipment for LTAR on the highest calculated rate for any Chinese LTAR program is unreasonable. The rate selected, the Provision of Titanium Dioxide for LTAR, is based on the experience of uncoated paper producers with respect to a material input, and has no connection to the provision of plant and equipment to geogrids producers. It has not been corroborated, is not an accurate estimate of Taian Modern's rate, and is not grounded in commercial reality. The statute requires that the assignment of a rate resulting from an adverse inference be corroborated by evidence showing that the rate is reliable and relevant to the particular respondent. Moreover, there is no reliable benchmark information on the record that supports any benefit to the company.

Petitioners Rebuttal Comments:

- The AFA determination finding the sellers to be authorities is correct, as the Department repeatedly asked for complete ownership information of the entities in question. The GOC refused to provide this information, stating that the Department's requests were unreasonable and irrelevant. It did not explain why the information was unavailable or what steps had been taken to obtain it. It is the prerogative of the Department, not the GOC, to determine what information is needed.
- Taian Modern's contention that the existence of the subsidy programs is based on a questionable source is incorrect, as the new subsidy allegations were based on information provided from the company itself. The website mentioned is on its face a government source seeking to promote investment in the development zone, and the GOC did not dispute the existence of the subsidy programs.
- It was reasonable to expect Taian Modern would make an assessment of the value of such a large asset, but the company failed to provide any such information or propose alternative sources of this information. The reasonableness of this request is further highlighted by Taian Modern's own questionnaire responses, as well as the purchase agreements themselves.
- The Department applied its standard methodology to determine the AFA subsidy rate for the plant and equipment for LTAR subsidy in that it relied upon the highest rate for the same or similar program in a CVD proceeding from the same country. The rate calculated for the provision of titanium dioxide for LTAR is relevant to the LTAR subsidy in this case because

each subsidy involved the provision of a good by the GOC. This rate is reliable because it was determined based on actual subsidy data provided by the Chinese respondent and verified by the Department. The court cases relied on by Taian Modern pre-date the 2015 amendments to Section 776 of the Act, which overturn the cases. These statutory amendments make clear that the Department is not required to estimate what the subsidy rate would have been if the respondent had complied or to demonstrate that the rate reflects the alleged commercial reality of the respondent.

Department Position: We disagree with Taian Modern and continue to apply an adverse inference to find that the suppliers are authorities. The Department sought information that would allow us to analyze whether the providers are "authorities" within the meaning of section 771(5)(B) of the Act. Therein, the Act defines "authority" as a government of a country or any public entity within the territory of the country. Specifically, Taian Modern provided a list of entities from which it obtained land-use rights and plants and equipment.[209] Thereafter, the Department requested a variety of information from the GOC to assess the relationship between the identified suppliers of the plants and equipment and the GOC.[210]

In response to the Initial Questionnaire, Taian Modern provided the purchase agreements which identified its suppliers of land-use rights and plants and equipment.[211] The GOC indicated (1), that no government entities are owners of two of the companies which transferred the land-use rights and plants and equipment, and (2), that Beihuang Village Committee, the third transferor of the land-use rights and plants and equipment, is not a governmental authority.[212] To support this assertion, the GOC provided data denoting the business registration information and basic shareholder information for the two companies, and cited to Article 111 of the PRC Constitution and Article 2 of the Organic Law on the Village Committee.[213] Based on this information, the GOC argued that the suppliers were not "authorities."

However, the GOC did not provide a full response to the Department's questions regarding these entities. As noted, the GOC provided summary data including the business registration information and basic shareholder information, but it did not provide the additional information (e.g., company by-laws, articles of incorporation, licenses, etc.) that was specifically requested by the Department. Instead, the GOC stated that "…the Enterprise Credit Information Publicity System ("ECIPS") requires the administrative authorities of industry and commerce to release detailed information regarding the registration, filings, supervision and administration of enterprises…" and that as a result of ECIPS, "it is unnecessary and redundant to provide the {requested} documents."[214] Additionally, the GOC did not provide requested information regarding the Beihuang Village

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[209] See Taian Modern's Initial Questionnaire Response, dated April 7, 2016, ("Taian IQR") at Exhibit D-2.
[210] See Letter from the Department to the Ministry of Commerce, PRC, dated August 8, 2016, and Letter from the Department to the Ministry of Commerce, PRC, dated September 2, 2016.
[211] Id.
[212] See GOC's submission, "RE: GOC Supplemental NSA Response: Countervailing Duty Investigation on Certain Biaxial Integral Geogrids Products from the People's Republic of China (C-570-037)," dated September 9, 2016, at 3 and 10.
[213] Id., at 10.
[214] Id., at 2.

Committee.[215] This withholding of information undermined the Department's ability to determine accurately whether the suppliers constitute "authorities." While the GOC cited to Article 111 of the PRC Constitution and Article 2 of the Organic Law on the Village Committee, to support its conclusion, we note that none of the parties to this proceeding put copies or translations of these laws or articles on the record of this investigation, and therefore, we are unable to analyze these laws in the context of the GOC's argument in its response.

Furthermore, we requested information pertaining to the owners, members of the board of directors, or managers of the suppliers who were also government or Chinese Communist Party ("CCP") officials or representatives, during the POI. The GOC did not provide this requested information for any supplier. Instead, the GOC argued that "even if an owner, a director, or a manager of a privately-owned supplier company is a member of … {a CCP organization}, it would not make the management and business operations of the company in which he/she serves subject to any levels of intervention by the GOC."[216]

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. The GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. The GOC's responses in prior CVD proceedings involving the PRC demonstrate that it is, in fact, able to access information similar to what we requested.[217] Additionally, pursuant to section 782(c) of the Act, if the GOC could not provide any information, it should have promptly explained to the Department what attempts it undertook to obtain this information and proposed alternative forms of providing the information.[218]

As in the Preliminary Determination and Post-Preliminary Analysis, we continue to find that the GOC has withheld necessary information that was requested of it and, thus, the Department must rely on "facts otherwise available" in issuing its final determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. As AFA, we find that the suppliers of land-use rights and plants and equipment are "authorities" within the meaning of section 771(5)(B) of the Act.

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[215] Id., at 12.
[216] Id., at 6.
[217] See, e.g., High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 26738 (May 7, 2012) ("HPSC from the PRC"), and accompanying Issues and Decision Memorandum ("HPSC IDM") at 13.
[218] Section 782(c)(1) of the Act states, "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority of the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."

We also disagree with Taian Modern that there is insufficient evidence to establish the existence of the subsidy programs at issue. First, the Department did not rely solely on the website at issue, but on evidence from Petitioner that the purchase price for plant and equipment included as part of three prior agreements is far less than the reported value of such fixed assets included in Taian Modern's 2014 financial statements. Second, the website appears to be a government source outlining the types of assistance provided to companies in the Taishan Qingchun Development Zone. Taian Modern's argument that the website is based in Hong Kong is unconvincing, as there is no evidence suggesting that the Taishan government would not post information on a website outside of mainland China where potential foreign investors could gather information.

The Department disagrees that it was unreasonable to apply AFA with respect to the Provision of Plant and Equipment for LTAR. We requested information relating to the valuation of the plant and equipment at issue. Taian Modern responded that all transaction values were negotiated between the parties, and no third-party appraisals were performed.[219] We asked Taian Modern a second time to provide any third-party appraisals or company documentation (i.e., meeting notes, internal memos) related to the purchases of plants and equipment. Taian Modern again reported that no third-party appraisals were performed and that it cannot locate any company documentation (i.e., meeting notes, internal memos) related to the purchases.[220] Additionally, Taian Modern reported that there is no official documentation outside of the purchase agreements.[221] Therefore, there is no evidence that Taian Modern or the GOC made an objective analysis of the market value of the plants and equipment purchased, and thus no evidence that this transaction was based on market principles. The Department finds that a reasonable economic actor would make an assessment of a large asset's value before making a purchase such as a plant and equipment. Because Taian Modern provided no evidence of any such assessment, we find Taian Modern has not cooperated in providing necessary information to demonstrate this transaction was based on market principles. Therefore, based on Taian Modern's failure to provide the requested information, we are drawing an adverse inference with respect to the provision of plants and equipment pursuant to section 776(b) of the Act and we determine that a benefit was provided pursuant to section 771(5)(E)(iv) of the Act.

As for the AFA subsidy rate used by the Department, we disagree with Taian Modern that it was unreasonable. The Department used its standard methodology to rely on the calculated rate for the same or similar program. Accordingly, we used a calculated rate for an LTAR program in the PRC. This is consistent with the new section 776(d) of the Act, which states that the Department may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department 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.[222]

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[219] See Taian Modern's new subsidy allegation questionnaire response, dated August 19, 2016, at pages 2-3.
[220] See Taian Modern's new subsidy allegation supplemental questionnaire response, dated September 13, 2016, at page 3.
[221] Id.
[222] See section 776(d)(3) of the Act.

XI. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the Federal Register and will notify the U.S. International Trade Commission of our determination.

☒ ☐

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Agree Disagree

1/4/2017

X 

Signed by: PAUL PIQUADO

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

Attachment

AFA Subsidy Rate Calculation

<table>
<tr><th>Program Name</th><th>AFA Rate (percent)</th></tr>
<tr><td>Policy Loans to the Geogrids Industry</td><td>1.88</td></tr>
<tr><td>Export Seller’s Credits from the Export-Import Bank of China</td><td>4.25</td></tr>
<tr><td>Export Buyer’s Credits from the Export-Import Bank of China</td><td>10.54</td></tr>
<tr><td>Preferential Loans for SOEs</td><td>10.54</td></tr>
<tr><td>Interest Subsidies for SOEs</td><td>0.58</td></tr>
<tr><td>State Key Technology Project Fund</td><td>0.58</td></tr>
<tr><td>Export Assistance Grants</td><td>0.58</td></tr>
<tr><td>GOC and Sub-Central Government Subsidies for the Development of Famous Brands and World Top Brands</td><td>0.58</td></tr>
<tr><td>Provision of Land Use Rights for LTAR</td><td>1.75</td></tr>
<tr><td>Provision of Land to SOEs for LTAR</td><td>13.36</td></tr>
<tr><td>Provision of Polypropylene for LTAR</td><td>16.54</td></tr>
<tr><td>Provision of Electricity for LTAR</td><td>1.34</td></tr>
<tr><td>Preferential Income Tax Program for HNTEs</td><td>1.74</td></tr>
<tr><td>Income Tax Benefits for Domestically-Owned Enterprises Engaging in R&D</td><td rowspan="8">25</td></tr>
<tr><td>Preferential Income Tax Subsidies for Productive FIEs</td></tr>
<tr><td>Preferential Income Tax Subsidies for High or New Technology FIEs</td></tr>
<tr><td>Reduction In or Exemption From Fixed Assets Investment Orientation Regulatory Tax</td></tr>
<tr><td>Preferential Tax Programs for Export-Oriented FIEs</td></tr>
<tr><td>Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment</td></tr>
<tr><td>Taishan Zone Income Tax Program</td></tr>
<tr><td>Feicheng Zone Income Tax Subsidy</td></tr>
<tr><td>Preferential Deduction of R&D Expenses for HNTEs</td><td>0.20</td></tr>
<tr><td>Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries</td><td>9.71</td></tr>
<tr><td>Export Credit Insurance</td><td>0.58</td></tr>
<tr><td>Export Credit Guarantees</td><td>10.54</td></tr>
<tr><td>Taishan Zone Infrastructure Fee Exemption</td><td>1.51</td></tr>
<tr><td>Taishan Zone Fiscal Charge Exemptions and Reductions</td><td>1.51</td></tr>
<tr><td>Taishan Zone Grants for Fixed Assets</td><td>0.02</td></tr>
<tr><td>Taishan Zone Collection of Charges Exemption</td><td>1.51</td></tr>
</table>

Feicheng Zone Infrastructure Fee Exemption	1.51
Ling County Economic Development Zone and Geosynthetics Production Base Grants	1.51
High Tech Base Support Grant	0.13
Local Small and Medium Enterprise Program	0.11
Foreign Trade Promotion Fund	0.08
Product Line Change Grant	0.11
Plant and Equipment Provided for LTAR	22.32
Installment Plans for Land-Use Rights	1.31
Industrial Park Relocation Fund	1.51
"One Project, One Discussion" Program	1.51
Grants from District Income Tax Funds	1.51
Grants to Top Listed Enterprises	1.51
Exemptions from Urban Infrastructure Support Fees	1.51
Taishan Qingchun Development Zone Incentives	1.51
Administrative Fee Reductions and Waivers	0.01
Exemptions and Waivers of Fees for Supporting Facilities of Infrastructure	1.51
Total Ad Valorem Rate	152.5