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Investigation
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DATE: January 17, 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: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Certain Amorphous Silica
Fabric from the People's Republic of China

I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain amorphous silica fabric (silica fabric) from the People's Republic of China (PRC) within the meaning of section 705 of the Tariff Act of 1930, as amended (the Act).¹ Petitioner in this matter is Auburn Manufacturing, Inc. (Petitioner). The mandatory respondents are ACIT (Pinghu) Inc. (ACIT Pinghu) and Nanjing Tianyuan Fiberglass Material Co., Ltd. (Nanjing Tianyuan).² Below is the complete list of issues in this investigation for which we received comments from interested parties.

Issues:

- Comment 1: Whether the Department Should Apply Adverse Facts Available (AFA) to the Provision of Fiberglass Yarn for Less Than Adequate Remuneration (LTAR)
- Comment 2: Whether the Department Should Incorporate Corrections Made to the Fiberglass Cloth Database as Reported by ACIT Pinghu and ACIT Shanghai
- Comment 3: Whether the Department Should Apply Partial AFA for Failure to Provide a Questionnaire Response for a Former Affiliate of ACIT Shanghai

¹ See also section 701(f) of the Act.

² See Memorandum to Christian Marsh, from John Corrigan and Emily Maloof, "Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Respondent Selection," dated April 5, 2016 (Respondent Selection Memorandum).



- Comment 4: Whether the Allegation of the Provision of Fiberglass Cloth for LTAR is Flawed
- Comment 5: Whether Domestic Chinese Producers of Fiberglass Cloth are Government “Authorities”
- Comment 6: Whether the Provision of Fiberglass Cloth for LTAR is Specific
- Comment 7: Whether to Use an In-China Benchmark to Measure the Adequacy of Remuneration for Fiberglass Cloth
- Comment 8: Whether the Benchmark for the Provision of Fiberglass Cloth for LTAR is Flawed
- Comment 9: Whether the Department Should Adjust the Fiberglass Cloth Benchmark for a Value-Added Process
- Comment 10: Whether the Department Should Exclude Value-Added Tax (VAT) from the Tariff Rate in its Calculations for the Electricity for LTAR Program and Exclude VAT from the Calculation for the Provision of Fiberglass Cloth for LTAR
- Comment 11: Whether the Department Should Revise the Ocean Freight Benchmark
- Comment 12: Whether the Department Should Continue its Use of Zeroing with Regard to Calculation of the Benefit of Fiberglass Cloth for LTAR
- Comment 13: Whether the Department Should Make Corrections to its Subsidy Calculations Regarding the Provision of Fiberglass Cloth at LTAR
- Comment 14: Whether the Department Should Exclude Certain World Export Prices for Fiberglass Cloth Pertaining to the PRC
- Comment 15: Whether the Department Should Revise the Denominator Used to Calculate the Benefit Received by ACIT for the Provision of Fiberglass Cloth at LTAR
- Comment 16: Whether the Department Should Find that ACIT and Nanjing Tianyuan Benefitted from Export Seller’s Credits Because the GOC Failed to Provide Evidence of Non-Use at Verification
- Comment 17: Whether the Department Should Find that ACIT and Nanjing Tianyuan Benefitted from Export Buyer’s Credits
- Comment 18: Whether the Provision of Electricity for LTAR is Countervailable
- Comment 19: Whether the GOC Provided Policy Loans to ACIT and Nanjing Tianyuan During the Period of Investigation
- Comment 20: Whether the Department Should Apply AFA to the Government Provision of Land for LTAR in Special Economic Zones (SEZs)
- Comment 21: Whether the Department Should Calculate the All-Others Rate Based on the Calculated Rate for ACIT Pinghu and Nanjing Tianyuan
- Comment 22: Whether the Department’s Investigation of Uninitiated Programs is Unlawful
- Comment 23: Whether the Department’s Countervailing Duty (CVD) Rates Should Reflect an Adjustment for Programs that Have Been Terminated

II. BACKGROUND

A. Case History

On January 20, 2016, the Department received a CVD petition³ concerning imports of silica fabric from the PRC, filed in proper form by Petitioner, and on February 16, 2016, the Department initiated the CVD investigation.⁴ ACIT Pinghu and Nanjing Tianyuan accounted for the largest volume of exports of the merchandise under consideration during the period of investigation (POI), and these companies were selected as mandatory respondents.⁵

On April 5, 2016, the Department issued a CVD questionnaire to the Government of the PRC (GOC).⁶ On April 20, 2016, and April 22, 2016, ACIT Pinghu and Nanjing Tianyuan filed their affiliated companies questionnaire responses, respectively.⁷ Pursuant to ACIT Pinghu's questionnaire response, we determined that ACIT (Shanghai) Inc. (ACIT Shanghai) was a cross-owned affiliated company and, as such, we requested a complete questionnaire response from this affiliate.⁸ On May 18, 2016, the GOC, ACIT Pinghu and ACIT Shanghai (collectively, ACIT), and Nanjing Tianyuan timely filed their responses to the Initial Questionnaire.⁹ The GOC,¹⁰ ACIT Pinghu,¹¹ and Nanjing Tianyuan¹² timely filed responses to additional

³ See "Petition for the Imposition of Countervailing Duties on Imports of Certain Amorphous Silica Fabric from the People's Republic of China," dated January 20, 2016 (Petition).

⁴ See *Certain Amorphous Silica Fabric Iron From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 81 FR 8909 (February 23, 2016) (CVD Initiation).

⁵ See Respondent Selection Memorandum; see also Memorandum from Christian Marsh to Paul Piquado, "Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China," dated June 27, 2016 (PDM) at 2 – 3.

⁶ See "Countervailing Duty Questionnaire from the Department to Ms. Liu Fang, First Secretary, Embassy of the People's Republic of China, Washington, D.C.," dated April 5, 2016 (Initial Questionnaire).

⁷ See Letter from ACIT Pinghu, "Certain Amorphous Silica Fabric from the People's Republic of China: Affiliated Companies Response," dated April 20, 2016 (ACIT Pinghu AQR); see also Letter from Nanjing Tianyuan, "Amorphous Silica Fabric from the Peoples Republic of China: Response to Section III Identifying Affiliated Companies," dated April 22, 2016 (Nanjing Tianyuan AQR).

⁸ See Letter from the Department, "Re: Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Supplemental Questionnaire for ACIT Pinghu Inc.," dated April 21, 2016.

⁹ See Letter from ACIT Pinghu, "Certain Amorphous Silica Fabric from the People's Republic of China: Sections III of Countervailing Duty Response," dated May 18, 2016 (ACIT Pinghu IQR), Letter from Nanjing Tianyuan, "Certain Amorphous Silica Fabric from the People's Republic of China: Section III Questionnaire Response," dated May 18, 2016 (Nanjing Tianyuan IQR), and Letter from the GOC, "Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC Initial Response and Supplemental Response," dated May 18, 2016 (GOC IQR), respectively.

¹⁰ See Letter from the GOC, "Re: Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC Initial Response and Supplemental Response," dated June 2, 2016 (GOC 2SQR); see Letter from the GOC, "Re: Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC Initial Response and Supplemental Response," dated June 13, 2016 (GOC 3SQR); see Letter from the GOC, "Re: Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC Initial Response and Supplemental Response," dated June 16, 2016 (GOC 4SQR); see Letter from the GOC, "Re: Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC Initial Response and Supplemental Response," dated June 23, 2016 (GOC 5SQR); see Letter from the GOC, "Re: Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC 6th Supplemental Response," dated August 15, 2016 (GOC 6SQR); see Letter from the GOC, "Re: Certain Amorphous Silica Fabric from the

supplemental questionnaires between May 24, 2016, and July 11, 2016. Petitioner filed comments on the aforementioned responses between May 4, 2016, and June 17, 2016.¹³

On May 31, 2016, ACIT Pinghu and Petitioner submitted proposed benchmark prices for use in calculating benefits under the initially alleged subsidy programs.¹⁴

People's Republic of China; CVD Investigation; GOC 7th Supplemental Response," dated September 6, 2016 (GOC 7SQR).

¹¹ See Letter from ACIT Pinghu, "Re: Certain Amorphous Silica Fabric from China: Affiliated Companies Supplemental Questionnaire Response," dated April 25, 2016 (ACIT Pinghu SQR); see Letter from ACIT Pinghu, "Re: Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Supplemental Questionnaire for ACIT Pinghu Inc.," dated May 24, 2016 (ACIT Pinghu 2SQR); see Letter from ACIT Pinghu, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Certain Amorphous Silica Fabric from China: Second Supplemental Questionnaire Response," dated June 2, 2016; see Letter from ACIT Pinghu, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Certain Amorphous Silica Fabric from China: Third Supplemental Questionnaire Response," dated June 2, 2016 (ACIT Pinghu 3SQR); see Letter from ACIT Pinghu, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Certain Amorphous Silica Fabric from China: Second Supplemental Questionnaire Response," dated June 16, 2016 (ACIT Pinghu 4SQR);

¹² See Letter from Nanjing Tianyuan, "Re: Amorphous Silica Fabric from the Peoples Republic of China: Supplemental CVD Questionnaire Response," dated June 1, 2016 (Nanjing Tianyuan SQR); see Letter from Nanjing Tianyuan, "Re: Amorphous Silica Fabric from the Peoples Republic of China: Supplemental CVD Questionnaire Response," dated June 9, 2016 (Nanjing Tianyuan 2SQR); see Letter from Nanjing Tianyuan, "Re: Amorphous Silica Fabric from the Peoples Republic of China: Supplemental CVD Questionnaire Response," dated June 14, 2016 (Nanjing Tianyuan 3SQR); see Letter from Nanjing Tianyuan, "Re: Amorphous Silica Fabric from the Peoples Republic of China: Supplemental CVD Questionnaire Response," dated July 11, 2016 (Nanjing Tianyuan 4SQR).

¹³ See Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Submission of Factual Information to Rebut, Clarify, or Correct Information Placed on the Record by ACIT (Pinghu) Inc.," dated May, 4 2016 (Petitioner Rebuttal of ACIT Pinghu SQR); see Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Failure to Provide Questionnaire Response for Certain Affiliates of ACIT Shanghai and Submission of Factual Information to Rebut, Clarify, or Correct Information Contained in the Producer Questionnaire Response," dated May 25, 2016 (Petitioner Second Rebuttal to ACIT Pinghu SQR); see Letter from Petitioner, "Re: Countervailing Duty Investigation on Certain Amorphous Silica Fabric from the People's Republic of China: Additional Comments Regarding the CVD Producer Response of ACIT," dated May 25, 2016 (Petitioner Rebuttal to ACIT Pinghu IQR); see Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Comments Regarding the CVD Producer Response of Nanjing Tianyuan," dated May 27, 2016; see Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Comments on ACIT's Response to the Department's Third Supplemental Countervailing Duty Questionnaire," dated June 8, 2016 (Petitioner Rebuttal to ACIT Pinghu 3SQR); see Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's Rebuttal Factual Information in Response to GOC's 2nd Supplemental Questionnaire Response," dated June 8, 2016; see Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Comments Regarding June 1, 2016 Supplemental Questionnaire Response of Nanjing Tianyuan," dated June 14, 2016; see Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's Rebuttal Factual Information in Response to GOC's 4th Supplemental Questionnaire Response," dated June 17, 2016; see Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's Rebuttal Factual Information in Response to ACIT's Response to the Department's 4th Supplemental Countervailing Duty Questionnaire," dated June 17, 2016)

¹⁴ See Letter from ACIT Pinghu, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Benchmark Submission," dated May 31, 2016 (ACIT Pinghu Land Benchmark) and Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's Benchmark Factual Information," dated May 31, 2016 (Petitioner Benchmark Submission).

On May 24, 2016, and May 25, 2016, Petitioner submitted new subsidy allegations (NSA) to the Department.¹⁵ On May 31, 2016, ACIT Pinghu submitted a response to Petitioner's NSA Letter,¹⁶ to which Petitioner submitted rebuttal information on June 2, 2016.¹⁷ On June 21, 2016, the Department initiated an investigation of ten NSAs and issued a NSA questionnaire to ACIT Pinghu, Nanjing Tianyuan, and the GOC.¹⁸ We determined that there was not sufficient time to fully analyze the responses prior to the preliminary determination, and we would issue a post-preliminary analysis regarding these programs.

On June 9, 2016, Petitioner also filed a request that the Department align the final determination of this CVD investigation with the companion antidumping duty investigation.¹⁹ On June 20, 2016, Petitioner submitted pre-preliminary comments.²⁰

On July 5, 2016, the Department issued its *Preliminary Determination* in this matter.²¹ In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on Petitioner's request,²² we aligned the deadline for the final CVD determination in this investigation with the deadline for the final determination in the antidumping duty investigation of silica fabric from the PRC.

On July 11, 2016, and July 12, 2016, the GOC, ACIT Pinghu, and Nanjing Tianyuan timely filed their responses to the NSA questionnaire.²³ On July 19, 2016 and July 29, 2016, Petitioner and ACIT Pinghu submitted benchmark data to analyze the allegation of fiberglass cloth for LTAR.²⁴

¹⁵ See Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's New Subsidy Allegations," dated May 24, 2016 (NSA Letter) and Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's New Subsidy Allegations," dated May 25, 2016 (NSA Supplement).

¹⁶ See Letter from ACIT Pinghu, "Re: Certain Amorphous Silica Fabric from China: Response to Petitioner's New Subsidy Allegations," dated May 31, 2016.

¹⁷ See Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's Response to ACIT's Objection to Petitioner's New Subsidy Allegations," dated June 2, 2016.

¹⁸ See Memorandum to Scot Fullerton, Director, AD/CVD Enforcement, Office VI, "Re: New Subsidy Allegations," dated June 14, 2016, (NSA Memorandum).

¹⁹ See Letter from Petitioner, "Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's Request for Postponement of Date for Final Countervailing Duty Determinations to Align to the Date of the Final Antidumping Determination," dated June 9, 2016 (Petitioner Alignment Request).

²⁰ See Letter from Petitioner, "Re: Countervailing Duty Investigation on Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's Pre-Preliminary Determination Comments," dated June 20, 2016 (Petitioner's Pre-Preliminary Comments).

²¹ See *Countervailing Duty Investigation of Certain Amorphous Silica Fabric From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 43579 (July 8, 2016) (*Preliminary Determination*) and accompanying Memorandum from Christian Marsh to Paul Piquado, "Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China," dated July 5, 2016 (PDM).

²² See Petitioner Alignment Request.

²³ See Letter from the GOC, "Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC New Subsidy Allegation Response," dated July 12, 2016 (GOC NSA QR); Letter from Nanjing Tianyuan, "Re: Certain Amorphous Silica Fabric from the Peoples Republic of China: New Subsidy Allegations Countervailing Questionnaire Response," dated July 11, 2016 (Nanjing Tianyuan NSA QR); Letter from ACIT

Between July 27, 2016, and August 30, 2016, the Department issued supplemental questionnaires to the GOC, ACIT Pinghu, and Nanjing Tianyuan which requested additional information and supporting documentation about program use by the respective companies. Between August 3, 2016, and September 6, 2016, the GOC and ACIT Pinghu timely filed their respective responses to the supplemental questionnaires.²⁵ Nanjing Tianyuan, however, did not file a timely response to the Department's supplemental questionnaire.²⁶ On August 18, 2016, Petitioner filed comments regarding the post-preliminary analysis.²⁷ On October 25, 2016, the Department issued its post-preliminary analysis of the NSAs.²⁸

On September 14, 2016, Petitioner submitted pre-verification comments pertaining to ACIT and Nanjing Tianyuan.²⁹ From September 19, 2016, through September 28, 2016, Department officials conducted verification of the GOC's, ACIT's, and Nanjing Tianyuan's questionnaire responses. From September 26, 2016, through October 4, 2016, parties submitted verification exhibits from the Department's verification.³⁰

Pinghu, "Re: Certain Amorphous Silica Fabric from China: Response to the Department's June 21, 2016 New Subsidy Allegations Questionnaire," dated July 12, 2016 (ACIT NSA QR).

²⁴ See Letter from ACIT Pinghu, "Re: Certain Amorphous Silica Fabric from China: New Subsidy Allegation Benchmark Submission," dated July 19, 2016; Letter from ACIT Pinghu, "Re: Certain Amorphous Silica Fabric from China: Rebuttal to Petitioner's July 19, 2016 Initial Benchmark Values Submission," dated July 29, 2016; Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Provision of Initial Benchmark Values by Petitioner," dated July 19, 2016.

²⁵ See Letter from ACIT Pinghu, "Re: Certain Amorphous Silica Fabric from China: Response to the Fifth Supplemental Countervailing Duty Questionnaire," dated August 3, 2016 (ACIT Pinghu 5SQR); Letter from the GOC, "Re: Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC 6th Supplemental Response," dated August 15, 2016 (GOC 6SQR); Letter from the GOC, "Re: Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC 7th Supplemental Response," dated September 6, 2016 (GOC 7SQR).

²⁶ See Questionnaire from the Department, "Re: Countervailing Duty Investigation of Certain Amorphous Silica Fabric: Fifth Supplemental Questionnaire for Nanjing Tianyuan Fiberglass Material Co., Ltd., dated July 28, 2016 (Nanjing Tianyuan 5SQR); *see also* Memorandum to the File, "Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Failure to Respond to a Countervailing Duty Questionnaire," (Memo Regarding Nanjing Tianyuan's Failure to Respond) dated August 29, 2016.

²⁷ See Letter from Petitioner, "Re: Countervailing Duty Investigation on Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's Comments in Advance of the Department's Post-Preliminary Determination on New Subsidy Allegations," dated August 18, 2016.

²⁸ See Memorandum from Scot Fullerton to Ronald K. Lorentzen, "Post-Preliminary Analysis Memorandum," dated October 25, 2016 (Post-Preliminary Analysis Memorandum).

²⁹ See Letter from Petitioner, "Re: Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Pre-Verification Comments Regarding Nanjing Tianyuan," dated September 14, 2016, and Letter from Petitioner, "Re: Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Pre-Verification Comments Regarding ACIT," dated September 14, 2016.

³⁰ See Letter from the GOC, "Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC Verification Exhibits," dated September 26, 2016 (GOC Verification Exhibits); *see also* Letter from ACIT, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Verification Exhibits," dated September 29, 2016 (ACIT's Verification Exhibits); *see also* Letter from Nanjing Tianyuan, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Verification Exhibits," dated October 4, 2016 (Nanjing Tianyuan's Verification Exhibits).

On August 1, 2016, August 4, 2016, and August 5, 2016, Petitioner and ACIT requested that the Department hold a hearing.³¹ The GOC and Nanjing Tianyuan stated that they would participate in a hearing, if it was held.³² On December 1, 2016, Petitioner and ACIT withdrew their hearing requests.³³

On November 1, 2016, the Department issued its verification reports.³⁴ On November 14, 2016, Petitioner, the GOC, and ACIT filed case briefs.³⁵ On November 21, 2016, Petitioner, the GOC, and ACIT submitted rebuttal briefs.³⁶ Nanjing Tianyuan did not submit case or rebuttal briefs.

The “Analysis of Programs” and “Subsidies Valuation” sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Based on our verification findings, we made certain modifications to the *Preliminary Determination*, which are discussed under each program, below. For details of the resulting revisions to the Department’s rate calculations resulting from those modifications, see the final calculation memoranda.³⁷ We recommend that you approve the positions we describe in this memorandum.

³¹ See Letter from Petitioner, “Re: Certain Amorphous Silica Fabric from the People’s Republic of China: Hearing Request of Petitioner,” dated August 1, 2016; Letter from ACIT, “Certain Amorphous Silica Fabric from the People’s Republic of China: Hearing Request,” August 4, 2016; Letter from Nanjing Tianyuan, “Certain Amorphous Silica Fabric from China: Will Participate in Any Hearing in This Case,” dated August 5, 2016.

³² See Letter from the GOC, “Re: Certain Amorphous Silica Fabric from the People’s Republic of China; CVD Investigation; GOC Request to Participate in Hearing, if Requested,” dated August 3, 2016; see also Letter from Nanjing Tianyuan, “Re: Certain Amorphous Silica Fabric from the Peoples Republic of China: Will Participate in Any Hearing in This Case,” dated August 5, 2016.

³³ See Letter from ACIT, “Certain Amorphous Silica Fabric from the People’s Republic of China: Withdrawal of Hearing Request,” dated December 1, 2016; Letter from Petitioner, “Certain Amorphous Silica Fabric from the People’s Republic of China: Withdrawal of Hearing Request of Petitioner,” dated December 1, 2016.

³⁴ See Memorandum to File, “Verification Report of the Government of the People’s Republic of China,” dated November 1, 2016 (GOC’s VR); Memorandum to File, “Verification Report of Nanjing Tianyuan Fiberglass Material Co., Ltd.,” dated November 1, 2016 (Nanjing Tianyuan’s VR); and Memorandum to the File, “Verification Report of ACIT (Pinghu) Ltd. And ACIT (Shanghai) Ltd.,” dated November 1, 2016 (ACIT’s VR).

³⁵ See Letter from the GOC, “Re: Certain Amorphous Silica Fabric from the People’s Republic of China; CVD Investigation; GOC Case Brief,” dated November 14, 2016 (GOC’s Case Brief); Letter from Petitioner, “Certain Amorphous Silica Fabric from the People’s Republic of China: Petitioner’s Case Brief Regarding ACIT,” dated November 14, 2016 (Petitioner’s Nanjing Tianyuan Case Brief); Letter from Petitioner, “Re: Certain Amorphous Silica Fabric from the People’s Republic of China: Petitioner’s Case Brief Regarding ACIT,” November 14, 2016 (Petitioner’s ACIT Case Brief); and Letter from ACIT, “Certain Amorphous Silica Fabric from the People’s Republic of China: Case Brief,” dated November 14, 2016 (ACIT’s Case Brief).

³⁶ See Letter from Petitioner, “Re: Certain Amorphous Silica Fabric from the People’s Republic of China: Petitioner’s Rebuttal Brief Regarding ACIT,” dated,” dated November 21, 2016 (Petitioner’s ACIT Rebuttal Brief); Letter from Petitioner, “Re: Certain Amorphous Silica Fabric from the People’s Republic of China: Petitioner’s Rebuttal Brief in Response to the Government of China,” dated November 1, 2016 (Petitioner’s GOC Rebuttal Brief); Letter from the GOC, “Re: Certain Amorphous Silica Fabric from the People’s Republic of China; CVD Investigation; GOC Rebuttal Brief,” dated November 21, 2016 (GOC’s Rebuttal Brief); and Letter from ACIT, “Re: Certain Amorphous Silica Fabric from the People’s Republic of China: Rebuttal Brief,” dated November 21, 2016 (ACIT’s Rebuttal Brief).

³⁷ See Memorandum from Emily Maloof to Brian C. Davis, “Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China: ACIT (Pinghu) Inc. and ACIT (Shanghai) Inc. Final Analysis Memorandum,” dated January 17, 2017 (ACIT’s Final Calculation Memorandum) and Memorandum from John Corrigan to Brian C. Davis, “Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the

B. Period of Investigation

The POI for which we are measuring subsidies is January 1, 2015, through December 31, 2015.

III. SCOPE OF THE INVESTIGATION

The final version of the scope appears in Appendix II of the accompanying *Federal Register* notice.

IV. SCOPE COMMENTS

The Department set aside a period of time for parties to address scope issues.³⁸ We received no scope comments.³⁹ In the *Preliminary Determination*, we did not modify the scope language from what appeared in the *Initiation Notice*.⁴⁰ No interested party submitted scope comments in case or rebuttal briefs. Therefore, the scope of this investigation remains unchanged for this final determination.

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.⁴¹ 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.⁴²

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.⁴³ Furthermore, on March 13, 2012, Public Law 112-99 was enacted, which confirms that the Department has authority to apply the CVD law to countries designated as non-

People's Republic of China: Nanjing Tianyuan Fiberglass Material Co., Ltd. Final Analysis Memorandum," dated January 17, 2017 (Nanjing Tianyuan's Final Calculation Memorandum).

³⁸ See *Certain Amorphous Silica Fabric From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 81 FR 8909 (February 23, 2016) (*Initiation Notice*).

³⁹ On March 13, 2016, the Department received a letter dated March 7, 2016, from Lewco Specialty Products, Inc. We rejected this letter as improperly filed and removed it from the record of this proceeding. See Memorandum to the File, "Re: Request to Take Action on Certain Barcodes," dated March 18, 2016.

⁴⁰ *Initiation Notice*, 81 FR at 8912-13.

⁴¹ 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*) and accompanying Issues and Decision Memorandum (Coated Paper IDM) at Comment 6.

⁴² *Id.*

⁴³ 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 IDM (CWP IDM) at Comment 1.

market economies under section 771(18) of the Act, such as the PRC.⁴⁴ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.⁴⁵

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.⁴⁶

VI. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

The Department has made no changes to the allocation period used in the *Preliminary Determination* and no issues were raised by interested parties in case briefs regarding the allocation period. For a description of the allocation period and the methodology used for this final determination, see the *Preliminary Determination*.⁴⁷

B. Attribution of Subsidies

The Department has made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies. For a description of the methodology used for this final determination, see the final analysis memoranda.⁴⁸

C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for a 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 Department has made certain changes to the methodologies used in the *Preliminary Determination* with respect to calculating Nanjing Tianyuan's sales. In our *Preliminary Determination*, based on Nanjing Tianyuan's failure to provide its audited POI financial statement, and inconsistencies in the sales figures it submitted, the Department applied AFA with respect to certain countervailable subsidies.⁴⁹

Following the *Preliminary Determination*, we again requested that Nanjing Tianyuan provide an audited financial statement for the POI and reconciliations for the company's 2013, 2014, and 2015 sales values to those years' respective financial statements. On July 11, 2016, Nanjing Tianyuan submitted the requested information regarding its sales from 2013 through 2015.⁵⁰ We, therefore, are calculating subsidy rates for certain programs that Nanjing Tianyuan used

⁴⁴ Section 1(a) is the relevant provision of Public Law 112 – 99 and is codified at section 701(f) of the Act.

⁴⁵ See Public Law 112 – 99, 126 Stat. 265 §1(b).

⁴⁶ See CWP IDM at Comment 2.

⁴⁷ See PDM at 9 – 10.

⁴⁸ See ACIT's Final Calculation Memorandum and Nanjing Tianyuan's Final Calculation Memorandum.

⁴⁹ See PDM at 21 – 25.

⁵⁰ See Nanjing Tianyuan 4SQR.

during 2013 and 2015 in this final determination based upon the company's own sales.⁵¹ We are not using Nanjing Tianyuan's 2014 sales as the bases for measuring subsidies the company received in 2014. For further information, see Section VII C below.

Regarding ACIT, the Department has made no changes to the denominators used in the *Preliminary Determination*, with the exception of updating the reported sales values for ACIT Shanghai, where applicable, for the minor corrections submitted at verification.⁵² For a description of the methodology used for this final determination, see the final analysis memoranda.⁵³

VII. BENCHMARKS AND DISCOUNT RATES

Interested parties submitted a number of comments regarding the benchmarks and discount rates used in the *Preliminary Determination* and the post-preliminary analysis in their case and rebuttal briefs.⁵⁴ The Department has considered these comments and has made certain changes to the benchmarks used previously. Specifically, we have made adjustments to the fiberglass cloth benchmarks; no other changes were made to any of the benchmarks or discount rates. For a more in-depth discussion of the comments and the Department's analysis as well as the changes made to the benchmarks, see Comments 7, 8, 9, and 11. For a description of all other unchanged benchmarks and discount rates used for these final results, see the *Preliminary Determination* and the accompanying PDM.⁵⁵

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 post-preliminary analysis.⁵⁶ The Department continues to rely on AFA with respect to its treatment of the following programs: Electricity for LTAR;⁵⁷ Provision of Fiberglass Cloth for LTAR;⁵⁸ Policy Loans to the silica fabric industry;⁵⁹ and certain "other subsidies."⁶⁰ The Department also continues to apply total AFA to the companies that failed to respond to the Department's quantity and value (Q&V) questionnaire. The Department's calculation of the total AFA rate is presented in Appendix I.

⁵¹ As discussed in Section VIII below, we determine, as AFA, that all subsidy program benefits Nanjing Tianyuan received during 2014 are allocable to the POI in their entirety because we were unable to reconcile Nanjing Tianyuan's 2014 sales at verification.

⁵² See ACIT's VR at 2-4.

⁵³ See ACIT's Final Calculation Memorandum and Nanjing Tianyuan's Final Calculation Memorandum.

⁵⁴ See ACIT's Case Brief, Petitioner's Case Brief, ACIT's Rebuttal Brief, and Petitioner's Rebuttal Brief.

⁵⁵ See PDM at 12 – 15.

⁵⁶ See PDM at 17 – 33; see also Post-Preliminary Analysis Memorandum at 2 – 12.

⁵⁷ See Comment 18.

⁵⁸ See Comments 2, 4 – 10, and 12 – 15; see also Post-Preliminary Analysis Memorandum at 6 – 7.

⁵⁹ See PDM at 31 – 33; see also Comment 19.

⁶⁰ In this final determination, the Department determines, as AFA, that all subsidy program benefits Nanjing Tianyuan received in 2014 are allocable to the POI. See Section VIII at "C. Application of AFA: Nanjing Tianyuan."

Additionally, in this final determination, the Department has relied on AFA to determine certain additional CVD rates for Nanjing Tianyuan. Pursuant to sections 776(a)(2)(A), (2)(C), and (2)(D) of the Act, when an interested party withholds information that has been requested by the administering authority, significantly impedes a proceeding, and/or provides information that cannot be verified, the Department uses facts otherwise available to reach its determination. As discussed below in the section “Application of AFA: Nanjing Tianyuan,” and at Comment 1, we determine that Nanjing Tianyuan withheld requested information, significantly impeded the proceeding, and provided information that could not be verified. Further, pursuant to section 776(b) of the Act, we find that Nanjing Tianyuan failed to cooperate by not acting to the best of its ability to comply with our requests for information regarding the Provision of Fiberglass Yarn for LTAR and the company’s 2014 sales data. Accordingly, we find that the application of AFA is warranted with respect to this program and data.

Further, as explained below, the Department has relied on AFA for the following programs:

A. Application of AFA: Export Buyer’s Credits

GOC

The Department has determined that the use of AFA is warranted in determining the countervailability of the Export Buyer’s Credit program because the GOC did not provide the requested information needed to allow the Department to analyze this program fully. In our initial questionnaire, we requested that the GOC provide the information requested in the Standard Questions Appendix “with regard to all types of financing provided by state-owned banks” such as the Export Import Bank of China (EX-IM Bank) and the Bank of China through the Export Buyer’s Credit program. The Standard Questions Appendix requested various information that the Department requires in order to analyze the specificity and financial contribution of this program, including the following: translated copies of the laws and regulations pertaining to the program, identification of the agencies and types of records maintained for administration of the program, a description of the program and the program application process, program eligibility criteria, and program use data. Rather than responding to the questions in the Appendix, the GOC stated that it had confirmed “none of the U.S. customers of the respondents used Export Buyer’s Credits from the EX-IM Bank during the POI.”⁶¹

Moreover, in the same response, the GOC stated that the EX-IM Bank confirmed that it strictly limits the provision of Export Buyer’s Credits to business contracts exceeding U.S. Dollars (USD) 2 million.⁶² However, information on the record of this proceeding indicates that the GOC revised this program in 2013 to eliminate this minimum requirement.⁶³ In response to our request that it provide the documents pertaining to the 2013 program revision, the GOC declined to provide them, stating that the “Administrative Measures/Internal Guidelines relating to this

⁶¹ See GOC IQR at 12 – 16.

⁶² *Id.*

⁶³ See Memorandum to the File from Yasmin Bordas, AD/CVD Operations, Office VI, “Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China: Placing Information on the Record,” dated August 30, 2016 (Citric Acid Verification Report).

program that were revised in 2013 are internal to the bank, non-public, and not available for release.”⁶⁴ Through its response to the Department’s supplemental questionnaire, the GOC has refused to provide the requested information or any information concerning the 2013 program revision, which is necessary for the Department to analyze how the program functions.

We requested the 2013 *Administrative Measures* revisions (2013 Revisions) because information on the record of this proceeding indicated that the 2013 Revisions affected important program changes. For example, the 2013 Revisions may have eliminated the USD 2 million contract minimum associated with this lending program.⁶⁵ By refusing to provide the requested information, and instead asking the Department to rely upon unverifiable assurances that the *2000 Rules Governing Export Buyers’ Credit* remained in effect, the GOC impeded the Department’s understanding of how this program operates and how it can be verified.

Additional information in the GOC’s supplemental questionnaire response also indicated that the loans associated with this program are not limited to direct disbursements through the EX-IM Bank.⁶⁶ Specifically, the GOC stated that customers can open loan accounts for disbursements through this program with other banks.⁶⁷ The funds are first sent from the EX-IM Bank to the importer’s account, which could be at the EX-IM Bank or other banks, and that these funds are then sent to the exporter’s bank account.⁶⁸ Given the complicated structure of loan disbursements for this program, the Department’s complete understanding of how this program is administrated is necessary. Thus, the GOC’s refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administrated by the EX-IM Bank, impeded the Department’s ability to conduct its investigation of this program.

Pursuant to sections 776(a)(2)(A) and (2)(C) of the Act, when an interested party withholds information requested by the Department and significantly impedes a proceeding, the Department uses facts otherwise available. We find that the use of facts otherwise available is appropriate in light of the GOC’s refusal to provide the 2013 Revisions. Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding of information and significantly impeding this proceeding, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted. The GOC has not provided enough information to determine whether the EX-IM Bank limits the provision of Export Buyer’s Credits to business contracts exceeding USD 2 million. Such information is critical to understanding how the Export Buyer’s Credits program operates and critical to the Department’s program use determination.

The GOC’s response to the supplemental questionnaire stated its refusal to provide information about the internal administration of the program. The GOC is the only party that can answer questions about the internal administration of this program, and, thus, absent the requested information, the GOC’s and respondent company’s claims of non-use of this program are not

⁶⁴ See GOC 7SQR at 3.

⁶⁵ See Citric Acid Verification Report.

⁶⁶ See GOC 7SQR at 4 – 5.

⁶⁷ *Id.*

⁶⁸ *Id.*

verifiable. Therefore, we determine that the GOC has not cooperated to the best of its ability and, as AFA, find that the respondents used and benefited from this program.⁶⁹

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.⁷⁰ When selecting rates in an investigation, we first determine if there is an identical program in the investigation and, if so, use the highest calculated rate for the identical program. If no such identical program with a rate above zero exists in the investigation, we then determine if an identical program was examined in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding rates that are *de minimis*).⁷¹ 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, excluding *de minimis* rates.⁷² We are using an AFA rate of 10.54 percent ad valorem, the highest rate determined for a similar program in the *Coated Paper from the PRC* proceeding, as the rate for these companies.⁷³

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 practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁷⁴ The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.⁷⁵

The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.⁷⁶ Furthermore, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested

⁶⁹ See Petition at 26-27.

⁷⁰ 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 (*Shrimp 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”).

⁷¹ See *Pre-Stressed Concrete Steel Wire Strand from China, Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) (*PC Strand from the PRC*) and accompanying Issues and Decision Memorandum at 13.

⁷² See *Shrimp IDM* at 13 – 14.

⁷³ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from the PRC*) (revised rate for “Preferential Lending to the Coated Paper Industry” program).

⁷⁴ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103 – 316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA) at 870.

⁷⁵ *Id.*

⁷⁶ *Id.*, at 869 – 870

party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁷⁷

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 and thus reflects the actual behavior of the GOC with respect to these similar subsidy programs.⁷⁸ Moreover, no information has been presented that calls into question the reliability of the calculated rate that we are applying as AFA 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 as AFA, the Department will not use it.⁷⁹ Thus, we have corroborated the selected rate to the extent possible and find that the rate is reliable and relevant for use as an AFA rate for the Export Buyer’s Credits program.

ACIT and Nanjing Tianyuan

As discussed in Comment 17 below, we are finding that a facts available determination with an adverse inference in selecting from the facts available is warranted with regard to the GOC’s provision of Export Buyer’s Credits for both ACIT and Nanjing Tianyuan. With regard to ACIT, although ACIT Pinghu and ACIT Shanghai submitted affidavits that state their customers did not use this program, we were unable to corroborate these statements based on a lack of evidence provided by the GOC. Therefore, based on AFA, we find that ACIT and Nanjing Tianyuan received and benefitted from these subsidies. For further discussion, see Comment 17 below.

B. Application of AFA: Provision of Fiberglass Yarn for LTAR

GOC

⁷⁷ See section 776(d) of the Act.

⁷⁸ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper Investigation Amended Final*), and accompanying MEM at “Revised Net Subsidy Rate for the Gold Companies” (regarding “Preferential Lending to the Coated Paper Industry”); see also *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) (*Passenger Tires from the PRC*), and accompanying IDM (*Passenger Tires IDM*) at 17 (“Export Buyer’s Credit from State-Owned Banks Program”).

⁷⁹ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

As discussed immediately below and in Comment 1, we are applying AFA to Nanjing Tianyuan for its failure to report purchases of fiberglass yarn it made during the POI. As AFA, we determine that Nanjing Tianyuan received a benefit under this program.

The GOC did not comply with the Department's requests for information that aid the Department's analysis of whether the provision of fiberglass yarn for LTAR program is specific within the meaning of section 771(5A) of the Act and whether it provides a financial contribution as defined under section 771(5)(D) of the Act. Specifically, the GOC stated that none of the mandatory respondents in this investigation used this program and, accordingly, responses to the Department's questions were not required.⁸⁰ Because the GOC did not provide an adequate response to the Department's questions about this program, and instead simply claimed that it was not used by ACIT and Nanjing Tianyuan, we continue to find, pursuant to section 776(a)(2)(A) of the Act, that the Department must rely on "facts otherwise available" because the GOC withheld necessary information. Moreover, we continue to find that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently we 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 that the Chinese producers from which Nanjing Tianyuan made purchases of fiberglass yarn are "authorities" within the meaning of section 771(5)(B) of the Act.⁸¹

For this final determination, we are including this program in our AFA determination as we determine, as AFA, that Nanjing Tianyuan benefited from it and that the companies which did not respond to the Department's Q&V questionnaire could have reasonably benefitted from it. Furthermore, pursuant to section 776(b) of the Act, we determine that the Provision of Fiberglass Yarn for LTAR program provides both a financial contribution under section 771(5)(D) of the Act and is *de facto* specific within the meaning of section 771(5A) of the Act.⁸²

Nanjing Tianyuan

For a detailed discussion of the Department's determination, as AFA, that Nanjing Tianyuan benefitted from the Provision of Fiberglass Yarn for LTAR program during the POI, see Comment 1.

⁸⁰ See GOC IQR at 20.

⁸¹ See Petition at 35-36.

⁸² See Petition at 36-38.

C. Application of AFA: Provision of Fiberglass Cloth for LTAR

GOC

As discussed immediately below and in Comments 4-6, we are applying AFA to Nanjing Tianyuan for its failure to respond to the Department's July 28, 2016, questionnaire about purchases of fiberglass cloth that it made during the POI. As AFA, we determine that Nanjing Tianyuan received a benefit under this program.

The record is unchanged from the post-preliminary analysis with regard to information provided by the GOC about this program. Thus, for the reasons detailed in the Department's Post-Preliminary Analysis Memorandum, and as explained in immediately below and in Comments 4-6, we continue to determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in issuing our determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, we continue to find that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information.⁸³ 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 continue to find that the Chinese producers from which the respondents made purchases of fiberglass cloth are "authorities" within the meaning of section 771(5)(B) of the Act.⁸⁴ We continue to find that the use of domestic Chinese prices are not suitable as benchmarks and that an external benchmark is warranted for calculating the benefit for the provision of fiberglass cloth for LTAR. Further, where the respondents were unable to report the identity of the producer, we are attributing these purchases to GOC authorities.

For this final determination, we are including this program in our AFA determination as we determine, as AFA, that Nanjing Tianyuan benefitted from it and that the companies which did not respond to the Department's Q&V questionnaire could have reasonably benefitted from it. Furthermore, pursuant to section 776(b) of the Act, we determine that the Provision of Fiberglass Cloth for LTAR program provides both a financial contribution under section 771(5)(D) of the Act and is *de facto* specific within the meaning of section 771(5A) of the Act.⁸⁵

Nanjing Tianyuan

The record is unchanged from the post-preliminary analysis with regard to the Nanjing Tianyuan's failure to respond to a supplemental questionnaire about this program. For a detailed discussion of the Department's determination, as AFA, that Nanjing Tianyuan benefitted from the Provision of Fiberglass Cloth for LTAR program during the POI, see the Post-Preliminary Analysis Memorandum at 6-7.

⁸³ See GOC NSA QR at 23-27.

⁸⁴ See NSA letter at 21-22.

⁸⁵ See NSA letter at 21-24.

D. Application of AFA: Nanjing Tianyuan

2014 Financial Statement and Sales Value Reconciliations

As discussed in Section VI C above, we preliminarily determined, as AFA, that Nanjing Tianyuan benefited from certain grant programs because it failed to provide certain financial statements and sales reconciliations, as requested.⁸⁶ Following our June 28, 2016, request for Nanjing Tianyuan to submit its financial statements and sales reconciliations, on July 11, 2016, Nanjing Tianyuan timely submitted, *inter alia*, its complete, corrected, audited financial statement for 2014 and reconciliation of sales values for 2014.⁸⁷ At verification, the Department was unable to reconcile Nanjing Tianyuan's 2014 total sales, export sales, and sales of subject merchandise to the United States to the company's accounting records.⁸⁸ Company officials explicitly stated to the Department that Nanjing Tianyuan's corrected, audited 2014 financial statement did not comport with records within its accounting system and that reconciliation of the company's reported 2014 sales would therefore be impossible.⁸⁹ Nanjing Tianyuan waited until verification, *i.e.*, three months after the *Preliminary Determination*, to disclose discrepancies between its accounting system and corrected audited 2014 financial statement, and provided no explanation for why it did not disclose such discrepancies earlier.

The Department requests that respondents reconcile reported sales with audited financial statements to ensure that the subsidy calculation denominator is fully corroborated by multiple components of companies' financial records. Because Nanjing Tianyuan did not provide 2014 sales information that would reconcile with its corrected audited 2014 financial statement, necessary reconciliation information is not on the record. Further, the information that Nanjing Tianyuan provided could not be verified. Accordingly, the Department must rely on "facts available" in making its determination with respect to all of Nanjing Tianyuan's reported 2014 sales, in accordance with sections 776(a)(1) and 776(a)(2)(D) of the Act. Moreover, we determine that Nanjing Tianyuan failed to cooperate by not acting to the best of its ability to comply with our request for information in that it did not reconcile its 2014 sales with its audited financial statements. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In drawing an adverse inference in selecting from the facts available, we find that all non-recurring grant subsidy program benefits Nanjing Tianyuan received in 2014 pass the "0.5 percent test" provided in 19 CFR 351.524(b) and, thus, are allocable to the POI. We, therefore, are calculating subsidy rates for non-recurring grant programs used during 2014 pursuant to the methodology set out in 19 CFR 351.524(d).

Income Tax Programs

We preliminarily determined, as AFA, that Nanjing Tianyuan benefited from each income tax program examined, because the company failed to provide a complete copy of its 2014 income

⁸⁶ See PDM at 21 – 25.

⁸⁷ See Nanjing Tianyuan 4SQR at Exhibits CVD-4-S2 and CVD-4-S4.

⁸⁸ See Nanjing Tianyuan's VR at 2 and 16 – 17.

⁸⁹ *Id.*

tax return, as requested.⁹⁰ On July 11, 2016, Nanjing Tianyuan timely submitted, *inter alia*, its 2014 income tax return filed during the POI, with all schedules and attachments, as requested.⁹¹ The Department examined Nanjing Tianyuan's original 2014 income tax return at verification and identified no discrepancies between that document, the income tax return the company submitted to the record, and the company's response that it did not use any income tax programs during the POI.⁹² Consequently, in this final determination we determine that Nanjing Tianyuan did not use any of the income tax programs under investigation during the POI.

IX. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable and Used by ACIT and/or Nanjing Tianyuan

1. Policy Loans to the Silica Fabric Industry

The GOC and Petitioner submitted comments in their case briefs regarding this program. As explained above, the Department has not modified its methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.⁹³ However, the Department has revised its benefit calculation for ACIT Shanghai due to certain information submitted at verification as a minor correction.⁹⁴ Therefore, the final program rate for ACIT reflects revisions to ACIT Shanghai's reported loans.

ACIT: 3.43 percent *ad valorem*

2. Provision of Inputs for LTAR

a. *Electricity for LTAR*

The GOC, ACIT, and Petitioner submitted comments in their case briefs regarding this program. As explained below, the Department has not modified its methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.⁹⁵

ACIT: 0.93 percent *ad valorem*

Nanjing Tianyuan: 0.93 percent *ad valorem*

b. *Provision of Fiberglass Cloth for LTAR*

The GOC, ACIT, and Petitioner submitted comments in their case briefs regarding this program. As explained below, the Department has modified its methodology for calculating a subsidy rate

⁹⁰ See PDM at 27 – 28.

⁹¹ See Nanjing Tianyuan 4SQR at Exhibit CVD-4-S9.

⁹² See Nanjing Tianyuan's VR at 23; *see also* Nanjing Tianyuan IQR at 10 – 11.

⁹³ See PDM at 33 – 34.

⁹⁴ See ACIT's Verification Report at 4.

⁹⁵ See PDM at 34-35.

for this program from the post-preliminary analysis.⁹⁶ Specifically, the Department revised its benchmark calculation to adjust for a more comparable ocean freight benchmark.⁹⁷ Therefore, the final program rate reflects modifications to the Department's benchmark calculation and revisions to purchases reported by ACIT Pinghu and ACIT Shanghai.⁹⁸

ACIT: 34.04 percent *ad valorem*
Nanjing Tianyuan: 34.04 percent *ad valorem*

c. Provision of Fiberglass Yarn for LTAR

Petitioner submitted comments in its case briefs regarding this program.⁹⁹ As described in Section VIII above, we determine that the Provision of Fiberglass Yarn for LTAR provides both a financial contribution under section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. Further, we determine, as AFA, that Nanjing Tianyuan and the companies which did not respond to the Q&V questionnaire benefited from this program during the POI.¹⁰⁰

Nanjing Tianyuan: 34.04 percent *ad valorem*

3. Grant Programs

Nanjing Tianyuan reported receiving benefits under four grant programs, all of which it characterized as “other subsidies,” from 2013 through 2015.¹⁰¹ The Department preliminarily determined, as AFA, that Nanjing Tianyuan benefited from each of these four programs because financial statements and sales information necessary to measure benefit were not available on the record, and because Nanjing Tianyuan had withheld information that was requested of it.¹⁰² For each of the four programs, we applied a countervailable subsidy rate calculated for the same or similar program in a CVD proceeding involving the PRC.¹⁰³

On July 11, 2016, Nanjing Tianyuan submitted its financial statements and sales information, as requested by the Department.¹⁰⁴ We, therefore, are calculating subsidy rates for each of these four grant programs in this final determination.¹⁰⁵ Non-recurring grants received in 2014 are calculated based on AFA, as described above in Section VIII.C.

Additionally, in our October 25, 2016 Post-Preliminary Analysis Memorandum, we expensed the grants Nanjing Tianyuan received under the Patent Assistance Fee and Intellectual Property

⁹⁶ See Post-Preliminary Analysis Memorandum at 33 – 34.

⁹⁷ See Comment 9.

⁹⁸ See Comments 9 and 13.

⁹⁹ See Petitioner's Nanjing Tianyuan Case Brief at 2.

¹⁰⁰ See Comment 1.

¹⁰¹ See Nanjing Tianyuan IQR at 21 – 22.

¹⁰² See PDM at 29.

¹⁰³ *Id.*

¹⁰⁴ See Nanjing Tianyuan 4SQR.

¹⁰⁵ See Section VII for a discussion on our treatment of benefits Nanjing Tianyuan received in 2014.

Development Assistance during 2014 to the year of receipt, in accordance with 19 CFR 351.524(c).¹⁰⁶ However, for reasons discussed in Section VIII.C above, we were unable to verify Nanjing Tianyuan's 2014 sales values which we used in our post-preliminary analysis. In this final determination, we are therefore calculating subsidy rates for all benefits Nanjing Tianyuan received in 2014 by allocating those benefits to the POI, and then calculating subsidy rates pursuant to the methodology set out in 19 CFR 351.524(d).

With respect to the GOC, we found in our *Preliminary Determination* that the use of AFA was appropriate with respect to each of these four grant programs because the GOC twice failed to provide requested information about them.¹⁰⁷ In drawing an adverse inference in selecting from the facts available, we found that the GOC's provision of each of these four subsidies was specific within the meaning of section 771(5A)(D)(iii)(I) of the Act and constituted a financial contribution pursuant to section 771(5)(D) of the Act.

We continue to find, as AFA, that the GOC's provision of the Small and Medium-Sized Enterprise (SME) Science and Technology Innovation Fund was specific within the meaning of section 771(5A)(D)(iii)(I) of the Act and constituted a financial contribution pursuant to section 771(5)(D) of the Act.¹⁰⁸

With respect to the fourth grant program, *i.e.* the SME International Market Development Fund, the GOC provided requested information regarding this program, but used a different name for it than did Nanjing Tianyuan.¹⁰⁹ We, therefore, are relying on the GOC's submissions with respect to this program in this final determination and provide countervailability analysis in the program-specific section below.

a. SME Science and Technology Innovation Fund

Nanjing Tianyuan reported receiving benefits under this grant program in 2013 and 2014.¹¹⁰ The company applied to, and received funds directly from, the Nanjing Jiangning District Finance Bureau, which encourages SMEs to focus on new technology innovation and creation.¹¹¹

To calculate the benefit, we divided the amount of funds received by Nanjing Tianyuan under this program during 2013 by its total sales during 2013, pursuant to 19 CFR 351.524(b). Because the result was greater than 0.5 percent, we then calculated a subsidy rate of 0.09 percent

¹⁰⁶ See Post-Preliminary Analysis Memorandum at 15, footnote 72.

¹⁰⁷ See PDM at 33.

¹⁰⁸ We determine that the remaining two non-recurring grants Nanjing Tianyuan received in 2014 under the Patent Assistance Fee and Intellectual Property Development Assistance did not provide a measureable benefit. See Nanjing Tianyuan's Final Calculation Memorandum.

¹⁰⁹ See GOC IQR at 31; *see also* GOC 2SQR at 4. We note that the GOC referred to this program by its name as indicated in the Petition, *i.e.* "International Market Exploration Fund (SME Fund)." In its response, Nanjing Tianyuan referred to the program as the "SME International Market Development Fund." See Nanjing Tianyuan IQR at 21 – 22. In this final determination, we are treating the program that Nanjing Tianyuan reported using as the program on which we initiated, and about which the GOC provided a response.

¹¹⁰ See Nanjing Tianyuan IQR at 21.

¹¹¹ *Id.*, at 23.

pursuant to the methodology set out in 19 CFR 351.524(d). Regarding the benefit received under this program in 2014, we determined, as AFA, that the benefit was allocable to the POI and then calculated a subsidy rate of 0.04 percent pursuant to 19 CFR 351.524(d). We then summed these two subsidy rates to reach a total subsidy rate.

On this basis, we determine that Nanjing Tianyuan received a countervailable subsidy rate of 0.13 percent *ad valorem* under this program.¹¹²

Nanjing Tianyuan: 0.13 percent *ad valorem*

b. SME International Market Development Fund

Nanjing Tianyuan reported receiving benefits under this program during 2015.¹¹³ The company applied to, and received funds directly from, the Nanjing Jiangning District Finance Bureau under this program, which helps with SME's exhibitions at international trade fairs.¹¹⁴

The program is operated according to the *Notice of the Jiangsu Province Department of Finance on Releasing the International Market Development Fund for SMEs in the First Half Year of 2015*.¹¹⁵ Pursuant to that regulation, Nanjing Tianyuan qualified to receive funds under this program based upon its being registered in Jiangsu Province, obtaining an import/export license, and its classification as an SME, *i.e.* its imports and exports in the year prior to its application did not exceed USD 65 million.¹¹⁶

We determine that the grant received under this program constitutes a financial contribution from the GOC and confers a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We determine that the grant received is specific under section 771(5A)(A) and (B) of the Act because the program supports the international market activities of SMEs and is contingent upon export performance.

To calculate the benefit, we divided the amount of funds received by Nanjing Tianyuan under this program during 2015 by its total export sales during the POI. On this basis, we determine that Nanjing Tianyuan received a countervailable subsidy rate of 0.22 percent *ad valorem* under this program.¹¹⁷

Nanjing Tianyuan: 0.22 percent *ad valorem*

¹¹² See Nanjing Tianyuan's Final Calculation Memorandum.

¹¹³ See Nanjing Tianyuan IQR at 22.

¹¹⁴ *Id.*, at 23.

¹¹⁵ See GOC 2SQR at 4 and Exhibit S2-5.

¹¹⁶ *Id.* See also GOC's VR at 7 for clarification regarding qualifications for use of this program.

¹¹⁷ See Nanjing Tianyuan's Final Calculation Memorandum.

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

Through this program, the Export Import Bank of China provides loans at preferential rates for the purchase of exported goods from the PRC.¹¹⁸ The Department found that this program was not used by ACIT and Nanjing Tianyuan in the Preliminary Determination.¹¹⁹ However, the Department was not able to verify the reported non-use of export buyer's credits with the GOC. As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are determining, relying upon AFA, that ACIT and Nanjing Tianyuan used this program during the POI.¹²⁰ 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 in Comment 17. On this basis, we determine a countervailable subsidy rate of 10.54 percent *ad valorem* for ACIT and Nanjing Tianyuan.

B. Programs Determined To Be Not Used by, or Not to Confer a Measurable Benefit to, ACIT and/or Nanjing Tianyuan

1. Preferential Export Financing
2. Preferential Loans to State-Owned Enterprises (SOEs)
3. Export Seller's Credits
4. Export Credit Insurance
5. Provision of Land for LTAR in SEZs
6. Provision of Services at LTAR through Demonstration Bases and Common Service Platform Programs
7. Income Tax Reduction for (High and New-Technology Enterprises (HNTEs)
8. Income Tax Reduction for Research & Development (R&D) under the Enterprise Income Tax Law (EITL)
9. Income Tax Reduction/Exemption for HNTEs for Geographic Location
10. Import Tariff and VAT Exemptions on Imported Equipment in Encouraged Industries
11. Other VAT Subsidies
12. GOC and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands
13. Science and Technology Awards
14. Invention and Patent Fee Subsidies

Program for Attraction of Leading Hi-tech Entrepreneurial Talents

15. Start-Up Support
16. Venture Capital Support
17. Technology Insurance Premium Subsidy
18. Program for Cultivation of Hi-tech Entrepreneurs – Loan Guarantees

¹¹⁸ See Petition at 22 and 26.

¹¹⁹ See *Preliminary Determination* at 35.

¹²⁰ See Petition at 26-27.

Program for Development of Proprietary Intellectual Properties

- 19. Awards for Certain Patented Technologies
- 20. Project Subsidies
- 21. Clean Production Technology Fund

“Other Subsidies” Reported by Nanjing Tianyuan

- 22. Patent Assistance¹²¹
- 23. Intellectual Property Development Assistance¹²²

X. ANALYSIS OF COMMENTS

Comment 1: Whether the Department Should Find Apply AFA to the Provision of Fiberglass Yarn for LTAR

Petitioner’s Comments:

- Nanjing Tianyuan made two affirmative statements to the Department that it did not purchase fiberglass yarn during the POI.¹²³
- At verification, the Department was unable to verify Nanjing Tianyuan’s claim that it did not use the fiberglass yarn for LTAR program.¹²⁴
- Nanjing Tianyuan officials provided false and misleading information to the verifiers about Nanjing Tianyuan’s purchases of fiberglass yarn during the POI. Company officials eventually admitted that Nanjing Tianyuan did purchase fiberglass yarn during the POI.¹²⁵
- The Department should apply, as AFA, the 31.65 percent subsidy rate calculated in the CVD petition because Nanjing Tianyuan failed to cooperate to the best of its ability with respect to the fiberglass yarn for LTAR program.¹²⁶

No other parties commented on this issue.

Department’s Position:

We agree with Petitioner, except with regard to the subsidy rate that should be applied to Nanjing Tianyuan, as AFA, for this program. Nanjing Tianyuan made two affirmative

¹²¹ See Nanjing Tianyuan’s Final Calculation Memorandum.

¹²² *Id.*

¹²³ See Petitioner’s Nanjing Tianyuan Case Brief at 2.

¹²⁴ *Id.*

¹²⁵ *Id.*, at 5.

¹²⁶ *Id.*

statements to the Department that it did not purchase fiberglass yarn during the POI.¹²⁷ The Department preliminarily determined that Nanjing Tianyuan did not use this program during the POI.¹²⁸ At verification, the Department questioned company officials in order to verify Nanjing Tianyuan's record statements. In response, company officials stated multiple times that Nanjing Tianyuan did not purchase fiberglass yarn during the POI. Officials later confirmed that Nanjing Tianyuan did, in fact, purchase fiberglass yarn during the POI, only after the Department identified purchases of the input in the company's accounting system and found company officials to be physically concealing documentation of fiberglass yarn purchases made during the POI.¹²⁹

The Department, therefore, determines that Nanjing Tianyuan significantly impeded this proceeding and provided information that could not be verified. In accordance with sections 776(a)(2)(C) and (2)(D) of the Act, we find that the use of facts available is appropriate. Further, we find that Nanjing Tianyuan failed to cooperate, by not acting to the best of its ability, to comply with the Department's requests for information at various stages of this investigation. Accordingly, pursuant to section 776(b) of the Act, we find that the application of AFA is warranted.

As discussed in section "B. Application of AFA: Provision of Fiberglass Yarn for LTAR" above, the Department has determined, as AFA, that the GOC's provision of fiberglass yarn constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act.¹³⁰ As AFA, and within the meaning of section 776(b)(1)(A) of the Act, we are applying a countervailable subsidy rate applied for the same or similar program in the instant investigation, which is the 34.04 percent *ad valorem* rate for a similar program, *i.e.* Provision of Fiberglass Cloth for LTAR, calculated for ACIT Pinghu.¹³¹

Comment 2: Whether the Department Should Incorporate Corrections Made to the Fiberglass Cloth Database as Reported by ACIT Pinghu and ACIT Shanghai

Petitioner's Comments:

- ACIT Pinghu and ACIT Shanghai reported corrections to purchases of fiberglass cloth initially submitted to the Department. The Department should include these corrections in the benefit calculation for both companies in the final determination.

No other parties commented on this issue.

Department's Position:

We agree with Petitioner. At verification, ACIT Pinghu and ACIT Shanghai submitted certain adjustments to their fiberglass cloth purchase database which were originally reported to the

¹²⁷ See Nanjing Tianyuan IQR at 16; see also Nanjing Tianyuan SQR at 2.

¹²⁸ See PDM at 35.

¹²⁹ See Nanjing Tianyuan's VR at 2, 9 – 10, and 24 – 25.

¹³⁰ See Petition at 36-38.

¹³¹ See ACIT's Final Calculation Memorandum.

Department in its NSA Questionnaire Response.¹³² We accepted these changes as minor corrections and have adjusted the calculation of the benefit for the provision of fiberglass cloth for LTAR accordingly in this final determination.¹³³

Comment 3: Whether the Department Should Apply Partial AFA for Failure to Provide a Questionnaire Response for a Former Affiliate of ACIT Shanghai

Petitioner's Comments:

- Petitioner asserts that Company X¹³⁴ should have provided a complete response to the initial questionnaire as evidence on the record demonstrates that it exercised control over ACIT Shanghai during the average useful life (AUL).¹³⁵
- Petitioner contends that when the Department attempted to verify the involvement of Company X in ACIT Shanghai's operation, ACIT argued that the relevant Articles of Association of ACIT Shanghai demonstrate that ACIT USA controlled the majority of export sales during the AUL. Petitioner states further that this statement contradicts other documents on the record regarding Company X's control.
- When the Department requested additional documentation to substantiate ACIT's claims, ACIT responded that there were no such documents (*i.e.*, minutes from prior meetings).
- Petitioner argues that the record evidence does not clearly demonstrate that Company X did not exercise sufficient control over ACIT Shanghai, and, as such, Company X should have provided a response. Consistent with past practice and the *CVD Preamble*, the Department should find that documented ownership of Company X over ACIT Shanghai, in addition to certain controls that Company X had over ACIT Shanghai, collectively constitute a control relationship.¹³⁶ Therefore, Company X should have provided a complete questionnaire response.
- The Department should apply AFA to ACIT for not fully responding to the initial questionnaire. In addition to the subsidies calculated for ACIT Shanghai, the Department should apply to ACIT Shanghai the highest margins for all non-recurring programs (a rate of 0.58 percent each), and all loan programs (a rate of 10.54 percent each), alleged in this investigation. Petitioner suggests rates of 4.25 percent and 2.55 percent for Export Seller's Credits and the Provision of Land for LTAR in SEZs, respectively.

¹³² See ACIT's VR at 3 – 4.

¹³³ See ACIT's Final Calculation Memorandum.

¹³⁴ The details of this company are business proprietary in nature, see ACIT's Final Determination Calculation Memorandum for further discussion.

¹³⁵ See Letter from Petitioner, "Re: Petitioner's Comments on ACIT's Response to the Department's Third Supplemental Countervailing Duty Questionnaire," dated June 8, 2016 (Petitioner's Comments on ACIT's 3SQR), at 3 – 6; see also Letter from Petitioner, dated June 17, 2016 (Petitioner's Request for Company X Response), at Exhibit 1.

¹³⁶ See Petitioner's Case Brief at 9 (citing to *Citric Acid and Certain Citrate Salts From the People's Republic of China*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying IDM at Comment 27; see also Countervailing Duties: Final Rules, 63 FR 65347, 65400 (November 25, 1998) (*CVD Preamble*) at 65401).

- The total 55.34 percent AFA rate should then be added to ACIT Pinghu's and ACIT Shanghai's calculated rate.

ACIT's Rebuttal Comments:

- As stated in the Department's regulations, a company must "use or direct" assets of the other in order to demonstrate control.¹³⁷ Company X never had majority control over ACIT Shanghai and, as such, could not direct the actions of ACIT Shanghai in a manner that would require a questionnaire response.
- ACIT argues that a cross-ownership finding due to "an inverted standard of proof" is not consistent with the Department's regulations and the *CVD Preamble*. The "40 percent, golden share" determination is only applied in instances where there is no outright majority shareholder and the largest non-majority shareholder's bloc of shares would be decisive in any contested vote.
- In the instant investigation, ACIT USA maintained majority control of ACIT Shanghai and could "out vote" Company X throughout the AUL.¹³⁸
- In *Citric Acid from the PRC*, the Department determined that the referred to entity was cross-owned, and requested a response from the parent company.¹³⁹ As the ownership of the parent company was unclear due to a 50-50 split in control, the "golden share" analysis was implemented that case.
- The determination in *Citric Acid from the PRC* alternatively supports the Department's decision not to request a response from Company X because, as in *Citric Acid from the PRC*, the company determined to be cross-owned appointed the chairman and could break any ties among the directors. As documented in ACIT Shanghai's Articles of Association, ACIT USA also maintained the aforementioned controls over ACIT Shanghai.¹⁴⁰
- Petitioner's argument that the absence of meeting minutes from five years ago for a company that is now closed is not sufficient to overcome the Department's regulations and previous determination not to require a response from Company X.

Department's Position:

We agree with ACIT. As stated in our *Preliminary Determination*, we found that no response was required from ACIT Shanghai's former parent company, Company X, as we did not find

¹³⁷ 19 CFR 351.525(b)(6)(vi).

¹³⁸ See ACIT's 3SQR at Exhibit 4; see also ACIT's VR at 7.

¹³⁹ See Petitioner's Case Brief at 9 (citing *Citric Acid from the PRC*, and accompanying IDM at 9 – 10).

¹⁴⁰ See ACIT's 4SQR at Exhibit 1 and ACIT's 3SQR at Exhibit 4.

that Company X is cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).¹⁴¹ We received no additional information since our *Preliminary Determination* that would alter our preliminary finding. Therefore, we continue to determine that no response was required from Company X and, as such, this does not warrant application of AFA to ACIT.

Petitioner's reliance on *Citric Acid from the PRC* is misplaced.¹⁴² In that case, as ACIT discusses, the company in question held 50 percent ownership of the mandatory respondent, Cogeneration, and therefore, the Department examined further control by the parent over the respondent. In that analysis, the Department concluded that the parent company, Yixing Union, exercised additional control over Cogeneration through appointment of board members and significant voting rights.

We do not have similar facts in the instant investigation. Company X was never a majority shareholder of ACIT Shanghai. Moreover, ACIT USA maintained majority control of ACIT Shanghai throughout the AUL and maintained additional control through board appointments and voting rights.¹⁴³ Therefore, even if we were to analyze whether a potential "golden share" was maintained by Company X, no such evidence arose upon examination of elements that the Department normally relies upon in this type of analysis (e.g. voting rights, Articles of Association, etc.) either at verification or in ACIT's questionnaire responses.¹⁴⁴

Additionally, while Petitioner is correct in stating that ACIT did not produce minutes from meetings as requested by the Department at verification, as described above, we find that the record contains substantial information to demonstrate that Company X did not have majority control over ACIT Shanghai throughout the AUL.¹⁴⁵

Comment 4: Whether the Allegation of the Provision of Fiberglass Cloth for LTAR is Flawed

ACIT's Comments:

- ACIT argues that although Petitioner cited the use of this input in the Petition, Petitioner did not initially allege any countervailable subsidies relating to this input. As such, information was reasonably available to Petitioner at the time of filing that the input was used in the production of subject merchandise, but was not included in the initial submission due to assumptions made by Petitioner.¹⁴⁶

¹⁴¹ See PDM at 11. The name of this company is proprietary, see ACIT's Final Calculation Memorandum for further discussion.

¹⁴² See Petitioner's Case Brief at 9 (citing *Citric Acid from the PRC*, and accompanying IDM at 9 – 10)

¹⁴³ See ACIT's 4SQR at Exhibit 1 and ACIT's 3SQR at Exhibit 4.

¹⁴⁴ See ACIT's VR at 7; see also ACIT's 3SQR at Exhibit 4; see also ACIT's 4SQR at Exhibit 1.

¹⁴⁵ *Id.*

¹⁴⁶ See Letter from ACIT, "Re: Response to Petitioner's New Subsidy Allegation," dated May 31, 2016 (ACIT NSA Comments).

- Petitioner was aware that certain Chinese producers of silica fabric consumed fiberglass cloth, as stated in the Petition, and information that demonstrated the use of fiberglass cloth as an input was publically available.¹⁴⁷
- Although Petitioner assumed that the anticipated mandatory respondents would begin the production process with fiberglass yarn, they still knew that certain producers began the production process with cloth.¹⁴⁸
- Petitioner’s failure to focus on the appropriate market segment when it determined anticipated mandatory respondents, and subsequent realization of this failure upon reading the questionnaire responses, cannot be categorized as new information that would result in an NSA.¹⁴⁹
- ACIT claims that the Department unlawfully initiated on the provision of fiberglass cloth for LTAR, in accordance with 19 CFR 351.202(b), because the program was known to Petitioner, yet the Petition did not include “reasonably available” information regarding fiberglass cloth.
- Petitioner improperly correlated assertions made during a CVD investigation at the European Commission with inputs used by the mandatory respondents in the instant investigation.
- Although global trade data demonstrated that Chinese export prices were below the yearly average for trade in fiberglass yarn, data for countries trading similar volumes of fiberglass yarn reflected comparable and even lower average unit values of these exports.¹⁵⁰
- ACIT argues that the “attenuation” from the Petition to the NSA resulted in difficulties identifying and collecting usable data for the Department’s questionnaire responses.
- Allowing this allegation to stand encourages parties to improperly file and potentially withhold information from future petitions to purposely establish prejudice against the respondent.
- ACIT explains further that the improper filing of the allegation, consequential short timeframe, and three-question supplemental questionnaire that ACIT had to respond to was “undue burden” imposed on the respondent. Proper filing of the allegation would have allowed the Department to more thoroughly and effectively analyze the program throughout the investigation.

¹⁴⁷ See Petition at 16.

¹⁴⁸ See Letter from Petitioner, “Re: Petitioner’s Response to ACIT’s Objection to Petitioner’s New Subsidy Allegations,” dated June 2, 2016 (Petitioner NSA Response) at 6.

¹⁴⁹ See ACIT NSA Comments at 7.

¹⁵⁰ See Petition at Exhibit 52.

- Although the Department issued the verification outline eight days before beginning verification and severely limited officials from ensuring a complete response, ACIT satisfied all of the Department's requests at verification.

Petitioner's Rebuttal Comments:

- Section 351.202(b)(7)(ii)(B) of the Department's regulations does not limit a petitioner's ability to make a timely NSA after the Department has initiated a CVD investigation. This regulation only describes information that is necessary for the petitioner to provide when alleging a new subsidy.
- Petitioner argues that it did not know certain information necessary to allege the provision of fiberglass cloth for LTAR in the Petition, as information only in the initial questionnaire response provided evidence that the production processes of ACIT and Nanjing Tianyuan began with fiberglass cloth.¹⁵¹ In the Petition, Petitioner merely said that it was a possibility for "some" producers of the subject merchandise to begin the production process with fiberglass cloth.
- ACIT's argument that a three-question supplemental questionnaire issued by the Department, in comparison to numerous previous supplemental questionnaires, demonstrates that the Department prejudiced ACIT with a short timeframe is without merit. A three-question questionnaire demonstrates that either the initial NSA response appeared somewhat sufficient, or that the Department should have asked about additional information that ACIT chose not to reveal.
- The extensive amount of time that the Department took to analyze this program is unsurprising as fiberglass cloth is the major input used in the production of subject merchandise. As ACIT successfully satisfied verification requirements requested by the Department, the Department should not reverse its decision on the countervailability of the program.
- Petitioner is not aware of any instance when the Department reversed the initiation of its investigation into an alleged program after the program was fully analyzed and verified.

Department's Position:

We agree with Petitioner. Pursuant to the Department's regulations, Petitioner submitted timely and complete NSAs. In accordance with 19 CFR 351.301(c)(2)(iv)(A), Petitioner requested extensions of time to submit the NSA,¹⁵² and filed responses within the specified deadlines.¹⁵³

¹⁵¹ See ACIT IQR at 19 and footnote 43 and Nanjing Tianyuan IQR at 16.

¹⁵² See Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Request Extension of Deadline to Allege New Subsidies," dated April 22, 2016 and Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Request Extension of Time for New Subsidy Allegations Based On Information Revealed In Supplemental Questionnaire Responses," dated May 24, 2016.

Further, Petitioner substantiated its NSAs in accordance with 19 CFR 351.202(b)(7)(ii)(B).¹⁵⁴ We determined that we received sufficient information, including evidence of state ownership of fiberglass cloth producers and price distortion in the domestic Chinese fiberglass cloth market, to initiate on the NSAs on June 21, 2016.¹⁵⁵

In response to ACIT's claims that it was improperly treated by the Department, we find that ACIT was not "prejudiced" throughout the investigation. A three-question supplemental questionnaire was issued to request clarification of certain deficiencies in ACIT's NSA QR.¹⁵⁶ The length of the questionnaire issued was a result of certain deficiencies that the Department noted upon receipt of ACIT's response. Further, the Department's standard practice is to issue verification outlines seven days prior to the first day of a company's verification. The verification outline for ACIT Pinghu and ACIT Shanghai was issued on September 12, 2016, eight days prior to the outset of verification, and well within the Department's standard seven-day period to issue such documents.¹⁵⁷

With regard to the Department's verification of the provision of fiberglass cloth for LTAR, we disagree with ACIT that a short timeframe impeded the Department from thoroughly conducting an investigation of this program. At verification, we examined the program in-depth, including verifying sales traces, speaking with fiberglass cloth suppliers, and discussing product calculations with company officials.¹⁵⁸ Upon returning from verification, we issued a post-preliminary analysis, in which we fully analyzed program operation and conducted a calculation of benefit using a tier (ii) benchmark.¹⁵⁹ For this final determination, we have revised certain fiberglass cloth purchases submitted by ACIT Pinghu and ACIT Shanghai as minor corrections, however, we continue to find that this program is countervailable and provided a benefit to ACIT during the POI.

Comment 5: Whether Domestic Chinese Producers of Fiberglass Cloth are Government "Authorities"

GOC's Comments:

- There are no governmental programs to provide fiberglass cloth to the silica fabric industry and Chinese fiberglass cloth producers are not government authorities within the

¹⁵³ See Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's New Subsidy Allegations," dated May 24, 2016 and Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's New Subsidy Allegations," dated May 25, 2016.

¹⁵⁴ *Id.*

¹⁵⁵ See Memorandum from John Corrigan, Emily Maloof, and Yasmin Bordas, to Scot Fullerton, "New Subsidy Allegations," dated June 21, 2016 (NSA Initiation Memorandum), at 9.

¹⁵⁶ See Letter from the Department, "Re: Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Fifth Supplemental Questionnaire for ACIT (Pinghu) Inc.," dated July 27, 2016.

¹⁵⁷ See Letter from the Department, "Re: Countervailing Duty Investigation: Certain Amorphous Silica Fabric from the People's Republic of China; Verification of ACIT (Pinghu) Inc. and ACIT (Shanghai) Inc.," dated September 12, 2016.

¹⁵⁸ See ACIT's VR at 11 – 15.

¹⁵⁹ See Post-Preliminary Analysis Memorandum at 14.

meaning of U.S. CVD law.¹⁶⁰

- The Department's post-preliminary analysis regarding the provision of fiberglass cloth was unlawful and should be reversed in the final determination. Further, the Department's post-preliminary determination unlawfully resorted to benchmarks outside of the PRC.¹⁶¹
- The GOC provided the Department with a significant amount of information regarding mandatory respondents' suppliers of fiberglass cloth, including registration information and ownership structures. The Department chose not to verify this information and, therefore, must conclude that all GOC statements on the fiberglass cloth suppliers are accurate.¹⁶²
- The Department should find that all fiberglass cloth suppliers that are owned by private enterprises and individuals are not government authorities.¹⁶³
- The Department's post-preliminary analysis that, as AFA, all privately-held fiberglass cloth producers are authorities within the meaning of section 771(5)(B) of the Act is contradicted by record evidence.¹⁶⁴
- The record establishes: the Chinese Communist Party (CCP) is not a government authority; Chinese law prohibits members of the board of directors and managers of fiberglass cloth producers from being GOC or CCP officials; the *Company Law of China* demonstrates the absence of legal state control over privately-owned Chinese companies; the GOC responded to the Department's questionnaires regarding CCP involvement in input suppliers' ownership structures to the best of its ability; CCP affiliations or activities of fiberglass cloth producers are not relevant to the Department's government authorities analysis; and the Department has sufficient information to determine that fiberglass cloth suppliers are not government authorities.¹⁶⁵
- The Department should revise its post-preliminary findings to determine that all privately-held fiberglass cloth producers are not government authorities, and subsequently revise its CVD rates based upon this finding.¹⁶⁶

Petitioner's Rebuttal Comments:

- The Department correctly applied AFA to find that fiberglass cloth producers were government authorities because the GOC failed to provide information about those

¹⁶⁰ See GOC's Case Brief at 4.

¹⁶¹ *Id.*

¹⁶² *Id.*, at 5.

¹⁶³ *Id.*, at 6.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*, at 6 – 10.

¹⁶⁶ *Id.*, at 15.

producers, as requested by the Department.¹⁶⁷

- The GOC provided no reason for the Department to deviate from its approach of making a determination on government authorities on the basis of AFA when relevant information is absent from the record.¹⁶⁸
- The GOC provided no reason why its failure to provide information on CCP activities or affiliations was excusable. Therefore, the Department's basis for applying AFA with respect to government authorities was correct, consistent with prior determinations, and resulted from the GOC withholding information and impeding the investigation.¹⁶⁹

Department's Position:

The Department continues to find, based on AFA, that the companies producing the fiberglass cloth are "authorities" within the meaning of section 771(5)(B) of the Act, and that the goods provided by them are financial contributions within the meaning of section 771(5)(D)(iii) of the Act.

As explained in the Post-Preliminary Analysis Memorandum, we sought information from the GOC regarding input producers and suppliers.¹⁷⁰ Specifically, we sought information from the GOC that would allow us to analyze whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.¹⁷¹ For each producer that the GOC claimed was government-owned, we asked for the articles of incorporation and capital verification reports.¹⁷² For all input producers that were not majority government-owned and that produced the input purchased by the respondent companies, we asked that the GOC provide the articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports for the POI, articles of association, business licenses, and tax registration documents.¹⁷³ Also, for each producer that the GOC claimed was privately owned by individuals during the POI, we requested identification of the owners, members of the board of directors, or managers of the producers who were also government or CCP officials or representatives during the POI.¹⁷⁴ Without this information, the Department cannot determine whether the GOC has control over the companies.

The GOC did not provide this requested information for any producer. Instead, the GOC provided basic registration information and the ownership structure of the fiberglass producers.¹⁷⁵ The GOC also did not provide the requested identifications of the company officials who were also government or CCP officials, and instead argued that "even if an owner, a director, or a manager of a supplier is a member or representative of these organizations, this

¹⁶⁷ See Petitioner's GOC Rebuttal Brief at 1 – 2.

¹⁶⁸ *Id.*, at 3.

¹⁶⁹ *Id.*, at 4 – 9.

¹⁷⁰ See Post-Preliminary Analysis Memorandum at 8 – 9.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ See GOC NSA QR at 7.

individual can never have any additional responsibility, authority and/or capacity regarding the operation of the company because he or she is a member or representative of these nine organizations.”¹⁷⁶

Because the GOC did not provide information we need for our analysis, we asked for this information a second time, in a supplemental questionnaire issued on August 3, 2016. The GOC referred back to the GOC NSA QR and stated that it could not provide additional information.¹⁷⁷

The GOC did not provide information that we rely on to determine the level of government ownership and involvement in fiberglass cloth producers. It also did not identify the individual owners, members of the board of directors or senior managers of the producers who were CCP officials during the POI for any producer. 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 Department considers information regarding the CCP’s involvement in the PRC’s economic and political structure to be relevant because public information suggests that the CCP exerts significant control over activities in the PRC.¹⁷⁸ We have explained our understanding of the CCP’s involvement in the PRC’s economic and political structures in past proceedings.¹⁷⁹ With regard to the GOC’s claim that PRC law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.¹⁸⁰

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.¹⁸¹ 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

¹⁷⁶ *Id.*, at 15.

¹⁷⁷ See GOC 6SQR at 12.

¹⁷⁸ See Memorandum from Emily Maloof, International Trade Compliance Analyst to the File, “Public Bodies Memorandum” (June 8, 2016).

¹⁷⁹ *Id.* See also *Uncoated Paper from the PRC* at 15.

¹⁸⁰ 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), and accompanying IDM at 16.

¹⁸¹ 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 or 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.” Furthermore, the Department’s questionnaire explicitly informs respondents that if they are unable to respond completely to every question in the questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, the respondents must notify the official in charge and submit a request for an extension of the deadline for all or part of the questionnaire response.

is, in fact, able to access information similar to what we requested.¹⁸² Thus, the GOC did not act to the best of its ability.

The GOC also argues that the Department, because it did not verify its questionnaire responses, is obligated to accept the factual information.¹⁸³ Under these circumstances, where the GOC submitted deficient responses, there is no requirement to verify the information. If a respondent provides substantially incomplete questionnaire responses and the Department must then base the company's rate entirely on facts available, as in this case, then verification is "meaningless."¹⁸⁴ The Department continues to find that the necessary information to conduct its analysis is not on the record of this investigation, and in using facts available, applying an adverse inference in selecting from the facts available is warranted for the final determination. Contrary to the GOC's assertions and objections to our questions, it is the prerogative of the Department, not the GOC, to determine what information is relevant to our analysis.¹⁸⁵ The Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be essential. In numerous previous cases, the Department has determined that CCP membership is relevant to companies—including purportedly private companies—in the PRC.¹⁸⁶ Specifically, the Department has determined that "the CCP meets the definition of the term 'government' for the limited purpose of applying the U.S. CVD law to China."¹⁸⁷ Further, the Department has found that PRC law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a controlling influence in a company's affairs.¹⁸⁸ Moreover, the GOC provided no evidence that it attempted to obtain the information we requested.

The GOC asserts that certain laws, such as the *Company Law of China*, preclude any role for the CCP in terms of being owners, board members, or managers of the relevant input suppliers. The GOC argues that the Department's findings in *PC Strand from the PRC* do not suggest otherwise, as the case addressed whether CCP "members" (rather than "officials") could serve on boards of directors. The Department has already addressed this same argument and concluded that this distinction "does not diminish the Department's position that complete information

¹⁸² 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 IDM (*HPSC IDM*) at 13, where the Department found that the GOC's response to certain questions concerning CCP officials indicates that the GOC is able to obtain the requested information.

¹⁸³ See GOC's Case Brief at 40.

¹⁸⁴ See *Galvanized Steel Wire from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17430 (March 26, 2012) and accompanying Issues and Decision Memorandum at 11 (*Galvanized Steel Wire*).

¹⁸⁵ See *NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); see also *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (stating that "[i]t is Commerce, not the respondent, that determines what information is to be provided").

¹⁸⁶ See *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission in Part; 2012-2013*, 80 FR 69638 (November 10, 2015) and accompanying IDM (*Sinks IDM*) at Comment 1; see also *CORE IDM* at Comment 1; *Uncoated Paper IDM* at Comment 1

¹⁸⁷ See *Sinks IDM* at Comment 1; *Uncoated Paper IDM* at Comment 1.

¹⁸⁸ *Id.*

related to whether any senior company officials were government or CCP officials and the role of any CCP committee within the companies is essential to determine” whether input suppliers are authorities.¹⁸⁹

Moreover, the Department disagrees with the GOC’s assertion that – based on the Department’s antidumping practice – the *Company Law of China* establishes an absence of legal state control over privately-owned companies in the PRC.¹⁹⁰ The Department’s evaluation of the *Company Law of China* in the context of separate rate analyses in antidumping proceedings does not demonstrate a lack of state control here. As explained in *Aluminum Extrusions from the PRC*, antidumping PRC proceedings are separate and distinct from CVD PRC proceedings with the application of different analyses and methodologies.¹⁹¹ As such, the Department’s finding in an antidumping review is not germane to this investigation.

In this proceeding, the GOC did not provide the information we requested regarding CCP officials’ involvement in the operations of the input producers. The GOC also did not provide the requested details on the producers’ operations (*e.g.*, company by-laws, articles of incorporation, licenses, *etc.*). For these reasons, we have no basis to revise the Department’s preliminary AFA finding that fiberglass cloth producers are “authorities” within the meaning of section 771(5)(B) of the Act.

For the final determination, we continue to determine that the companies producing the fiberglass cloth purchased by the respondent are “authorities” within the meaning of section 771(5)(B) of the Act, and that the respondents received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.¹⁹²

Comment 6: Whether the Provision of Fiberglass Cloth for LTAR is Specific

GOC’s Comments:

- Even if the Department finds that fiberglass cloth suppliers are government authorities, the Department should find that this input is not specific because, as the record evidence establishes, this input is used in a wide variety of industries that involve a diverse array of products and consumers.
- The record evidence of the wide array of disparate uses of fiberglass cloth in the instant investigation is even more compelling than the record evidence relating to the specificity of the input urea in *Chlorinated Isocyanurates*, where the Department found that the provision of the input was not specific under section 771(5A)(D) of the Act.

¹⁸⁹ See CORE IDM at Comment 1.

¹⁹⁰ See GOC Brief at 10 (citing *Certain Cut-to-Length Carbon Steel Plate from China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 8301 (February 24, 2010) and accompanying IDM at Comment 2).

¹⁹¹ See *Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 78788 (December 31, 2014), and accompanying IDM at Comment 8.

¹⁹² See NSA letter at 21-24.

Petitioner's Rebuttal Comments:

- The GOC's contention that the Department's post-preliminary determination regarding specificity for this program ignores the basis of that determination, *i.e.* that the GOC failed to provide requested information regarding industrial uses of fiberglass cloth. The GOC does not address this aspect of the Department's finding and provides no basis for why that finding should be modified.¹⁹³

Department's Position

We agree with Petitioner. The Department asked the GOC to provide a list of industries in the PRC that purchase fiberglass cloth directly, and to provide the amounts (volume and value) purchased by each industry grouping, including the industry grouping that encompasses fiberglass cloth producers.¹⁹⁴ Although the GOC provided some general information regarding the consumption of the inputs, the information provided was inadequate for the purposes of the Department's analysis. Specifically, the information provided by the GOC consists of summary statements regarding the broad uses for the inputs, as well as unverifiable, secondary-source lists of industries that use fiberglass cloth.¹⁹⁵ The Department requires more systematic and verifiable data (*e.g.*, consumption and purchase) for its analysis.

Following the GOC's initial response, in our August 3, 2016, supplemental questionnaire, we asked a second time for this information. In response, the GOC stated that it had "contacted the China Nonwovens & Industry Textiles Association (CNITA), the association to which the fiberglass industry may belong, and CNITA has confirmed that it does not maintain the requested information."

Given that the GOC was unable to provide a list of industries in the PRC that purchase fiberglass cloth directly and was unable to provide the amounts (volume and value) purchased by each of the industries, the GOC's reliance on CNITA as its sole source of the requested data is inadequate. Further, the GOC did not provide any additional explanation of any efforts it made in an attempt to gather the requested information. Thus, the GOC did not cooperate to the best of its ability.¹⁹⁶

The Department explained in the Post-Preliminary Analysis Memorandum that, "necessary information is not available on the record" and "the GOC has withheld information that was requested of it, and, thus, that the Department must rely on 'facts available' in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act."¹⁹⁷ We found that the GOC withheld requested information and that this amounted to a failure of the GOC to act to the best of its ability, within the meaning of sections 776(a) and (b) of the Act.

¹⁹³ *Id.*, at 9 – 10.

¹⁹⁴ See GOC NSA QR at 23 – 25.

¹⁹⁵ *Id.*

¹⁹⁶ See section 776(b)(1) of the Act.

¹⁹⁷ See Post-Preliminary Analysis Memorandum at 9.

Consequently, we determined that an adverse inference was warranted in selecting from the facts available. In drawing an adverse inference in selecting from the facts available, we found that the purchasers of fiberglass cloth provided for LTAR are limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act.¹⁹⁸

The Department continues to find that the GOC has withheld information requested of it, within the meaning of section 776(a)(2)(A) of the Act, and that the Department must continue to rely on facts available in making a specificity determination. Additionally, we continue to find that an adverse inference in selecting from the facts available is warranted because the GOC did not adequately answer the questions posed by the Department, nor did the GOC ask for additional time to gather and provide information. As AFA, we find that the fiberglass cloth is provided to a limited number of users and is, thus, specific under section 771(5A)(D)(iii)(I) of the Act.¹⁹⁹

Finally, the Department's *de facto* specificity analysis is not limited simply to whether users are limited in number. Instead, sections 771(5A)(D)(iii)(II)-(III) of the Act provide that a subsidy is also *de facto* specific if an enterprise or industry is a predominant user of the subsidy or receives a disproportionately large amount of the benefit. Therefore, even if the GOC had presented systematic information establishing widespread use across industries, it still did not provide data that would have allowed the Department to determine whether the usage was concentrated in a select group of industries (including the industry grouping that encompasses silica fabric producers), as is contemplated by sections 771(5A)(D)(iii)(II)-(III) of the Act. Therefore, the facts of this investigation are not similar to *Chlor-Isos from the PRC*, in which the Department was provided with the data necessary for the complete *de facto* specificity analysis.²⁰⁰ In *Chlor-Isos from the PRC*, the Department's finding that the provision of urea was not specific was based on the "overarching fact that a large number of diverse industrial sectors in the PRC use urea and that the industry producing subject merchandise is not the predominant or disproportionate user of urea (emphasis added)."²⁰¹ Although the GOC did not provide the requested data that the Department would normally rely upon to assess whether the industry grouping that includes silica fabric production was a predominant user of fiberglass cloth, information on the record from the NSA letter supports finding that fiberglass cloth is provided to a limited number of Chinese industries.²⁰²

For the reasons stated above, for the final determination, the Department continues to find that sections 776(a)(1) and 776(a)(2)(A) of the Act are applicable because the GOC did not provide requested data and did not cooperate to the best of its ability to obtain and submit the data. Accordingly, we have continued to determine, based on AFA, that the provision of fiberglass cloth for LTAR is specific.

¹⁹⁸ See NSA letter at 21-24 for additional information concerning the specificity of this program.

¹⁹⁹ *Id.*

²⁰⁰ See *Chlorinated Isocyanurates From the People's Republic of China: Final Affirmative Countervailing Duty Determination*; 2012, 79 FR 56560 (September 22, 2014) (*Chlor-Isos from the PRC*) and accompanying IDM (*Chlor-Isos IDM*) at Comment 4.

²⁰¹ *Id.*

²⁰² See NSA letter at 21-24.

Comment 7: Whether to Use an In-China Benchmark to Measure the Adequacy of Remuneration for Fiberglass Cloth

GOC's Comments:

- The Department should use an in-China, *i.e.* tier-one, benchmark to calculate the adequacy of remuneration because its post-preliminary determination that use of a tier-one benchmark is not appropriate is inconsistent with U.S. WTO obligations.²⁰³

Petitioner's Rebuttal Comments:

- The Department properly concluded that the Chinese market for fiberglass cloth is distorted through government intervention because its analysis focused on government presence in the PRC market and not direct evidence of price manipulation, and because information regarding the percentage of production attributable to SOEs was unreliable.²⁰⁴

Department's Position

As explained in the Post-Preliminary Analysis Memorandum, in the NSA questionnaire, the Department requested information about the volume of fiberglass cloth domestic consumption that is accounted for by domestic production.²⁰⁵ The Department also asked that the GOC report the percentage of volume of domestic production that is accounted for by companies in which the GOC maintains ownership interests, and that the GOC identify the industry classification that was used to collect this requested data.²⁰⁶ The Department requests such information to determine the GOC's role in the relevant input market, including whether the GOC is the predominant provider of these inputs in the PRC and whether its significant presence in the market distorts all domestic transaction prices.

The GOC failed to provide the requested information.²⁰⁷ The Department again asked for this information in a supplemental questionnaire, and it instructed the GOC that, if the GOC is claiming that it cannot provide this information, to explain why it cannot do so and detail the efforts it made in its attempt to provide this information. In its response, the GOC stated that it contacted the CNITA, the association to which the fiberglass industry may belong, and that CNITA has confirmed that it does not maintain the requested information.”²⁰⁸ Given that the GOC was unable to confirm whether or not manufacturers of fiberglass cloth could fall within the purview of CNITA,²⁰⁹ the GOC's reliance on CNITA as its sole source of the requested production data is inadequate.

²⁰³ *Id.*, at 17 – 19.

²⁰⁴ *Id.*, at 9 – 12.

²⁰⁵ See New Subsidy Questionnaire at 5 – 6.

²⁰⁶ *Id.*

²⁰⁷ See GOC NSA QR at 23 – 25.

²⁰⁸ See GOC 6SQR at 14, 16.

²⁰⁹ *Id.*, at 16 – 17.

Because we determine that we are missing necessary fiberglass cloth production information to determine whether the domestic fiberglass cloth market is distorted, the Department must rely on “facts available” in making our determination, in accordance with section 776(a)(1) and 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. Specifically, the GOC’s reliance on an organization that the GOC itself stated may or may not include the fiberglass industry as a data source,²¹⁰ its failure to provide verifiable fiberglass cloth production data, and its failure to explain any additional steps that it made in its attempt to gather the requested data, impaired the Department’s ability to determine the GOC’s ownership level in the fiberglass cloth market. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act.

In drawing an adverse inference in selecting from the facts available, we find that PRC prices of fiberglass cloth from actual transactions involving Chinese buyers and sellers are distorted by the significant presence and involvement of the GOC.²¹¹ Therefore, we find that the use of domestic Chinese prices are not suitable as benchmarks and that an external benchmark is warranted for calculating the benefit for the provision of fiberglass cloth for less than adequate remuneration.²¹² Further, we do not have reliable record information as to what percentage of fiberglass cloth production can be attributed to state-owned entities.²¹³ As a consequence, for fiberglass cloth purchases where the respondents were unable to report the identity of the producer, we are attributing these purchases to GOC authorities.

Comment 8: Whether the Benchmark for the Provision of Fiberglass Cloth for LTAR is Flawed

ACIT’s Comments:

- ACIT argues that there is no adequate benchmark on the record to construct an accurate calculation of benefit because the tariff classification, Harmonized Tariff Schedule (HTS) 7019.59 is over-inclusive. This classification covers both fiberglass cloth and subject merchandise.
- The inclusion of subject merchandise in the benchmark calculation inflates the benchmark as it is produced through a value-added process. Therefore, the United Nations (UN) Comtrade data is inadequate for the purpose of deriving a benchmark.
- ACIT claims that the monthly benchmark used in the *Preliminary Determination* is distorted because of large pricing variations and due to ACIT’s suppliers’ invoicing practices.

²¹⁰ See GOC NSA QR at 25.

²¹¹ See *CVD Preamble*, 63 FR 65438, 65377; NSA letter at 21-24.

²¹² See *Uncoated Paper from China IDM* at 54.

²¹³ See NSA letter at 21-24.

- An annual benchmark should be derived from averaging the monthly benchmark prices used because it would “ameliorate” the variability of the data and the suppliers’ invoicing practices, consistent with *Steel Grating from the PRC and Bearings from the PRC: Administrative Review; 2008-09*.²¹⁴
- In *Steel Grating from the PRC*, the Department used an annual benchmark upon considering respondent’s payment timing and method in report input purchases.
- ACIT argues that using an annual benchmark as opposed to the monthly benchmark would comply with 19 CFR 351.511(a)(2)(ii), as an annual benchmark would resemble market conditions more closely felt by respondents.
- ACIT argues that pursuant to 19 CFR 351.511(a)(2)(iv), the Department must adjust the comparison price to reflect the price that respondents would have paid if they imported the product. As established in *Borusan Mannesmann*, the comparison price can be derived from what a hypothetical firm would pay, unless the respondent is found to be atypical.²¹⁵
- Consistent with *Borusan Mannesmann* and *Supercalendared Paper from Canada*, ACIT’s invoices and payment practices should be taken into consideration in the absence of a determination that ACIT is atypical.²¹⁶ ACIT’s inconsistent invoicing and payment practices lead to an inflated benefit calculation.
- The Department should use the annual weighted average of the UN Comtrade data submitted by both Petitioner and ACIT to determine the benchmark for fiberglass cloth purchases. Additionally, the Department should use a simple average of the already calculated ocean freight, import duties, VAT, and inland freight derived from the monthly benchmarks.²¹⁷

²¹⁴ See ACIT’s Case Brief at 12 and 14 (citing *Certain Steel Grating from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32362 (June 8, 2010) (*Steel Grating from the PRC*) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of the PRC: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011) (*Bearings from the PRC: Administrative Review; 2008-09*), and accompanying IDM at Comment 5, respectively).

²¹⁵ See ACIT’s Case Brief at 12 (citing *Borusan Mannesmann v. United States*, 61 F. Supp 3d 1306, 1335 (CIT 2015) (*Borusan Mannesmann*)).

²¹⁶ See ACIT’s Case Brief at 13 (citing *Supercalendered Paper From Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) (*Supercalendared Paper from Canada*), and accompanying IDM at Comment 9).

²¹⁷ See Letter from Petitioner, “Re: Provision of Initial Benchmark Values by Petitioner,” dated July 19, 2016 at Exhibit 1; see also Letter from ACIT, “Re: New Subsidy Allegations Benchmark Submission,” dated July 19, 2016, at Exhibit 1.

Petitioner's Rebuttal Comments:

- Petitioner notes that any six-digit HTS heading will contain more than one type of good. Certain goods may be higher or lower priced than the alleged good. Quantities of the aforementioned good are not known; however, these facts do not make the data unusable.
- ACIT itself submitted data that the Department used to calculate the benchmark. ACIT's argument that the data is unusable at this time is without merit.
- ACIT initially reported that subject merchandise may have also been imported during the investigation period under the HTS codes 7019.40, 7019.51, 7019.52, and 7019.90.²¹⁸ The multitude of HTS codes that the subject merchandise could be imported under thus further decreases the volume of subject merchandise that would be included in HTS 7019.59.
- ACIT alternatively states that two key HTS classifications of subject merchandise are 7019.40.4030 and 7019.40.9030.²¹⁹ Petitioner argues that the significant distortion that ACIT cites under HTS 7019.59 is thus a discredited argument.
- If the Department determines that certain subject merchandise is included in HTS 7019.59, it can remove export values from countries understood to produce silica fabric (i.e. Latvia and Belarus).²²⁰

Department's Position:

We agree with Petitioner, in part. We first note that *both* Petitioner and ACIT submitted identical six-digit HTS data, for HTS number 7019.59, from UN Comtrade for the post-preliminary analysis. We selected that data submitted by ACIT to calculate the benchmark as it was in the raw form. No party commented on any potential flaws with the data prior to the post-preliminary analysis.

While we recognize that certain products, in addition to fiberglass cloth, may be listed under this six-digit HTS code, we do not have additional data on the record to determine whether the HTS code is, therefore, distorted. As such, we are not adjusting the benchmark as ACIT suggests.

With regard to ACIT's request to use an annual benchmark, we disagree. ACIT claims that large pricing variations in the UN Comtrade data makes the data distorted and using an annual benchmark would "ameliorate" this distortion, and cites to instances in *Steel Grating from the PRC* and *Supercalendered Paper from Canada* where annual benchmarks were used. In the NSA questionnaire, we requested that ACIT report all purchases of fiberglass cloth and stated that "{b}y each purchase, we are referring to each line item on a VAT invoice that corresponds

²¹⁸ See Preliminary Determination at 43582.

²¹⁹ See ACIT Q&V Response at 5.

²²⁰ See Petition at Vol. III.

to a unique price and/or quantity.”²²¹ The Department regularly requests respondents to report their input purchases on a transaction-specific basis. Because of that transaction-specific approach, and consistent with the Department’s practice, we have determined that use of monthly benchmarks will yield a more accurate calculation of the benefits.²²² A monthly benchmark better reflects price fluctuations within the market than an annual benchmark, and accurately reflects the price “available to the purchasers in the country in question.”²²³ Thus, we will continue not to use annual benchmark prices for the respective HTS code. Moreover, because of the timing of the final determination, the Department will not reopen the record to obtain additional benchmarks. Instead, we will continue to use the monthly benchmarks from the post-preliminary analysis.

We disagree with ACIT’s argument regarding the annual benchmark used in *Steel Grating from the PRC*. In that case, input purchases were reported as an aggregate number comprised of all purchases made during the POI.²²⁴ An annual benchmark in that investigation was sufficient as it established a comparable analysis between the purchases as reported, and the benchmark data. However, in the instant investigation, ACIT reported its purchases on an individual basis, and indicated the month of the purchase. In order to establish a comparable analysis to the price that the respondent would have paid, therefore, we are utilizing a monthly benchmark.

We also disagree with ACIT’s argument regarding the annual benchmark used in *Supercalendered Paper from Canada*. In that investigation, the Department used an appropriate benchmark that was selected based on the facts on the record and the particular good for which the Department was seeking a benchmark.²²⁵ The Department has discretion under the statute and regulations to develop benchmarks determined by multiple factors, on a case-by-case basis.²²⁶ The prices for the land in question in *Supercalendered Paper from Canada* were determined by various factors over the course of the POI.²²⁷ As such, an annual benchmark was appropriate in that investigation. However, in the instant investigation, the product, fiberglass cloth, has different properties than the aforementioned land, and different market factors that affect price. Additionally, the prices were reported by ACIT on an individual basis, and reported to the Department as such. Therefore, we continue to use a monthly benchmark for this final determination. Further, any inconsistencies with ACIT’s billing and invoicing practices do not demonstrate that the initial price determined by the supplier would have been affected.

²²¹ See ACIT’s NSA QR at 5.

²²² See *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2011, 79 FR 108 (January 2, 2014), and accompanying IDM at Comment 13.D; see also *Final Negative Countervailing Duty Determination: Live Swine from Canada*, 70 FR 12186 (March 11, 2005) (*Live Swine from Canada*). In *Live Swine from Canada*, the application of monthly benchmarks was with respect to benchmarks for loan programs. However, the reasoning remains the same for monthly benchmarks of provisions of inputs for LTAR; see also, *Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2010, 78 FR 21594 (April 11, 2013) (*2010 Kitchen Racks Review*); *Steel Cylinders from the PRC*, and accompanying *Steel Cylinders IDM* at 18.

²²³ See 19 CFR 351.511(a)(2)(ii).

²²⁴ See *Steel Grating from the PRC*, at 56801.

²²⁵ See *Supercalendered Paper from Canada*, and accompanying IDM at Comment 9.

²²⁶ *Id.*, at 102.

²²⁷ *Id.*

Comment 9: Whether the Department Should Adjust the Fiberglass Cloth Benchmark for a Value-Added Process

ACIT's Comments:

- ACIT claims that the Department must not use data that it knows are inherently flawed,²²⁸ and instead should alter the benchmark to account for the aforementioned data flaws in order to calculate the margins as accurately as possible.²²⁹
- The inclusion of both fiberglass cloth and the finished product in the data leads to an inflated benchmark and distorted data because fiberglass cloth must go through a value-added process, such as acid leaching, to result in creation of subject merchandise.²³⁰
- Consistent with *RZBC Group*, where clear delineations exist in the market for inputs, the Department must integrate that dynamic into the comparability analysis.²³¹
- The Department should correct the benchmark by dividing ACIT's input purchases by sales of subject merchandise during the POI. This would result in the value added factor established through ACIT's production process of subject merchandise. The "value added factor" is the differential between inputs and finished goods.
- ACIT also argues that to ensure the correction accounts for the relative volume of inputs and finished goods contained in the UN Comtrade data, a "production ratio factor" can be derived from the ratio of ACIT Pinghu's purchases of fiberglass cloth and exports of subject merchandise.
- By multiplying the value added factor and production ratio factor, a "product mix corrective factor" will result and can be applied to the annual benchmark to ensure a more accurate benefit calculation.
- An annual benchmark should be derived from averaging the monthly benchmark prices used because it would "ameliorate" the variability of the data and the suppliers' invoicing practices, consistent with *Steel Grating from the PRC* and *Bearings from the PRC: Administrative Review; 2008-09*.²³²

²²⁸ See *Dorbest Ltd. v. United States*, 602 F. Supp. 2d 1287, 1297 (CIT 2009).

²²⁹ See *Rhone Poulenc*, 899 F.2d at 1191.

²³⁰ See ACIT IQR at Vol. I, 16 and Exhibit 1.

²³¹ See ACIT's Case Brief at 18 (citing *RZBC Grp. Shareholding Co., Ltd. v. United States*, No. 15-00022, 2016 CIT LEXIS 68, *34 (June 30, 2016) (*RZBC Group*) and *Archer Daniels Midland Co. v. United States*, 968 F. Supp. 2d 1269, 1279 (CIT 2014)); see also ACIT's Case Brief at 19 (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), and accompanying IDM at Comment 6).

²³² See ACIT's Case Brief at 12 and 14 (citing *Steel Grating from the PRC* and *Bearings from the PRC: Administrative Review; 2008-09*, and accompanying IDM at Comment 5, respectively).

- Consistent with *Shrimp from Ecuador* and *Supercalendared Paper from Canada*, ACIT's invoices and payment practices should be taken into consideration in the absence of a determination that ACIT is atypical.²³³ ACIT's inconsistent invoicing and payment practices lead to an inflated benefit calculation.

Petitioner's Rebuttal Comments:

- ACIT's proposed value added factor must not be used. The physical property of glass density is incapable of distortion by government interventions in the economy, as opposed to production costs. In *Solar Cells from the PRC; 2013*, in fact, the Department stated that Chinese price data is not to be included in any benchmark.²³⁴
- In a non-market economy, prices and costs are distorted by non-market forces, rendering any factor based on a material input in the non-market economy useless. If costs were not distorted, the Department would not have relied on the surrogate country methodology prescribed by the statute in the companion antidumping duty investigation.
- The Department's preferred practice is to rely on monthly benchmark data instead of data over a longer period.²³⁵
- Petitioner contends that the only large variations in pricing that are relevant for the months that ACIT purchases the input occur during October and November, and are actually favorable to ACIT.
- ACIT's reference to *Steel Grating from the PRC* (summarized in Comment 8, above) is misplaced because an annual benchmark was used only because wire rod purchases were reported as an aggregate number comprising of all purchases made during the POI.²³⁶ In the instant investigation, ACIT did not report its purchases aggregated, but instead on an individual basis.
- ACIT's references to *Supercalendered Paper from Canada* and *Warmwater Shrimp from Ecuador* are also misplaced. The land for LTAR program in *Supercalendered Paper from Canada* is not comparable to silica fabric, as land has differing characteristics from a textile.
- Petitioners rebut that no documentation on the record proves that price establishment and delivery are mismatched; further, ACIT has benefitted from the alleged mismatch in certain instances. Overall, ACIT failed to properly demonstrate any distortions in the CVD data that would result in an increased benefit attributed to ACIT.

²³³ See ACIT's Case Brief at 13 (citing *Supercalendared Paper from Canada*, and accompanying IDM at Comment 9 and *Certain Frozen Warmwater Shrimp from Ecuador: Final Affirmative Countervailing Duty Determination*, 78 FR 50389 (August 19, 2013) (*Shrimp from Ecuador*), and accompanying IDM at 8).

²³⁴ See Petitioner's Rebuttal Brief at 8 (citing *Solar Cells from the PRC; 2013*, and accompanying IDM at 22).

²³⁵ See ACIT's Case Brief at 19 (citing, e.g. *Solar Cells from the PRC; 2013*, and accompanying IDM at 20).

²³⁶ See Petitioner's Rebuttal Brief at 10 (citing *Steel Grating from the PRC*, at 56801).

Department's Position:

We agree with Petitioner. As stated in the *Preliminary Determination* and addressed in Comment 6 above, we continue to find that, based on AFA, the domestic Chinese fiberglass cloth market is distorted. Due to this determination, we find that application of a tier one benchmark is unwarranted, and we are continuing to apply a tier two benchmark for this final determination. Consistent with our regulations, we do not include prices of products purchased from Chinese domestic producers in the benchmark calculation due to the aforementioned finding of distortion.²³⁷ The value-added “production ratio factor” proposed by ACIT includes a calculation of the purchases made by ACIT Pinghu and ACIT Shanghai from Chinese domestic producers of fiberglass cloth; the market determined by the Department to be distorted in the instant investigation. Therefore, pursuant to 19 CFR 351.511(a)(2)(ii), we are not applying a ratio determined, in part, by the distorted market. This determination is consistent with *Solar Cells from the PRC; 2013* in that we do not use Chinese domestic prices in the benchmark when we determine that such prices are distorted.²³⁸

See Comment 13 below for discussion of the references to the benchmark calculation methodology in *Supercalendered Paper from Canada* and *Steel Grating from the PRC*.

Comment 10: Whether the Department Should Exclude VAT from the Tariff Rate in its Calculations for the Electricity for LTAR Program and Exclude VAT from the Calculation for the Provision of Fiberglass Cloth for LTAR

GOC's Comments:

- In its *Preliminary Determination* calculations for ACIT Pinghu, the Department stated that it included VAT in the electricity tariff rates for its subsidy rate calculations.²³⁹
- Should the Department continue to find the provision of electricity countervailable, it should exclude VAT from the tariff rates in its calculations for all respondents because the GOC has provided record evidence to confirm that entities must pay VAT if they sell electricity, i.e. China's nationwide electricity prices include VAT.²⁴⁰

ACIT's Comments:

The Provision of Electricity for LTAR

- ACIT claims that the Department noted in the *Preliminary Determination* that ACIT's electricity payments were VAT inclusive. Further, the Department verified this at ACIT Pinghu.²⁴¹

²³⁷ See 19 CFR 351.511(a)(2)(ii).

²³⁸ See *Solar Cells from the PRC; 2013*, and accompanying IDM at 22.

²³⁹ See GOC's Case Brief at 22.

²⁴⁰ *Id.*

²⁴¹ See ACIT's VR at 16; see also PDM at 34 – 35.

- Consistent with *Iron Mechanical Transfer Drive Components (ITMDC's) from the PRC*, the Department should adjust calculations to ensure that it uses benchmarks comparable to the market at issue.²⁴²
- ACIT's electricity bills are indicative of the general billing practices of Chinese state-owned power companies. The benchmark rates selected in the *Preliminary Determination* are grounded in the actual electricity rates and no adverse finding was made regarding VAT inclusion.
- By utilizing ACIT's electricity payments without removing VAT from *all* benchmark prices, an adverse finding would be applied to ACIT.
- Upheld in *Borusan Mannesman*, the respondent's actual experience is relevant in determining what a firm would pay in terms of establishing a comparable benchmark.²⁴³
- Although the Department's practice may be to not remove VAT from electricity tariff rates, record evidence in the instant investigation demonstrates that all electricity tariff rates include VAT.

The Provision of Fiberglass Cloth for LTAR

- ACIT argues that, pursuant to 19 CFR 351.511(a)(2)(iv), VAT is not listed as an allowable adjustment and cannot be construed as an allowable delivery charge or import duty. Instead, VAT is listed as an "indirect tax."²⁴⁴ Thus, VAT should not be included in the construction of the tier (ii) benchmark of fiberglass cloth.
- If the Department were supposed to adjust the fiberglass cloth benchmark to include VAT, it would have been listed as a tier-two adjustment in the regulations. Further, VAT is excluded from the "import charge" as listed in 19 CFR 351.102(b)(26) and also from the SCM Agreement.²⁴⁵
- The Department must remove VAT from the constructed fiberglass cloth benchmark price as VAT is not explicitly named as a component of prevailing market conditions or a

²⁴² See *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) (*ITMDC's from the PRC*), and accompanying IDM at Comment 8.

²⁴³ See *Borusan*, 61 F. Supp. 3d at 1340 (*Borusan*).

²⁴⁴ See 19 CFR 351.102(b)(28).

²⁴⁵ See Agreement on Subsidies and Countervailing Measures, n. 58 dated April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A (SCM Agreement).

condition of purchase or sale. The Department's action of VAT inclusion is inconsistent with its own regulation and must be rejected, as established by *Chevron*.²⁴⁶

Petitioner's Rebuttal Comments:

- No new information has been placed on the record since the Department's determination not to exclude VAT in certain tariff rates.²⁴⁷
- Petitioner argues that the Department clearly stated its methodology for not removing VAT from all electricity tariff rates.²⁴⁸
- The Department made an overall preliminary AFA determination with respect to this program and is thereby entitled to reject information from the GOC about it. The GOC's contention that the Department's decision not to verify the GOC's single statement that all provincial electricity rates include VAT renders that statement true and complete is incorrect.
- The Department's established practice is to include VAT in the LTAR benefit calculation methodology. Consistent with 19 CFR 351.511(a)(2)(iv), the Department adjusts the world price in order to estimate what a firm would have paid if it imported the product.²⁴⁹ Therefore, the Department should reject the GOC's request to exclude VAT from the tariff rates in its calculations.

Department's Position:

Pursuant to 19 CFR 351.511(a)(2)(iv), the Department will adjust benchmark prices to reflect the price a firm actually paid or would pay if it imported the product, while also making adjustments for delivery charges and import duties. The Department adds freight, import duties, and VAT to the world prices in order to estimate what a firm would have paid if it imported the product. As long as VAT is reflective of what an importer would have paid, then VAT is appropriate to include in the benchmark. Accordingly, we find that our regulations require us to consider all adjustments necessary to ensure an accurate comparison and are not limited to delivery charges and import duties. To exclude VAT and/or adjust the reported purchases by removing VAT would result in a less accurate comparison and, therefore, would be inconsistent with the Department's regulations. As such, and consistent with past practice, the Department has not excluded VAT from its benchmark prices.²⁵⁰

²⁴⁶ See ACIT's Case Brief 23 (citing *Chevron v. Natural Resources Defense Council*, 467 U.S. 837, 843 (1984) (*Chevron*)).

²⁴⁷ See Memorandum to Scot Fullerton, "Response to Ministerial Error Comments filed by Auburn Manufacturing Inc. and ACIT (Pinghu) Inc.," August 12, 2016, at 6 – 7.

²⁴⁸ *Id.*; see also GOC's VR; see also Memorandum to Brian C. Davis, "Re: Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Preliminary Determination Calculations for ACIT (Pinghu) Inc.," dated June 27, 2016 (ACIT's Preliminary Determination Calculation Memorandum), at 3-4.

²⁴⁹ See, e.g. *Solar Cells from the PRC; 2013*, and accompanying IDM at 25-26.

²⁵⁰ See, e.g., *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) and accompanying IDM (Solar Cells 2016 IDM) at Comment 8.

With respect to electricity payments, the GOC and ACIT argue that the Department must adjust its electricity for LTAR calculations. They argue that the Department should compare the VAT-inclusive electricity benchmark with VAT-inclusive electricity payments. For our final determination, we continue to find that this approach amounts to an apples-to-apples price comparison, with regard to the prices that we are able to confirm include VAT.²⁵¹ Therefore, we continue to incorporate VAT into the construction of our benchmark prices, where inconsistent with the discussion above.²⁵²

With regard to the GOC's and ACIT's argument that VAT should be excluded from all tariff rates in the PRC, we disagree. While ACIT has provided evidence that VAT is included in tariff rates for ACIT Shanghai and ACIT Pinghu, we are not able to confirm that VAT is included for all companies and provinces within the PRC. At verification, we only confirmed that VAT is included in the tariff rate for the State Grid Zhejiang Electricity Power Company Jiaxing Power Supply Corporation and the State Grid Shanghai Municipal Electric Power Company. As such, we confirmed that Zhejiang Province and the Shanghai Municipality include VAT in electricity tariff rates. In the *Preliminary Determination*, based on AFA, we selected the highest electricity rate charged at each price category.²⁵³ We continue to find that AFA is warranted because of the GOC's failure to cooperate with regard to the provision of electricity for LTAR, see discussion at Comment 18 below. Thus, consistent with our approach in *Wind Towers from the PRC*,²⁵⁴ we continue to apply the highest electricity rate charged in each category. We were able to verify through examination of VAT invoices and electricity bills that rates in Zhejiang Province and Shanghai Municipality included VAT.

Further, consistent with our decision above to establish an apples-to-apples comparison, we excluded VAT from both the payment by ACIT Shanghai and ACIT Pinghu and electricity tariff rates for Zhejiang Province.²⁵⁵ With regard to the remaining provinces, we did not exclude VAT as we were unable to confirm through documentation on the record that VAT is also included in those rates provided in Exhibit 19 of the GOC's IQR. With regard to the Chinese law excerpts on the record that the GOC argues demonstrate VAT is included in all electricity tariff rates, we find this documentation inconclusive.²⁵⁶ The GOC provided, as support for their argument, excerpts of a Chinese law that explain *generally* how VAT is applied in the PRC, and explains that electricity is subject to VAT.²⁵⁷ However, the evidence does not demonstrate that *all* of the specific price schedules submitted by the GOC include VAT.

²⁵¹ See *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane From the People's Republic of China: Final Affirmative Countervailing Duty*, 79 FR 62594 (October 20, 2014) and accompanying IDM (Tetrafluoroethane IDM) at Comment 8 (noting "that the electricity prices placed on the record by the GOC are inclusive of VAT.").

²⁵² See Final Analysis Memorandum at 3 – 5.

²⁵³ See PDM at 35.

²⁵⁴ See *Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from the PRC*), and accompanying IDM (Wind Towers IDM).

²⁵⁵ The Department's practice is to exclude Shanghai Municipality from the electricity rates used for AFA due to seasonality of the rates.

²⁵⁶ See Letter from the GOC, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: CVD Investigation; GOC Factual Information Submission," dated May 31, 2016.

²⁵⁷ *Id.*

With regard to the GOC's and ACIT's arguments regarding VAT-inclusive payments, our approach is consistent with the aforementioned investigation, *IMTDCs from the PRC*. In that investigation, the Department compared the VAT-inclusive electricity benchmark with VAT-inclusive electricity payments made by respondents in order to ensure an apples-to-apples price comparison.²⁵⁸ In the instant investigation, our exclusion of VAT from the respondents' reported tariff rates, both in the calculation of benefit and in the calculation of the benchmark, results in the same apples-to-apples comparison as it relates to the provinces in which the respondents are located. Further, as we could only verify that VAT was included in the tariff rates paid by ACIT Pinghu and ACIT Shanghai to their respective state power grids, we only excluded VAT from the tariff rates relating to those provinces.²⁵⁹

Comment 11: Whether the Department Should Revise the Ocean Freight Benchmark

ACIT's Comments:

- The Department should revise its initial use of forty-foot container benchmark shipping data from the *Preliminary Determination*, and instead use twenty-foot container data previously submitted by ACIT.²⁶⁰
- ACIT argues that, pursuant to the CIT's decisions in *Borusan* and *Essar Steel*, because the company used twenty-foot containers to ship the finished product, and because the physical characteristics between the input and the finished product are similar, a twenty-foot container benchmark would be more comparable than the previous benchmark.²⁶¹
- In the absence of record evidence to demonstrate the exact shipping method of the input, the Department should average the world benchmark prices for forty-foot and twenty-foot containers, consistent with 19 CFR 351.511(a)(2)(ii).

Petitioner's Rebuttal Comments:

- Petitioner contends that there is a significant difference between the silica fabric shipment method compared to the fiberglass cloth shipment method. The finished product is shipped by water, whereas the input is likely transported over land.
- Petitioner rebuts further that packaging methods for the unleached, raw fiberglass cloth likely differs significantly from the packaging of the finished subject merchandise, as noted in the Petition.²⁶²

²⁵⁸ See *IMTDCs from the PRC*, and accompanying IDM at 29-30.

²⁵⁹ See ACIT's Preliminary Determination Calculation Memorandum.

²⁶⁰ See Letter from ACIT, "Re: Rebuttal to Petitioner's July 19, 2016 Initial Benchmark Values Submission," dated July 29, 2016 (ACIT's Benchmark Rebuttal), at Exhibit 2.

²⁶¹ See *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1273 – 74 (Fed. Cir. 2012) (*Essar Steel*).

²⁶² See *Petition*, Vol. I, at 19.

- Due to the large variance in product characteristics and shipping methods of the input as opposed to the finished product, it is reasonable to believe the freight would be different as well.
- Still, Petitioner states that due to the lack of information on the record regarding shipping methods, they would not object to averaging the forty-foot and twenty-foot container prices.

Department's Position:

We agree with both ACIT and Petitioner. Due to the lack of record evidence demonstrating the shipping method used to transport fiberglass cloth from the supplier to ACIT Pinghu and ACIT Shanghai, we are revising the ocean freight benchmark used in the post-preliminary analysis. For the final determination, we are averaging the forty-foot and twenty-foot shipping container prices submitted by ACIT.²⁶³ Inland freight information on the record submitted by ACIT demonstrates that ACIT used 20-foot containers to transport the *finished product*. However, no evidence was provided to demonstrate the shipping method used to transport the *input* (i.e. fiberglass cloth). As we do not have evidence to confirm that ACIT also used 20-foot containers to transport the input, for this final determination, we used a simple average of two potential inland freight shipping methods that ACIT could have reasonably used to transport the input.

Comment 12: Whether the Department Should Continue its Use of Zeroing with Regard to Calculation of the Benefit of Fiberglass Cloth for LTAR

ACIT's Comments:

- ACIT argues that by assigning a zero value to a benchmark comparison yielding a negative benefit, the benefit is artificially inflated.²⁶⁴
- Consistent with the Department's regulations and the SCM Agreement, prevailing market conditions and prices available to purchasers in the country in question should be taken into consideration when determining the benefit received by a company.
- Due to ACIT's invoicing and payment mismatch, purchases that were made in a month with a high market price but invoiced in a month with a low market price would be zeroed. This would result in larger benefit than the actual benefit conferred by ACIT.

Petitioner's Rebuttal Comments:

- Although not explicitly stated, ACIT suggests that the time lag between any invoiced purchases and payment for those purchases would result in a "negative benefit."

²⁶³ See ACIT's Final Calculation Memorandum.

²⁶⁴ See Memorandum from Emily Maloof, "Re: Post Prelim Calculation Memorandum," dated June 27, 2016 (ACIT's Post Prelim Calc Memo).

- The suggested correction would result in an offset that is not permissible under the statute and is not consistent with the Department's practice. Specifically, ACIT's suggested offset is not listed under the three offsets permitted under the statute.²⁶⁵

Department's Position:

We agree with Petitioner. The LTAR benefit methodology applied in this investigation, which is to compare the actual input purchases made by ACIT to the world market price established for fiberglass cloth, is consistent with the regulations and is the Department's practice.²⁶⁶

However, ACIT argues against this methodology, stating that it is unfairly penalized based on its purchase payment pattern. ACIT states that the result of the benefit calculation penalizes a company where a payment is larger than the benchmark purchase price because instead of applying a credit for an overpayment, the Department assigns a benefit of zero. Therefore, ACIT argues for a change in the Department's methodology in order to capture any negative benefits in the calculation.²⁶⁷

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. As such, ACIT is seeking an impermissible offset, as Petitioner argues (*i.e.*, a credit for transactions that did not provide a subsidy benefit). Such an adjustment is not permitted under the statute and is inconsistent with the Department's practice.²⁶⁸ A list of permissible offsets is provided under section 771(6) of the Act; however, offsetting the benefit calculated with a "negative" benefit is not one of the permissible offsets.²⁶⁹ Therefore, we have made no modifications to the final results calculations regarding alleged "negative" benefits.

²⁶⁵ See section 771(6) of the Act; *see also, e.g. Final Results of Countervailing Duty New Shipper Review: Certain Softwood Lumber Products from Canada*, 70 FR 56640 (September 28, 2005) (*Softwood Lumber from Canada; NSR*), and accompanying IDM at Comment 6.

²⁶⁶ See 19 CFR 351.511(a)(2)(ii).

²⁶⁷ See ACIT's Case Brief at 28.

²⁶⁸ See *Softwood Lumber from Canada; NSR*, and accompanying IDM at Comment 6; *see also Drill Pipe From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 150 (August 5, 2013), and accompanying IDM at Comment 3; *see also 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 IDM at Comment 14.

²⁶⁹ Section 771(6) of the Act provides that the three offsets permitted are:

- (A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive the benefit of the countervailable subsidy,
- (B) any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and
- (C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

Comment 13: Whether the Department Should Make Corrections to its Subsidy Calculations Regarding the Provision of Fiberglass Cloth at LTAR

Petitioner's Comments:

- The Department inadvertently selected a fixed denominator when calculating the weighted-average of the price of fiberglass cloth for March 2015.
- Petitioner argues that by selecting a fixed denominator, as opposed to the relative denominator, the weighted calculation is incorrect.

No other parties commented on this issue.

Department's Position:

We agree with Petitioner. The benchmark calculation issue referred to by Petitioner was an inadvertent error that occurred when selecting the denominator to calculate the weighted-average of fiberglass cloth for March 2015. In the post preliminary analysis, we selected a fixed denominator for a portion of the calculation to determine the fiberglass cloth benchmark for March 2015. However, the denominator should not be fixed as we are dividing each trade value (in USD) by the respective trade quantity (in kilograms) to determine the average unit value (in USD) for the month of March 2015. For this final determination, we are revising the calculation to select the respective denominators in order to calculate the fiberglass cloth benchmark for March 2015.

Comment 14: Whether the Department Should Exclude Certain World Export Prices for Fiberglass Cloth Pertaining to China

Petitioner's Comments:

- It is the Department's practice to exclude exports from the PRC when establishing tier (ii) benchmarks and, therefore, the Department should alter the methodology used in the *Preliminary Determination* to reflect established precedent.²⁷⁰ Specifically, the Department should eliminate monthly line items pertaining to the PRC from its benchmark calculations.
- Petitioner contends that the Department should not determine a market-based value by including values distorted by a non-market economy.

ACIT's Rebuttal Comments:

- As the Department has elected to retain export prices from the PRC in the UN Comtrade data used to derive the benchmark for ACIT's fiberglass cloth purchases, the argument that the Department's practice to exclude exports from the PRC as a basis to exclude Hong Kong prices is flawed.

²⁷⁰ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules*, 81 FR 46904 (July 19, 2016), and accompanying IDM at 22.

- Following 19 CFR 351.511(a)(2)(ii), the Department may make certain adjustments to the data regarding market distortion that affect comparability. However, neither the case record nor Petitioner propose distortion findings related to Hong Kong.
- Petitioner's suggestion that Hong Kong and the PRC should be treated as the same entity in order to develop a specific tier-two benchmark is contrary to U.S. law, which specifically states that the U.S. should treat Hong Kong as a separate customs territory.²⁷¹ ACIT also states that the fact that there are separate line items in the UN Comtrade data demonstrates that Hong Kong and the PRC are two separate entities.

Department's Position:

In order to measure the benefit received by ACIT for the provision of fiberglass cloth at LTAR, we compared the price paid by ACIT to the domestic fiberglass cloth suppliers, to the world-market price.²⁷² Consistent with 19 CFR 351.511(a)(2)(ii), we averaged world-market prices provided by ACIT to establish a comparable benchmark for evaluating the price that would have been available to fiberglass cloth purchasers in China.²⁷³ When determining the world-market price, we included all relevant data points listed within the raw data.²⁷⁴

When calculating the benchmark, we did not exclude all prices pertaining to the PRC, as the regulations do not instruct the Department to exclude such data in a tier (ii) analysis.²⁷⁵ We, therefore, disagree with Petitioner that we should change this calculation methodology for the final determination. Alternately, in a tier (i) analysis, only domestic and *import* prices are included.²⁷⁶ Data provided by ACIT includes all *export* prices from the countries listed, including the PRC and Hong Kong. Therefore, we have correctly included all relevant data points in the benchmark calculation.²⁷⁷

Following the methodology outlined above, excluding prices of exports from Hong Kong is not within our regulations or practice, as the prices listed are export prices and do not fall under a tier (i) analysis.

Comment 15: Whether the Department Should Revise the Denominator Used to Calculate the Benefit Received by ACIT for the Provision of Fiberglass Cloth at LTAR

Petitioner's Comments:

- The Department confirmed at verification that ACIT had only reported the purchase of fiberglass cloth used to make subject merchandise.²⁷⁸

²⁷¹ See 22 U.S.C. 5712(3).

²⁷² See ACIT Post-Preliminary Calculation Memorandum at 2; *see also* 19 CFR 351.511(a)(2)(ii).

²⁷³ See Post-Preliminary Analysis Memorandum at 14.

²⁷⁴ We excluded certain line items in the data set that had missing values and were, therefore, unusable.

²⁷⁵ See 19 CFR 351.511(a)(2)(ii).

²⁷⁶ See 19 CFR 351.511(a)(2)(i).

²⁷⁷ See ACIT Final Calculation Memorandum.

²⁷⁸ See ACIT VR at 12.

- Petitioner argues that instead of using the total sales of subject merchandise during the POI, the Department calculated the benefit received by ACIT for purchases of fiberglass cloth using the total sales made during the POI (including subject and non-subject merchandise).
- Information on the record submitted by ACIT demonstrates that ACIT produces products other than subject merchandise, and the Department verified that ACIT did not report all purchases of fiberglass cloth because not all cloth was used to make subject goods.
- The Department should attribute the benefit to the 2015 sales of all merchandise sold by ACIT that is made from the fiberglass fabric, consistent with the *CVD Preamble*.²⁷⁹ As such, Petitioner contends, the Department should use the total sales of subject merchandise reported by ACIT as the denominator for this calculation of benefit.

ACIT's Rebuttal Comments:

- At verification, the Department officials verified that ACIT reported that both subject and non-subject merchandise are end products of the inputs reported in its questionnaire response.
- ACIT argues further that the Department's sales reconciliation contains information regarding which product codes cover both subject and non-subject merchandise.²⁸⁰
- The Department stated in the NSA questionnaire that it was seeking data related to all fiberglass purchases.²⁸¹
- If the Department decides to only focus on inputs used for the production of subject merchandise, the Department must use sales data for all subject merchandise as it is impossible to determine whether the input was used for products exported to the United States.

Department's Position:

We agree with ACIT. In the Department's NSA questionnaire, we requested that ACIT report all purchases of fiberglass cloth during the POI, regardless of whether the fiberglass cloth was used to produce subject merchandise during the POI.²⁸² At verification, Department officials confirmed that all purchases of fiberglass cloth were reported through a thorough input

²⁷⁹ See Countervailing Duties: Final Rules, 63 FR 65347, 65400 (November 25, 1998) (*CVD Preamble*).

²⁸⁰ See ACIT's VR at 4, 24 – 27, and 117.

²⁸¹ See Letter from the Department to ACIT, "Re: New Subsidy Allegation Questionnaire," dated June 21, 2016, at 5.

²⁸² See ACIT's NSA QR at 4 – 5.

reconciliation process. At that time, we were also able to confirm that the inputs reported were used to produce subject and non-subject merchandise.²⁸³

Our finding in the post-preliminary analysis that purchases of fiberglass cloth were not tied to the production of subject merchandise is consistent with the Department's practice and prior cases.²⁸⁴ Further, the Court of International Trade (CIT) has upheld the Department's decision to not tie benefits from inputs for LTAR to specific products. In the *OCTG from Turkey Redetermination*, the Department explained that "it does not 'tie' an input subsidy to specific products absent record evidence that a government intended to benefit a specific product at the time of bestowal of the subsidy."²⁸⁵ In the instant investigation, we note that Petitioner cites the *CVD Preamble*, stating that, "{o}ur tying rules are an attempt at a simple, rational set of guidelines for reasonably attributing the benefit from a subsidy based on the stated purpose of the subsidy or purpose we evince from record evidence at the time of bestowal."²⁸⁶ We rejected that argument in *Kitchen Racks from the PRC*, as we do in this instance.²⁸⁷ Under 19 CFR 351.525(b)(5), the provision of an input for LTAR is deemed to benefit a company's overall production absent a requirement explicitly made at the time of bestowal—i.e. when the terms for the provision are set—that the input may only be used for a certain subset of a company's production.²⁸⁸ As stated in the *OCTG from Turkey Redetermination*, documentation on the record of the investigation demonstrates that the input subsidy was not tied to specific products unless evidence at the point of bestowal shows an intentional restriction of the subsidy to those products.²⁸⁹ During the instant investigation, no record information demonstrated that the GOC intended to benefit a specific product at the time of bestowal of the subsidy. Thus, consistent with the Department's practice, "{a}bsent a determination that a subsidy is 'tied' to a specific product under 19 CFR 351.525(b)(5), the Department does not limit the attribution of a benefit from a subsidy to a specific product."²⁹⁰

In order to determine that a subsidy is "tied," the Department must make an affirmative finding based on record evidence. In the instant investigation, we do not have documentation that supports an affirmative finding that the GOC provided fiberglass cloth for LTAR with the purpose of producing the subject merchandise. Further, we have record evidence that demonstrates that the inputs reported by ACIT were used in the production of *both* subject and non-subject merchandise.²⁹¹ As such, we reject Petitioner's argument that we should find all fiberglass cloth purchases are tied to the production of subject merchandise and we continue to

²⁸³ See ACIT's VR at 4, 24 – 27, and 117.

²⁸⁴ See Post Preliminary Analysis Memorandum at 14-15.

²⁸⁵ See *Borusan v. United States; Maverick Tube Corporation v. United States Consol. Ct. No. 14-0029*, 61 F. Supp. 3d 1306 and Slip Op. 15 – 59 (*OCTG from Turkey Redetermination*), at 20.

²⁸⁶ See *CVD Preamble*, 63 FR 65403.

²⁸⁷ See *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.

²⁸⁸ See *OCTG from Turkey Redetermination* at 22.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ See ACIT's VR at 12.

attribute the benefits received from the provision of fiberglass cloth for LTAR to the combined total sales of ACIT Pinghu and ACIT Shanghai (less intercompany sales).

Comment 16: Whether the Department Should Find that ACIT and Nanjing Tianyuan Benefitted from Export Seller's Credits Because the GOC Failed to Provide Evidence of Non-Use at Verification

Petitioner's Comments:

- Prior to verification, the Department indicated that the GOC should provide documentation at verification to substantiate its response that neither mandatory respondent received export sellers' credits.²⁹²
- At verification, the GOC failed to provide documentation, *e.g.* screenshots, or any other evidence of non-use of this program by the two mandatory respondents.²⁹³
- The Department should therefore find that the GOC failed to comply with multiple requests for information and rely on facts available for the final determination. Further, the Department should find, as AFA, that the GOC failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information, that both mandatory respondents benefitted from this program, and that the program was specific.²⁹⁴
- The Department should use that same 4.25 percent subsidy rate applied to non-cooperative respondents for this program at the *Preliminary Determination* as the final AFA rate for ACIT Pinghu and Nanjing Tianyuan.²⁹⁵

GOC's Rebuttal Comments:

- Complete and verified record evidence demonstrates that neither respondent used this program during the POI.²⁹⁶
- The Department has found in previous PRC CVD cases that it can rely solely upon respondent companies' information to confirm non-use of this program.²⁹⁷
- Contrary to Petitioner's argument that the Department must apply AFA to both respondents because the GOC failed to provide evidence of non-use at verification, there was no need to substantiate non-use during verification of the GOC because the

²⁹² See Petitioner's Nanjing Tianyuan Case Brief at 9 – 10; *see also* GOC VR at 9.

²⁹³ See Petitioner's Nanjing Tianyuan Case Brief at 9 – 10.

²⁹⁴ *Id.*, at 10.

²⁹⁵ *Id.*, at 11.

²⁹⁶ See GOC's Rebuttal Brief at 2; *see also* ACIT's VR at 20; *see also* Nanjing Tianyuan's VR at 22 – 24.

²⁹⁷ See, *e.g.* *Shrimp from the PRC* and accompanying IDM at 83.

Department fully verified non-use based on the respondents' records.²⁹⁸

- Petitioner's argument that the GOC's failure to provide electronic records regarding program usage at verification must lead the Department to apply AFA is wrong. Application of AFA is only warranted when information is missing from the record.²⁹⁹
- For the final determination, the Department should confirm its *Preliminary Determination* that export seller's credit was not used.³⁰⁰

ACIT's Rebuttal Comments:

- As the GOC states that the Chinese exporter is able to verify use of this program, and the Department verifiers did not find any information in ACIT's accounting system suggesting program use, the Department should determine that this program was not used by ACIT.³⁰¹
- The structure of payments under this program further indicates that any receipt of benefit would have appeared during the Department's verification.
- Consistent with *Essar Steel*, the Department should find that although AFA may be warranted with respect to the GOC, ACIT was able to demonstrate that it received no benefits under this program.³⁰²

Petitioner's Rebuttal Comments:

- Petitioner's rebuttal regarding this issue contained the same content as Petitioners' Case Brief.³⁰³

Department's Position:

Consistent with prior determinations, such as *Boltless Steel Shelving Units*, and information on the record of this proceeding, we determine that non-use of this program can be verified with the respondents.³⁰⁴ We verified non-use of these programs for both respondents.³⁰⁵ As a result, we continue to find that these programs were not used during the POI.

²⁹⁸ See GOC's Rebuttal Brief at 5 – 6; see also ACIT's VR at 20; see also Nanjing Tianyuan's VR at 22 – 24.

²⁹⁹ See GOC's Rebuttal Brief at 6 (citing *Zhejiang DunAn Hetian Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011)).

³⁰⁰ See GOC's Rebuttal Brief at 6.

³⁰¹ See ACIT's VR at 20 – 21.

³⁰² See *Essar Steel* at 1297; see also *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F. 3d 1365, 1372 (Fed. Cir. 2014).

³⁰³ See Petitioner's Rebuttal Brief at 22 – 24; see also Petitioner's Case Brief at 9 – 11.

³⁰⁴ See *Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015) (*Boltless Steel Shelving Units*), and accompanying IDM at Comment X.

³⁰⁵ See ACIT's VR at 21; see also Nanjing Tianyuan's VR at 21.

Comment 17: Whether the Department Should Find that ACIT and Nanjing Tianyuan Benefitted from Export Buyer's Credits

Petitioner's Comments:

- The GOC failed to cooperate because it did not provide requested information which the Department required to determine non-use of the export buyer's credits program by the two mandatory respondents.³⁰⁶
- Rather than provide information requested by the Department, *e.g.* complete responses to the Standard Questions Appendix for this program, the GOC stated that, based on its review of ACIT Pinghu and Nanjing Tianyuan's customer lists, it could confirm that neither of the mandatory respondents and their reported affiliated companies used this program during the POI.³⁰⁷
- The GOC failed to provide a sample application for the program and to explain in detail the steps it took to determine non-use of the program by the two mandatory respondents, as requested by the Department.³⁰⁸
- The GOC refused to supply its 2013 *Administrative Measures*, as requested by the Department.³⁰⁹ This refusal prevented the Department from gaining specific information about this program, *i.e.* whether a USD 2 million minimum contract amount requirement is currently in effect for use of the program.³¹⁰
- The GOC did not act to the best of its ability by failing to provide requested information that would allow the Department to determine whether this program constitutes a financial contribution or whether it is specific. As AFA, the Department should find that this program constitutes a financial contribution and is specific.³¹¹
- The Department should, pursuant to its AFA hierarchy, apply the subsidy rate of 10.54 percent for this program.³¹²

GOC's Rebuttal Comments:

- Complete and verified record evidence indicates that neither respondent used this program during the POI.³¹³

³⁰⁶ See Petitioner's Nanjing Tianyuan Case Brief at 11. Petitioner provides the same arguments, as summarized here, in Petitioner's ACIT Case Brief at 16 – 18.

³⁰⁷ See GOC IQR at 12.

³⁰⁸ See Petitioner's Nanjing Tianyuan Case Brief at 12.

³⁰⁹ See GOC 7SQR at 2 – 3.

³¹⁰ See Petitioner's Nanjing Tianyuan Case Brief at 13.

³¹¹ *Id.*

³¹² *Id.*; see also PDM at Appendix – AFA Rate Calculation.

³¹³ See GOC's Rebuttal Brief at 7.

- To demonstrate non-use of the export buyer's credit program, ACIT Pinghu provided the names of its unaffiliated customers and the affidavits of unaffiliated customers and ACIT USA in its initial questionnaire response.³¹⁴ The Department's verification of ACIT Pinghu indicated no discrepancies with respect to ACIT Pinghu's statements that it did not use this program.³¹⁵
- The Department's verification report indicates that Nanjing Tianyuan did not use the export buyer's credit program.³¹⁶
- In previous CVD cases involving the PRC, the Department has based a finding of non-use of export buyer's credits on respondent companies' U.S. customer certifications that they did not use the program.³¹⁷
- The Department chose not to verify information about this program provided by the GOC, and must therefore assume for the final determination that every factual statement submitted by the GOC is accurate.³¹⁸
- Petitioner's argument that the GOC's failed to provide requested evidence to apply AFA is wrong.³¹⁹ Application of AFA is only warranted when information is missing from the record.³²⁰
- The GOC's failure to provide a blank application for the Export Buyer's Credit program should not result in punitive measures by the Department, as application of AFA would thereby run counter to established tenets³²¹ and to court holdings providing that the Department cannot penalize the GOC for not providing information it does not have.³²²
- Further, the GOC's failure to provide a blank application for this program does not justify a conclusion that non-use could not be verified.³²³

³¹⁴ See ACIT IQR at 13.

³¹⁵ See ACIT's VR at 21.

³¹⁶ See Nanjing Tianyuan's VR at 23 – 25.

³¹⁷ See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules From China*, 81 FR 46904 (July 19, 2016) and accompanying IDM at 11.

³¹⁸ See GOC's Rebuttal Brief at 10 (citing to *China Kingdom Import & Export Co., Ltd. v. United States*, 507 F. Supp. 2d 1337, 1341 (Ct. Int'l Trade 2007)); see also *Boltless Steel Shelving Units Prepackaged for Sale from China*, 80 FR 51775 (Aug. 26, 2015) and accompanying IDM at 45.

³¹⁹ See GOC's Rebuttal Brief at 11.

³²⁰ *Id.*, (citing *Zhejiang DunAn Hetian Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011)).

³²¹ *Id.*, (citing *National Knitwear & Sportswear Association v. United States*, 15 CIT 548, 558 (1991); *Chaparral Steel Co. v. United States*, 901 F.2d 1097, 1103 – 04 (Fed. Cir. 1990)).

³²² *Id.*, (citing *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1572 (Fed. Cir. 1990); *AK Steel Corp. v. United States*, 21 CIT 1204, 1223 (1997); *NSK Ltd. v. United States*, 416 F. Supp. 2d 1334, 1341 (Ct. Int'l Trade 2006)).

³²³ See GOC's Rebuttal Brief at 13 (citing *China Kingdom*, 507 F. Supp. 2d at 1341).

- The Department should not countervail this program in its final determination based upon its verification of non-use of the program at the mandatory respondents and its acceptance of the accuracy of the GOC's record statements about this program.³²⁴

ACIT's Rebuttal Comments:

- As stated by the GOC, the Chinese exporter can provide evidence of non-use for the Buyer's Credits program and any evidence would have been found during the verification of ACIT. No such evidence was found by the Department.³²⁵
- ACIT provided documentation³²⁶ identical to that provided in *Solar Cells from the PRC; 2013* and *Chloro Isos from the PRC*, which was used to find Buyer's Credits program non-use.³²⁷ The aforementioned documentation from its parent company, U.S. customer, and all of its parent company's unaffiliated U.S. customers confirms non-use of this program.

Petitioner's Rebuttal Comments:

- Petitioner's rebuttal regarding this issue contained the same content as Petitioners' Case Brief.³²⁸

Department's Position:

We agree with Petitioner. In its rebuttal, the GOC argues that the Department verified non-use of this program at the respondents' verifications. However, this assertion ignores the fact that the GOC's failure to provide updated program information obstructed the Department's ability to completely verify this program.³²⁹ Contrary to the GOC's argument that the Department is obligated to accept non-verified questionnaire responses, if a respondent provides substantially incomplete questionnaire responses and the Department must then base the company's rate entirely on facts available, as in this case, then verification is "meaningless."³³⁰

Additionally, the GOC contends that the Department's verification report indicates that Nanjing Tianyuan did not use the export buyer's credit program.³³¹ We disagree and note that neither the Department's verification outline nor the verification report for Nanjing Tianyuan address export

³²⁴ *Id.*

³²⁵ See ACIT's VR at 21 – 22.

³²⁶ See ACIT's IQR at Exhibit 8.

³²⁷ See ACIT's Rebuttal Brief at 13 (citing *Solar Cells from the PRC; 2013*, and accompanying IDM at Comment 1; see also *Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Chloro Isos from the PRC*)).

³²⁸ See Petitioner's Rebuttal Brief at 24 – 26; see also Petitioner's Case Brief at 11 – 13.

³²⁹ See GOC 7SQR at 3.

³³⁰ See *Galvanized Steel Wire* and accompanying IDM, at 11.

³³¹ See GOC's Rebuttal Brief at 8; see also Nanjing Tianyuan's VR at 23 – 25.

buyer's credits at any point.³³² The Department determined not to address export buyer's credits at verification because Nanjing Tianyuan failed to respond to a supplemental questionnaire which contained requests for information regarding this program.³³³

The GOC correctly argues, in part, that the Department verified non-use of the export seller's credits program based upon on the Department's inclusion of that program in "Section III: Non-use of Other Subsidy Programs" within Nanjing Tianyuan's VR.³³⁴ As discussed at Comment 16, we verified non-use of export seller's credits at Nanjing Tianyuan and directly addressed our verification of the program in Nanjing Tianyuan's VR.³³⁵ We did not address export buyer's credits in a manner similar to export seller's credits within Nanjing Tianyuan's VR because, as discussed above, we determined not to address the export buyer's credits program during verification based upon Nanjing Tianyuan's failure to provide requested information.

With respect to the GOC's responses regarding export buyer's credits, in a supplemental questionnaire dated August 30, 2016, we asked that the GOC provide the *2013 Administrative Measures* relating to this program, as revised in 2013. In response to our request for this information, the GOC stated, "The Export-Import Bank of China has confirmed to the GOC that, although the Export-Import Bank adopted in 2013 certain internal guidelines, those internal guidelines do not formally repeal or replace the provisions of the *2000 Rules Governing Export Buyers' Credit (2000 Rules)*, which remain in effect," and that, "its 2013 guidelines are internal to the bank, non-public, and not available for release."³³⁶

As described above, we requested the 2013 Revisions because information on the record of this proceeding indicated that the 2013 Revisions affected important program changes.³³⁷ For example, the 2013 Revisions may have eliminated the USD 2 million contract minimum associated with this lending program.³³⁸ This contradicts the GOC's suggestion that this program can be verified by reviewing the respondents' contracts. By refusing to provide the requested information, and instead asking the Department to rely upon unverifiable assurances that the *2000 Rules* remained in effect, the GOC impeded the Department's understanding of how this program operates and how it can be verified. Without this information, we could not determine how this program operates and whether it was used.

Additional information in the GOC's supplemental questionnaire response also indicated that the loans associated with this program are not limited to direct disbursements through the Export Import Bank of China.³³⁹ Specifically, the GOC stated that customers can open loan accounts

³³² See Letter to Nanjing Tianyuan, "Re: Verification of Nanjing Tianyuan Fiberglass Material Co., Ltd.," dated September 13, 2016; see also Nanjing Tianyuan's VR.

³³³ See Memo Regarding Nanjing Tianyuan's Failure to Respond.

³³⁴ See GOC's Rebuttal Brief at 3 – 4.

³³⁵ See Nanjing Tianyuan's VR at 21.

³³⁶ See *Galvanized Steel Wire* and accompanying IDM, at 11.

³³⁷ See Citric Acid Verification Report.

³³⁸ See Memorandum to The File from Yasmin Bordas, AD/CVD Operations, Office VI, "Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Placing Information on the Record," dated August 30, 2016.

³³⁹ See GOC 7SQR at 4 – 5.

for disbursements through this program with other banks.³⁴⁰ The funds are first sent from the Export Import Bank of China to the importer's account, which the GOC states could be at the Export Import Bank of China or other bank, and that these funds are then sent to the exporter's bank account.³⁴¹ Given the complicated structure of loan disbursements for this program, the Department's complete understanding of how this program is administrated is necessary. Thus, the GOC's refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administrated by Export Import Bank of China, impeded the Department's ability to conduct its investigation of this program.

In response to ACIT's claim that it provided declarations from customers claiming non-use of the program, similar to documents provided in *Chloro Isos from the PRC* and *Solar Cells from the PRC; 2013*, we find that the facts of this case are different. In the immediate investigation, we are unable to verify the accuracy of these documents as the primary entity that possesses such supporting records is the Export Import Bank of China. Further, we now have information on the record that demonstrates the GOC updated certain measures of the program, but the GOC refused to provide the updated measures.³⁴² Because the GOC withheld critical information regarding this program, we are unable to determine how the program now operates, and, thus, we cannot verify ACIT's declarations as submitted.

Accordingly, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in issuing our determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Specifically, the GOC withheld information that we requested that was reasonably available to it, the *2013 Administrative Measures*. 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 determine that that this program provides a financial contribution, is specific, and provides a benefit to the respondents within the meaning of section 771(5)(B) of the Act.³⁴³

Comment 18: Whether the Provision of Electricity is Countervailable

GOC's Comments:

- The provision of electricity constitutes general infrastructure and, therefore, is not a financial contribution under U.S. CVD law or the SCM Agreement.³⁴⁴
- There is no record evidence to demonstrate that the provision of electricity by the GOC in this case is specific to the silica fabric industry.³⁴⁵

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² See Citric Acid Verification Report.

³⁴³ See Petition at 26-27.

³⁴⁴ See GOC's Case Brief at 20.

³⁴⁵ *Id.*

- For the two abovementioned reasons, the GOC's provision of electricity is not a countervailable benefit. The Department's preliminary determination to countervail to the GOC's provision of electricity³⁴⁶ is unlawful and should be reversed for the final determination.³⁴⁷

Petitioner's Rebuttal Comments:

- The Department rejected the GOC's contention that provision of electricity constitutes general infrastructure as recently as October 2016.³⁴⁸ The GOC provides no new reasoning as to why provision of electricity should be considered non-countervailable infrastructure.³⁴⁹
- The GOC's arguments regarding the Department's preliminary specificity finding for this program fail to address the basis of that finding, *i.e.* differences in electricity rates between rather than within provinces. The Department should reject the GOC's arguments about the preliminary specificity determination for this program.³⁵⁰

Department's Position:

We agree with Petitioner. In continuing to find this program countervailable, we rely on our findings in the *Preliminary Determination* that the GOC's provision of electricity confers a financial contribution, under section 771(5)(D) of the Act, and is specific, under section 771(5A) of the Act.³⁵¹ These findings were based on AFA as a result of the GOC's failure to provide certain data to the Department, including information regarding electricity costs, labor costs, and electricity price proposals.³⁵²

The GOC's arguments regarding specificity do not affect the Department's finding. The GOC argues that its electricity tariffs are not specific because the same price is charged to each type of end-user within a province.³⁵³ However, the Department's analysis and its specificity determination are not based on a conclusion that different users within a province are treated differently or that preferential rates otherwise exist within the province. Rather, we have focused our analysis on the GOC's failure to explain why rates differ *among* provinces, not *within* provinces.³⁵⁴ The GOC has failed to explain the reason for these differences in this and previous cases, claiming without support that the provincial governments set the rates for each province in accordance with market principles. Because the GOC has never sufficiently addressed our

³⁴⁶ See PDM at 29.

³⁴⁷ See GOC's Case Brief at 21.

³⁴⁸ See *IMTDC's from the PRC* and accompanying IDM at Comment 15.

³⁴⁹ See Petitioner's Rebuttal Brief at 13.

³⁵⁰ *Id.*, at 14.

³⁵¹ See PDM at 34 – 35. See also Petition at 38-43.

³⁵² As we did in the *Preliminary Determination*, we are using the respondents reported electricity usage data, as verified by the Department, in calculating the benefit. See ACIT's Final Calculation Memorandum for additional details on the Department's calculation of a subsidy rate.

³⁵³ See GOC's Case Brief at 21.

³⁵⁴ See original questionnaire at "Electricity Appendix."

questions related to this program, we have determined as AFA that different electricity rates among provinces constitute a regionally-specific subsidy.³⁵⁵

Regarding the GOC's claim that the provision of electricity is not countervailable because it is general infrastructure, we disagree. The GOC refers to the Department's finding in *Wire Rod from Saudi Arabia* that certain benefits, such as roads and ports, are general infrastructure,³⁵⁶ and argues that the Department should apply the same analysis to the provision of electricity in this case. However, the *Wire Rod from Saudi Arabia* determination was issued in 1986, and the Department has since revised its approach to assessing whether a particular financial contribution constitutes general infrastructure.³⁵⁷ Similarly, the GOC's citation to *Bethlehem Steel*³⁵⁸ is inapposite, because record evidence in that case showed that the Korean producer under review did not receive a countervailable benefit from infrastructure subsidies; we do not have similar record support here. Also, the Department has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure.³⁵⁹ Finally, the Department's regulations explicitly categorize electricity within the provision of countervailable goods and services.³⁶⁰

For the reasons stated above, we have continued to find that the provision of electricity for LTAR provides a financial contribution through the provision of a good or service and we continue to determine that this program is specific.

³⁵⁵ See CORE IDM at 23.

³⁵⁶ See GOC Brief at 20 (citing *Carbon Steel Wire Rod from Saudi Arabia*, 51 FR 4206 (February 3, 1986) (*Wire Rod from Saudi Arabia*)).

³⁵⁷ See, e.g., *Final Affirmative Countervailing Duty Determination Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001) and accompanying IDM at Comment 10 ("Furthermore, the electricity at issue here is not general infrastructure, but a good that is bought and sold in the marketplace. In the Department's view, the term infrastructure refers to the types of goods and services described in the Preamble to the regulations, including schools, interstate highways, health care facilities and police protection. According to our regulations, if we find that these types of infrastructure were provided for the broad societal welfare, they would be considered general infrastructure."); see also *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012) (*Steel Wheels from the PRC*) and accompanying IDM (*Steel Wheels IDM*) at Comment 20 ("The Department disagrees with the GOC's position that electricity is categorized as 'general infrastructure.' The Department has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure").

³⁵⁸ See *Bethlehem Steel Corp. v. United States*, 223 F. Supp. 2d 1372 (CIT 2002) (*Bethlehem Steel*).

³⁵⁹ See, e.g., *Steel Wheels IDM* at Comment 20 ("The Department has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure").

³⁶⁰ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998).

Comment 19: Whether the GOC Provided Policy Loans to the Respondents during the POI

GOC's Comments:

- No commercial bank loans issued to the mandatory respondents were issued pursuant to a policy lending program. Respondents received no benefit under any policy lending program because no such program exists.³⁶¹
- The GOC submitted record evidence to confirm that relevant government authorities never released a national industrial plan or policy specific to the silica fabric industry from the AUL through the POI,³⁶² explained repeatedly that there are no laws or regulations that define to which industry silica fabric belongs,³⁶³ and acted to the best of its ability to respond to the Department.³⁶⁴
- The Department's preliminary determination that, as AFA, policy lending is specific and constitutes a financial contribution because the GOC withheld information or otherwise failed to cooperate was made in error.³⁶⁵
- Factual information submitted by the GOC and revised banking regulations stipulated in the *Capital Rules for Commercial Banks (provisional)* confirm that there are no industrial policies or guidance specific to the silica fabric industry.³⁶⁶
- The Department should therefore find for the final determination that the GOC has cooperated by providing sufficient evidence to demonstrate that no policy for preferential lending to silica fabric producers exists.³⁶⁷
- There is no record evidence that Chinese state-owned commercial banks (SOCBs) or policy banks act as government authorities. Virtually all loans received by respondents were from commercial banks. The Department should conclude that commercial banks which lent to respondents are not government authorities and therefore cannot provide any financial contribution that constitutes a specific subsidy.³⁶⁸
- The Department's multi-country short-term benchmark interest rates are fundamentally flawed. For the final determination, the Department should use actual interest rates on comparable bank loans in the PRC, as the Department's regulations require.³⁶⁹

³⁶¹ See GOC IQR at 4.

³⁶² *Id.*, at 7.

³⁶³ See GOC 2SQR at 1.

³⁶⁴ See GOC's Case Brief at 26.

³⁶⁵ *Id.*, at 27.

³⁶⁶ See GOC IQR at 4 and Exhibit 5.

³⁶⁷ See GOC's Case Brief at 28.

³⁶⁸ *Id.*, at 30.

³⁶⁹ *Id.*, at 31 – 32.

Petitioner's Rebuttal Comments:

- The Department was correct to apply AFA for this program because the GOC withheld information concerning, *inter alia*, the industry to which silica fabric production belongs.³⁷⁰
- The GOC's arguments do not negate the Department's preliminary findings for financial contribution and specificity, and should, therefore, be rejected.³⁷¹
- The GOC fails to demonstrate that it does not maintain a policy of providing loans to the fiberglass cloth industry, and thereby fails to identify errors in the Department's *Preliminary Determination*.³⁷²
- The GOC incorrectly assumed that the Department's authority determination regarding SOCBs was based on state ownership alone and fails to provide a basis for the Department to deviate from its prior findings that SOCBs are authorities.³⁷³
- The GOC fails to demonstrate that the Department erred in relying on an external benchmark. The Department followed its past practice in creating its benchmark.³⁷⁴ The GOC provides no basis for the Department to reconsider this past practice.

Department's Position:

We agree with Petitioner and continue to find that lending from 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 the respondents are specific within the meaning of section 771(5A)(D)(i) of the Act.

As explained in the Post-Preliminary Analysis Memorandum, we reviewed the national and provincial policy plans submitted by the GOC in its questionnaire responses to determine whether preferential lending was provided to silica fabric producers during the AUL.³⁷⁵ We noted that many of the plans included language regarding the encouragement of industries that could have included silica fabric producers. For example, the "11th Five-Year Plan for the National Economic and Social Development of the People's Republic of China" (11th FYP), Chapter 14, states "Encourage the Light and Textile Industry to Improve Manufacturing Level," and "Encourage the Textile Industry to Increase added Value."³⁷⁶ The "12th Five Year Plan for

³⁷⁰ See Petitioner's Rebuttal Brief at 15 – 16.

³⁷¹ *Id.*, at 17.

³⁷² *Id.*, at 18.

³⁷³ See, e.g., *IMTDC's from the PRC* and accompanying IDM at Comment 16; see also Petitioner's Rebuttal Brief at 20.

³⁷⁴ See, e.g., *IMTDC's from the PRC* and accompanying IDM at Comment 16.

³⁷⁵ See GOC SQR at 1. See also GOC SQR4 at 1.

³⁷⁶ See GOC IQR at Exhibit 6.

the National Economic and Social Development of the People's Republic of China," at Section 1: Promoting the Structural Adjustment of Key Industries identifies the textile industry, and Chapter 10: Nurturing and Developing the Strategic and Emerging Industries states that, "new materials industry will focus on developing new functional materials, advanced structural materials, high-performance fibers and their compound materials,. . ."³⁷⁷ The "11th and 12th Five-Year Plans for Economic and Social Development of Jiangsu Province" under Part III Develop Priority and Policy Direction also identifies "Modern Textile Industry" as a concentrated area for development.³⁷⁸

The record of this investigation indicates that policy considerations are a significant factor in lending decisions. For instance, the "Major Industries, Products and Technologies Encouraged for Development in China (2000) lists "Manufacturing of Special Textiles for Industrial Use" as an encouraged industry.³⁷⁹ The "Guidance on Industrial Structural Adjustment (2011) (Revised 2013)" also lists the following as encouraged: "Development and production of organic and inorganic high performance fibers and products, high-strength glass fiber, high-grade textiles fabrics by using enzyme treatment. . . and other dyeing and finishing and clearer production technologies and water and oil proofing, antifouling, inflaming retarding,. . . and other functional finishing technologies, production of industry textiles which meet the demand of national economic in various fields."

In supplemental questionnaires, we asked the GOC to identify the industry to which silica fabric production belongs, to provide a complete copy of each national industrial plan/policy that includes the silica fabric industry, and to state whether silica fabric is included in any of the industries promoted under the submitted policy plans: textile, industrial textile, high-tech, high tensile glass fiber, glass fiber, new materials, new functional materials, high-performance fibers, high performance glass fiber, high-strength glass fiber, non-metal mineral products processing.³⁸⁰ This information was required to determine whether the policy lending program is specific to silica fabric producers.

In its first response, the GOC stated, "To the best knowledge of the GOC, there are no regulations or laws in China that specifically define to which industry silica fabric belongs. Therefore, this question is not applicable."³⁸¹ The GOC's response did not address whether silica fabric is included in any of the submitted policy plans. We, therefore, asked again, to which the GOC replied, "since (as the GOC has pointed out) there are no laws or regulations in China that specifically define to which industry the amorphous silica fabric subject to this proceeding belongs, the GOC is unable to confirm the exact industry association(s), if any, to which manufacturers of amorphous silica fabric would belong."³⁸²

³⁷⁷ See GOC 2SQR at Exhibit S2-1.

³⁷⁸ *Id.*, at Exhibit S2-2.

³⁷⁹ See GOC IQR at Exhibit 13.

³⁸⁰ See May 24, 2016 and June 9, 2016 Supplemental Questionnaires to the GOC.

³⁸¹ See GOC 2SQR at 1.

³⁸² See GOC 4SQR at 1.

In a supplemental questionnaire, we asked that the GOC explain whether it uses an Industry Classification System in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data relating to the business economy.³⁸³ Further, we asked the GOC to identify the classification system and the agency by which it was developed, and submit any manuals that existed from the AUL through the POI for the industry classification system that provide industry identifications and definitions. The GOC submitted the National Economic Industrial Classification (GB/T4754-2011), which provides the standard industrial classifications and codes of the industrial activities/sectors in the PRC.³⁸⁴ The GOC explained that the National Economic Industrial Classification was developed by the National Bureau of Statistics of the PRC. The GOC provided an English-translation of the classification codes ascribed to the textile industry, within which are eight sub-categories of various textile products.³⁸⁵

The GOC's statements that the relevant industry definitions are not laid out in law or regulation notwithstanding, the GOC has not explained or demonstrated that the information we have requested is not reasonably available to the GOC. For example, the GOC has not explained how it is that the relevant GOC ministries and agencies that develop and issue policies and plans for particular sectors or industries would not be able to provide additional information on which particular industries are encompassed within the particular sector they are seeking to target with a specific plan or policy. The GOC likewise has not described any efforts it undertook to contact *e.g.*, other government agencies that publish statistical data based on the PRC's national economic industrial classification system, or industry associations to help determine what sectors or industry groupings encompass silica fabric.

To the extent the GOC argues that such industrial policies no longer influence lending decisions, we disagree. For instance, the GOC indicated that the *Capital Rules*, as enacted by the China Banking Regulatory Commission, went into effect on January 1, 2013. According to the GOC, these *Capital Rules* establish tight disciplines on loan management, and these changes, combined with deregulation of floor interest rates by commercial banks, demonstrate substantial changes in the PRC's commercial banking sector. We find that these changes do not call into question the Department's prior findings regarding the PRC's banking sector. As we have explained previously, there is often a distinction between *de jure* reforms of the PRC's banking sector and *de facto* banking practices.³⁸⁶ *De jure* reform does not always translate into *de facto* reform. Regarding the most recent round of *de jure* modifications, insufficient time has elapsed to see clearly the definitive, *de facto* results of these incremental reforms and regulatory initiatives, nor does the record contain any such evidence.

More importantly, even under the assumption that sufficient time might have elapsed, the GOC has offered no demonstration or evidence of how these incremental reforms and regulatory initiatives have fundamentally changed, or relate to fundamental changes in, (i) core features of the state commercial bank relationship, and (ii) the economic and institutional roles of banks and

³⁸³ See June 9, 2016 Supplemental Questionnaire to the GOC.

³⁸⁴ See GOC 4SQR at 4 and Exhibit S4-1.

³⁸⁵ *Id.*, at Exhibit S4-1.

³⁸⁶ See, *e.g.*, OCTG IDM at Comment 21.

the banking sector in the PRC. In the absence of any argument or evidence of such changes, the Department sees no basis at this time to depart from its analysis of the PRC's banking sector.³⁸⁷

The GOC cites the *Capital Rules* as sufficient information on the record to show that the lending market has significantly changed. However, the *Capital Rules* only address capital adequacy and loan management standards.³⁸⁸ The rules do not address the use of policy considerations or the role of the government in the financial system. The record, therefore, contains no evidence that contradicts our findings in *CFS from the PRC*³⁸⁹ and numerous subsequent proceedings that the PRC's banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the financial system and the government's use of banks to effectuate policy objectives.³⁹⁰

Likewise, we continue to find that state-owned or controlled banks (including banks outside the "Big Four" SOCBs) are "authorities" within the meaning of section 771(5)(B) of the Act. The Department has repeatedly affirmed these findings in the proceedings following *CFS from the PRC*. In *OCTG from the PRC*, for example, we noted that:

{T}he GOC has failed to provide evidence that the government has divested itself of ownership in Chinese banks. The GOC has failed to address the issue of real risk assessment within the Chinese banking sector. The GOC has failed to address interest rate and deposit rate ceilings and floors set by the government. The GOC has failed to address both *de jure* and *de facto* reforms within the Chinese banking sector. The GOC has failed to address the elimination of policy based lending within the Chinese banking sector. Therefore, the GOC has failed to provide the information that would warrant a reconsideration of the Department's determination in {the *CFS from the PRC* investigation}.³⁹¹

In a more recent investigation, we also noted that the banking system continues to be affected by the legacy of government policy objectives, which continue to undermine the ability of the domestic banking sector to act on a commercial basis, and allows continued government involvement in the allocation of credit in pursuit of those objectives.³⁹² Thus, our treatment of SOCBs as authorities turns on more than the existence of government ownership.

³⁸⁷ See, e.g., *Countervailing Duty Investigation of Stainless Steel Sheet and Strip From the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016) at "Policy Loans to the Stainless Sheet and Strip Industry"; *Extrusions 2015 IDM* at Comment 3; *CORE IDM* at Comment 5.

³⁸⁸ See GOC IQR at Exhibit 41.

³⁸⁹ See *CFS from the PRC* and accompanying IDM at Comment 10 pages 62 to 72.

³⁹⁰ *Id.*

³⁹¹ See *OCTG IDM* at Comment 20; see also *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products From the PRC*) and accompanying IDM (*Solar Products IDM*) at Comment 9.

³⁹² See, e.g., *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) and accompanying IDM (*Extrusions IDM*) at Comment 7.

Because the Department is continuing to find that the policy lending market is distorted, we are also continuing to rely on external benchmarks to determine the respondents' benefit from this program. The Department has previously fully addressed the arguments raised by the GOC regarding the calculation of the Department's benchmark interest rate, including the use of certain rates published by the International Monetary Fund,³⁹³ the Department's practice with respect to certain negative inflation-adjusted rates,³⁹⁴ its regression analysis based on a composite governance factor,³⁹⁵ and adjustment of rates based on the spread between U.S. short and long-term "BB" bond rates.³⁹⁶ Because the GOC offers no more than bare restatements of arguments that have previously been rejected, we find that none of these arguments warrant reconsideration of the Department's prior findings.³⁹⁷

For the reasons stated above, we continue to determine that necessary information is not available on the record and that the GOC has withheld information that was requested of it. For this final determination, we must rely on "facts available," in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference in selecting from the facts available, we have continued to countervail policy loans to the respondents.³⁹⁸

Comment 20: Whether the Department Should Apply AFA to the Government Provision of Land for Less Than Adequate Remuneration in Special Economic Zones

Petitioner's Comments:

- Officials from Nanjing Tianyuan provided vague and contradictory answers during verification with respect to this program. Accordingly, the Department should apply AFA for this program.³⁹⁹

No other parties commented on this issue.

³⁹³ See, e.g., *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) and accompanying IDM (Citric Investigation IDM) at Comment 10.

³⁹⁴ See, e.g., *Solar Cells IDM* at Comment 16.

³⁹⁵ See, e.g., *Citric Investigation IDM* at Comment 12, *Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) and accompanying IDM at Comment 8; *OCTG IDM* at Comment 23.

³⁹⁶ See, e.g., *Citric Investigation IDM* at Comment 13; *OCTG IDM* at Comment 27.

³⁹⁷ See *CORE IDM* at 29.

³⁹⁸ See *Petition* at 15-18.

³⁹⁹ See *Petitioner's Nanjing Tianyuan Case Brief* at 2.

Department's Position:

We disagree with Petitioner. We preliminarily determined that Nanjing Tianyuan did not use this program and continue to do so in this final determination.⁴⁰⁰ Record evidence supports Nanjing Tianyuan's statements that it rented factory space from a wholly private, unaffiliated company during the POI.⁴⁰¹ Consequently, we find no evidence for the existence of a financial contribution made by the GOC to Nanjing Tianyuan, within the meaning of section 771(5)(D)(iii) of the Act.

During verification, the Department reviewed, *inter alia*, publicly available ownership documentation pertaining to the company from which Nanjing Tianyuan rents factory space, the lessor's land-use rights contracts, and documentation of payments by Nanjing Tianyuan to the lessor within Nanjing Tianyuan's accounting system.⁴⁰² The Department found no indication that the lessor was not a private company during its examination of the lessor's ownership documentation.⁴⁰³ Further, the Department examined the lessor's land-use rights contract and found no indication that any party other than the lessor maintained land-use rights to any part of the facility rented by Nanjing Tianyuan, nor to any part of the surrounding facility occupied by the lessor. In sum, the Department found no indication in Nanjing Tianyuan's responses that its statement that it rents factory space from a wholly private, unaffiliated company was either incorrect or incomplete.

Petitioner states that answers Nanjing Tianyuan provided to the Department at verification were "vague and contradictory."⁴⁰⁴ The Department addressed certain inconsistencies between Nanjing Tianyuan's questionnaire responses and information examined during verification. Specifically, company officials provided contradictory explanations for why the amount Nanjing Tianyuan paid the lessor was slightly less than the annual rental amount stipulated within the rental contract.⁴⁰⁵ Certain officials were also initially unsure of how and when Nanjing Tianyuan paid rent to the lessor.⁴⁰⁶ However, the answers provided by Nanjing Tianyuan that Petitioner characterizes as "vague and contradictory" pertained to certain aspects of Nanjing Tianyuan's rental payments to the lessor. In making our determination that no financial contribution exists within the meaning of section 771(5)(D)(iii) of the Act, the Department has considered the legal status of the lessor, and not necessarily the particulars of the rental payment process. We, therefore, find no reason to revise our preliminary determination that Nanjing Tianyuan did not use this program during the POI.

⁴⁰⁰ See PDM at 35.

⁴⁰¹ See Nanjing Tianyuan IQR at 15 – 16; *see also* Nanjing Tianyuan SQR at Exhibit-CVD-S2.

⁴⁰² See Nanjing Tianyuan's VR at 19 – 21.

⁴⁰³ See Nanjing Tianyuan's VR at Exhibit 1-15 – 16.

⁴⁰⁴ See Petitioner's Nanjing Tianyuan Case Brief at 2.

⁴⁰⁵ See Nanjing Tianyuan's VR at 20 – 21. The Department verified that Nanjing Tianyuan paid the lessor 97.22 percent, rather than 100 percent, of the rental amount stipulated in the rental contract.

⁴⁰⁶ *Id.*

Comment 21: Whether the Department Should Calculate the All-Others Rate Based on the Calculated Rate for ACIT Pinghu and Nanjing Tianyuan

Petitioner's Comments:

- The Department improperly calculated the all-others rate in the *Preliminary Determination* by basing that rate only upon the subsidy rate calculated for ACIT Pinghu and by excluding the partial AFA rate calculated for Nanjing Tianyuan.⁴⁰⁷
- The preliminary subsidy rate calculated for Nanjing Tianyuan consists of a combination of partial AFA determinations and a determination of non-use with respect to certain other programs. Specifically, Nanjing Tianyuan's subsidy rate of 28.25 percent was a summation of the 28.25 partial AFA rate and the rate of 0 percent preliminarily determined for all other programs.⁴⁰⁸
- For the final determination, unless the subsidy rate calculated for Nanjing Tianyuan is based entirely upon AFA, and would, therefore, be excluded from calculation of the all-others rate pursuant to section 705(c)(5)(A) of the Act, the Department should calculate the all-others rate based on the weighted average of the rates calculated for ACIT Pinghu and Nanjing Tianyuan.⁴⁰⁹

GOC's Rebuttal Comments:

- The Department affirmatively stated in its *Preliminary Determination* that the rate calculated for Nanjing Tianyuan was determined entirely on facts available.⁴¹⁰
- Petitioner's contention that Nanjing Tianyuan's rate was determined upon partial AFA because of the consideration of non-use of certain programs is inaccurate.⁴¹¹
- To determine Nanjing Tianyuan's preliminary subsidy rate, the Department relied entirely upon rates calculated for ACIT Pinghu. The Department did not rely upon Nanjing Tianyuan's own reported benefits or sales.⁴¹²
- If the Department continues to rely on AFA for Nanjing Tianyuan in the final determination, it should exclude Nanjing Tianyuan's rate in the calculation of the all-others' rate.⁴¹³

⁴⁰⁷ See Petitioner's Nanjing Tianyuan Case Brief at 5.

⁴⁰⁸ *Id.*, at 8.

⁴⁰⁹ *Id.*, at 9.

⁴¹⁰ See *Preliminary Determination* at 43581.

⁴¹¹ See GOC's Rebuttal Brief at 14.

⁴¹² *Id.*

⁴¹³ *Id.*

Department's Position:

Petitioner's argument and the GOC's rebuttal are moot for this final determination. As discussed in Section IX above, the Department is calculating subsidy rates for certain grant programs which Nanjing Tianyuan used in 2013, 2014, and 2015 in this final determination.

Consequently, the final countervailable subsidy rate applied to Nanjing Tianyuan will not be determined entirely under section 776 of the Act. The Department would normally, therefore, calculate the all-others rate based upon a weighted average of the subsidy rates applied to each of the two mandatory respondents, pursuant to section 705(c)(5)(A) of the Act. We have not calculated the all-others rate by weight-averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. Therefore, and consistent with the Department's practice, for the all-others rate, we calculated a simple average of the two mandatory respondents' subsidy rates.⁴¹⁴

Comment 22: Whether the Departments Investigation of Uninitiated Programs is Unlawful

GOC's Comments:

- The Department preliminarily investigated and countervailed the following four programs reported as "other subsidies" by Nanjing Tianyuan: SME Science and Technology Innovation Fund; Intellectual Property Development Assistance; Patent Assistance; and SME International Market Development Fund.⁴¹⁵
- As AFA, the Department preliminarily determined that these programs, which were neither alleged by Petitioner nor initiated by the Department, are specific and constitute financial contributions.⁴¹⁶
- The Department has no authority to seek information on these programs, under either the statute or the Department's regulations, and followed none of the requirements of Articles 11.6, 13.1, and 13.2 of the SCM Agreement.⁴¹⁷
- The Department should withdraw its preliminary findings related to these programs and remove all record information obtained through improper questionnaire requests because it failed to lawfully initiate an investigation into them.⁴¹⁸

⁴¹⁴ See, e.g., *Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 5089 (January 30, 2015), unchanged in *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 64745 (October 24, 2015).

⁴¹⁵ See PDM at 24.

⁴¹⁶ *Id.*, at 33.

⁴¹⁷ See GOC's Case Brief at 33.

⁴¹⁸ *Id.*

Petitioner's Rebuttal Comments:

- The Department has previously rejected this argument made by the GOC and the GOC provides no new basis for the Department to depart from its prior determinations.⁴¹⁹

Department's Position:

We agree with Petitioner. Section 775 of the Act states that if, during a proceeding, the Department discovers “a practice that appears to provide a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition,” the Department “shall include the practice, subsidy, or subsidy program if the practice, subsidy or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding.” Under 19 CFR 351.311(b), the Department will examine the practice, subsidy, or subsidy program if the Department “concludes that sufficient time remains before the scheduled date for the final determination or final results of review.”

In response to the Department's Initial Questionnaire, Nanjing Tianyuan stated that it received benefits under four different grants programs from 2013 through 2015.⁴²⁰ Nanjing Tianyuan provided additional information about benefits received under these programs in a subsequent questionnaire response.⁴²¹ Based upon provided information, the Department preliminarily determined that these programs constituted countervailable subsidies. The Department's decision to countervail these programs fell squarely within the guidelines established under section 775 of the Act and 19 CFR 351.311(b). Additionally, this approach was consistent with the Department's practice.⁴²²

Additionally, in accordance with 19 CFR 351.311(d), the Department will notify the parties to the proceeding of any subsidy discovered in the course of an ongoing proceeding, and will state whether or not it will be included in the ongoing proceeding. In this instance, Nanjing Tianyuan clearly had notice of these programs, as it self-reported the programs in its Initial Questionnaire response. Moreover, Nanjing Tianyuan and the GOC were notified of the Department's investigation of these programs in light of the Department's issuance of supplemental questionnaires concerning the programs.⁴²³

For the reasons discussed above, the Department acted consistently with its statutory authority, as well as Departmental practice, in considering subsidy programs that came to light during the course of this proceeding. Therefore, for the final determination, we have continued to countervail these programs.

⁴¹⁹ See *IMTDC's from the PRC* and accompanying IDM at Comment 17.

⁴²⁰ See Nanjing Tianyuan IQR at 21 – 22.

⁴²¹ See NT 2SQR at Exhibits-CVD-S4 through S8.

⁴²² The Department has addressed these same arguments in the context of similar fact patterns before. See, e.g., *Steel Wheels* IDM at Comment 5; *Solar Cells* IDM at Comment 23; and *Multilayered Wood Flooring from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011) and accompanying IDM at Comment 3.

⁴²³ See, e.g., NT SQR at 2 – 3, GOC 2SQR at 5.

Comment 23: Whether the Department's CVD Rates Should Reflect an Adjustment for Programs that Have Been Terminated

GOC's Comments:

- Record evidence and the Department's verification report confirm that the program City Construction Tax and Education Fees Exemptions for Foreign Invested Enterprises and the program Income Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment were terminated.⁴²⁴
- The Department verified that residual benefits were not available under either program during the POI.⁴²⁵
- The Department should determine that a program-wide change has occurred with respect to both programs and that no company could receive any residual benefits under either program during the POI.⁴²⁶
- Consequently, the Department should apply a zero rate with respect to these two programs to the mandatory respondents and eliminate them from the AFA program list for companies which did not respond to the Q&V questionnaire.⁴²⁷

No other parties commented on this issue.

Department's Position:

We agree with the GOC. Under 19 CFR 351.526(d), a program-wide change consists of the termination of the program, and a determination that: (1) no residual benefits continue to be received under the program; and (2) no substitute program has been introduced. In this proceeding, the Department verified that there were no residual benefits provided to the respondents under either the City Construction Tax and Education Fees Exemptions for FIEs program or the Income Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment program during the POI.⁴²⁸ Further, the Department verified that no substitute program was introduced.⁴²⁹ Thus, for this final determination, we are finding that these programs were terminated prior to the POI and provided no residual benefits to the respondents.

⁴²⁴ See GOC's VR at 2 – 6.

⁴²⁵ *Id.*, at 3 and 5.

⁴²⁶ See GOC's Case Brief at 35.

⁴²⁷ *Id.*, at 36.

⁴²⁸ See GOC's VR at 3 – 6.

⁴²⁹ *Id.*

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.



Agree

Disagree

1/17/2017

X 

Signed by: PAUL PIQUADO

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

Appendix I

AFA Rate Calculation

	Program Name	AFA Rate	Source
1.	Policy Loans to the Silica Fabric Industry	3.43%	Calculated – ACIT Pinghu
2.	Preferential Export Financing	10.54%	Highest Rate for Similar Program Based on Benefit Type
3.	Preferential Loans to SOEs	10.54%	Highest Rate for Similar Program Based on Benefit Type
4.	Export Seller's Credits	4.25%	Highest Rate for Similar Program Based on Benefit Type
5.	Export Buyer's Credits	10.54%	Highest Rate for Similar Program Based on Benefit Type
6.	Export Credit Insurance Subsidies	0.58%	Highest Rate for Similar Program Based on Benefit Type
7.	Provision of Land for LTAR in SEZs	2.55%	Highest Rate for Similar Program Based on Benefit Type
8.	Provision of Fiberglass Yarn for LTAR	34.04%	Highest Rate for Similar Program Based on Benefit Type
9.	Provision of Electricity for LTAR	0.93%	Calculated—ACIT Pinghu
10.	Provision of Services at LTAR through Demonstration Bases and Common Service	2.55%	Highest Rate for Similar

	Platform Programs		Program Based on Benefit Type
11.	Income Tax Reduction for HNTes	25.00%	Highest Rate for Similar Program Based on Benefit Type
12.	Income Tax Reduction for R&D Expenses Under the EITL		Highest Rate for Similar Program Based on Benefit Type
13.	Income Tax Reduction/Exemption for HNTes Based on Geographic Location		Highest Rate for Similar Program Based on Benefit Type
14.	Import Tariff and VAT Exemptions on Imported Equipment in Encouraged Industries	9.71%	Highest Rate for Similar Program Based on Benefit Type
15.	Other VAT Subsidies	0.58%	Highest Rate for Similar Program Based on Benefit Type
16.	GOC and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands	0.58%	Highest Rate for Similar Program Based on Benefit Type
17.	International Market Exploration Fund (SME Fund)	0.22%	Calculated—Nanjing Tianyuan
18.	Science & Technology Awards	0.58%	Highest Rate for Similar Program Based on Benefit Type
19.	Provision of Fiberglass Cloth for LTAR	34.04%	Calculated – ACIT Pinghu
20.	Start-Up Support	0.58%	Highest Rate for Similar Program

			Based on Benefit Type
21.	Venture Capital Support	0.58%	Highest Rate for Similar Program Based on Benefit Type
22.	Technology Insurance Premium Subsidy	0.58%	Highest Rate for Similar Program Based on Benefit Type
23.	Program for Cultivation of Hi-tech Entrepreneurs Loan Guarantees	10.54%	Highest Rate for Similar Program Based on Benefit Type
24.	Invention and Patent Fee Subsidies	0.58%	Highest Rate for Similar Program Based on Benefit Type
25.	Awards for Certain Patented Technologies	0.58%	Highest Rate for Similar Program Based on Benefit Type
26.	Project Subsidies	0.58%	Highest Rate for Similar Program Based on Benefit Type
27.	Clean Production Technology Fund	0.58%	Highest Rate for Similar Program Based on Benefit Type
28.	SME Science and Technology Innovation Fund	0.13%	Calculated— Nanjing Tianyuan

Total AFA Rate: 165.39%