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International Trade Administration
Washington, D.C. 20230

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Investigation
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Office I: Team

**DATE:** January 19, 2016

**MEMORANDUM TO:** Ronald K. Lorentzen
Acting 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 Truck and Bus Tires from the People's Republic of China; and Final Affirmative Determination of Critical Circumstances, in Part

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## I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of truck and bus tires from the People's Republic of China (China), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). Below is the complete list of issues in this investigation for which we received comments from interested parties.

Comment 1: Whether there is a Legal Basis for Investigating "Other" and/or "Discovered Subsidies
Comment 2: Whether to Find Non-Use for the Export Buyer's Credit Program
Comment 3: Whether the Department was Able to Verify Non-Use with Exporters for the Export Buyer's Credit Program
Comment 4: Whether Information Provided by the Respondents is Sufficient for the Export Buyer's Credit Program
Comment 5: Whether to Find the Export Buyer's Credit Program Countervailable as AFA
Comment 6: Identification of an AFA Rate for the Export Buyer's Credit Program
Comment 7: Whether to Adjust the Ocean Freight and Import Duties Included in the Benchmarks for the Input for LTAR Calculations
Comment 8: Whether the Ocean Freight Data includes "Aberrational" Prices
Comment 9: Whether to Use Carbon Black World Market Prices Reported in US Dollars per MT

## II. BACKGROUND

*A. Case History*

The selected mandatory respondents in this investigation are Double Coin Holdings Ltd. (Double Coin) and Guizhou Tyre.[1] On June 27, 2016, the Department published its *Preliminary Determination* in accordance with section 703 of the Act and 19 CFR 351.205; in response to the petitioner's request, we aligned the final countervailing duty determination with the final determination in the antidumping investigation of truck and bus tires from the PRC.[2]

Following the *Preliminary Determination*, we requested additional information from the Government of China (GOC), Double Coin, and Guizhou Tyre.[3] The GOC, Double Coin, and Guizhou Tyre timely responded to our requests.[4] On August 30, 2016, the Department determined not to initiate on the petitioner's new subsidy allegation of "Equity Infusion by a State-Owned Enterprise."[5] On September 19, 2016, the Department placed information on the record.[6] The petitioner[7] submitted rebuttal and clarifying information in response.[8] On November 7, 2016, we issued a Post-Preliminary Determination.[9]

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[1] The Department selected as a mandatory respondent Guizhou Tyre I/E Corp, later identified as Guizhou Tyre Import and Export Co., Ltd. Guizhou Tyre Import and Export Co. Ltd. identified Guizhou Tyre Co., Ltd. as its cross-owned producer of subject merchandise. Guizhou Tyre Import and Export Co. Ltd. and Guizhou Tyre Co., Ltd. (collectively, Guizhou Tyre) provided full responses to the initial and supplemental questionnaires.

[2] *See Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Determination*, 81 FR 43577 (July 5, 2016) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[3] *See* Letter to Double Coin, "Countervailing Duty Investigation of Truck and Bus Tires from the People's Republic of China: Supplemental Questionnaire" (September 12, 2016) (September DSQ); *see* Letter to Guizhou Tyre, "Countervailing Duty Investigation of Truck and Bus Tires from the People's Republic of China: Supplemental Questionnaire, (September 21, 2016) (Sept GZSQ); *see* Letter to the GOC, "Countervailing Duty Investigation on Truck and Bus Tires from The People's Republic of China: Supplemental Questionnaire" (September 8, 2016) (September 8 GSQ); *see* Letter to the GOC, "Countervailing Duty Investigation on Truck and Bus Tires from The People's Republic of China: Supplemental Questionnaire" (September 19, 2016) (September 19 GSQ).

[4] *See* Letter to the Department, "Double Coin's 3rd Supplemental Questionnaire Response; Certain Truck and Bus Tires From the People's Republic of China (C-570-041)" (September 30, 2016) (September DSQR); *see* Letter to the Department, "Double Coin's Monthly U.S. Shipment Data: June 2016 Certain Truck and Bus Tires From the People's Republic of China (C-570-041)" (July 12, 2016) (Double Coin's July CC Data); *see* Letter to the Department, "Guizhou Tyre Third Supplemental Response: Countervailing Duty Investigation of Certain Truck and Bus Tires from the People's Republic of China (C-570-041)" (October 4, 2016) (October GZSQR); *see* Letter to the Department, "GOC's Supplemental Questionnaire Response: Truck and Bus Tires From the People's Republic of China (C-570-041)" (October 3, 2016) (October GSQR); *see* Letter to the Department, "GOC's Second Supplemental Questionnaire Response: Truck and Bus Tires From the People's Republic of China (C-570-041)" (September 26, 2016) (September GSQR).

[5] *See* Memorandum to James Maeder, Senior Director, Office I for Antidumping and Countervailing Duty Operations, "Countervailing Duty Investigation of Truck and Bus Tires from the People's Republic of China: Double Coin's New Subsidy Allegation," (August 30, 2016) (NSA Memorandum).

[6] *See* Memorandum to the File, "Countervailing Duty Investigation: Truck and Bus Tires from the People's Republic of China: Placing information on the record," (September 19, 2016) (Memorandum Placing Information on the Record).

[7] United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (the petitioner).

On October 18, 2016, Cheetah Chassis submitted comments on the scope of the investigation.[10] On October 14, 2016, and October 31, 2016, the petitioner submitted support for the scope comments submitted by Cheetah Chassis.[11] Also on October 31, 2016, CIMC Vehicles (Group) Co., Ltd., Shenzhen CIMC Vehicle Co., Ltd., CIMC Vehicles (HK) Limited, CIMIC Intermodal Equipment, and CIMC USA Inc. (collectively, CIMC Vehicles) responded to the comments filed by Cheetah Chassis.[12]

The petitioner filed comments in advance of verification.[13] From November 2, 2016, to November 18, 2016, the Department conducted verification of the GOC's, Double Coin's, and Guizhou Tyre's questionnaire responses. The GOC, Double Coin, and Guizhou Tyre submitted verification corrections and verification exhibits.[14] We released the verification reports on December 13, 2016.[15]

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[8] *See* Letter to the Department, "Truck and Bus Tires from the People's Republic of China – Petitioner's Rebuttal and Clarifying Factual Information to Information Placed on the Record by the Department" (September 27, 2016).

[9] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Countervailing Duty Investigation on Truck and Bus Tires from The People's Republic of China: Post-Preliminary Determination," (November 7, 2016) (Post-Preliminary Determination).

[10] *See* Letter to the Department, "Truck and Bus Tires from the People's Republic of China: Scope Comments," (October 18, 2016) (Cheetah Scope Comments).

[11] *See* Letter to the Department, "Truck and Bus from the People's Republic of China (A-570-040 and C-570-041): Petitioner's Support for Cheetah's Request to Submit Additional Scope Comments," (October 14, 2016) (Petitioner October 14 Scope Comments); s*ee* Letter to the Department, "Truck and Bus from the People's Republic of China (A-570-040 and C-570-041): Petitioner's Support for Cheetah's Request to Submit Additional Scope Comments," (October 14, 2016) (Petitioner October 31 Scope Comments).

[12] *See* Letter to the Department, "Truck and Bus Tires from the People's Republic of China: Response to Cheetah Chassis Scope Clarification Request," (October 31, 2016) (CIMC Scope Request Response).

[13] *See* Letter to the Department, "Truck and Bus Tires from the People's Republic of China – Petitioner's Pre-Verification Comments," (October 11, 2016).

[14] *See* Letter from the GOC, "GOC's Verification Minor Corrections Submission: Truck and Bus Tires from The People's Republic of China," (November 3, 2016) (GOC's Verification Corrections); *see* Letter from Double Coin Holdings Ltd., "Double Coin's Minor Corrections Submission: Certain Truck and Bus Tires From the People's Republic of China (C-570-041)" (November 9, 2016) (Double Coin's Verification Corrections); *see* Letter to the Department, "Guizhou Tyre Verification Minor Corrections: Countervailing Duty Investigation of Certain Truck and Bus Tires from the People's Republic of China (C-570-041)" (November 21, 2011) (Guizhou Tyre's Verification Corrections); *see* Letter to the Department, "GOC's Submission of Verification Exhibits Truck and Bus Tires from the People's Republic of China," (November 8, 2016) (GOC's Verification Exhibits); *see* Letter to the Department, "Double Coin's Verification Exhibits Submission Truck and Bus Tires From the People's Republic of China (C-570-041)" (November 17, 2016) (Double Coin's Verification Exhibits); *see* Letter to the Department, "Guizhou Tyre Verification Exhibits: Countervailing Duty Investigation of Certain Truck and Bus Tires from the People's Republic of China (C-570-041)" (November 29, 2011) (Guizhou Tyre's Verification Exhibits).

[15] *See* Memorandum to the File, "Countervailing Duty Investigation of Truck and Bus Tires from the People's Republic of China: Verification of the Questionnaire Responses Submitted by Double Coin Holdings, Ltd.," (December 9, 2016) (Double Coin Verification Report); *see* Memorandum to the File, "Countervailing Duty Investigation of Truck and Bus Tires from the People's Republic of China: Verification of the Questionnaire Responses Submitted by Guizhou Tyre Co., Ltd.," (December 9, 2016) (Guizhou Tyre Verification Report); *see* Memorandum to the File, "Countervailing Duty Investigation of Truck and Bus Tires from the People's Republic of China: Verification of the Questionnaire Responses Submitted by the Government of China" (December 9, 2016) (GOC Verification Report).

On August 4, 2016, the petitioner and Double Coin requested that the Department hold a hearing.[16] On December 30, 2016, and January 3, 2017, respectively, Double Coin and the petitioner withdrew their hearing requests.[17]

On December 14, 2016, the Department released instructions regarding scope-specific case brief comments. On December 6, 2016, and December 19, 2016, the petitioner, the GOC, Double Coin, Guizhou Tyre, Cheetah Chassis, and Zhongce Rubber Group Company Limited (Zhongce) timely filed case briefs.[18] On December 27, 2016, the petitioner, the GOC, Double Coin, Guizhou Tyre, CIMC Vehicles, and Zhongce timely filed rebuttal briefs.[19]

### *B. Period of Investigation*

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

## III. SCOPE COMMENTS

The deadline for filing scope information was March 9, 2016; however, we allowed parties to seek permission to file scope requests after this deadline.[20] In response to their requests,[21] we

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[16] *See* Letter to the Department, "Petitioner's Hearing Request" (August 4, 2016); Letter to the Department, "Double Coin's Request for a Hearing" (August 4, 2016).
[17] *See* Letter to the Department from Double Coin, "Rescission of Hearing Request," (December 30, 2016); Letter to the Department, "Petitioner's Withdrawal of Request for a Hearing" (January 3, 2017).
[18] *See* Letter to the Department, "Case Brief on Behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC" (December 19, 2016) (Petitioner's Case Brief); *see* Letter to the Department, "GOC's Case Brief: Truck and Bus Tires From the People's Republic of China (C-570-041)" (December 19, 2016) (GOC's Case Brief); *see* Letter to the Department, "Double Coin's Case Brief: Truck and Bus Tires From the People's Republic of China (C-570-041)" (December 19, 2016) (Double Coin's Case Brief); *see* Letter to the Department, "GTC Administrative Case Brief: Countervailing Duty Investigation on Certain Truck and Bus Tires from the People's Republic of China (C-570-041" (December 19, 2016) (Guizhou Tyre's Case Brief); *see* Letter to the Department, "Truck and Bus Tires from the People's Republic of China: Zhongce's Case Brief" (December 6, 2016) (Zhongce's Case Brief); *see* Letter to the Department, "Truck and Bus Tires from the People's Republic of China: Case Brief of Cheetah Chassis" (December 19, 2016) (Cheetah's Case Brief).
[19] *See* Letter to the Department, "Rebuttal Brief on Behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC" (December 27, 2016)(Petitioner's Rebuttal Brief); *see* Letter to the Department, "GOC's Rebuttal Brief: Truck and Bus Tires From the People's Republic of China (C-570-041)" (December 27, 2016) (GOC's Rebuttal Brief); *see* Letter to the Department, "Double Coin's Rebuttal Brief: Truck and Bus Tires From the People's Republic of China (C-570-041)" (December 27, 2016) (Double Coin's Rebuttal Brief); *see* Letter to the Department, "GTC Rebuttal Brief: Countervailing Duty Investigation on Certain Truck and Bus Tires from the People's Republic of China (C-570-041" (December 27, 2016) (Guizhou Tyre's Rebuttal Brief); *see* Letter to the Department, "Truck and Bus Tires from the People's Republic of China: Zhongce's Rebuttal Brief" (December 6, 2016) (Zhongce's Rebuttal Brief); *see* Letter to the Department, "Truck and Bus Tires from the People's Republic of China: Rebuttal Response to of Cheetah and Petitioner's Case Briefs, (December 27, 2016) (CIMC Rebuttal Brief).
[20] *See Truck and Bus Tires From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 81 FR 9428, 9429 (February 25, 2016) ("However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information.").
[21] *See* Letter to the Secretary of Commerce from Zhongce, "Request to Submit Additional Scope Comments," dated August 18, 2016, and Letter to the Secretary of Commerce from Cheetah Chassis, "Request to Submit Additional Scope Comments," dated October 14, 2016.

granted Zhongce and Cheetah Chassis permission to submit scope requests.[22] Zhongce and Cheetah Chassis filed their scope requests on August 24, 2016, and October 18, 2016, respectively.[23] In response to Cheetah Chassis' scope request, the petitioner filed its support, and CIMC Vehicles filed its opposition, on October 31, 2016.[24] Because these scope requests were filed either close to or after the issuance of the *Preliminary Determination*, we did not analyze these scope requests for the *Preliminary Determination.* For a full discussion of these two scope requests, *see* Comments 32 and 33, below.

## IV. SCOPE OF THE INVESTIGATION

The scope of the investigation covers truck and bus tires. Truck and bus tires are new pneumatic tires, of rubber, with a truck or bus size designation. Truck and bus tires covered by this investigation may be tube-type, tubeless, radial, or non-radial.

Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have one of the following suffixes in their tire size designation, which also appear on the sidewall of the tire:

> TR – Identifies tires for service on trucks or buses to differentiate them from similarly sized passenger car and light truck tires; and
>
> HC – Identifies a 17.5 inch rim diameter code for use on low platform trailers.

All tires with a "TR" or "HC" suffix in their size designations are covered by this investigation regardless of their intended use.

In addition, all tires that lack one of the above suffix markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the "Truck-Bus" section of the *Tire and Rim Association Year Book*, as updated annually, unless the tire falls within one of the specific exclusions set out below.

Truck and bus tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes truck and bus tires produced in the subject country whether mounted on wheels or rims in the subject country or in a third country. Truck and bus tires are covered whether or not they are accompanied by other parts, *e.g.*, a wheel, rim, axle parts, bolts, nuts, etc. Truck and bus tires that enter attached to a vehicle are not covered by the scope.

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[22] *See* the Letter from the Department to All Interested Parties (granting permission to Zhongce to file scope comments), dated August 23, 2016, and Letter from the Department to All Interested Parties (granting permission to Cheetah Chassis to file scope comments), dated October 17, 2016.
[23] *See* Letter to the Secretary of Commerce from Zhongce, "Scope Comments," dated August 24, 2016, and Letter to the Secretary of Commerce from Cheetah Chassis, "Scope Comments," dated October 18, 2016.
[24] *See* Letter to the Secretary of Commerce from the petitioner, "Petitioner's Support for Cheetah's Scope Clarification Request," dated October 31, 2016 (Petitioner's Support for Cheetah Chassis' Scope Request), and Letter to the Secretary of Commerce from CIMC Vehicles, "Response to Cheetah Chassis Scope Clarification Request," dated October 31, 2016 (CIMC Vehicles' Opposition to Cheetah Chassis' Scope Request).

Specifically excluded from the scope of this investigation are the following types of tires: (1) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires; (2) non-pneumatic tires, such as solid rubber tires; and (3) tires that exhibit each of the following physical characteristics: (a) the designation "MH" is molded into the tire's sidewall as part of the size designation; (b) the tire incorporates a warning, prominently molded on the sidewall, that the tire is for "Mobile Home Use Only;" and (c) the tire is of bias construction as evidenced by the fact that the construction code included in the size designation molded into the tire's sidewall is not the letter "R."

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1015 and 4011.20.5020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.69.0020, 4011.69.0090, 4011.70.00, 4011.90.80, 4011.99.4520, 4011.99.4590, 4011.99.8520, 4011.99.8590, 8708.70.4530, 8708.70.6030, 8708.70.6060, and 8716.90.5059.[25]

While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

## V. CRITICAL CIRCUMSTANCES

In the *Preliminary Determination,* the Department preliminarily determined that critical circumstances existed with respect to truck and bus tires from China produced and exported by Guizhou Tyre, but did not exist for Double Coin and all other producers/exporters. In the *Preliminary Determination*, we found that both Double Coin and Guizhou Tyre received countervailable subsidies from programs contingent upon export performance.[26] Based on our examination of monthly shipment data placed on the record by Double Coin after the *Preliminary Determination*, as requested by the Department, and revised at verification, and of the monthly shipment data from the U.S. Department of Commerce and the International Trade Commission, we continue to find that critical circumstances exist for Guizhou Tyre and do not exist for Double Coin. In a change from the *Preliminary Determination*, we also find that critical circumstances exist for all other companies.

Consistent with the Preliminary Determination of Critical Circumstances, we continue to find evidence of countervailable subsidies contingent upon export that are inconsistent with the World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM Agreement). For this final determination, in accordance with 19 CFR 351.206(i), we analyzed

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[25] On August 26, 2016, the Department included HTSUS subheadings 4011.69.0020, 4011.69.0090, and 8716.90.5059 to the case reference files, pursuant to requests by U.S. Customs and Border Protection (CBP) and the petitioner. *See* Memorandum to the File entitled, "Requests from Customs and Border Protection and the Petitioner to Update the ACE Case Reference File," dated August 26, 2016. On January 19, 2017, the Department included HTSUS subheadings 4011.70.00 and 4011.90.80 to the case reference files, pursuant to requests by CBP. *See* Memorandum to the File entitled, "Requests from Customs and Border Protection to Update the ACE Case Reference File," dated January 19, 2017.

[26] *See Preliminary Decision Memorandum* at 5-8. and Memorandum to the File, "Countervailing Duty Investigation of Truck and Bus Tires from the People's Republic of China: Preliminary Analysis of Critical Circumstances," June 27, 2016.

monthly shipment data from the International Trade Commission for the period September 2015 through June 2016. We adjusted the data to reflect the additional data submitted by Double Coin and Guizhou Tyre following the *Preliminary Determination*. These data indicate that there was not a massive increase (*i.e.*, greater than 15 percent) in shipments, as defined by 19 CFR 351.206(h), from Double Coin. These data also indicate that there was a massive increase (*i.e.*, greater than 15 percent) in shipments, as defined by 19 CFR 351.206(h), for Guizhou Tyre and for all other producers/exporters of subject merchandise.[27]

## VI. 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.[28] 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.[29]

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.[30] Furthermore, on March 13, 2012, Public Law 112-99 was enacted which confirms that the Department has the authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as the PRC.[31] The effective date of the enacted legislation makes clear that this provision applies to this proceeding.[32]

## VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

In the *Preliminary Determination* and the Post-Preliminary Determination, we relied on "facts otherwise available," including adverse facts available (AFA), for several findings. In the *Preliminary Determination*, with regard to the provision of carbon black, nylon cord, synthetic rubber and butadiene, and natural rubber, we relied on AFA to determine that all of the producers that supply inputs to the respondent companies are "authorities" within the meaning of section 771(5)(B) of the Act.[33] With regard to the provision of electricity for LTAR, we relied on AFA to determine that the provision of electricity 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. We also relied on an adverse inference to determine the existence and the amount of

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[27] *See* Department Memorandum, Countervailing Duty Investigation of Truck and Bus Tires from the People's Republic of China: Final Analysis of Critical Circumstances, dated concurrently with this final determination.
[28] 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*).
[29] *Id.* at Comment 6.
[30] *See, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from the PRC*) and accompanying Issues and Decision Memorandum at Comment 1.
[31] Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.
[32] *See* Public Law 112-99, 126 Stat. 265 §1(b).
[33] *See* PDM at 10-11.

the benefit; we selected as our benchmark the highest electricity rates on the record for the applicable rate and user categories.[34] With regard to the provision of land-use rights for LTAR, we relied on AFA to find that the GOC's provision of land-use rights 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.[35] In the Post-Preliminary Determination, we relied on AFA to find that the GOC's provision of land-use rights to SOEs, direct government grants to Double Coin, and grants self-reported by Guizhou Tyre constitute financial contributions within the meaning of section 771(5)(D) of the Act and are specific within the meaning of section 771(5A)(D) of the Act.[36]

For purposes of this final determination, we have not changed these AFA findings. We are, however, making a number of additional findings on the basis of AFA, for each of the programs specifically discussed below.

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, use the "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person withholds information that has been requested; fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding; or provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

Under section 776(d) of the Act, the Department may use as AFA a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[37]

Consistent with section 776(d) of the Act and our established practice, for each of the programs discussed below, we selected as AFA the highest calculated rate for the same or a similar program.[38] When selecting rates in an investigation, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program (excluding zero rates). If no such identical program with a rate above zero exists in the

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[34] *Id.* at 11-12.
[35] *Id.* at 12-14.
[36] *See* Post-Preliminary Determination at 4-6.
[37] The Standard Questions Appendix solicits general information about a program including questions about the program's operation and eligibility criteria.
[38] *See, e.g., Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*) and accompanying Issues and Decision Memorandum 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").

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*).[39] If no such 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 we apply the highest calculated rate for the similar/comparable program, excluding *de minimis* rates. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program in any CVD case involving the same country, but we do not use a rate from a program if, based on eligibility criteria, the industry under investigation cannot use that program.[40]

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."[41] The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.[42]

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.[43] Furthermore, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[44]

With regard to the reliability aspect of corroboration, we note that the rates on which we are relying are subsidy rates calculated in other China CVD proceedings. Further, the calculated rates were based on information about the same or similar programs. Moreover, no information has been presented that calls into question the reliability of the calculated rates that we are applying as AFA for these programs. Finally, unlike other types of information, such as publicly available data on a country's national inflation rate 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

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[39] *See Pre-Stressed Concrete Steel Wire Strand from China, Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) and accompanying Issues and Decision Memorandum at 13.
[40] *See Shrimp from China* Issues and Decision Memorandum at 13-14.
[41] *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.
[42] *Id.*
[43] *Id.* at 869-870.
[44] *See* section 776(d) of the Act.

circumstances indicate that the information is not appropriate as AFA, the Department will not use it.[45]

Due to the failures of the GOC and Guizhou Tyre to cooperate to the best of their abilities, for each of the programs discussed below, the Department relied on subsidy rates from other proceedings involving China. The Department corroborated the rates it selected to use as AFA for these programs to the extent practicable for this final determination. Because these rates reflect the actual behavior of the GOC with respect to similar subsidy programs, and lacking adequate information demonstrating otherwise, the Department corroborated the rates that it selected to the extent practicable.

### A. Export Buyer's Credit -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 the 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 "China EX-IM under the Export Buyer's Credit Facility and other state-owned banks."[46] Rather than responding to the questions in the Appendix, the GOC stated that "none of the U.S. customers of the respondents used the Export Buyers Credits from China Export-Import Bank during the POI."[47] Moreover, in the same response, the GOC stated that the Export-Import Bank of China (EX-IM Bank) confirmed that it strictly limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million.[48]

Information on the record indicates that the GOC revised this program in 2013 to eliminate this minimum requirement.[49] In response to a supplemental questionnaire in which the Department requested the GOC to provide the documents pertaining to the 2013 program revision, the GOC declined to provide them, stating that the "{t}he Export-Import Bank of China has also confirmed to the GOC that its 2013 internal guidelines/revised Administrative Measures are internal to the bank, non-public, and not available for release."[50] Through its response to the Department's initial and supplemental questionnaires, the GOC has refused to provide the necessary information or any information concerning the 2013 program revision, which is required for the Department to analyze fully how the program is administered and functions.

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[45] *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).
[46] *See* Initial Questionnaire, Section II at 7 and Standard Appendix.
[47] *See* GQR-B at 23.
[48] *See* GQR-B at 24.
[49] *See* Memorandum to File Placing Information on the Record at Appendix 1, "Memorandum from the Department of Commerce, 'Administrative Review of Countervailing Duty Order on Citric and Certain Citrate Salts; Verification of the Questionnaire Responses Submitted by the Government of the People's Republic of China,' October 7, 2014 (public version)" and Appendix 2, "Letter from the Government of China, 'Certain Amorphous Silica Fabrics from the People's Republic of China; CVD Investigation; GOC 7th Supplemental Response,' September 6, 2016 (public document)."
[50] *See* September GSQR at 2.

Moreover, information on the record also indicates that the EX-IM Bank may disburse Export Buyer's Credits directly or through a third-party partner and/or correspondent banks.[51] We asked the GOC to confirm whether it extended credit through third-party banks, and if so, to identify all participating third-party banks. Instead of providing a response stating whether third party banks play a role in the disbursement/settlement of export buyer's credits, the GOC replied that the "question is not applicable."[52] With regard to the Department's request that the GOC provide a list of all third-party banks involved in the disbursement/settlement of Export Buyer's Credits, the GOC again advised that the "question is not applicable."[53]

We requested the 2013 *Administrative Measures* revisions (2013 Revisions) because information on the record of this proceeding indicated that the 2013 Revisions effected important program changes. For example, the 2013 Revisions may have eliminated the USD 2 million contract minimum associated with this lending program.[54] 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 to verify it, with both the GOC and the company respondents.

Additional information also indicated that the loans associated with this program are not limited to direct disbursements through the EX-IM Bank.[55] Specifically, the GOC stated that customers can open loan accounts with other banks for disbursements through this program.[56] The funds are first sent from the EX-IM Bank to the importer's account, which could be at the EX-IM Bank or another bank, and these funds are then sent to the exporter's bank account.[57] 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. Pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding 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 sufficient information that would allow us to determine whether the EX-IM Bank limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million, or to consider the involvement of third-party banks. Such information is critical to understanding how the Export Buyer's Credits program operates and critical to the Department's program use determination.

[51] *See* Memorandum to File Placing Information on the Record at Attachment 2 at 4-5
[52] *See* September GSQR at 2.
[53] *Id.*
[54] *See* Memorandum to File Placing Information on the Record at Attachment 1.
[55] *See Id*. at Attachment 2.
[56] *Id*.
[57] *Id*.

As noted above, the GOC has not answered the questions in the Initial Questionnaire's Standard Questions Appendix and the supplemental questionnaire with respect to this program. As a result, the GOC has not provided information that would permit us to make a determination of whether this program constitutes a financial contribution or whether this program is specific. Accordingly, we find that the GOC has not cooperated to the best of its ability in response to the Department's specific information requests and determine, as AFA, that this program constitutes a financial contribution and meets the specificity requirements of the Act.[58]

The GOC's response to the supplemental questionnaire stated its refusal to provide the requested 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. Absent the requested information, the GOC's unsubstantiated claim that the companies did not use this program is not verifiable. Moreover, without a full understanding about the role of third-party banks, the affidavits provided by the company respondents, certifying non-use of an "EX-IM Bank program," the respondent companies' claims of non-use of are also not verifiable. Therefore, we find that the GOC has not cooperated to the best of its ability and, as AFA, find that Double Coin and Guizhou Tyre used and benefited from this program.

In relying on AFA for the selection of a subsidy rate, we note that there is no identical program in this investigation for which we have calculated a rate; neither has the Department calculated a rate for this program in any other CVD proceeding involving China. On this basis, 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 this program, applicable to both respondent companies.[59]

**B. Government Policy Lending – Guizhou Tyre**

As stated above, just prior to verification, Guizhou Tire contacted the Department to discuss its discovery of information about loans that had not been previously provided for the record. At that time, the Department informed Guizhou Tyre that it would not accept the information at verification.[60] At verification, Guizhou Tyre presented the information about loans that was previously unreported. The Department declined to accept this information and subsequently, did not verify Guizhou Tyre's reported use of Government Policy Lending.[61]

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[58] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part,* 81 FR 35308 (June 2, 2016) and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences."

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

[60] *See* Memorandum to the File, "Countervailing Duty Investigation of Truck and Bus Tires from the People's Republic of China: Conversation with Counsel for Guizhou Tyre," (November 8, 2016) (November 8 Memorandum); *see* Guizhou Tyre Verification Report.

[61] *See* November 8 Memorandum; *see* Guizhou Tyre Verification Report.

In the Department's initial questionnaire, we stated, "[r]eport all financing to your company that was outstanding at any point during the POI, ***regardless*** of whether you consider the financing to have been provided under this program." Guizhou Tyre explained that the loans it presented at verification were in the form of invoice discounting. Information about the company's borrowing using this type of financial instrument is specifically requested in the Department's initial questionnaire:

> Ensure that you report all forms of financing outstanding during the POI, not only traditional loans. This includes, but is not limited to, interest expenses on bank promissory notes, ***invoice discounting***, and factoring of accounts receivable. If your company did not make interest payments on the financing during the POI (*e.g.,* ***factoring of accounts receivable***), then identify the specific terms of the financing (*e.g.*, the discount rate associated with the factoring).

The Department clearly requested Guizhou Tyre to report all forms of financing, including invoice discounting, during the POI. Therefore, we find that the Guizhou Tyre has not cooperated to the best of its ability. Pursuant to sections 776(a)(2)(B) and (2)(C) of the Act, when an interested party fails to provide requested information by the deadlines established by the Department, or significantly impedes a proceeding, the Department uses facts otherwise available. Further, pursuant to section 776(b) of the Act, we find that the Guizhou Tyre, by virtue of its failing to provide timely information and significantly impeding this proceeding and exhibiting inattentiveness and carelessness in not providing full and complete answers to the Department's inquiries, failed to cooperate by not acting to the best of its ability. As noted in *Nippon I*,[62] it is the Department's role to determine what information is or is not relevant to this investigation. Accordingly, the application of AFA is warranted.

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.[63] However, the highest rate for the identical program in this investigation is the rate that was calculated for Double Coin for the *Preliminary Determination*, which is lower than the rate calculated for Guizhou Tyre for the *Preliminary Determination*. Using this lower rate for Guizhou Tyre would undermine Congress's intent "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[64] As such, we sought the highest non-*de minimis* rate calculated for the comparable or similar program (based on the treatment of the benefit) in another PRC proceeding, but we do not use a rate from a program if, based on eligibility criteria, the industry under investigation cannot use that program.[65] The highest calculated rate for a similar program in another China CVD proceeding is 10.54 percent, from *Coated Paper from the PRC*.[66]

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[62] *See Nippon Steel Corp. v. United States*, 118 F. Supp. 2d 1366, 1369-72, 22 Ct. Int'l Trade 1158, 24 Ct. Int'l Trade 1158 (CIT 2000) ("*Nippon I*").
[63] *See, e.g., Shrimp from China* and Issues and Decision Memorandum 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").
[64] *See* SAA at 870.
[65] *See Shrimp from China* Issues and Decision Memorandum at 13-14; *see also* Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012, 79 FR 5230 (September 3, 2014) and accompanying Issues and Decision Memorandum at 72)
[66] *Coated Paper from China* (revised rate for "Preferential Lending to the Coated Paper Industry" program).

Because this calculated rate is higher than the calculated rate for the lending program in this proceeding, as adverse facts available we are applying a program rate of 10.54 percent for policy loans to Guizhou Tyre. We determine that this is an appropriate AFA rate for reasons described above and at Comment 29.

### C. Unreported Grants – Guizhou Tyre

As stated above, at verification Guizhou Tire presented information about grants that were previously unreported. The Department declined to accept this information.[67] At verification, Department officials did not collect information concerning the amount of each grant, the date it was received or the program under which it was provided. Department officials merely noted the receipt of "more than 40 grants." The Department's initial questionnaire requests respondents to report "other subsidies" and is clear in instructing respondents to report "any other forms of assistance to your company."[68] In fact, Guizhou Tyre did provide information regarding other assistance, and in so doing, Guizhou Tyre demonstrated that it has the tools to identify such assistance. However, the disclosure at the outset of verification that there was a large number of additional grants that should have been reported in response to the question about other forms of assistance demonstrates that Guizhou Tyre's efforts to identify and report other forms assistance were incomplete.

We find that Guizhou Tyre failed to provide complete information in response to our questions about other forms of assistance provided by the GOC. By not divulging the receipt of this unreported assistance prior to verification in the initial and subsequent questionnaire responses requesting information on "other subsidies," Guizhou Tyre precluded the Department from an adequate examination of the grants (*e.g.*, the Department did not receive timely, complete responses to the questions in the relevant appendices regarding these grants and was unable to issue a supplemental questionnaire to the GOC concerning the extent to which these programs constitute a financial contribution or are specific under sections 771(5)(D) and 771(5A) of the Act). Therefore, consistent with prior determinations,[69] we find that the Guizhou Tyre has not cooperated to the best of its ability. Pursuant to sections 776(a)(2)(B) and (2)(C) of the Act, when an interested party fails to provide requested information by the deadlines established by the Department, or significantly impedes a proceeding, the Department uses facts otherwise available. Further, pursuant to section 776(b) of the Act, we find that Guizhou Tyre, by virtue of its failing to provide timely information and significantly impeding this proceeding and exhibiting inattentiveness and carelessness in providing full and complete answers to the Department's inquiries, failed to cooperate by not acting to the best of its ability. Pursuant to the Department's authority under section 775 of the Act and 19 CFR 351.311(b), we have included these grants in our investigation and we determine the application of AFA is warranted. We are finding that, as AFA, these discovered forms of assistance provide a financial contribution and

[67] *See* Guizhou Tyre Verification Report.
[68] Initial Questionnaire, Section III at 19.
[69] *See Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Affirmative Determination*, 81 FR 13337 (March 14, 2016)(*Pet Resin from China*) and accompanying Issues and Decision Memorandum at 19; *see Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) (*SC Paper Final*) and accompanying Issues and Decision Memorandum at 12-13 and 153-155; *Shrimp from China* and accompanying Issues and Decision Memorandum at 75-78.

are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively.  A benefit is conferred pursuant to section 771(5)(E) of the Act.

Based on the hierarchy for selecting rates for purposes of applying AFA, we are using the highest non-*de minimis* rate for a similar program, *i.e.* a grant program.[70] The highest rate for a similar program in a prior CVD proceeding involving China, a grant program, is 0.58 percent *ad valorem*.[71] Therefore, we are applying a rate of 0.58 percent *ad valorem* for each of the "more than 40" unreported grants, *i.e.*, we are multiplying this rate by 41, to determine a rate of 23.78 percent *ad valorem* for Guizhou Tyre's unreported grants.

## VIII. SUBSIDIES VALUATION

### A. Allocation Period

The Department has made no changes to the allocation period used in the *Preliminary Determination* and no issues regarding the allocation period were raised by interested parties in case briefs.  For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination*.[72]

### B. Attribution of Subsidies

For purposes of this final determination, with regard to Guizhou Tyre, the Department has made no changes since the *Preliminary Determination*.[73] With regard to Double Coin, the Department has made changes in the attribution of subsidies provided to Double Coin and its cross-owned companies.

In the *Preliminary Determination*, we relied on 19 CFR 351.525(b)(6)(ii) to attribute to Double Coin any subsidies provided to Double Coin or its four cross-owned tires producers, Double Coin Group (Jiangsu) Tyre Co., Ltd. (Jiangsu Tyre); Double Coin Group (Chongqing) Tyre Co., Ltd. (Chongqing Tyre); Double Coin Group Shanghai Donghai Tyre Co. Ltd. (Donghai Tyre); Double Coin Group (Xinjiang) Kunlun Tyre Co., Ltd. (Kunlun Tyre), collectively, the "Double Coin Tire Producers."  We also attributed to the Double Coin Tire Producers subsidies provided to the input supplier Double Coin Group Shanghai Supply & Marketing Co., Ltd. (Shanghai Supply) under 19 CFR 351.525(b)(6)(iv).  We also noted in the *Preliminary Determination* that we were continuing to examine whether certain companies identified by Double Coin meet the threshold for cross-ownership provided in 19 CFR 351.525(b)(6)(vi), and whether subsidies received by these companies, as well as subsidies received by an unaffiliated trading company, are attributable to the Double Coin Tire Producers.[74]

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[70] *See, e.g.*, *SC Paper Final* and accompanying Issues and Decision Memorandum at 12-13 and 153-155.
[71] *See Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination;* 2012 (September 22, 2014), and accompanying Issues and Decision Memorandum
[72] *See PDM* at 14-15.
[73] *See PDM* at 17-18.
[74] *Id.* at 17.

In the Post-Preliminary Determination, we also found that Xinjiang Kunlun Engineering Co., Ltd. (Kunlun Engineering) is a cross-owned input supplier and we attributed to the Double Coin Tire Producers subsidies received by Kunlun Engineering under 19 CFR 351.525(b)(6)(iv).[75]

In light of additional information provided by Double Coin since the *Preliminary Determination* and arguments submitted by Double Coin and the petitioner in case and rebuttal briefs, we have determined that it is appropriate to attribute to Double Coin subsidies provided directly to Double Coin under 19 CFR 351.525(b)(6)(iii), rather than under 19 CFR 351.525(b)(6)(ii). *See* Comment 15, below. In addition, we have determined that Double Coin Group Shanghai Tyre Research Institute Co. Ltd. (Tyre Research Institute) is a producer of tires. As such, this company is included as Double Coin Tire Producers and we are attributing subsidies provided to this company to the Double Coin Tire Producers under 19 CFR 351.525(b)(6)(ii). *See* Comments 18 and 19. Finally, we are attributing to the Double Coin Tire Producers subsidies received by the unaffiliated trading company, Qingdao Jinhaoyang International Co., Ltd. (Jinhaoyang), under 19 CFR 351.525(c).

### C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. We have made certain changes to the sales denominators we used to calculate the countervailable subsidy rates for the various subsidy programs. These changes are discussed in Comments 16 and 20, and they are explained in further detail in the final calculation memoranda.

## IX. INTEREST RATE BENCHMARKS; DISCOUNT RATES; INPUT, ELECTRICTY, AND LAND BENCHMARKS

### A. Short-Term RMB-Denominated Loans, Long-Term RMB-Denominated Loans, and Discount Rates

The Department has made no changes to the benchmark interest rates for short-term RMB-denominated loans, long-term RMB-denominated loans, and discount rates that we used in the *Preliminary Determination*.[76]

[75] *See* Post-Preliminary Determination at 7.
[76] *See* PDM at 19-22.

### B. Foreign Currency-Denominated Loans

The Department has made no changes to the benchmark interest rates for foreign currency-denominated loans that we used in the *Preliminary Determination*.[77]

### C. Provision of Inputs for LTAR

The petitioner, the GOC, Double Coin and Guizhou Tyre provided arguments in their case and rebuttal briefs regarding the Department's selection of sources for benchmarks and adjustments included in the benchmarks. These arguments are addressed below in Comments 7 through 12.

1. *Carbon Black*

The Department preliminarily found that the domestic market for carbon black is distorted, based on: significant government control of production (GOC-owned producers accounted for 31.02 of domestic production); insignificant volume of imports as a percentage of domestic production and consumption (2.17 percent and 2.61 percent, respectively); and the existence of GOC policy plans in place to support the tire industry. Based on the finding of distortion, neither domestic PRC prices nor import prices were an appropriate basis for a Tier 1 benchmark. Thus we relied on world market prices as the Tier 2 benchmark.[78]

We have revised the market distortion data for carbon black, based on additional information provided since the *Preliminary Determination*[79] and the results of verification.[80] However, for purposes of this final determination, we continue to find that the domestic market for carbon black is distorted. Although the percentage of production accounted for by GOC-owned producers fell to 27.50 percent, this remains significant; moreover, the volume of imports as a percentage of domestic production and consumption has fallen to 1.70 percent and 1.95 percent, respectively. [81] These factors combined with the continued existence of GOC policy plans to support the tire industry support the continued finding that the domestic market for carbon black is distorted. As such, we continue, for purposes of this final determination, to rely on world market prices as the Tier 2 benchmark.

*2. Nylon Cord*

Because GOC-owned producers accounted for 7.08 percent of domestic production, the Department preliminarily found that the domestic market for nylon cord was not distorted, and the Department was permitted to rely on prices resulting from actual transactions as a Tier 1 benchmark. However, because we preliminarily found that the respondents' suppliers are "authorities," we did not rely on prices from the suppliers as Tier 1 benchmarks. Although actual import prices can be used as a Tier 1 benchmark, because neither respondent reported

[77] *Id.* at 22.
[78] *See* PDM at 23.
[79] *See* GQR-B at 74-137; *see* GSQR1 at 14-51.
[80] *See* GOC Verification Report.
[81] *See* Memorandum to the File, "Analysis for the Final Determination: Market Distortion in the Markets for Carbon Black, Nylon Cord, Synthetic Rubber and Butadiene, and Natural Rubber," dated concurrently with this final determination (Final Market Distortion Analysis).

actual imports of nylon cord during the POI, we relied on PRC import prices as the Tier 1 benchmark.[82]

There have been no changes in the market distortion data since the *Preliminary Determination*.[83] Thus for purposes of this final determination, we continue to rely on PRC import prices as the Tier 1 benchmark for measuring the adequacy of remuneration for nylon cord.

*3. Synthetic Rubber and Butadiene; Natural Rubber*

For synthetic rubber and butadiene and natural rubber, we preliminarily found that, although the GOC-owned producers accounted for a substantial portion of the production (32 percent for synthetic rubber and 51 percent for natural rubber), the high volume of imports (nearly equal to domestic production) and the low volume of exports indicated a lack of distortion in the PRC market. However, because we preliminarily found that the respondents' suppliers are "authorities," we did not rely on prices from the suppliers as Tier 1 benchmarks. Both respondent companies reported imports of synthetic rubber and butadiene and natural rubber during the POI, and we relied on the companies' actual import prices as a Tier 1 benchmark.[84]

There have been no changes since the *Preliminary Determination* to the data for GOC-owned production as a percentage of production of synthetic rubber and butadiene and natural rubber. However, we have revised the domestic consumption and import data to distinguish synthetic rubber and butadiene from natural rubber, based on additional information provided since the *Preliminary Determination*[85] and the results of verification.[86] However, these data continue to show a high volume of imports as a percentage of production (38.51 percent for synthetic rubber and 471 percent for natural rubber) and consumption (28.57 percent for synthetic rubber and 83.30 percent for natural rubber).[87] Thus, for purposes of this final determination, we continue to find that the domestic market for synthetic rubber and butadiene and natural rubber is not distorted. As such, we continue, for purposes of this final determination, to rely on the respondents' imports as the Tier 1 benchmark.

### D. Provision of Electricity for LTAR; Provision of Land-Use Rights for LTAR

The Department has made no changes to the benchmark rates used in the *Preliminary Determination* for purposes of measuring the adequacy of remuneration for electricity and land-use rights.[88]

[82] *See* PDM at 24.
[83] *See* Final Market Distortion Analysis.
[84] *See* PDM at 24.
[85] *See* GQR-B at 74-137; *see* GSQR1 at 14-51
[86] *See* GOC Verification Report.
[87] *See* Final Market Distortion Analysis.
[88] *Id.* at 25.

## X. ANALYSIS OF PROGRAMS

### A. Programs Determined to Be Countervailable

*1. Government Policy Lending*

The Department has not modified its determination or its methodology for calculating a subsidy rate for this program for Double Coin. However, as discussed above in the section "USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES," for purposes of this final determination, the Department is applying a rate for Government Policy Lending to Guizhou Tyre on the basis of AFA. We address the comments provided by Guizhou Tyre and the petitioner in Comments 27, 28, and 29, below.

Double Coin: 1.78 percent *ad valorem*
Guizhou Tyre: 10.54 percent *ad valorem*

*2. Export Seller's Credits from State-Owned Banks*

Double Coin: 0.73 percent *ad valorem*
Guizhou Tyre: 0.20 percent *ad valorem*

*3. Export Buyer's Credits from State-Owned Banks*

As discussed above in the section "USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES," for purposes of this final determination, the Department determines that this program is countervailable and has selected a subsidy rate on the basis of AFA. We address the comments provided by the petitioner, the GOC, Double Coin and Guizhou Tyre and in Comments 2 through 6, below.

Double Coin: 10.54 percent *ad valorem*
Guizhou Tyre: 10.54 percent *ad valorem*

*4. Provision of Carbon Black for LTAR*
*5. Provision of Nylon Cord for LTAR*
*6. Provision of Natural Rubber for LTAR*
*7. Provision of Synthetic Rubber and Butadiene for LTAR*

For purposes of this final determination, the Department has made some modifications to the components of the benchmarks, and the calculations of the benefits and the countervailable subsidy rates for the provision of these four inputs at LTAR. Specifically, the Department has removed from the benefit calculation inputs provided to the Double Coin Tire Producers by their cross-owned input supplier, Shanghai Supply, to avoid double counting the benefit from the provision of the inputs to Shanghai Supply. We also have removed Guizhou Tyre's purchases of Russian-origin synthetic rubber and butadiene from the benefit calculation.

We address the arguments provided by the petitioner, the GOC, Double Coin and Guizhou Tyre in Comments 7 through 14, below.

*Provision of Carbon Black for LTAR*
Double Coin: 3.40 percent *ad valorem*
Guizhou Tyre: 3.77 percent *ad valorem*

*Provision of Nylon Cord for LTAR*
Double Coin: 0.00 percent *ad valorem*
Guizhou Tyre: 4.09 percent *ad valorem*

*Provision of Natural Rubber for LTAR*
Double Coin: 9.32 percent *ad valorem*
Guizhou Tyre: 0.01 percent *ad valorem*

*Provision of Synthetic Rubber and Butadiene for LTAR*
Double Coin: 10.68 percent *ad valorem*
Guizhou Tyre: 6.78 percent *ad valorem*

8. *Provision of Electricity for LTAR*

The Department has not modified its determination or its methodology for calculating a subsidy rate for this program for Double Coin. However, for Guizhou Tyre, we have revised the calculation of the benefit by including in the amounts that Guizhou Tyre paid for electricity certain taxes that Guizhou Tyre pays and that are included in the benchmark used to measure the adequacy of remuneration. We address the arguments provided by Guizhou Tyre and the petitioner in comments 25 and 26, below.

Double Coin: 0.95 percent *ad valorem*
Guizhou Tyre: 1.13 percent *ad valorem*

9. *Provision of Land-Use Rights to Truck and Bus Tire Producers for LTAR*
10. *Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR*
11. *Provision of Land-Use Rights to SOEs for LTAR*

The Department has not modified its determination or its methodology for calculating a subsidy rate for these programs. We address the arguments provided by Guizhou Tyre and the petitioner in comments 21 and 22.

Double Coin: 0.35 percent *ad valorem*
Guizhou Tyre: 2.12 percent *ad valorem*

*12. Income Tax Reductions for High- and New- Technology Enterprises*

The Department has not modified its determination or its methodology for calculating a subsidy rate for this program for Guizhou Tyre. However, for purposes of this final determination, as discussed above in the "Attribution of Subsidies" section, we have determined that Tyre Research Institute is a tire producer cross-owned with Double Coin. Thus, under 19 CFR 351.525(b)(6)(ii), in addition to the subsidies received by Jiangsu Tyre and Kunlun Tyre under this program, we are attributing to the Double Coin Tire Producers subsidies received by Tyre Research Institute under this program.[89]

Double Coin: 0.12 percent *ad valorem*
Guizhou Tyre: 0.23 percent *ad valorem*

*13. Enterprise Income Tax Law, Research and Development Program*

The Department has not modified its determination or its methodology for calculating a subsidy rate for this program for Guizhou Tyre. However, for purposes of this final determination, as discussed above in the "Attribution of Subsidies" section, we have determined that Tyre Research Institute is a tire producer cross-owned with Double Coin. Thus, under 19 CFR 351.525(b)(6)(ii), in addition to the subsidies received by Jiangsu Tyre and Kunlun Tyre under this program, we are attributing to the Double Coin Tire Producers subsidies received by Tyre Research Institute under this program.[90]

Double Coin: 0.05 percent *ad valorem*
Guizhou Tyre: 0.10 percent *ad valorem*

*14. Value Added Tax (VAT) Exemptions for Imported Equipment*

Double Coin: 0.00 percent *ad valorem*
Guizhou Tyre: 0.10 percent *ad valorem*

*15. State Key Technology Renovation Fund Program*

Double Coin: 0.00 percent *ad valorem*
Guizhou Tyre: 0.07 percent *ad valorem*

**Self-Reported Grants**

| Double Coin | | |
|---|---|---|
| *16.* | *Special Funds for Giant All Steel Engineering Radial Tire Technology Transformation Project* | 0.01% |
| *17.* | *Reward for Technical Renovation Project* | 0.02% |
| *18.* | *Interest Subsidy from Economic Development Bureau* | 0.02% |
| *19.* | *Refund of Payment for Land Use Right* | 0.15% |

[89] *See* Double Coin Final Calculation Memorandum.
[90] *Id.*

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| *20.* | *Subsidy Concerning the Second Batch of Industrial Structure Adjustment of Shanghai for 2015* | 0.03% |
| *21.* | *Reward for Processing Trade* | 0.02% |
| *22.* | *Subsidy on Social Insurance Charges* | 0.05% |
| *23.* | *Subsidy on Environmental Protection* | 0.04% |
| *24.* | *Compensation of Land Resettlement* | 0.12 % |
| *25.* | *Subsidy for Staff Training from Finance Bureau of Huangpu District, Shanghai City* | 0.01% |
| *26.* | *Fund of Technical Reformation* | 0.21% |
| Guizhou Tyre | | |
| *27.* | *Boiler Dust Collector Transformation Fee* | 0.02% |
| *28.* | *SASAC Funds for Allocated Testing Exercise* | 0.07% |
| *29.* | *Provincial Human Resources and Social Security Department Allocated Funding of Postdoctoral Work* | 0.23% |
| *30.* | *Municipal Industry and Information Technology Committee Circulating Capital Subsidies* | 0.60% |
| *31.* | *Sum of Petroleum Chemical Industry Innovation Funds Appropriations* | 1.08% |
| *32.* | *Commercial Enterprises Innovation Funds* | 0.01% |
| *33.* | *Unreported Grants* | 23.78% |

*34. Unreported Grants Presented at Verification*

At verification, Guizhou Tyre presented information about more than 40 grants that were not previously reported in its questionnaire and supplemental questionnaire responses. As discussed above in the section, "USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES," the Department declined to accept this factual information, and we are relying on AFA to determine that these grants are countervailable and to identify a subsidy rate applicable to them.

Guizhou Tyre: 23.78 percent *ad valorem*

**B. Programs Determined to Be Not Used**

1. *Preferential Loans to SOEs*
2. *Discounted Loans for Export-Oriented Enterprises*
3. *Export Credit Guarantees*
4. *Income Tax Reduction for Advanced Technology for FIEs*
5. *Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs*
6. *VAT Refunds for FIEs on Purchases of Chinese-Made Equipment*
7. *VAT Exemptions and Deductions for Central Regions*
8. *Land Use Rights for FIEs for LTAR*
9. *Export Interest Subsidy Funds for Enterprises Located in in Guangdong and Zhejiang Provinces*
10. *Funds for "Outward Expansion" of Industries in Guangdong Province*
11. *Direct Government Grants to Guizhou Tire (GTC)*
12. *Direct Government Grants to Aeolus*
13. *Direct Government Grants to Qingdao Doublestar*

*14. Direct Government Grants to Sailun*

**C. Programs Determined to Provide No Benefit During the POI**

1. *Export Credit Insurance Subsidies (from Sinosure & PICC)*
2. *Import Duty Exemptions for Imported Equipment*
3. *Famous Brands Program*
4. *Special Fund for Energy-Saving Technology Reform*
5. *The Clean Production Technology Fund*
6. *Direct Government Grants to Double Coin*
   - a. *Government Subsidies Transferred from Deferred Revenue to Non-Operational Income*
     - i. *Innovation and Industry Upgrading Special Guiding Fund (2012 and 2013)*
     - ii. *Western Region Construction Award (2012 and 2013)*
     - iii. *Amortization of Relocation Compensation (2012 and 2013)*
   - b. *Government Subsidies Pertinent to Income*
     - i. *Other Subsidy Pertinent to Income (2012 and 2013)*
   - c. *Boiler Shutdown Subsidy (2014)*
   - d. *2014 Land Tax Return (2013 and 2014)*
   - e. *Relocation Subsidy (2013 and 2014)*
   - f. *Refund for Land Purchase (Inclusive of Fixed Asset Special Fund) (2013 and 2014)*
   - g. *Relocation Compensation for Radial Tire Project of Xinkun Tire Co., Ltd. (2014)*
   - h. *Special Fund for Accelerating the Construction of Independent Brands*
   - i. *Special Fund for Optimizing Structure of Foreign Trade*

## XI. ANALYSIS OF COMMENTS

**Comment 1: Whether there is a Legal Basis for Investigating "Other" and/or "Discovered Subsidies**

The GOC and Guizhou Tyre argue that the Department's practice of investigating "other" and discovered subsidies is inconsistent with the United States' international obligations under the SCM Agreement and U.S. law.[91] The GOC and Guizhou Tyre argue that the Department should only focus "where a proper subsidy allegation was made, sufficient evidence was presented to support initiation of an investigation into the allegation, consultations were held, and notice of an initiation was announced."[92] The GOC and Guizhou Tyre note that the Department requests respondents to disclose all "other" subsidies and that these "other" subsidies are not included in an allegation by the petitioner nor defined by the Department. The GOC and Guizhou Tyre further state that the Department has used "this other subsidy request" as the basis to apply AFA when the Department discovers information that the Department determines is a subsidy that was not disclosed by the respondent in response to a questionnaire request. Guizhou Tyre notes that,

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[91] *See* GOC's Case Brief at 3-8; *see* Guizhou Tyre's Case Brief at 30-33. Agreement on Subsidies and Countervailing Measures, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization.

[92] *See* GOC's Case Brief at 3; *see* Guizhou Tyre's Case Brief at 31.

in this investigation, the Department rejected information presented at verification and expresses concern that the Department will apply AFA to the grants identified in the rejected information.

According to the GOC and Guizhou Tyre, each subsidy investigation must be justified by sufficient evidence and be preceded by consultations and formal initiation. The GOC and Guizhou Tyre reference Article 11 of the SCM Agreement's description of the requirements for the initiation of a CVD investigation, including that "any alleged subsidy shall be initiated upon a written application by or on behalf of the domestic industry" with sufficient evidence to substantiate the allegation and to "justify the initiation of an investigation." The GOC and Guizhou Tyre argues that Article 11 provides that evidence "presented to support investigation of one alleged subsidy does not permit an authority to engage in a wide-ranging investigation beyond that alleged subsidy." The GOC and Guizhou Tyre further argue that Article 13 of the SCM Agreement requires the Department to invite the government subject to the petition for consultations.

Both the GOC and Guizhou Tyre also argue that the obligations expressed in Articles 11 and 13 are found in the U.S. statute, regulations, and the Department's practice. The GOC and Guizhou Tyre note that, under section 702 of the Act, the obligations are the same whether the investigation is self-initiated or initiated based on a petition filed by a domestic party. Both parties claim that the Department's "initiation checklist" reflects the Department's requirement that each subsidy must be supported by a "properly-framed allegation and allegation-specific evidence." Both the GOC and Guizhou Tyre agree that the Department is allowed to investigate new subsidy allegations raised by the petitioner within 40 days of the preliminary determination, noting that the Department's practice is consistent with section 702 and involves a formal allegation and supporting information from the petitioner. The GOC and Guizhou Tyre also note that under 19 CFR 351.311(b), the Department will examine apparent subsidy practices "discovered" during the course of a countervailing duty investigation, but the Department may choose to investigate the subsidy in the current proceeding or the following based on whether there is sufficient time before the date of the final determination. Both parties also note that 19 CFR 351.311(d) states that the Department will "notify the parties to the proceeding of any practice that the Secretary discovers…and whether or not it will be included in the then ongoing proceeding." The GOC and Guizhou Tyre argue that the Department's regulations require "evidence to give rise to the appearance of a subsidy" and that the discovery of a subsidy "does not permit the application of AFA, findings of countervailability, or the imposition of additional CVD cash deposits or duties." Both parties argue that discovered subsidies require the Department either to give the petitioner an opportunity to resubmit an amended petition or to defer any judgment until a subsequent review.

The GOC and Guizhou Tyre argue that the Department violated these requirements first when it requested information about "other" subsidies because this is not a "properly framed allegation by petitioners or other finding by the Department supported by evidence, initiation, or notice thereof."[93] The GOC argues that there is no basis under the SCM Agreement and U.S. law for investigating or countervailing "other" subsidies. The GOC argues that an investigation into unspecified "other" subsidies cannot be the basis for the application of facts available or AFA, claiming that the term "subsidy" is "a term of art and inherently subjective." Guizhou Tyre notes

[93] *See* GOC's Case Brief at 8; *see* Guizhou Tyre's Case Brief at 34.

that under section 776 of the Act, and as articulated in *Nippon Steel Corp. v. United States*, and *Ningbo Dafa Chemical Fiber Co. v. United States*, the Department has "gap-filling power" to apply AFA when the Department "received less than the full and complete facts needed to make a determination." However, the GOC and Guizhou Tyre argue that the Department should only "investigate such practices, or defer their consideration to a subsequent administrative review, if any, but nothing more."

The petitioner contends that the Department's request for information about "other subsidies" was appropriate.[94] Noting that the initial questionnaire included the program "Direct Government Grants to Guizhou Tyre" on which the Department had initiated, the petitioner also cites to section 775 of the Act:

> If in the course of a proceeding under this subtitle, {the Department} discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petitioner,…then {the Department}…shall include the practice, subsidy, or subsidy program in the proceeding 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…

The petitioner also quotes 19 CFR 351.311(b):

> If during a countervailing duty investigation…{Commerce} discovers a practice that appears to provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding,…{Commerce} will examine the practice, subsidy, or subsidy program if {Commerce} concludes that sufficient time remains before the scheduled date for the final determination…

The petitioner argues that the Department's application of AFA to grants that the respondents failed to report in response to its questions regarding "other subsidies" is consistent with the statute and regulations. With reference to information submitted in the Petition, the petitioner further argues that the Department's need for the "other subsidies" question is "acute in China CVD cases, due to the GOC's lack of transparency and incomplete reporting regarding subsidies."[95] The petitioner also asserts that China's obligations under the SCM, to publish information about the measures, etc., is well documented and supports its argument.[96] The petitioner uses the example of Guizhou Tyre's public financial statement, which identifies a number of grants, and argues that the public information reasonably available to the petitioner

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[94] *See* Petitioner's Rebuttal Brief at 23-27.

[95] *See* Petitioner's Rebuttal Brief (citing United States Trade Representative, *2013 National Trade Estimate Report on Foreign Trade Barriers* (March 2013) at 79; World Trade Organization, *Trade Policy Review Report by the Secretariat: China Revision*, WT/TPR/S/300/Rev.1 (October 7, 2014) at 88).

[96] *See* Petitioner's Rebuttal Brief (citing United States Trade Representative, *2013 National Trade Estimate Report on Foreign Trade Barriers* (March 2013) at 79; United States Trade Representative*, 2015 National Trade Estimate Report on Foreign Trade Barriers* (March 2015) at 73; World Trade Organization, *China-Certain Measures Affecting the Automobile and Automobile-Parts Industries*, Request for Consultations by the United States, WT/DS450/1 (September 20, 2012) at 7-8).

about these grants was limited to the grant totals and the names and specific amounts of certain grants. The petitioner argues that other information relevant to the countervailability of these types of grants, such as specificity information, was not reasonably available to the petitioner and that only the GOC and the Guizhou Tyre would have this information. The petitioner also contends that the Department appropriately investigated such grants through the "other subsidies" question.

**Department's Position:** We disagree with the GOC and Guizhou Tyre that the Department unlawfully investigated "other subsidies" without first finding that the initiation standard had been satisfied. Investigations into potentially countervailable subsidies are initiated in one of two ways. First, an investigation can be self-initiated by the Department.[97] Second, when a domestic interested party files a petition for the imposition of countervailing duties on behalf of an industry, and the petition: (1) alleges the elements necessary for the imposition of a countervailing duty pursuant to section 701(a) of the Act; and (2) "is accompanied by information reasonably available to the petitioner supporting those allegations {,}" the Department will initiate an investigation into whether countervailing duties should be imposed.[98]

After an investigation has been initiated through one of the above mechanisms, then, pursuant to section 775 of the Act and 19 CFR 351.311(b), the Department has the ability, during the course of that investigation, to examine discovered practices, subsidies, or subsidy programs if they appear to provide a countervailable subsidy. Indeed, if, after the commencement of an investigation, the Department "discovers a practice which appears to be a countervailable subsidy {}" that was not included in the petition, the Department "shall include the practice, subsidy, or subsidy program in the proceeding{.}"[99] Pursuant to section 775 of the Act, the Department has an "affirmative obligation" to "consolidate in one investigation…all subsidies known by petitioning parties to the investigation or by the administering authority relating to that merchandise" to ensure "proper aggregation of subsidization practices."[100]

The statute does not define what "appears" to be a countervailable subsidy. Although the GOC and Guizhou Tyre argue that whenever the Department itself "discovers" a potential subsidy, the Department is expected to apply the same initiation standard that applies when a subsidy is alleged by a petitioner, this interpretation is not supported by the statute. Pursuant to section 702 of the Act, "{a} countervailing duty investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of duty under section 701 of the Act exits." This statutory provision does not preclude the Department from investigating a program or subsidies "which appear {} to be a countervailable subsidy…with respect to the merchandise which is the subject of the proceeding," and the Department is not "legally precluded from asking questions that enable it to effectuate this obligation, the goal of which is to consolidate all relevant subsidies into a single investigation."[101] Indeed, under section 775 of

[97] *See* section 702(a) of the Act.
[98] *See* section 702(b) of the Act.
[99] *See* section 775 of the Act.
[100] *See Allegheny Ludlum Corp. v. Unites States*, 112 F. Supp. 2d 1141, 1150 n. 12 (CIT 2000) (*Allegheny I*); *see* section 775 of the Act.
[101] *See Allegheny I,* 112 F. Supp. 2d at 1150 n. 12 ("Congress…clearly intended that all potentially countervailable programs be investigated and catalogued{.}").

the Act, the Department "shall" include in its investigation subsidies discovered during the course of the investigation.

The Department disagrees with the suggestion by the GOC and Guizhou Tyre that the consultations provision in section 702(b)(4)(A)(ii) of the Act applies to subsidies discovered during an investigation. That provision only applies when a petition is filed by a domestic interested party. Section 775 of the Act contains no requirement that the responding government be invited to consultations. Regarding the notice requirement in 19 CFR 351.311(d), our verification report notified all interested parties of the newly discovered potential subsidies.

Moreover, the Department's question regarding "all other assistance" is not broad or vague. The Department has broad discretion to determine which information is relevant to its determination and to request that information.[102] The Department pursues information regarding "other assistance" expressly to satisfy the intent of the CVD law, to investigate and catalogue all potentially countervailable subsidies, "to consolidate all relevant subsidies into a single investigation."[103] Consistent with U.S. law, the Department is not precluded from inquiring about other assistance to make determinations.[104] The Department "has an independent statutory authority to investigate discovered subsidies, and to ask questions to facilitate that investigation."[105] The Department may determine to use AFA in deciding whether the elements of a countervailable subsidy are met for both categories of subsidies (those alleged in a petition and those "discovered" during an investigation) if the Department determines that the respondents are being uncooperative. In this case, Guizhou Tyre hindered the Department's efforts to examine the "full scope of governmental assistance," and to consolidate all relevant subsidies into this investigation when it withheld information responsive to the Department's requests for information.[106] Guizhou Tyre was required by law to respond to the Department's requests for information by conducting a thorough review of its records, regardless of whether it believed that the discovered subsidies fell outside the purview of the Department's investigation. Guizhou Tyre did not lodge any objection to the Department's question in its initial questionnaire or lay out its own criteria for identifying "other assistance." Thus, its failure to report the discovered assistance to the Department in a timely manner reflects either carelessness in responding to the Department's requests or a deliberate and unilateral decision that the discovered subsidies were not relevant to the Department's investigation. Either circumstance warrants the application of adverse facts available.

**Comment 2: Whether to Find Non-Use for the Export Buyer's Credit Program**

Double Coin, the GOC, and Guizhou Tyre state that the Department should continue to find, as it did in the *Preliminary Determination*, that neither Double Coin nor Guizhou Tyre received

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[102] *See, e.g., Acciai Speciali Termi S.p.A. v. United States*, 26 C.I.T. 148, 167 (sustaining the Department's application of adverse inferences when respondent engaged in "willful non-compliance" with requests for information); *see PAM, S.p.A. v. United States*, 495 F. Supp. 2d 1360, 1369 (CIT 2007) (sustaining the Department's application of adverse inferences when respondent's judgement that the information requested was irrelevant).
[103] *See Allegheny I.*
[104] *See Ansaldo Componeti*, *S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986).
[105] *Id.*
[106] *Id.*

benefits from the Export Buyer's Credit Program.[107] Guizhou Tyre and the GOC note that customers from both Double Coin and Guizhou Tyre submitted certifications of non-use.[108] Guizhou Tyre argues that information identical to the information submitted in this proceeding was sufficient in *Solar Cells from China AR 2*[109] to establish non-use despite the Department's determination that the GOC was uncooperative. Referencing *Midland Co. v United States*[110] and *Fine Furniture v. United States*,[111] Guizhou Tyre further argues that the Department has an obligation to consider record evidence regardless of the GOC's uncooperative actions and that an inference adverse to the cooperating party is "disfavored and should not be employed when facts not collaterally adverse to the cooperative party are available." Guizhou Tyre further argues that the Department is obligated to follow its precedent and treat the identical factual circumstances in this proceeding as it did in *Solar Cells from China AR 2*, referencing *Sunpower v. United States*.[112]

The petitioner rebuts these arguments, stating that the information on the record does not support finding non-use of the Export Buyer's Credit Program in the final determination.[113] The petitioner argues that the Department should apply AFA and find that both respondents benefited from the program because the GOC failed to provide complete information about the program. The petitioner argues that, although the Department previously declined to find non-use for this program where company respondents provided declarations of non-use from all of their U.S. customers, the certifications and declarations submitted by the respondents in this proceeding are insufficient. Regarding Double Coin's certifications, the petitioner argues that the certifications are insufficient because not all U.S. customers were represented, some declarations were not for the POI, some declarations were from customers not included in the list of U.S. customers during the POI that Double Coin provided, and the certifications did not include a clause acknowledging a penalty for knowingly providing inaccurate statements. Regarding Guizhou Tyre's declarations, the petitioner argues that Guizhou Tyre does not address export buyer's credits from Chinese state-owned banks other than the EX-IM Bank and that this is deficient because these credits are also under investigation. The petitioner asserts that both respondents have failed to establish non-use of this program.

**Department's Position:** As explained in the section "USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES," above, the Department finds that the information on the record does not support finding non-use of the Export Buyer's Credit program for the final determination. In prior proceedings in which we have examined this program, we have found that the EX-IM Bank, as the lender, is the primary entity that possesses the

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[107] *See* Double Coin's Case Brief at 16; *see* GOC's Case Brief at 13; *see* Guizhou Tyre's Case Brief at 14-16.
[108] *Id.*
[109] *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review: 2013*, 81 FR 46904 (July 19, 2016) (*Solar Cells from China AR 2*) and accompanying Issues and Decision Memorandum.
[110] *See* Guizhou Tyre's Case Brief at 15 (citing *Archer Daniels Midland Co. V. United States*, 917 F, Supp. 2d 1331, 1342 (CIT 2013) (*Midland Co. v. United States*).
[111] *See* Guizhou Tyre's Case Brief at 15 (citing *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254 (CIT 2012) (*Fine Furniture v United States*)).
[112] *See* Guizhou Tyre's Case Brief at 17, (citing *Sunpower Corp. v. United States*, 2016 Court of International Trade LEXIS 54 (June 8, 2016) (*Sunpower v United States*)).
[113] *See* Petitioner's Case Brief at 18.

supporting information and documentation that are necessary for the Department to fully understand the operation of the program which is prerequisite to the Department's ability to verify the accuracy of the respondents' claimed non-use of the program.[114] The GOC has not provided the requested information and documentation necessary for the Department to develop a complete understanding of this program, *e.g.* whether the EX-IM Bank limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million, and whether it uses third-party banks to disburse/settle Export Buyer's Credits. Such information is critical to understanding how Export Buyer's Credits flow to and from foreign buyers and the EX-IM Bank. Absent the requested information, the GOC's claims that the respondent companies did not use this program are not verifiable. Moreover, without a full understanding of the involvement of third party banks, the respondent companies' (and their customers') claims are also not verifiable.

We disagree with Guizhou Tyre's assertion that the information on the record of this investigation is identical to the information submitted in *Solar Cells from China AR 2*. In this investigation, we have additional information on the record regarding the 2013 revisions to the program and the involvement of third-party banks. When we asked the GOC to explain how these revisions affected the operation of the program, especially vis-à-vis eligibility for borrowing and approved lending institutions, the GOC was not responsive. Regardless, in *Solar Cells from China AR 2*, we specifically stated that even though we found the record there supported a conclusion of non-use, we intended in future proceedings to continue requesting the GOC's cooperation on this program and we would base subsequent evaluations of this program on the record developed in the relevant proceeding. The GOC was uncooperative in this proceeding in not responding to our requests for additional information regarding the operations of this program. Without this information, the Department determined that the information provided by the GOC on the record about this program was incomplete and that our understanding of this program was unreliable. As such, we recognized that we could not rely on information about this program provided by parties other than the GOC, *i.e.*, the respondents. Therefore, while we did consider the customer certifications provided by the respondents, without a complete and verifiable understanding of the program's operation, especially with regard to the involvement of third-party banks, the information provided by the respondents is also unverifiable.

**Comment 3: Whether the Department was Able to Verify Non-Use with Exporters for the Export Buyer's Credit Program**

The petitioner argues that the Department previously relied upon the information and documentation provided by the GOC, rather than by the respondents. Referencing *Wind Towers from China* and *Solar Cells from China Investigation,*[115] the petitioner asserts that the

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[114] *See, e.g., Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016), and accompanying Issues and Decision Memorandum at Comment 6; *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014), and accompanying Issues and Decision Memorandum at Comment 16.
[115] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Determination and Final Affirmative Critical Circumstances*

Department should verify only the GOC's responses because the state-owned bank that operates the Export Buyer's Credits Program is the only entity that possesses complete records of all recipients of Export Buyers Credits and the recipients are customers of the respondents. According to the petitioner, the respondent companies' claims of non-use of this program are not verifiable. The petitioner dismisses the GOC's assertion that a Chinese exporter should have at least some awareness of its customers' receipt of this type of loan. The petitioner further dismisses the GOC's statement that the Chinese exporter should be involved in the loan process and thus can verify and confirm the existence of sales contracts supported by EX-IM Bank export buyer's credits. The petitioner argues that the GOC's assertions are limited to the EX-IM Bank export buyer's credits and do not address export buyer's credits from other Chinese state-owned banks. The petitioner further argues that because the GOC never provided the requested information regarding exporters' awareness of their buyers' export credit applications, disbursements, and other information about the Export Buyer's Credits program, the GOC's claims are unsupported and thus unverifiable.

Double Coin argues that the Department did not request additional information regarding the U.S. customer certification submission and therefore the Department "fully accepted" Double Coin's responses.[116] The GOC argues that the Department "chose not to verify," with both the GOC and the companies themselves, whether the company respondents used the program.[117] The GOC references *Fine Furniture v. United States* and *Gerber Food v United States*,[118] arguing that the determination of non-cooperation of the GOC does not affect the Department's ability to verify issues of benefit with the company respondents, and stating that "{w}hen Commerce can independently fill in the gaps, without the requested information, FOA and adverse inferences are not appropriate." Double Coin and the GOC argue that this is why the Department previously verified respondent's reported non-use of this program when the respondent provided declarations from its U.S. customers and references *Solar Cells from China AR 2013*[119] for support.

**Department's Position:** As explained in the "USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES" section, and Comment 2 above, the Department finds that the information provided by the GOC was incomplete and unreliable, and it rendered both the GOC's and the respondents' claims of non-use unverifiable. Although the GOC claims that an exporter should have at least some awareness of whether its buyers have received loans under this program (or not), the GOC did not provide evidence to support this claim.

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*Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China Investigation*) and accompanying Issues and Decision Memorandum.

[116] *See* Double Coin's Rebuttal Brief at 4-5.

[117] *See* GOC's Rebuttal Brief at 2-5.

[118] *See* GOC's Rebuttal Brief at 3 (citing *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254, 1260 (CIT 2012) (*Fine Furniture v. United States*) (citing *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F. 3d 1333, 1348 (Federal Circuit 2011); *Gerber Food (Yunnan) Co. v. United States*, 387 F. Supp. 2d 1270, 1283 (CIT 2005)(*Gerber Food v. United States*).

[119] *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2013, 81 FR 46904 (July 19, 2016) (*Solar Cells from China AR 2013*) and accompanying Issues and Decision Memorandum at 11.

We determined that it was not appropriate to verify the information provided by the GOC because twice we requested information regarding the operation of this program, referencing information on the record that differed from the Department's previous understanding of the program. The GOC did not provide the information we requested and stated "{t}he Export-Import Bank of China has also confirmed to the GOC that its 2013 internal guidelines/revised Administrative Measures are internal to the bank, non-public, and not available for release." We also chose not to verify the information provided by the respondent companies because the Department's incomplete understanding of the operation of this program prevented the Department from fully understanding what information an exporter would have regarding whether its buyers were using Export Buyer's Credits, *e.g.*, whether an exporter would be aware and would have documentation showing, by virtue of the operational requirements of the program, that its buyers were applying for or receiving credits under the program, and whether they meet the threshold requirements for financing, and what banking institutions were involved with providing the financing. Without the information the Department requested from the GOC, we lack an understanding of these aspects of the program which are crucial to the verification of the program. Therefore, the Department was hindered in developing a plan for verification of the respondents' (and their customers') and the GOC's claims of non-use, *e.g.*, identifying appropriate accounting records. With regard to the customers' claims of non-use, without a complete understanding of the involvement of third party banks and minimum lending thresholds, about which the GOC declined to provide information, the claims are not meaningful and are unverifiable because again, the Department cannot identify the appropriate records for review.

**Comment 4: Whether Information Provided by the Respondents is Sufficient for the Export Buyer's Credit Program**

The petitioner argues that both respondents failed to provide complete and verifiable information about their U.S. customers' use of export buyer's credits. The petitioner asserts that, although the Department has declined to apply AFA for this program in cases where respondents provided declarations of non-use from all U.S. customers, the Department has applied AFA when the submitted U.S. customer declarations did not represent all of the U.S. customers. The petitioner argues that the respondents' submissions of certifications and declarations of non-use do not represent all U.S. customers, comparing Double Coin's list of customers during the POI to the names of the customers on the provided declarations. The petitioner notes that some of the certifications were not submitted under penalty of perjury and those submitted by Guizhou Tyre do not address the full, possible, implementation of the program. The petitioner concludes that submissions from both respondents are insufficient to establish non-use of this program

Double Coin, Guizhou Tyre, and the GOC argue that the information on the record is sufficient to demonstrate non-use of the Export Buyer's Credit program.[120] Double Coin argues that the Department did not request additional information regarding the U.S. customer certifications and therefore the Department "fully accepted" Double Coin's responses. Double Coin rebuts the petitioner's claims that it did not provide non-use declarations from all of its customers, asserting that the record shows that Double Coin Holding Ltd. had only one U.S. customer, CMA, LLC,

[120] *See* Double Coin's Rebuttal Brief at 4-8; *see* Guizhou Tyre's Rebuttal Brief at 1-2; *see* GOC Rebuttal Brief at 2-3.

which submitted a declaration of non-use. The additional declarations submitted by Double Coin provide "additional substantial evidence that no benefit exists in any form." Double Coin rebuts the petitioner's argument that the declarations submitted by Double Coin are not usable because "they were not executed under penalty of perjury" and argues that the petitioner "can point to no authority that states this is a requirement." Double Coin asserts that the submission of declarations was accompanied by a company certification, which includes the statement "I am also aware that U.S. law imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government."

Guizhou Tyre argues that the petitioner's allegation that the U.S. customer declarations submitted by Guizhou Tyre are deficient because they do not address potential Export Buyer's Credits received from third-party banks is meritless. For support, Guizhou Tyre lists excerpts from four declarations, noting that the statements are not limited to the receipt of funds directly or only from EX-IM Bank. Guizhou Tyre further argues that the general declaration of non-use indicates that the customers did not use the program in any way. The GOC argues that the Department "chose not to verify" whether the company respondents used the program with the GOC or the companies themselves.

**Department's Position:** As explained in the "USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES" section and Comments 2 and 3, above, the Department finds that the lack of information, a result of the GOC's lack of cooperation, resulted in the Department not having a verifiable understanding of the program's operation. Thus, the Department is unable to rely on the information provided by the respondent companies, and we did not issue supplemental questionnaires to the respondent companies regarding the information they submitted.

**Comment 5: Whether to Find the Export Buyer's Credit Program Countervailable as AFA**

The petitioner argues that the Department should find, as AFA, financial contribution and specificity due to the GOC's failure to respond to the questions in the Standard Questions Appendix.[121] The petitioner argues that the Department should also find, as AFA, that Double Coin and Guizhou Tyre benefited from this program because the GOC refused to provide information regarding program operation specifics. Noting that the information the Department placed on the record indicates that the GOC revised this program in 2013 to eliminate the USD 2 million minimum, the petitioner argues that the GOC's refusal to provide information regarding whether the EX-IM Bank limits the provision of export buyer's credits to business contracts exceeding USD 2 million and to respond to questions regarding the use of third-party banks to disburse or settle export buyer's credits is critical to understanding the program's operation. According to the petitioner, the application of AFA with respect to this program is consistent with *Pneumatic OTR from China AR Prelim 2016*,[122] due to the GOC failure to provide requested information which significantly impeded this investigation.

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[121] *See* Petitioner's Case Brief at 17-20.
[122] *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2014*, 81 FR 24798 (October 14, 2016) (*Pneumatic OTR from China AR Prelim 2016*) and accompanying Preliminary Decision Memorandum.

Double Coin and the GOC argue that the Department cannot apply facts available to the GOC. [123] The GOC argues that all parties provided information of non-use and did not fail to cooperate. Double Coin further argues that the petitioner does not claim the respondents did not cooperate, noting its relevant responses, and that section 776 of the Act permits the application of an adverse inference only when the party in question "has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority." Double Coin asserts that by not requesting additional information, the Department "fully accepted" Double Coin's responses. The GOC also argues that the Department "chose not to verify" whether the company respondents used the program with the GOC or the companies themselves. The GOC claims that under these circumstances the application of AFA regarding use of the program is not warranted and would be lawful.

**Department's Position:** As explained in the section "USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES," above, the Department finds 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) and (2)(C) 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, it withheld information that we requested that was reasonably available to it. 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 sections 771(5) and 771(5A) of the Act. This finding is similar to the application of AFA in *Pneumatic OTR from China AR Prelim 2016*. In both proceedings, the Department requested program operational information from the GOC, noting information on the record stating the threshold requirement no longer follows the Article 5 of the Administrative Measures of Export Buyer's Credit of EX-IM Bank provided by the GOC as support for the operational procedures of the program.[124] We also noted that financial institutions other than the EX-IM Bank may supply the buyer's credits under this program. The GOC declined to provide the Department information regarding the operation of the program.

The Department has considered all information on the record of this proceeding, including the certifications provided by the respondent companies. However, as explained in Comments 2, 3, and 4, we are unable to rely on information provided by respondent companies due to the Department's lack of a verifiable understanding of the program. Contrary to the assertions of the GOC and the respondent companies, the application of AFA to the GOC and to the respondent companies in this investigation is not automatic. The Department's complete understanding of this program's operation is a prerequisite to our reliance on information provided by the respondent companies regarding non-use. Thus, without the GOC's necessary information, the information provided by the respondent companies is incomplete for reaching a determination of non-use.

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[123] *See* Double Coin's Rebuttal Brief at 4-5; *see* GOC's Rebuttal Brief at 2-3.
[124] *See* September 19 GSQ at 1, *see* Memo to File Placing Information on the Record at Attachments 1 and 2; *see* *Pneumatic OTR from China AR Prelim 2016* and accompanying Issues and Decision Memorandum at 13-14.

**Comment 6: Identification of an AFA Rate for the Export Buyer's Credit Program**

The petitioner argues that the Department should select as AFA the highest calculated rate for the same or a similar program in the same country consistent with established practice.[125] The petitioner argues that 10.54 percent is the applicable rate for a similar program which the Department should assign to both respondents. The petitioner references *Wind Towers from China, CSPV Cells from China, CORE from China, Pneumatic OTR from China AR Prelim 2016*, and *OCTG from China AR 2012*[126] for support.

Guizhou Tyre relies on *Solar Cells from China AR 2012*[127] to argue that the Department should use the rate calculated for Double Coin for the Government Policy Lending Program, as the AFA rate for the Export Buyer's Credit program.

**Department's Position:** As explained in the section "USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES," above, in selecting an AFA rate, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the identical program in another CVD proceeding involving the same country. If no such rate is available, the Department will use the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.[128]

In this proceeding, we are unable to find an identical program in the investigation. Guizhou Tyre's argument to use Double Coin's policy lending rate as the AFA rate does not follow the AFA hierarchy for an investigation, because the policy lending program is similar in terms of treatment of the subsidy (*i.e.*, relates to loans), but not identical, to the export buyer's credit program. Thus, we have examined other Chinese CVD proceedings and selected the 10.54

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[125] *See* Petitioner's Case Brief at 23.
[126] *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 China*) and accompanying Issues and Decision Memorandum at 19 and 20; *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) and accompanying Issues and Decision Memorandum; *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the People's Republic of China: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) (*CORE from China*) and accompanying Issues and Decision Memorandum; *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301, and accompanying Issues and Decision Memorandum.
[127] *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review: 2012*, 80 FR 41003 (July 14, 2015) (*Solar Cells from China AR 2012*).
[128] *See Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*) and accompanying Issues and Decision Memorandum at 2-5; *see SC Paper Final* and accompanying Issues and Decision Memorandum at 30.

percent *ad valorem* rate calculated in *Coated Paper from China* for "Government Policy Lending," a program that provides assistance in the form of preferential interest rates on various types of loans sourced from Chinese-owned financial institutions. Consistent with the Department's practice, this is the highest non-*de-minimis* rate for a similar program in a Chinese proceeding.[129]

**Comment 7: Whether to Adjust the Ocean Freight and Import Duties Included in the Benchmarks for the Input for LTAR Calculations**

Double Coin and the GOC argue that the Department's regulation regarding the use of delivered prices in a Tier 1 or Tier 2 benchmark has limitations and the Department should consider the in-country market conditions to determine whether to include delivery charges in the benchmark.[130] Double Coin and the GOC argue that the Department cannot make adjustments for freight and import duties in all situations. Double Coin further argues that the Department should limit any adjustment that includes ocean freight and import duties to a "representative level" consistent with prevailing market conditions in China. Referencing section 771(5)(E)(iv) of the Act, Article 14 of the SCM Agreement, and HR Carbon Steel Flat Products from India Appellate Body Report,[131] Double Coin and the GOC argue that it is the Department's responsibility to conduct the necessary analysis to determine a country's market conditions and how they affect benchmark adjustments, and that the Department should consider the prominence of the domestic supply relative to the import supply in the market based on information provided by the GOC. Double Coin contends that the Department should adjust the benchmark to include ocean freight and import duties when import levels are high and suggests applying a ratio of domestic to import supply to the duty or ocean freight adjustment.

The petitioner notes that neither Double Coin nor the GOC specified which of the four inputs were subject to "limited or minimal" import transactions or how the Department should reflect the general condition of the relative domestic and import supply beyond an unspecified "domestic/import supply ratio."[132] Referencing the U.S. Court of Appeals for the Federal Circuit's decision in *Essar Steel*,[133] the petitioner argues that the statute, regulation, and case law precedent "require that {freight and import} costs be added to the benchmark prices." The petitioner argues that the Department found at the *Preliminary Determination* that each of the inputs at issue is imported into China and at levels that "do not reflect mere isolated transactions."

**Department's Position:** We disagree with the GOC and Double Coin. We find that the ocean freight information on the record of this investigation conforms to the statute and our regulations regarding delivered prices. Pursuant to 19 CFR 351.511(a)(2)(iv), benchmarks should reflect

[129] *See Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) (*Pipe from Turkey Final)* and accompanying Issues and Decision Memorandum at 5-7.
[130] *See* Double Coin's Case Brief at 11-15; *see* GOC's Case Brief at 9-13.
[131] *See* Double Coin's Case Brief at 12-13 (citing Appellate Body Report, United States-Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India, WTO/DS436/AB/R (December 8, 2014) at paras. 4.249 and 4.306).
[132] *See* Petitioner's Rebuttal Brief at 15-18.
[133] *See* Petitioner's Rebuttal Brief at 16 (citing *Essar Steel Ltd. v. United States*, 678 F 3d. 1268, 1274 (Fed. Cir. 2012) (*Essar Steel*).

"delivered prices" and should include import and delivery charges. The record of each proceeding is separate from the records of other proceedings. Available on the record of this proceeding is information regarding market ocean freight charges from Maersk and actual import transactions which include delivery charges submitted by both respondents. Neither the statute nor the regulations require or instruct the Department to conduct a market analysis of ocean freight rates as suggested by the GOC and Double Coin. As the petitioner noted, in *Essar Steel*, the Federal Circuit stated that "{b}oth the statute and the regulation {…} require that {freight and import} costs be added to the benchmark." As provided in our regulations, and as we explained in *Softwood Lumber from Canada,* the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation (*i.e.*, Tier one). This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.[134] We continue to find that information on actual import transactions on the record reported by both respondents is reliable, including the delivery price data. We also continue to find the ocean freight data sourced from Maersk on the record reliable and usable in the final determination.

**Comment 8: Whether the Ocean Freight Data includes "Aberrational" Prices**

Guizhou Tyre argues that the Department should omit from the applicable benchmark prices ocean freight rates that are significantly higher than the rates from other countries, specifically the freight rates from Long Beach, California to the port of Shekou, China,[135] which Guizhou Tyre contends are "aberrational." Guizhou Tyre asserts that these freight rates were seven times larger than any other freight costs on record, including the freight rates from Long Beach, California to the ports of Qingdao or Lianyunyang, China. Referencing *Iron Mechanical Transfer Drive Components from China*,[136] Guizhou Tyre argues that the Department has previously excluded similar aberrational freight costs from the ocean freight cost applied to the benchmark. Guizhou Tyre quotes *Iron Mechanical Transfer Drive Components from China* regarding the description of the ocean freight costs between the ports of Long Beach, California to Qingdao, China during a four-month period as being eleven times higher than the costs during the rest of the year and five to ten times higher than other routes on the record. Guizhou Tyre also quotes the Department's position, where the Department excluded aberrational freight costs from Long Beach, California to Qingdao, China, and urges the Department to follow this precedent.

The petitioner urges the Department to reject Guizhou Tyre's argument, citing to *53-Foot Domestic Dry Containers From China*,[137] in which the Department did not exclude ocean freight rates from North America. According to the petitioner, the Department has repeatedly stated that

[134] *See Final of Countervailing Duty Determination: Certain Softwood Lumber Products from Canada*, 57 FR 8800 (March 11, 1992) (*Softwood Lumber from Canada*) and accompanying IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."
[135] *See* Guizhou Tyre Case Brief at 13-14.
[136] *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) (*Iron Mechanical Transfer Drive Components from China*) and accompanying Issues and Decision Memorandum at Comment 7.
[137] *See 53-Foot Domestic Dry Containers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 21209 (April 17, 2015) and accompanying Issues and Decision Memorandum at Comment 6D.

it will disregard freight quotes from North America only if there is evidence that the North American input product was not available for purchase by Chinese companies or if the Department used data sources which would allow the Department to match the freight sources with the sources for the benchmarks.[138] In the alternative, if the Department excludes the freight rates from Long Beach to Shekou, it should do so only for the January to April 2015 period.

**Department's Position:** We have reviewed the Maersk ocean freight data and we agree with Guizhou Tyre that these particular Long Beach freight rates are aberrational. In *Iron Mechanical Transfer Drive Components from China*, the Department disregarded aberrational shipping rate data for the rates from the port of Long Beach for certain months, when calculating the ocean freight component of benchmarks.[139] We agree with Guizhou Tyre that it is appropriate to disregard the aberrational freight rates, and we agree with the petitioner that those rates occur only in the months of January to April 2015. Accordingly, we have not included in the ocean freight component of our benchmark the January through April prices for Long Beach to Shekou.

**Comment 9: Whether to Use Carbon Black World Market Prices Reported in US Dollars per MT**

The petitioner argues that, for the carbon black benchmark calculation, the Department should use the monthly average dollar per metric ton values of world exports.[140] The petitioner notes that in the *Preliminary Determination*, the Department converted monthly dollar per kilogram average unit values and argues that the Department should use the values on the record that have already been converted for a more accurate benchmark. No other party provided comments.

**Department's Position:** The Department has reviewed its calculations. For purposes of the final determination, we are relying on the carbon black world market price benchmark information that was provided on the basis of U.S. dollars per metric ton, as requested by the petitioner. We have adjusted the calculations accordingly.[141]

**Comment 10: Whether to Include Brokerage and Handling Costs in the Benchmarks for Carbon Black and Nylon Cord**

The petitioner argues that the Department should include brokerage and handling costs in the benchmarks for carbon black and nylon cord because these costs are included in a delivered price.[142] The petitioner notes that in the preliminary determination the Department omitted brokerage and handling costs from the benchmark components that included ocean freight, import duties, VAT, and inland freight per 19 CFR 351.511(a)(2)(iv). The petitioner argues that the Department should include brokerage and handling costs because they are part of the price to

[138] *Id.*; *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review*, 80 FR 77318 (December 14, 2015) and accompanying Issues and Decision Memorandum at Comment 5.
[139] *See Iron Mechanical Drive Transfer Components from China* and the accompanying Issues and Decision Memorandum at Comment 7.
[140] *See* Petitioner's Case Brief at 30-31.
[141] *See* Final Calculation Memoranda; *see* Letter to the Department, "Truck and Bus Tires from the People's Republic of China – Petitioner's Benchmark Factual Information," (May 31, 2016) (Benchmark Information) Exhibit 9.
[142] *See* Petitioner's Case Brief at 30-32.

import the products, referencing *Coated Paper from China*.[143] The petitioner notes that there is information regarding brokerage and handling costs in China in the Petition.

The GOC, Double Coin, and Guizhou Tyre dispute the petitioner's argument, arguing that the Department should not "add positive adjustments for brokerage and handling fees when using Maersk data for ocean freight rates because Maersk's rates already include brokerage and handling fees."[144] Referencing *Aluminum Extrusions from China AR*[145] and *PSCS Wire Strand from China,*[146] the GOC, Double Coin, and Guizhou Tyre note that the Department stated "we have not added separate brokerage, handling, and documentation fees to the benchmark because we find that such costs are already reflected in the ocean freight cost from Maersk." The GOC and Double Coin further argue that WTO and statutory obligations require "prevailing transportation costs for the goods in the country of investigation" and that the Department "must avoid any ocean freight or import duty adjustment if the import transactions for the input in question are limited or minimal." The GOC contends that the petitioner's argument would lead to double-counting brokerage and handling costs and Double Coin argues that if import levels are not minimal, then the Department must evaluate the prevailing market conditions to be consistent with statutory and WTO obligations. Guizhou Tyre argues that brokerage and handling costs should not be added because they are included in CIF pricing.

**Department's Position:** Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration using Tier one or Tier two benchmarks, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices for the provision of carbon black and nylon cord, we ensured that ocean freight and inland freight were included. Specifically, we included ocean freight pricing data from the Maersk shipping company placed on the record by the petitioner.[147] The Department has relied on Maersk for shipping data in other proceedings and continues to find the information reliable. Furthermore, the Maersk data is the only information on the record for ocean freight. We continue to rely on the Maersk information for ocean freight rates for purposes of this final determination.[148] These ocean freight rates are inclusive of brokerage, handling, and documentation fees.[149] Thus, we disagree with the petitioner that it is necessary to add amounts to the Maersk ocean freight rates for brokerage, handling, and documentation fees.

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143 *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination*, 75 FR 59209 (September 27, 2010) (*Coated Paper from China*) and accompanying Issues and Decision Memorandum.
144 *See* GOC's Rebuttal Brief at 5-6, *see* Double Coin's Rebuttal Brief at 9-11, *see* Guizhou Tyre's Rebuttal Brief at 7-8.
145 *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Administrative Review*; 2010 and 2011, 79 FR 106 (January 2, 2014) (*Aluminum Extrusions from China AR*) and accompanying Issues and Decision Memorandum.
146 *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (*PSCS Wire Strand from China*) and accompanying Issues and Decision Memorandum.
147 *See* Letter to the Department, "Truck and Bus Tires from the People's Republic of China – Petitioner's Benchmark Factual Information," (May 31, 2016) (Benchmark Information) at 8-9 and Exhibits 17 and 18.
148 *Id.*; *see Aluminum Extrusions from China AR* and accompanying Issues and Decision Memorandum at 28.
149 *See* Benchmark Information Exhibits 17, 18, 19, 20. The supporting documentation for each rate states that "Terminal Handling Service – Origin" and "Documentation Fee – Destination" fees are included in the quoted price.

**Comment 11: Whether to Average Benchmark Prices**

Guizhou Tyre argues that the Department should not average the benchmarks on the record for the provisions of carbon black, nylon cord, synthetic rubber and butadiene, and natural rubber for LTAR calculations.[150] Guizhou Tyre contends that 19 CFR 351.511(a)(2)(ii), which the Department references when averaging world benchmark prices, is inconsistent with section 771(5)(E)(iv) of the Act, which states that the price paid by the respondent needs to be "adequate." Guizhou Tyre contends that the primary goal of the statute and regulations is to identify a benchmark that would result in a comparison between the allegedly subsidized price and a market price that is available or reasonably available to the respondent purchaser. Guizhou Tyre notes that 19 CFR 351.511(a)(2)(i) articulates the goal in selecting a benchmark as selecting a price based on "actual transactions from the country in question." Guizhou Tyre then argues that 19 CFR 351.511(a)(2)(ii) includes additional detail on how the benefit is to be quantified that is not required by the statute and that the regulation goes beyond its "gap filling" purpose.[151] Guizhou Tyre further argues that the averaging requirement is contrary to the intention to achieve the most specific comparison possible by comparing "generic" average market prices to an individual subsidized transaction price.[152] Referencing *Mittal Canada v. United States,*[153] Guizhou Tyre argues that averaging market prices does not result in an "adequate" price to use for a benchmark. Guizhou Tyre argues that because there is no additional explanation in the *Preamble* regarding the Department's averaging of more than one commercially available market price, the Department's interpretation of the statute is internally inconsistent and, thus, the lack of a similar averaging requirement for Tier one prices shows the Department's methodology is inconsistent and arbitrary. Guizhou Tyre further argues that each market price on the record is an "adequate" price; that using an average market price does not address the question of whether the respondent's input purchase was made at "an adequate market price;" and the averaging of prices is tantamount to determining that the lower half of market prices used in the average are not "adequate."

Guizhou Tyre contents that the respondent's benefit is only the gap between its purchase price and the lowest available market price, claiming that any benefit calculated using a higher price is overstated. Providing an example of this difference, Guizhou Tyre argues that using an average market price rather than the lowest market price penalizes the respondent for not purchasing at average market levels and not a "merely adequate level" as required by the statute. Referencing, *Dorbest Ltd. v United States*,[154] Guizhou Tyre argues that averaging results in a disproportionate inclusion of higher priced data and thus the data is unreliable. Guizhou Tyre references *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, *Yantai Oriental Juice Co. v. United States* and *Wuhan Bee Healthy Co. v. United States*, arguing that a reason is needed for an industry to import inputs, the Department would need to explain and show evidence that a producer would choose an imported input over a domestically sourced input, and that a domestic

[150] *See* Guizhou Tyre Case Brief at 4-9.
[151] *See* Guizhou Tyre Case Brief at 5 (citing *Chevron, U.S.A., Inc. v. NRDC, Inc*., 467 U.S. 837, 843-844 (1984)).
[152] *See* Guizhou Tyre Case Brief at 5 (citing *NSK Ltd. V. United States*, 390 F.3d 1352, 1358 (Fed. Cir. 2004)).
[153] *See* Guizhou Tyre Case Brief at 5-6 (citing *Mittal Canada, Inc. v. United States*, 30 CIT 1565 (2006) (*Mittal Canada v. United States*)).
[154] *See* Guizhou Tyre Case Brief at 7 (citing *Dorbest Ltd. v. United States*, 30 CIT 1671, 1688 (2006*), reversed on other grounds*, 604 F. 3d 1363 (Fed. Cir. 2010)).

producer would be unlikely to purchase an imported input if the imported input was priced significantly higher than the domestically sourced input.

Guizhou Tyre states that some prices of its domestically sourced inputs were less than the prices of some of the imported inputs, but because of the averaging, the same domestically sourced inputs resulted in a calculated benefit. Guizhou Tyre concludes by asserting that only by comparing its domestically purchased inputs to the lowest market price on record does the measurement of the adequacy of remuneration remain consistent with section 771(5)(E)(iv) of the Act.

The petitioner disputes Guizhou Tyre's arguments, arguing that the Department's regulations explicitly require the Department to average commercially available world prices and that the CIT has already upheld averaging available prices rather than using the lowest input prices available.[155] Referencing *Passenger Tires from China Investigation*,[156] *Frozen Shrimp from Ecuador Investigation, Steel Wire from China Investigation,*[157] *Pneumatic OTR from China AR 2011*,[158] *Seamless Pipe from China Investigation*,[159] and *Beijing Tianhai v United States*,[160] the petitioner argues that the Department has consistently averaged available prices within the country to calculate Tier 1 and Tier 2 benchmarks, as required by 19 CFR 351.511(a)(2)(i) and (ii). Moreover, according to the petitioner, in *RZBC v United States*[161] and *Beijing Tianhai v United States*, the CIT rejected Guizhou Tyre's argument equating an "adequate" price to the lowest market price. Specifically, the petitioner notes that the CIT held that "it was reasonable for Commerce to equate 'prevailing market conditions' with average market conditions" because the statute "does not explain what it means for conditions to 'prevail' in the home market." The petitioner further notes that the CIT referenced Black's Law Dictionary 1380 (10th ed. 2014), to state that an average is "the predominant or typical case within a sample," and thus, according to the petitioner, the statute commands the Department's use of average country-level prices for a Tier 2 benchmark. As such, this approach is reasonable. The petitioner further argues that *RZBC v. United States* indicated that using the lowest available market price does not "align with prevailing market conditions" and in *Beijing Tianhai v. United States*, the CIT refuted the

[155] *See* Petitioner's Rebuttal Brief at 4-8.
[156] *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 China Final*), and accompanying Issues and Decision Memorandum at 28.
[157] *Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012) (*Steel Wire from China Investigation*), and accompanying Issues and Decision Memorandum at Comment 8.
[158] *New Pneumatic Off-the Road Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64274-75 (October 19, 2010), unchanged in *New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286, 23288 (April 26, 2011) (*Pneumatic OTR Tires from China AR 2011*).
[159] *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Determination*, *Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010) (*Seamless Pipe from China Investigation*) and accompanying Issues and Decision Memorandum at Comment 9.
[160] *See* Petitioner's Rebuttal Brief at 5 (citing *Beijing Tianhai Indus. Co. v. United States*, 52 F. Supp. 3d 1351, 1369 (CIT 2015) (*Beijing Tianhai. v. United States*)).
[161] *See* Petitioner's Rebuttal Brief at 6 (citing *RZBC Grp. Shareholding Co. v. United States*, 100 F. Supp. 3d 1288, 1306-07 (CIT 2015) (*RZBC v United States*)).

premise that a producer would necessarily purchase the lowest priced input. The petitioner also argues that the logic of these cases also applies to Tier 1 benchmarks, because averaging the available prices within a country ensures that a benchmark reflects the prevailing market conditions under section 771(5)(E) of the Act. The petitioner, providing a hypothetical example, argues that Guizhou Tyre's position would incentivize gamesmanship to avoid countervailing duties by ensuring artificially low prices are included in the monthly purchases of inputs.

**Department's Position:** As provided in 19 CFR 351.511(a)(2)(ii), the Department will average all world market prices:

> {i}f there is no usable market-determined price with which to make the comparison under paragraph (a)(2)(i) of this section, the Secretary will seek to measure the adequacy of remuneration by comparing the government price to a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question. Where there is more than one commercially viable world market price, the Secretary ***will average*** such prices to the extent practicable, making due allowances for factors affecting comparability. (emphasis added)

The regulation is clear and it provides no basis for selecting the lowest monthly world market price as the benchmark for measuring the adequacy of remuneration.[162] We have interpreted this provision of our regulations within the context of our goal to derive the most robust benchmark possible and, thus, we have sought to include as many data points on the record as possible. Regarding Guizhou Tyre's argument that the Department cannot equate "prevailing market conditions" with "prevailing average condition," the CIT disagreed in *Beijing Tianhai v. United States*. Also, as the petitioner noted, the CIT has found that "the lowest available market price" does not represent "prevailing market conditions," and the CIT has rejected the premise that a producer would necessarily purchase the lowest priced input.[163]

We agree with the petitioner that this practice also applies to Tier 1 benchmarks when there are multiple import prices available and they are comparable.

**Comment 12: Whether to Use Actual Import Prices as the Benchmark for Measuring the Benefit from the Provision of Synthetic Rubber and Butadiene for LTAR**

Double Coin and Guizhou Tyre argue that the benchmark the Department used to calculate the benefit for the provision of synthetic rubber is not appropriate because the type of imported synthetic rubber purchased by the respondents is limited in scope compared to the many types of synthetic rubber covered by the allegation.[164] Double Coin asserts that, of the numerous varieties of synthetic rubber, the respondents imported only a small quantity of higher quality at

[162] *See High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*Steel Cylinders from China*), and accompanying Issues and Decision Memorandum at 40-42.
[163] *See RZBC v United States*, 100 F. Supp. 3d at 1307 (citing *Chevron, U.S.A, Inc. v Nat'l Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984)).
[164] *See* Double Coin Case Brief at 15-16; *see* Guizhou Tyre's Case Brief at 9-11.

a price roughly 30 percent higher than the average Chinese import price. Double Coin contends that it would have no reason to import if synthetic rubber were homogenous and the price difference indicates that the import purchases are not indicative of the broader synthetic rubber market reflected in the import prices submitted by the petitioner. Guizhou Tyre claims that the characteristics of the imported synthetic rubber are very different from the domestically purchased synthetic rubber. Both respondents argue that using a limited scope of the input variety contradicts 19 CFR 351.511, which states the Department will "consider product similarity" and using the actual prices of synthetic rubber imports limits the scope of the product variety and results in an inflated benefit.

The petitioner rebuts the respondents' arguments, stating that the Department's use of actual transactions for Tier 1 benchmarks is consistent with Department's practice and that the actual transactions of synthetic rubber reported by both respondents are preferred, because they are precise.[165] The petitioner notes that neither respondent argued that a Tier 1 benchmark is inappropriate and references *Pneumatic OTR Investigation Final 2008*[166] and *Pneumatic OTR AR Prelim 2016*[167] to support its argument that respondent-specific Tier 1 benchmarks are the most accurate way to measure the adequacy of remuneration. The petitioner notes the similarity in the import purchase prices reported by the respondents, and contends that because both respondents produce the same subject merchandise, then both would purchase the same types of rubber. The petitioner argues that there is no record evidence to suggest any significant differences in imported and domestic products or that the synthetic rubber respondents purchased domestically spans all types of synthetic rubber. The petitioner further argues that the price difference between the domestic and import purchases is more suggestive of domestic subsidization and that the small quantity of import purchases does not render the import data unreliable.

**Department's Position:** The adequacy of remuneration for government-provided goods or services is determined, pursuant to 19 CFR 351.511(a)(2), against comparable benchmark prices to determine whether the government provided goods or services for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (Tier one); (2) world market prices that would be available to purchasers in the country under investigation (Tier two); or (3) an assessment of whether the government price is consistent with market principles (Tier three). As provided in our regulations, and as we explained in *Softwood Lumber from Canada,* the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation (*i.e.*, Tier one). This is because such prices generally would be expected to reflect the most closely the prevailing market conditions of the purchaser under investigation.[168]

[165] *See* Petitioner's Rebuttal Brief at 10-12.
[166] *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 18, 2008) (*Pneumatic OTR Investigation Final 2008*) and accompanying Issues and Decision Memorandum at 11.
[167] *Pneumatic OTR AR Prelim 2016* and accompanying Preliminary Decision Memorandum at 32.
[168] *See Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) (*HRS Products from India AR*) and accompanying Issues and Decision Memorandum at Comment 26; *see also Final of Countervailing Duty Determination: Certain Softwood Lumber*

As stated above, the Department determined that it is appropriate to use a Tier 1 benchmark for measuring the adequacy of remuneration from the provision of Synthetic Rubber and Butadiene and we relied on actual import purchase prices provided from imports by both respondent companies. While both Double Coin and Guizhou Tyre argue that these import prices do not provide an appropriate benchmark because the type of synthetic rubber they import is not comparable to the allegedly LTAR purchases we are examining, there is no evidence on the record to support their claims. There is no basis in the record to distinguish imports of synthetic rubber from the domestic purchases based on type and quality that would render the otherwise usable Tier 1 benchmarks prices not comparable. Moreover, the respondents' argument regarding the quantity of such purchases is not relevant to our analysis. We also disagree that the noted differences in prices between the domestic and imported purchases suggest that the purchases are not comparable and find that the actual import purchase price data is reliable.

**Comment 13: Whether to Include in the Benefit Calculation Purchases of Synthetic Rubber and Butadiene Produced by a Russian Company**

Guizhou Tyre argues that it is inappropriate for the Department to calculate a benefit from its purchases of synthetic rubber that was produced in Russia. Further, the GOC was "never in the position" to provide ownership information regarding this Russian producer due to its foreign location.[169] Guizhou Tyre also argues that there is no evidence a foreign rubber producer followed Chinese industrial policies or is a Chinese government authority, and thus purchases made from this producer should not be included in the benchmark calculation.

The petitioner asserts that the rubber was purchased from a Chinese supplier, which the petitioner states is a state-invested enterprise.[170] The petitioner also argues that the GOC failed to provide the Department ownership information about all of the suppliers, thus all purchases from the Chinese supplier are countervailable and should be included in the calculation.

**Department's Position:** The record information demonstrates that certain of Guizhou Tyre's purchases of synthetic rubber and butadiene were of Russian origin. Specifically, information provided by both the GOC and Guizhou Tyre indicates that the Chinese supplier obtained the synthetic rubber from a Russian producer.[171] Under our practice, there is a financial contribution if the producer of the input is an "authority" within the meaning of section 771(5)(B) of the Act, and the intermediary supplier or trading company's state-owned status is irrelevant.[172] The Russian producer cannot be a Chinese "authority" within the meaning of section 771(5)(B) of the

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*Products from Canada*, 57 FR 8800 (March 11, 1992) (*Softwood Lumber from Canada*) and accompanying Issues and Decision Memorandum at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

[169] *See* Guizhou Tyre's Case Brief at 11-12.

[170] *See* Petitioner's Rebuttal Brief at 12-15.

[171] *See* GQR-B Exhibit II.E.18; *see* GZQR-C Exhibit P.E.6.

[172] *See Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying Issues and Decision Memorandum at Comment 6.

Act. Therefore, we have not included these inputs in our calculation of the benefit from the provision of synthetic rubber and butadiene for LTAR.[173]

**Comment 14: Whether to Include in the Benefit Calculation Purchases of Inputs from Cross-Owned Affiliates**

Double Coin argues that the Department incorrectly included in its benefit calculation purchases of carbon black, nylon cord, synthetic rubber and butadiene, and natural rubber purchases from cross-owned affiliates. Double Coin notes that Jiangsu Tyre and Chongqing Tyre sourced inputs exclusively from Double Coin or Shanghai Supply and to include these purchases would capture any benefit twice in the calculations. According to Double Coin, the Department acknowledged this error in its memorandum addressing Double Coin's ministerial error allegation. The petitioner did not comment on this argument.

**Department's Position:** We agree that our calculations for the *Preliminary Determination* double-counted the benefits from the provision of inputs for LTAR when we measured the benefits from the provision of inputs to Double Coin and Shanghai Supply, and then measured the benefits from the acquisition of inputs by any of the cross-owned tire producers from Double Coin or Shanghai Supply. We have removed from the calculation the inputs provided by Double Coin or Shanghai Supply to the cross-owned tire producers, and have thus removed the double counting.[174]

**Comment 15: Whether to Treat Double Coin as a Parent Company or as a Producer for the Purposes of its Sales Denominator**

Double Coin argues that the Department should change Double Coin's attribution application in the final determination.[175] In the *Preliminary Results*, the Department attributed any subsidy received by Double Coin or Jiangsu Tyre, Chongqing Tyre, Donghai Tyre, and Kunlun Tyre (all identified as truck and bus tire producers) to the combined sales for all five companies, net of intercompany transactions, pursuant to 19 CFR 351.525(b)(6)(ii). Double Coin argues that the Department should treat Double Coin as a parent company under 19 CFR 351.525(b)(6)(iii), which provides that when there is "a subsidy received by a holding company, including a parent company with its own operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries."[176] Double Coin argues that the fact that it is also a producer of truck and bus tires does not preclude the application of this rule, the only exception to which is a parent company that is a holding company that "merely serves as a conduit for the transfer of the subsidy." This exception does not apply, according to Double Coin. Referencing *OCTG from China Investigation*, *Coated Paper from China*,[177] and *Iron*

[173] *See Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review: 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid from China AR 2012*) and accompanying Issues and Decision Memorandum at 79; *see also* Guizhou Tyre Final Calculation Memorandum.
[174] *See* Double Coin Final Calculation Memorandum.
[175] *See* Double Coin's Case Brief at 5-9.
[176] *Id*. at 5-7.
[177] *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 59212 (September 27, 2010) (*Coated Paper from China*) and accompanying Issues and Decision Memorandum.

*Mechanical Transfer Drive Components from China Preliminary Determination*,[178] Double Coin argues that the Department has found where the parent company and cross-owned affiliates produce subject merchandise, the parent company attribution regulation is applicable, and that the approach was upheld by the CIT.[179]

Finally, Double Coin argues that the Department's decision to treat Double Coin as a producer of subject merchandise and not as a parent company is an unexplained departure from Department practice, and was, therefore, arbitrary and capricious. Ample court precedent, according to Double Coin, requires the Department to provide a "reasoned analysis" for a change in prior practice and explain why the change is occurring.[180]

Double Coin notes that attributing Double Coin's subsidies to its consolidated sales instead of the combined sales of all the truck and bus tire producers would significantly reduce the countervailable subsidy rate; the Department should make this change for the final determination.

The petitioner notes that the Department rejected this argument when Double Coin submitted it as a ministerial error and that the Department stated that the preliminary determination calculation reflected an intentional, methodological choice.[181]

**Department's Position:** In the *Preliminary Determination*, we attributed subsidies received by Double Coin to the combined sales of Double Coin (on an unconsolidated basis) and its cross-owned tire producers (net of intercompany sales), under the "producer rule," 19 CFR 351.525(b)(6)(ii). We note that the *Preamble* allows for a certain amount of flexibility when the Department is applying its attribution rules because, "depending on the facts, several of the different rules may come into play at the same time."[182] Given the facts presented in this investigation, for purposes of this final determination, we find that it is appropriate to attribute subsidies provided directly to Double Coin to Double Coin's consolidated sales. As Double Coin notes, the "parent rule" of 19 CFR 351.525(b)(6)(iii) is applicable, even when the parent is also a producer of subject merchandise, and even when there are multiple cross-owned affiliates producing subject merchandise. The CIT has upheld the application of the parent rule in this scenario.[183] Thus, for this final determination, we have attributed subsidies provided directly to Double Coin to Double Coin's *consolidated* sales, *i.e.*, Double Coin's sales on a parent company basis. For subsidies provided to any of Double Coin's cross-owned producers of subject

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[178] *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components From the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 21316 (April 11, 2016) (*Iron Mechanical Transfer Drive Components from China Preliminary Determination*) and accompanying PDM.
[179] *See* Double Coin Case Brief at 6 (citing *TMK IPSCO et. Al. v. United States*, 2016 WL 3693714, at * 17 (CIT 2016).
[180] *See* Double Coin Case Brief at 8 (citing *Motor Vehicle Mfrs. Ass'n of the U.S. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 57 (1983); *Trustees in Bankruptcy of North Am. Rubber Thread Co., v. United States*, 533 F. Supp. 2d. 290, 1295 (CIT 2007) (citing *Consol. Bearings Co. V. United States*, 348 F. 3d 997, 1007 (Fed. Cir. 2003)); *Huvis Corp. v. United States*, 525 F. Supp. 2d 1370, 1380 (CIT 2007) (citing *Nippon Steel Corp. V. U.S. Int'l Trade Comm'n*, 494 F.3d 1371, 1378 n.5 (Fed. Cir. 2007).
[181] *See* Petitioner's Rebuttal Brief at 37.
[182] *See Countervailing Duties*, 63 FR 65348, 65399 (Nov. 25, 1998) (*Preamble*).
[183] *See TMK IPSCO et. al. v. United States*, No. 10-00055, 2016 WL 3693714, at * 17 (CIT June 24, 2016).

merchandise, we have continued to attribute them to Double Coin under the "producer rule" of 19 CFR 351.525(b)(6)(ii), dividing the benefits from such subsidies by the combined sales of the Double Coin Tire Producers, including the *unconsolidated* sales of Double Coin, *i.e.*, Double Coin's sales as a producer of tires, net of intercompany sales.

**Comment 16: Whether to Adjust Double Coin's Sales Denominator**

The petitioner argues that the Department should make four adjustments to Double Coin's sales denominators for the final determination.[184] The petitioner states that for the *Preliminary Determination* and the Post-Preliminary Determination, the Department relied on information Double Coin submitted in DQR-C.[185] The petitioner argues that the Department should: (1) use the revised sales data submitted in Double Coin's June SQR and Double Coin's Verification Corrections; (2) correctly exclude intercompany sales; (3) use the correct sales denominator when calculating the subsidy rate for export subsidies received by Jiangsu Tyre and Chongqing Tyre; and (4) use the correct total and export sales denominator for Kunlun Tyre.

The petitioner argues that despite its stated intent to calculate sales "net of intercompany transactions," the Department did not accurately remove reported intercompany sales for Double Coin and its cross-owned affiliates for the preliminary and the post-preliminary calculations. The Department should make the necessary adjustments for the final determination. Double Coin did not comment on this issue.

**Department's Position:** On the basis of information provided by Double Coin after the *Preliminary Determination* and in verification corrections, as well as the comments of the petitioner, we have made the petitioner's four recommended adjustments to the denominators.[186]

**Comment 17: Whether to Recognize Double Coin's 2016 Name Change**

Double Coin argues that the Department should recognize the legal name change that occurred in 2016 and refer to both names in the final determination and corresponding communication with Customs Border Protection (CBP).[187] Double Coin states it notified the Department prior to the preliminary determination of its legal name change, provided information requested by the Department after the preliminary determination, and the information was verified by the Department. Double Coin contends that the Department should refer to Double Coin as both Double Coin Holdings Ltd. and Shanghai Huayi Group Corporation Limited in its final determination, and the cash deposit instructions to CBP, to avoid continued impact on export shipments of Double Coin. The petitioner did not comment on this issue.

**Department's Position:** The Department has reviewed and verified the information provided since the *Preliminary Determination* by Double Coin regarding the change of its name to Shanghai Huayi Group Corporation Limited and we agree that in this instance it is appropriate to

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[184] *See* Petitioner's Case Brief at 8-10.
[185] See Double Coin's CVD Questionnaire Response (Part 2- Program -specific questions): Certain Truck and Bus Tires From the People's Republic of China (C-570-041)" (May 19, 2016) (DQR-C).
[186] *See* Double Coin Final Calculation Memorandum.
[187] *See* Double Coin's Case Brief at 3.

recognize both names for the purposes of this final determination and related cash deposit instructions to CBP.[188] As a result, the Department will apply Double Coin's estimated countervailable subsidy rate and cash deposit requirements to Shanghai Huayi Group Corporation Limited. However, because this decision is effective with the issuance of this final determination, there is no basis for issuing instructions to CBP to change the cash deposit rate applicable to entries suspended based on the *Preliminary Determination*.

**Comment 18: Whether to Attribute to Double Coin Subsidies Received by Kunlun Engineering**

The petitioner asserts that the Department correctly determined in the Post-Preliminary Determination that Kunlun Engineering is cross-owned with Double Coin as an input supplier and argues the Department should continue this conclusion in the final determination.[189] The petitioner notes that Double Coin stated in its June DSQR that Kunlun Engineering is cross-owned because it meets "the attribution rules given its provision of particular inputs." The petitioner also states that, in the Post-Preliminary Determination, the Department correctly attributed subsidies received by Kunlun Engineering to the combined sales of the Double Coin Tire Producers and Kunlun Engineering, net of intercompany transactions. The petitioner argues that the Department should attribute all subsidies received by Kunlun Engineering, not just the subsidies addressed in the Post-Preliminary Determination, to the same sales denominator in the final determination. No other party submitted comments on this issue.

**Department's Position:** As explained above in the "Attribution of Subsidies" section, the Department finds that Kunlun Engineering is a cross-owned input supplier of Double Coin's. As such we are attributing to the Double Coin Tire Producers the benefits received by Kunlun Engineering as an input supplier pursuant to 19 CFR 351.525(b)(6)(iv).[190] These include benefits received under programs addressed in the *Preliminary Determination*, as well as in the Post-Preliminary Determination.

**Comment 19: Whether to Attribute to Double Coin Subsidies Received by Tyre Research Institute**

The petitioner argues that the Department should consider Tyre Research Institute to be a cross-owned input supplier to Double Coin and should attribute to Double Coin all subsidies received by Tyre Research Institute accordingly for the final determination. The petitioner references Double Coin's June DSQR and the Double Coin Verification Report, noting that Double Coin reported that Tyre Research Institute benefits from a tax subsidy as a producer of truck and bus tires that Double Coin actually produced, processed, and sold. The petitioner also argues that subsidies received by Tyre Research Institute are attributable to Double Coin under 19 CFR 351.525(b)(6)(ii) because Tyre Research produces truck and bus tires. The petitioner also argues, in the alternative, that subsidies received by Tyre Research Institute should be attributable to Double Coin under CFR 351.525(b)(6)(v), because Tyre Research Institute transferred subsides to Double Coin. The petitioner argues that the operational procedures used

[188] *See* Double Coin Verification Report at 5-6.
[189] *See* Petitioner's Case Brief at 13-15.
[190] *See* Double Coin Final Calculation Memorandum.

by Double Coin and Tyre Research Institute must not be permitted to shield subsidies that Tyre Research Institute received based on Double Coin's production of truck and bus tires. The petitioner provided, based on business proprietary information, the sales denominator it believes is appropriate for attributing to Double Coin the subsides received by Tyre Research Institute. The petitioner notes that Tyre Research Institute benefited from a tax reduction under the Income Tax Reductions for High- and New- Technology Enterprises program and the Enterprise Income Tax Law, Research and Development Program, which the Department found countervailable at the *Preliminary Determination* and in prior proceedings.[191] The petitioner argues that the Department should also find grants received by Tyre Research Institute to be countervailable in the final determination.

Double Coin argues that the Department should not include the benefits from subsidies received by Tyre Research Institute in Double Coin's final determination calculations, because Tyre Research Institute is not a producer. According to Double Coin, the tolling arrangement is only for accounting purposes. Double Coin contends that Tyre Research Institute is not a "producer" or input supplier of subject merchandise because Tyre Research Institute does not have direct production-related activities or staff, all production-related activity is associated with the toll processing arrangement, and Tyre Research Institute is never physically in control of the inputs or finished product. Double Coin also argues that the tax deduction benefit stays with Tyre Research Institute and is not transferred, and thus Tyre Research Institute cannot be considered a transferor.

**Department's Position:** In order to be eligible for Tax Reductions for High- and New-Technology Enterprises, a company must be a "producer." Tyre Research Institute fulfills this eligibility requirement by having tires produced for it under a tolling arrangement. As explained in the "Attribution of Subsidies" section above, the Department finds Tyre Research Institute to be a cross-owned producer of tires. Double Coin reported that Tyre Research Institute produces subject merchandise through a tolling arrangement under which Double Coin produces tires for Tyre Research Institute in accordance with the specifications provided by Tyre Research Institute.[192] In addition, Tyre Research Institute procures and retains title to the input materials it supplies for Double Coin's tolled production. The Department verified this statement with company officials and reviewed Tyre Research Institute's accounting records and procedures related to the tolling arrangement.[193] Sales of the resulting tires produced under this tolling arrangement are recorded in Tyre Research Institute's financial statements.[194] The fact that Tyre Research Institute does not have its own production-related facilities, activities, or staff is not dispositive where it has structured the tolling arrangement with Double Coin in order to be considered the producer of the subject merchandise. On this basis, it is appropriate to attribute to

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[191] *See Passenger Tires from China Final* and accompanying Issues and Decision Memorandum at 31-32; *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) and accompanying Issues and Decision Memorandum at 25-28; *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012) and accompanying Issues and Decision Memorandum at 5 and 17.
[192] *See* June DSQR Exhibit 9; *see* Double Coin's Verification Corrections.
[193] *See* Double Coin's Verification Report at 5, 7.
[194] *See* June DSQR Exhibit 9.

the Double Coin Tire Producers subsidies received by Tyre Research Institute under 19 CFR 351.525(b)(6)(ii).

**Comment 20: Whether to Adjust Guizhou Tyre's Sales Denominator**

The petitioner argues that four changes should be made to the sales denominator used by the Department for the final determination.[195] First, the petitioner notes that the Department based the information for Guizhou Tyre's sales denominator used in the *Preliminary Determination* on information from Guizhou Tyre's GZQR-B and based Guizhou Tyre's sales denominator in the Post-Preliminary Determination on information reported in Guizhou Tyre's October GZQR.[196] The petitioner argues that the Department should: (1) use the revised sales values provided in Guizhou Tyre's June GZQR;[197] (2) account for the export sales values for the average useful life (AUL) period prior to the period of investigation, as done in the Post-Preliminary Determination; (3) correctly exclude intercompany sales between GTC and Guizhou Dalishi Tire Co. Ltd. (GDT); and (4) correctly deduct GTC's freight from Guizhou Tyre's total sales.

Regarding excluding intercompany sales, the petitioner notes that GDT and GTC both submitted sales amounts related to intercompany sales for a three-year period, and argues that the Department should deduct these sales amounts from Guizhou Tyre's total sales denominator for the three-year period.

The petitioner references 19 CFR 351.525(a), noting the Department's stated practice to use FOB sales values for its denominator. The petitioner also references Guizhou Tyre's Verification Correction, asserting that the sales value adjustments show that for GTC, the freight costs were removed from an account other than "Main Operation Revenue," which, according to the petitioner, Guizhou Tyre identified as its total sales. The Department should apply the freight deduction to this value for purposes of the total sales denominator for the final determination.

Guizhou Tyre disagrees with the petitioner, asserting that for the final determination, the Department should use a sales denominator that includes "Other Operating Revenue."[198] Guizhou Tyre references *Washers from Korea*,[199] to demonstrate that the Department only excludes from the total sales value used in the denominator values related to service income or royalty income. Guizhou Tyre argues that there is no evidence on the record that "Other Operating Revenue" includes the types of income the Department typically removes from the total sales value, and that GTC's verified sales figures included "Other Operating Revenue," as demonstrated in Guizhou Tyre's Verification Report.

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[195] *See* Petitioner's Case Brief at 10-13.
[196] *See* Letter to the Department, "Guizhou Tyre Third Supplemental Response: Countervailing Duty Investigation of Certain Truck and Bus Tires from the People's Republic of China (C-570-041),"(October 4, 2016)(October GZQR).
[197] *See* Letter to the Department, "Guizhou Tyre Second Supplemental Response: Countervailing Duty Investigation of Certain Truck and Bus Tires from the People's Republic of China (C-570-041),"(June 24, 2016)(JuneGZQR).
[198] *See* Guizhou Tyre's Rebuttal Brief at 2.
[199] *Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination, 77 FR 75975* (December 26, 2012) (*Washers from Korea*) and accompanying Issues and Decision Memorandum at Comment 13.

**Department's Position:** For the final determination, we have used the revised sales values provided in Guizhou Tyre's June GZQR, the export sales values for the AUL that we used in the Post-Preliminary Determination, and we have ensured that we have properly excluded intercompany sales and freight.

We have considered both the petitioner's and Guizhou Tyre's arguments regarding "Other Operating Revenue" and whether it should be included in the "total sales" denominator. Guizhou Tyre has explained that the value it reported as total sales is the sum of "Other Operating Revenue" which consists of revenue from "other operations – Material, Waste old drain, Electricity Fees etc" and "Main Operation Revenue," which records domestic and export sales in separate accounts.[200] We verified that both accounts reconcile into the total operating revenue in Guizhou Tyre's financial statement.[201]

The Department is required by 19 CFR 351.525(b)(2) and (3) to attribute export and domestic subsidies "only to products exported by a firm," and "to all products sold by a firm, including products that are exported," respectively.[202] In accordance with the regulation, the Department does not include income related to the sale of services, because such sales are not related to "*products* exported," or "all *products* sold" (emphasis added).[203] Guizhou Tyre cites to *Washers from Korea*[204] as an example where the Department stated that "it is appropriate to exclude Samsung's income from non-production related activities, *such as* royalties, sales of services, commissions, etc."[205] (emphasis added). There is no evidence in the record regarding the source of "Other Operating Revenue," beyond the line item identification as "other operations – Material, Waste old drain, Electricity Fees etc," to establish that this revenue is comprised of sales of services or royalties. Therefore, there is no basis for not including it in the value for total sales.

**Comment 21: Whether to Include Land Purchases from Affiliates in Calculating the Benefits from the Provision of Land for LTARs**

Guizhou Tyre argues that three land purchases (specifically, land parcels 2, 3, and 4) were purchased from affiliated companies, specifically Guizhou Tyre Factory and Guizhou Advance Tyre Tube Company, and should not be captured in the benefit calculation because they are not government authorities or private entities entrusted or directed by a government authority per section 771(5)(B) of the Act.[206] Guizhou Tyre further argues that there is no information on the

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[200] *See* Guizhou Tyre Third Supplemental Response: Countervailing Duty Investigation of Certain Truck and Bus Tires from the People's Republic of China (C-570-041) (October-A GZSQR) at 2.
[201] *See* Guizhou Tyre Verification Report at 7.
[202] *See Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products From the People's Republic of China: Final Affirmative Determination and Final Determination of Critical Circumstances, in Part*, 82 FR 3282 (January 11, 2017) (*Geogrids from China*) and accompanying Issues and Decision Memorandum at Comment 7; *see Seamless Pipe from China Investigation.*
[203] *Id.*
[204] *See* Guizhou Tyre Rebuttal Brief at 2; *see Washers from Korea* and accompanying Issues and Decision Memorandum at 52-53.
[205] *Id.* and accompanying Issues and Decision Memorandum at 53.
[206] *See* Guizhou Tyre Brief at 18.

record for the Department to determine if these affiliated companies are government authorities and, thus, these parcels of land do not constitute a financial contribution.

The petitioner argues that the Department should include these parcels of land in the benefit calculation because record evidence shows that the GOC was involved in the transactions for each of these land parcels, including that Guizhou Tyre providing payment to the GOC for two of the land parcels.[207] The petitioner asserts that the Department recognized, in *Pneumatic OTR Tires from China Investigation Prelim*,[208] that the GOC is the ultimate owner of all land in China, either at the national or local level, and that only "allocated" and "granted" land-use rights are available in China. The petitioner states that Guizhou Tyre reportedly applied to government agencies, the Guiyang Land and Resources Bureau, the People's Government of Guiyang, the Jingguan Village Committee, and the Guiyang Land and Resource Bureau, and argues that Land 2 was leased from the government and the government had to approve the conversion from allocated to granted land-use rights. Regarding Land 3 and 4, the petitioner argues that the government was more directly involved in the transactions as shown by Guizhou Tyre's direct payments to the government for the land transfer and the government's expropriation and conversion of the land into granted land-use rights. The petitioners conclude that the record evidence proves the GOC provided the land-use rights to Guizhou Tyre for these three parcels of land.

**Department's Position:** For this final determination, we are continuing to find that the purchases of land parcels 2, 3, and 4 provide countervailable subsidies to Guizhou Tyre based on record evidence of the GOC's direct involvement in the transactions.

For all three of these land transactions, Guizhou Tyre itself provided information that demonstrates that, regardless of the preceding involvement of the affiliated companies Guizhou Tyre Factory and Guizhou Advance Tyre Tube Company in acquiring the land-use rights at issue, the relevant government agencies were directly involved in the transfer of those rights to GTC. Thus, we reject Guizhou Tyre's contention that the land-use rights were acquired from affiliates, eliminating the government financial contribution. With regard to Land 2, this parcel of land was designated as allocated to Guizhou Tyre Factory, GTC's predecessor. Once the land was converted to granted, the certificate was provided to GTC in July 2009, and GTC itself paid the associated fees to the People's Government of Guiyang.[209]

Regarding Land 3 and 4, this land was owned by the Jingguan Village Committee and used by Guizhou Advance Tyre Industry. In 2006, GTC negotiated with the Jingguan Village Committee and entered into an agreement to purchase the land-use rights. Under the laws applicable at the time, the state had to expropriate the collectively-owned land and convert it to state-owned land before it could be granted to GTC. Once converted, it was transferred to GTC, which paid the transfer fee.[210] On the basis of these facts, we continue to determine that the GOC's provision of

[207] *See* Petitioner's Rebuttal Brief at 32-34.
[208] *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 72 FR 71360 (December 17, 2007) (*Pneumatic OTR Tires from China Investigation Prelim*).
[209] Guizhou Tyre May 18, 2016 response at 41-42.
[210] *Id.*

land rights to Guizhou Tyre for these three parcels of land constitutes a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.

**Comment 22: Whether to Conduct the 0.5 Percent Test on the Basis of all Land Purchases in 2009**

Guizhou Tyre argues that the Department should not have combined three separate purchases of land made in 2009 for purposes of conducting the 0.5 percent test, because each land purchase had its own separate agreement.[211] Guizhou Tyre contends that, although the Department is examining all of the land under the same program, there is not a single approval and each purchase is singular because it involves different locations, entities, and dates.

The petitioner argues that the Department is correct to combine the land parcels purchased in the same year for purposes of conducting the 0.5 percent test as dictated by the Department's regulations and practice.[212] The petitioner, referencing 19 CFR 351.524(b)(1) and (2), claims that the *Preamble* confirms the application of the 0.5 percent test on a program-wide basis, not on the basis of each individual benefit, if there are multiple benefits.[213] The petitioner asserts that the Department considered concerns that a government might be able to "reduce exposure to countervailing duties by providing a number of small subsidies instead of a single large subsidy." The petitioner also notes that the Department has stated in *Solar Cells from China AR 2012*, *Citric Acid from China AR 2011*,[214] and *Pneumatic OTR Tires from India Investigation Prelim*[215] that it will consider aggregating multiple programs "on a company-specific basis where application of the 0.5 percent rule would have a significant impact on the results." The petitioner argues that the regulation and the Department's established practice combine the total benefit from all parcels of land provided in a single year under the Provision of Land for LTAR program before conducting the 0.5 percent test. The petitioner notes that Guizhou Tyre does not dispute that the land was examined under the same program or in the same year. The petitioner concludes that, according to the *Preamble* and the Department's established practice, the total amount approved for this program in 2009 is the total benefit under all the land agreements for each parcel and Guizhou Tyre's request would result in the opposite and incentivize governments to split up land subsidies into multiple small agreements in order to reduce or avoid exposure to countervailing duties.

**Department's Position:** For this final determination, we have continued to aggregate the benefits from the three separate purchases of land made by Guizhou Tyre in 2009 for purposes of conducting the 0.5 percent test. This is consistent with Department practice as articulated in *Solar Cells from China AR 2012*, *Citric Acid from China AR 2011*,[216] and *Pneumatic OTR Tires*

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[211] *See* Guizhou Tyre's Case Brief at 18-19.
[212] *See* Petitioner's Rebuttal Brief at 35-37.
[213] *See Preamble*, 63 FR at 65394,
[214] *Citric Acid AR 2011* and accompanying Issues and Decision Memorandum at 28-29.
[215] *Certain New Pneumatic Off-the-Road Tires From India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Determination*, 81 FR 39903 (June 20, 2016) (*Pneumatic OTR Tires from India Investigation Prelim*) and accompanying Preliminary Decision Memorandum at 33.
[216] *Citric Acid AR* 2011, and accompanying Issues and Decision Memorandum at 28-29.

*from India Investigation Prelim.*[217] This is articulated in the *Preamble*, which says that 19 CFR 351.524(b)(2) "makes clear that we will apply the 0.5 percent test to all benefits associated with a particular program, not each individual benefit, if there are more than one." Guizhou Tyre itself concedes that the benefits associated with the three tracts of land acquired in 2009 were provided "under the same program." The fact that the benefits accrued under multiple approvals, rather than under a single approval, merely underscores that multiple individual benefits were provided under the program in the same year. Thus, we agree with the petitioner that it is not appropriate to examine separately the benefits provided by each tract of land for purposes of conducting the 0.5 percent test. To do so would indeed provide an incentive for governments to provide non-recurring benefits under a program in a series of small increments in order to avoid exposure to countervailing duties.

**Comment 23: Whether to Adjust the Benchmarks Used in Measuring the Benefit from the Provision of Land for LTAR**

The petitioner argues that while the Department used the correct external benchmark for the years Guizhou Tyre purchased land, some exchange rate errors in the calculation of the benchmark should be corrected for the final determination.[218] The petitioner's case brief identifies the necessary calculation corrections, the discussion of which involves business proprietary information. No other party commented on this issue.

**Department's Position:** The Department has corrected the exchange rate calculations of the land benchmark used to measure the benefits from the provision of land for LTAR for both respondents.[219]

**Comment 24: Whether to Adjust the Calculations for the Provision of Land for LTAR for Guizhou Tyre**

The petitioner argues that the Department calculated the benefit allocation incorrectly, listing specific mathematical errors, and these calculation errors should be corrected.[220] No other party submitted comments on this issue to this argument.

**Department's Position:** The Department has reviewed the calculations for the provision of land for LTAR to Guizhou Tyre and has made the changes suggested by the petitioner.[221]

**Comment 25: Whether to Include "Fund" Amounts in the Electricity Price Paid by Guizhou Tyre**

Guizhou Tyre argues that the per-unit price the company paid for electricity and the per-unit benchmark price both include certain fund amounts, but the Department, in the *Preliminary*

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[217] *Pneumatic OTR Tires from India Investigation Prelim* and accompanying Preliminary Decision Memorandum at 33.
[218] *See* Petitioner's Case Brief at 32-33.
[219] *See* Final Calculation Memoranda.
[220] *See* Petitioner's Case Brief at 33.
[221] *See* Guizhou Tyre Final Calculation Memorandum.

*Determination*, did not include these fund amounts in the amount that Guizhou Tyre paid for electricity during the POI.[222] Guizhou Tyre claims that it demonstrated, at verification, the inclusion of certain fund amounts in the company's per-unit electricity price. Guizhou Tyre contends that the per-unit benchmark price used from Heilongjiang Province also includes similar fund amounts. Referencing *Iron Mechanical Transfer Drive Components from China*,[223] Guizhou Tyre argues that the Department should include these fund amounts in Guizhou Tyre's per-unit electricity price for the benefit calculation because the benchmark per-unit price also includes fund amounts. No other party submitted comments on this issue.

**Department's Position:** The Department has reviewed its calculations and the record. For the purposes of the final determination, we find that information on the record shows that the benchmark prices on which we rely are inclusive of certain taxes. Therefore, we have adjusted the per-unit rate that Guizhou Tyre paid, to include these same taxes. However, we did not adjust the per-unit rate paid at the Commercial 1-10kv rate for the period January through April 2015, because the record does not contain the Guizhou Province electricity tariff schedule for this time period. The two electricity schedules submitted by the GOC and Guizhou Tyre are for the period May through December 2015, thus we are unable to confirm whether the additional fees are also included in the rate for the months of January through April 2015.[224]

**Comment 26: Whether to Adjust the Electricity Benchmark**

Guizhou Tyre argues that the Department should correct the benchmark used at the preliminary determination for measuring the adequacy of remuneration for electricity.[225] Guizhou Tyre states the Department used a "flat" rate electricity rate from Heilongjiang and Jiangzi Provinces but the record shows that Guizhou Tyre paid for its electricity under a "normal" rate and, therefore, the Department should correct the benchmark used in the final determination. No other party commented on this issue.

**Department's Position:** The Department has reviewed the information on the record and the calculations for the provision of electricity for LTAR for Guizhou Tyre and has adjusted the benchmark rate to reflect that the rate that Guizhou Tyre pays for electricity is a "normal" rate and not a "flat" rate.

**Comment 27: Whether The Department Should Have Accepted Additional Loan and Grant Information Presented by Guizhou Tyre at Verification**

Guizhou Tyre argues that the Department should have accepted the information regarding loans and grants that it presented as verification corrections.[226] Guizhou Tyre stated, in its questionnaire responses, that it reported loans and that it reported 168 grants, under programs

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[222] *See* Guizhou Tyre Case Brief at 19-20.
[223] See *Iron Mechanical Transfer Drive Components from China* and accompanying Issues and Decision Memorandum at Comment 8.
[224] *See* GQR-B at Exhibit II.E.31; *see* Guizhou Tyre Verification Exhibits at Exhibit V-31.
[225] *See* Guizhou Tyre Case Brief at 19-20.
[226] *See* Guizhou Tyre Case Brief at 21-30.

that were not alleged, received between 2002 and 2015. Guizhou Tyre referenced the verification instructions, noting that the Department stated:

> {v}erification is not intended to be an opportunity for the submission of new factual information. Information will be accepted at verification only when the information makes minor corrections to information already on the record or when information is requested by verifiers, in accordance with the agenda below, to corroborate, support, and clarify factual information already on the record.

Guizhou Tyre also referenced the instructions provided by the Department regarding verification corrections, including:

> {t}he verifiers will examine the errors to determine if they are minor. Further, depending upon the nature of the errors that you identify (*e.g.* discovery of unreported loans), you should contact the official in charge prior to the start of verification. It might be necessary for the verifiers to discuss the corrections with team members in Washington, D.C., before deciding whether the corrections can be accepted. In such cases, the verifiers will not be able to tell you whether the corrections are accepted on the same day that they are presented.

Guizhou Tyre describes the timeline by which it made the Department aware of the discovered unreported loans used for "bill discounting," *i.e.*, the type of discovered loans, and how the loans were discovered. Guizhou Tyre references the November 8 Memorandum which described the telephone conversation between Guizhou Tyre and the Department that concluded with the Department informing the company of the decision to not accept the information about the discovered loans as a verification correction. Guizhou Tyre argues that this information is not substantial, but minor, and references various proceedings for support.[227] Guizhou Tyre argues that the Department did not provide a clear basis for the rejection other than this was information that should have been submitted in Guizhou Tyre's questionnaire responses. Guizhou Tyre states that it submitted a request to the Department to reconsider the Department's determination regarding the discovered bill discounting. Repeating the arguments included in this request, Guizhou Tyre first argues that the company "promptly notified the Department immediately giving it plenty of time to review the information" and did not attempt to conceal the information. Guizhou Tyre claims that the interest from the unreported loans was located in a "discrete account and did not impact any of the information previously reported" because the bill discounting is clearly booked in the accounting system and "this information is reconciled to the financial statement along with the other interest already reported." Guizhou Tyre then argues that because the company does not consider the bill discounting to be loans, "{i}t was understandable how this bill discounting was missed in the questionnaire preparation stage as it was in a discrete account not identifiable in the company's audited financial statement." Guizhou Tyre also argues that loans and bill discounting are not comparable because the company does "not receive or pay principal for bill discounting" and banks "charge a much

[227] *See, e.g., Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016); *Pet Resin from China*; *53-Foot Domestic Dry Containers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 21209 (April 17, 2015).

lower discount interest rate" because the risk is very low. Guizhou Tyre argues that the Department did not conclude in its November 8 Memorandum that the correction to include the bill discounting loans was too large to be considered a minor correction. Referencing a verification report from another proceeding as support, Guizhou Tyre argues that the Department has previously accepted information about new loans or new bill discounting. Guizhou Tyre states that the Department did not respond to its request for reconsideration and did not verify loans relating to the Government Policy Lending program.

Regarding the unreported grants, Guizhou Tyre argues that the Department rejected the discovered grants without considering all the facts, *i.e.* a rejected chart of all the discovered grants, the allocation calculation of each of the discovered grants, that Guizhou Tyre is "a massive company," the discovered grants were from three companies, over the span of 14 years, the grants reported by GTC are larger than "many companies' sales denominators in CVD proceedings," the unreported grants "were for miniscule amounts compared to the grants reported," and that "these grants would not result in any countervailable benefit."

Guizhou Tyre argues that the grants were of "minimal values to be expensed in the year of receipt, and were booked by GTC in temporary receipt accounts, rather than the "non-operating revenue-Government subsidy" account, or "one-off disbursement" account, in which the previously reported grants had been booked." Guizhou Tyre argues that the Department "normally accepts on the first day of verification" as minor corrections information about these types of grants. Guizhou Tyre describes the presentation of the unreported grants to the Department at verification, stating that all the grants should expense in the year of receipt and would have been reported under "Other Subsidies." Guizhou Tyre argues that "it is not unreasonable that some miniscule grants were missed, particularly those booked in temporary expense accounts going back over a 14-year period." Guizhou Tyre notes that the Department did not notify the company of its decision to not accept the discovered grants on the fourth day of verification and contends that an electronic version of the discovered grants remained on a verifier's computer after this rejection. Guizhou Tyre states that the Department did not provide a reason for not accepting the discovered grants as a verification correction, and that the verification team did not share a chart of the discovered grants with Washington, D.C. decision makers. Guizhou Tyre argues that this chart quantified the discovered grants and argues that the Department should have accepted its attempt to submit the chart. Guizhou Tyre notes that the Department stated the reason for the rejection of this submission was because "the letter contained new factual information regarding previously unreported grants."

Guizhou Tyre argues that the Department's outline requires presented corrections to include changes to quantitative data but that the Department rejected the discovered grants based on "the perceived largeness" of qualitative data and not on the quantitative data "contrary to the specific instructions in the verification outline." Guizhou Tyre further argues that use of qualitative data instead of quantitative data can be misleading in terms of impact, asserting that the discovered grants' actual impact is minimal and the "value of the grants which GTC previously reported and the new information also is *de miminis*."

The petitioner disputes Guizhou Tyre's arguments and asserts that the company's previously unreported loan and grant information were not minor corrections, noting that many of the investigations cited by Guizhou Tyre included situations in which the Department rejected respondents' attempt to present previously unreported loan and grant information at verification.[228] Referencing *Pet Resin from China*,[229] the petitioner claims the Department rejected the respondent's attempt to present numerous new policy loans and preferential export financing loans as minor corrections at verification, stating that the loans were not "mere minor corrections because the scope of the corrections was not minor in nature." Additionally, the Department rejected previously unreported grants because the grants "were recorded in accounts that should have been examined prior to verification" and that "whether a program was used or not by a company is not minor in the view of the Department."

The petitioner states that shortly before verification, Guizhou Tyre attempted to present information regarding invoice discounting of a business proprietary number of loans and total interest expense reported on the financial statement. The petitioner further notes that Guizhou Tyre admitted that the company should have reported the loan information in its initial questionnaire response. The petitioner also states that the verification report described the unreported grants to be "more than forty" and argues that such numerous unreported grants are not minor corrections and the company should have more thoroughly examined its accounting system when responding to the "other subsidies" question.

**Department's Position:** As Guizhou Tyre notes, the Department's verification instructions include the following:

> {v}erification is not intended to be an opportunity for the submission of new factual information. Information will be accepted at verification only when the information makes minor corrections to information already on the record or when information is requested by verifiers, in accordance with the agenda below, to corroborate, support, and clarify factual information already on the record.

Presenting new information about previously unreported loans and grants after the Department specifically requested the information in questionnaires and after the deadline to submit new factual information, does not meet constitute a "minor correction." The unreported loans and grants presented at verification do not "corroborate, support, and clarify" factual information on the record, *e.g.* tax return appendices corroborate, support, and clarify a tax return already on the record. Rather, such information is indicative of unreported additional occurrences of assistance that may constitute countervailable subsidies. As we stated in *Passenger Tires from China Final*, "whether a program was used or not by a company is not 'minor' in the view of the Department" and the Department will not accept new factual information at verification[230]

Guizhou Tyre's explanation that the loan information "did not impact any of the information previously reported," supports the Department's assessment that this loan information does not

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[228] *See* Petitioner's Rebuttal Brief at 27-31.
[229] *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin From the People's Republic of China: Final Affirmative Critical Circumstances Determination*, 81 FR 13337 (March 14, 2016) (*Pet Resin from China*) and accompanying Issues and Decision Memorandum.
[230] *See Passenger Tires from China Final*, and accompanying Issues and Decision Memorandum at 18; *see Pet Resin from China* and accompanying Issues and Decision Memorandum at 52-53.

make minor corrections or corroborate, support, and clarify factual information already on the record.[231]

Guizhou Tyre informed the Department of discovered, unreported loans and grants at the time of verification. The loans were described by Guizhou Tyre to be invoice discounting, and to have been overlooked in Guizhou Tyre's reporting of loans because of the way in which these "loans" and the associated financing fees are recorded in the company's accounting system. However, the Department's initial questionnaire explicitly describes this type of financing when requesting respondent companies to provide loan information:

> Report **all** financing to your company that was outstanding at any point during the POI, **regardless of whether you consider the financing to have been provided under this program**. . .
>
> Ensure that you report all forms of financing outstanding during the POI, not only traditional loans. This includes, but is not limited to, interest expenses on bank promissory notes, **invoice discounting, and factoring of accounts receivable**. If your company did not make interest payments on the financing during the POI (*e.g.,* factoring of accounts receivable), then identify the specific terms of the financing (*e.g.*, **the discount rate associated with the factoring**)."[232]

Guizhou Tyre admits that the company should have reported these loans in its initial questionnaire response.[233] Guizhou Tyre states that the company purposely did not report the invoice discounting because the company "did not consider the bill discounting to be loans."[234] This decision by Guizhou Tyre at the time it prepared its questionnaire responses is directly contrary to the Department's instructions to report all financing, including "invoice discounting." Although Guizhou Tyre claims the Department did not provide a clear basis for rejecting this information, other than that this information should have been submitted in Guizhou Tyre's questionnaire responses, the fact that the initial questionnaire specifically identified and described this type of financing, and instructed Guizhou Tyre to include this type of financing in its reporting of "all loans," is a sufficient basis to support rejection of this information. Guizhou Tyre does not dispute the fact that invoice discounting is a type of financing and that the company maintains an interest expense account in which it records the "fees" associated with this type of financing. Guizhou Tyre's arguments that invoice discounting is not comparable with other financing included in the "Government Policy Lending" program are immaterial because the Department explicitly requests all financing to be reported "regardless of whether you consider the financing to have been provided under this program." The Department's questionnaire makes clear that the Department requires respondent companies to include this type of financing in their reporting of Government Policy Lending loans. Thus, we find unpersuasive Guizhou Tyre's explanation that it did not include this type of financing in its timely loan reporting because this type of financing is not comparable to the financing the company did timely report.

[231] *See* Guizhou Tyre's Case Brief at 24.
[232] *See* Initial Questionnaire at Section III 9.
[233] *See* November 8 Memorandum at 1.
[234] *See* Guizhou Tyre's Case Brief at 24.

In considering whether this information constitutes a "minor correction," and whether it was appropriate to accept it at verification, we note that the unreported loans represent a type of financing which the Department specifically asked to be reported in the company's initial questionnaire response, not to be reported to the Department for the first time at verification. As noted above, the purpose of verification is to review the record evidence and not to accept new information. Guizhou Tyre's failure to timely report this information demonstrates its inattentiveness and carelessness and, therefore, its and its lack of cooperation, to the best of its ability, in responding to the Department's questionnaires regarding Government Policy Lending. Therefore, the Department decided not to accept the information about these previously unreported loans. Moreover, because Guizhou Tyre's reporting was materially incomplete, the Department decided not to verify the information previously provided by Guizhou Tyre with regard to Government Policy Lending.

Guizhou Tyre objects to the Department's refusal to accept this information in light of the specific request in the verification outline for certain information regarding corrections to be presented at verification (*e.g.*, a list of errors, original documentation to show the corrections, and a chart showing the magnitude of the changes to quantitative data). However, this information demonstrates that Guizhou Tyre failed to report an entire type of financing and that the magnitude of the unreported financing exceeds what can be considered "minor" under the instructions in the verification outline.

Regarding the unreported grants, information which Guizhou Tyre presented at verification, the Department declined to accept the information about these grants because each grant potentially represents an individual program. As stated above, "whether a program was used or not by a company is not 'minor' in the view of the Department," and presenting information about more than 40 potential individual programs at verification is extensive.[235] Guizhou Tyre argues that the Department did not consider all the facts regarding the unreported grants. However, in this situation, the information the Department was presented as a putative minor correction demonstrated that Guizhou Tyre failed to cooperate by not acting to the best of its ability by responding fully and completely to the Department's questions regarding the provision of assistance under other programs. Guizhou Tyre claims that the Department did not provide a reason for not accepting the new information about these previously unreported grants; however, the Department defines what it considers acceptable information in its verification outline. The verification outline indicates that the Department will not accept information that does not "corroborate, support, and clarify factual information already on the record" or "new factual information." The Department rejected Guizhou Tyre's later attempt to submit the rejected information, stating that the submission contained

> new factual information[236] regarding previously unreported grants. The information regarding these grants was provided but not accepted as minor corrections during verification. No information regarding this new factual information, including an electronic version of the information presented at

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[235] *See Passenger Tires from China Final*, and accompanying Issues and Decision Memorandum at 18.
[236] *See* 19 CFR 351.301(c). *See also 19 CFR Part 351 Definition of Factual Information and Time Limits for Submission of Factual Information,* 78 FR 21246 (April 10, 2013).

> verification, was retained by the Department at the conclusion of verification and none is on the record of this proceeding.[237]

Despite the Department's request in its initial questionnaire for information about "Other Subsidies," Guizhou Tyre did not report receiving these grants in its initial or supplemental questionnaire responses. Guizhou Tyre made no attempt to provide the information requested by the deadline for the submission of factual information and gave no indication that it needed more time to provide the information requested.

We also disagree with Guizhou Tyre's contention that it gave the Department "plenty of time to review the information." By its own actions, in not providing this information until the outset of verification, Guizhou Tyre precluded the Department from fully investigating and verifying this information. The purpose of verification is "to verify the accuracy of information previously submitted to the record by the respondent," not to collect new information that had been previously requested but not reported.[238] Accepting this information at this point in the investigation would be inconsistent with the statute's mandate that the Department "shall verify all information relied upon in making . . . a final determination in an investigation."[239] Instead, we must rely on the adverse inference that Guizhou Tyre chose not to timely report this information and subject it to verification because doing so would have resulted in a less favorable result than allowing the Department to discover this information at verification.[240]

**Comment 28: Whether to Apply AFA to Guizhou Tyre Regarding its Government Policy Lending Program**

The petitioner argues that the Department was correct in its decision not to verify Guizhou Tyre's reported use of the Government Policy Lending program because Guizhou Tyre failed to report requested loan information. The petitioner notes that Guizhou Tyre informed the Department of unreported invoice discounting one week before the company's scheduled on-site verification. The petitioner also notes that Guizhou Tyre acknowledged that the company "should have reported this financing instrument in its initial questionnaire, especially in light of the question in the Department's questionnaire, which specifically requests the company to report all financing, including invoice discounting." The petitioner further noted that the Department stated prior to verification that "verification is not intended to be an opportunity for the submission of new factual information" and that the Department considered only "corroborating, supporting, and clarifying factual information already on the record" to be corrections accepted at verification. The petitioner argues that the Department should apply AFA to determine a benefit to Guizhou Tyre because Guizhou Tyre, by not timely reporting its receipt of invoice discounting, withheld information requested by the Department, failed to provide such information by the deadlines for submission of information or in the form and manner requested, significantly impeded the

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[237] *See* Memorandum to The File, "Countervailing Duty Investigation: Truck and Bus Tires from the People's Republic of China: Rejection of New Factual Information Filing by Guizhou Tyre Co., Ltd.," (November 29, 2016).
[238] *See, e.g.*, *Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes From the People's Republic of China*, 78 FR 70918 (November 27, 2013), and accompanying Issues and Decision Memorandum at Comment 7; *see, also, Marsan Gida Sanayi Ve Ticaret A.S. v. United States*, 931 F. Supp. 2d 1258, 1280 (CIT 2013) (agreeing that "[t]he purpose of verification is not to collect new information").
[239] *See* section 782(i) of the Act.
[240] *See* SAA at 870.

proceeding, and failed to cooperate by not acting to the best of its ability to respond to the Department's requests for information.

Guizhou Tyre argues that it was "completely upfront with the Department prior to verification regarding its loan correction" and that "the change did not impact the completeness of other reported loans as it was a discrete account in the accounting system." Guizhou Tyre claims that the "correction did not impair the Department's ability to verify GTC's reported loans."[241]

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

We disagree with Guizhou Tyre's assessment that it was "completely upfront with the Department prior to verification regarding its loan correction." As explained in Comment 27, Guizhou Tyre prevented the Department from fully investigating and verifying this information by withholding the information until after the deadline for the submission of new factual information. The purpose of verification is to verify the accuracy and completeness of information previously submitted to the record by the respondent, not to collect new information that had been previously requested but not reported.[242] The Department agrees with Guizhou Tyre's acknowledgement that the company "should have reported this financing instrument in its initial questionnaire, especially in light of the question in the Department's questionnaire, which specifically requests the company to report all financing, including invoice discounting." In the initial questionnaire, the Department advised the respondents to report all financing that was outstanding during the POI, regardless of whether the respondent believes the financing is related to a subsidy program. Guizhou Tyre did not comply with the Department's clearly stated requests. We also disagree with Guizhou Tyre's claim that the "correction did not impair the Department's ability to verify" the reported loans. The presentation of new information at verification calls into question the completeness of the information provided in response to the initial and supplemental questionnaires. In this instance, when Guizhou Tyre presented information about an additional type of financing that should have been reported in response to the Department's questionnaires, Guizhou Tyre demonstrated that the information it did provide regarding Government Policy Lending was materially incomplete. Thus, there was no basis for the Department to accept and verify the new information.

As explained above in the section "USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES," above, we find that Guizhou Tyre failed to provide information

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[241] *See* Guizhou Tyre's Rebuttal Brief at 5, citing *JTEKT Corp. v. United States*, 675 F. Supp. 2 1206, 1251 (CIT 2009).
[242] *See, e.g.*, *Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes From the People's Republic of China*, 78 FR 70918 (November 27, 2013), and accompanying Issues and Decision Memorandum at Comment 7; *see, also, Marsan Gida Sanayi Ve Ticaret A.S. v. United States*, 931 F. Supp. 2d 1258, 1280 (CIT 2013) (agreeing that "[t]he purpose of verification is not to collect new information").

regarding its use of Government Policy Lending that was requested of it by the deadlines we established, and thus, section 776(a)(2)(B) of the Act applies. Further, Guizhou Tyre significantly impeded the proceeding, within the meaning of section 776(a)(2)(C) of the Act. We further find that by not timely reporting this assistance, Guizhou Tyre failed to cooperate by not acting to the best of its ability and precluded the Department from investigating and verifying this financing. Thus, pursuant to section 776(b) of the Act, we are determining that the application of AFA to Government Policy Lending is warranted.

**Comment 29: What AFA Rate to Apply to Guizhou Tyre's Government Policy Lending Program**

The petitioner argues that the Department should select as AFA the highest calculated rate for the Government Policy Lending program from a prior China CVD proceeding.[243] Referencing *Pet Resin from China*,[244]and *Drill Pipe from China*,[245] the petitioner argues that the Department's practice in selecting an AFA rate is to "ensure that the rate is sufficiently adverse as to effectuate the statutory purposes of adverse facts available." The petitioner asserts that pursuant to the SAA a "party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." The petitioner notes that at the preliminary determination, Guizhou Tyre and Double Coin had calculated subsidy rates of 4.52 percent and 3.21 percent, respectively. The petitioner argues, referencing *Pet Resin from China* and the SAA, that because Double Coin's preliminary calculated subsidy rate for the Government Policy Lending is lower than Guizhou Tyre's, relying on Double Coin's rate would "undermine Congress's intent" to keep a party from obtaining a more favorable result by failing to cooperate than if it had cooperated fully." The petitioner further argues that, using the Department's AFA hierarchy, the Department should apply an AFA rate of 10.54 percent, which is the highest calculated rate for the Government Policy Lending program in another China CVD proceeding.

Guizhou Tyre argues that the Department should select an AFA rate, if it applies AFA, from within the same proceeding because selecting a rate from a prior proceeding does not follow the Department's AFA rate hierarchy.[246] Specifically, Guizhou Tyre argues the Department should select as AFA Double Coin's calculated rate for Government Policy Lending in this investigation.

**Department's Position:** As explained in the "USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES" section above, in selecting an AFA rate the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the identical program in another CVD proceeding involving the same country. If no such rate is available, the Department will use the highest non-*de minimis* rate for

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[243] *See* Petitioner's Case Brief at 27-28.
[244] *Pet Resin from China* and accompanying Issues and Decision Memorandum.
[245] *Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from China*) and accompanying Issues and Decision Memorandum.
[246] *See* Guizhou Tyre's Rebuttal Brief at 5.

a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.[247]

In this proceeding, Double Coin also used the Government Policy Lending program. However, Double Coin's calculated rate is lower than the rate calculated for Guizhou Tyre at the *Preliminary Determination*. Substituting a lower rate would undermine Congress's intent "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[248] As a result, we sought the highest non-*de minimis* rate calculated for the same or similar program (based on the treatment of the benefit) in another China CVD proceeding. As such, we are using an AFA rate of 10.54 percent *ad valorem* calculated in the *Coated Paper from China* proceeding for "Government Policy Lending," a program that provides assistance in the form of preferential interest rates on various types of loans sourced from Chinese-owned financial institutions. Consistent with the Department's practice, this is the highest non-*de-minimis* rate for a similar program in a Chinese proceeding.[249]

**Comment 30: Whether to apply AFA to Grants First Identified at Verification**

The petitioner argues that the Department correctly declined to accept as verification corrections information about more than 40 previously unreported grants at verification of Guizhou Tyre.[250] The petitioner asserts that the Department should apply AFA to conclude that the grants are countervailable subsidies and to determine the benefit from these grants. Referencing *Passenger Tires from China* and *Pet Resin from China*, the petitioner contends that unreported grants are not "merely minor corrections" and that "whether a program was used or not by a company is not minor in the view of the Department." The petitioner notes that the initial questionnaire requests the reporting of "any other forms of assistance" and that the company should have thoroughly reviewed its accounting system before verification. The petitioner further argues, referencing *Pet Resin from China*, that the failure of Guizhou Tyre to report the grants before verification "denied the Department an adequate opportunity to examine the grants via issuing supplemental questionnaires and to determine whether the grants constitute countervailable subsidies." Referencing 19 CFR 351.311(b), the petitioner states that the Department will examine discovered unalleged subsidy programs if sufficient time remains before the final determination. The petitioner argues that the Department should apply an AFA rate of 0.58 percent for each unreported grant because it is the highest calculated subsidy rate for a similar grant program in a prior China CVD proceeding.

Guizhou Tyre argues that the company was not required by law to report unalleged grant programs, Guizhou Tyre was cooperative, and the application of AFA is improper.[251] Guizhou

[247] *See Thermal Paper from China* and accompanying Issues and Decision Memorandum at 2-5; *see SC Paper Final* and accompanying Issues and Decision Memorandum at 30.
[248] *See* SAA at 870.
[249] *See Pipe from Turkey Final* and accompanying Issues and Decision Memorandum at 5-7.
[250] *See* Petitioner's Case Brief at 28-30.
[251] *See* Guizhou Tyre's Rebuttal Brief at 6.

Tyre further argues that the Department has no basis to apply AFA because "there is nothing on the record to identify how many undisclosed grants are at issue." Guizhou Tyre notes that the Department rejected information identifying the number of grants and did not review the accounts where the grants were recorded. Referencing *Goldlink Indus. Co. v. Unites States*, Guizhou Tyre argues that without record evidence, the Department cannot identify the number of grants and therefore cannot apply AFA to these unreported grants.[252]

Guizhou Tyre contends that if the Department does apply AFA for these unreported grants, then the Department should use the highest rate from Guizhou Tyre's reported grant programs, *i.e.* 0.22 percent, referencing *SolarWorld Americas Inc. v. United States*.[253]

**Department's Position:** As discussed in the section "USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES" and Comment 28, the Department rejected information about more than 40 grants presented by Guizhou Tyre at verification. We disagree with Guizhou Tyre's assertion that it was cooperative by providing this information at the outset of verification, and consistent with the Department's instructions regarding the nature of corrections that will be accepted at verification. Guizhou Tyre provided new factual information after the deadline for submission of such information had passed, and in so doing, precluded the Department from being able to analyze the information, request information from the GOC, and verify the information regarding these previously unreported grants. Guizhou Tyre's reference to *Goldlink Indus. Co. v. Unites States* is not applicable to this situation because the decision to apply AFA in this investigation does not rest on events that occurred during the verification but on the untimely presentation of new factual information. While Guizhou Tyre argues that "there is nothing on the record to identify how many undisclosed grants are at issue," the Department disagrees. We stated in the Guizhou Tyre Verification Report that the rejected information identified "more than 40 grants" and Guizhou Tyre confirms, through its statements and its unsuccessful attempt to submit this new factual information on the record, that it failed to report all grants it received during the AUL. The record clearly shows that Guizhou Tyre did not cooperate to the best of its ability and hindered the Department's investigation by the untimely reporting of new factual information at verification.

Therefore, with respect to Guizhou Tyre's arguments, and consistent with *Shrimp from China*,[254] we find the failure of Guizhou Tyre to respond fully to our questions on "Other Subsidies" demonstrates an unwillingness to respond completely to the Department's initial and supplemental questionnaires regarding this unreported assistance. Further, section 775 of the Act and 19 CFR 351.311(b) direct the Department to examine apparent subsidy practices discovered during the course of the proceeding and not alleged in the petition (if the Secretary "concludes that sufficient time remains"). The information that Guizhou Tyre presented at verification indicated that these received grants should have been reported to the Department previously and,

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[252] *See* Guizhou Tyre's Rebuttal Brief at 6, citing *Goldlink Indus. Co. v. United States*, 431 F. Supp. 2d 1323, 1330, (CIT 2006) (*Goldlink Indus. Co. v. United States*).
[253] *See* Guizhou Tyre's Rebuttal Brief at 7, citing *SolarWorld Americas, Inc. v. United States*, 2016 Ct. Intl. Trade LEXIS 98 (October 14, 2016) (*SolarWorld, Inc.. v. United States*).
[254] *See 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 Issues and Decision Memorandum at 75-78.

therefore, the Department is properly including them in this investigation, under section 775 of the Act and 19 CFR 351.311(b), through the application of AFA.

As discussed in the section "USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES" and Comment 29, in selecting an AFA rate, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the identical program in another CVD proceeding involving the same country. If no such rate is available, the Department will use the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country.

Due to the untimely attempt to submit information regarding these grants, the Department cannot determine if there is an "identical" program within this investigation. Therefore, we must use the highest non-*de-minimis* rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving China. We are using a rate of 0.58 percent *ad valorem* per missing program, the highest rate determined for a similar program in a prior CVD proceeding, and we are applying this rate to each of the unreported grants. Because the record demonstrates that there are "more than 40" grants, we are multiplying this rate by 41.[255]

**Comment 31: Whether to Defer to the First Administrative Review the Investigation of Grants Presented by Guizhou Tyre at Verification**

Guizhou Tyre argues that the Department should investigate the additional grants first reported at verification in the subsequent administrative review. Guizhou Tyre references section 775(1) of the Act as used in *Washers from Korea*[256] which stated "the discovery at verification of a government-provided grant that is attributable to the production of subject merchandise provides sufficient cause for the Department to determine that such a grant is countervailable." Guizhou Tyre argues that the Department has interpreted its own regulations, specifically 19 CFR 351.311(b) to require the Department to examine discovered subsidies if the Department concludes sufficient time remains before the final determination. Guizhou Tyre further argues that the Department's refusal to accept information on the grants first presented at verification does not follow its practice and that the Department cannot change its practice in the middle of a proceeding without providing the respondent fair notice.[257] Guizhou Tyre notes that the Department did not provide an explanation for its change in practice at verification or in Guizhou Tyre's Verification Report, arguing that the change is arbitrary.[258]

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[255] *See Pet Resin from China* and accompanying Issues and Decision Memorandum at 19.
[256] *Washers from Korea* and accompanying Issues and Decision Memorandum.
[257] *See* Guizhou Tyre's Case Brief at 43, citing *Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisis A.S. v. United States*, 623 F. Supp. 2d 1339, 1351-1356 (CIT 2009); *Shikoku Chems. Corp. v. United States,* 795 F. Supp. 417, 16, n.8 (1992).
[258] *See* Guizhou Tyre's Case Brief at 43, citing *Cultivos Miramonte, S.A. v. United States*, 21 CIT 1059, n 7 (1997); *SKF USA Inc v. United States*, 263 F. 3d 1369, 1382 (Fed. Cir. 2001); *Shikoku Chems. Corp. v. United States,* 795 F. Supp. 417, 16, n.8 (1992).

The petitioner disputes Guizhou Tyre's arguments, claiming that Guizhou Tyre "ignores numerous cases, including several cases Guizhou Tyre itself cites… in which the Department applied AFA based on information not reported until verification or discovered at verification," referencing cases including *Pet Resin from China* and *Solar Cells from China AR 2012*.[259] The petitioner argues that the Department's "actual practice is to apply AFA where it discovers that a respondent failed to report necessary loan information and to countervail grants, applying AFA where necessary, that a respondent failed to report in response to the Department's "other subsidies" question in the same investigation."

**Department's Position:** While the Department acknowledges that its practice has evolved over time, since 2012, it has determined that the proper course of action when an unreported potential subsidy is discovered or "presented" at verification is to rely on adverse inferences in making a finding on that potential subsidy.[260] The CIT has recognized that the Department is entitled to change its practice when "its methodology is permissible under the statute and {} it ha{s} good reasons for new methodology."[261] Also, "{a}ny assessment of Commerce's operational capabilities… must be made by the agency itself" and "{t}he administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties."[262]

Guizhou Tyre argues that the Department should have accepted the information about the 40 plus grants that it first identified for the Department's consideration at verification and should now determine that it is appropriate to defer its analysis of these grants to the first administrative review. Guizhou Tyre's argument suggests that a company should be able to "discover" programs at any time during the investigation, including after the *Preliminary Determination*. Guizhou Tyre also argues that the Department is required to accept the information and defer its examination to the first administrative review. However, in general, permitting respondents to submit information so late in an investigation, indeed as late as at verification, deprives the Department of the opportunity to conduct a full analysis and issue a preliminary determination, and implement the relevant cash deposit requirements, that reflect the subsidies received by the respondents. Again, as noted above, verification is not an opportunity for respondents to provide new factual information, rather, the purpose is to verify the accuracy of the existing record. There would be an incentive not to report all of the government assistance received in response to the Department's requests for information or before the expiration of the deadline for submitting factual information. If the Department were required to defer examination, until a subsequent review, of all previously unreported assistance discovered or presented at verification, the exclusion of such subsidies from a respondent company's reporting might result in the Department reaching a negative determination. In such a case, in the absence of a CVD order, there would be no opportunity for the deferred examination that Guizhou Tyre now advocates. At a minimum, a respondent would be able to secure a lower cash deposit rate and

[259] *See* Petitioner's Rebuttal Brief at 31.
[260] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China,* 77 FR 63788 (October 17, 2012) and accompany IDM at 15; *see Certain Frozen Warmwater Shrimp From the People's Republic of China*, 78 FR 50391 (August 19, 2013) and accompanying IDM at 15 and 77-78.
[261] *See Huvis Cor. V. United States*, 570 F 3.d 1347, 1353 (Fed. Cir. 2009); *accord Ad Hoc Shrimp Trade Action Comm. V. United States*, 596 F.3 1365, 1372 (Fed. Cir. 2010).
[262] *See Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1353 (CIT 2008); *see Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 543 (1978).

escape the consequences of its failure to cooperate over the course of the investigation. This result is inconsistent with the rationale underlying the Department's authority to apply facts otherwise available, including adverse inference, and it hinders the Department's ability to consolidate all potentially relevant subsidy programs into a single investigation, as contemplated by section 775 of the Act.[263]

Regardless, the Department, not the respondent who failed to report the programs despite requests for such information, determines when to examine the discovered programs.[264] Furthermore, the Department is not required to "verify" the information underlying assistance first identified at verification in order to impose duties on the basis of an adverse inference. We reject Guizhou Tyre's argument that the Department must accept, rely on, and fully examine its information regardless of whether that information was timely submitted in accordance with the Department's original request for information. We also reject Guizhou Tyre's argument that the Department must accept the information about these grants and defer its examination to the first administrative review.

**Comment 32: Whether to Exclude Mobile Home Tires**

Zhongce requests the exclusion of mobile home tires from the scope of this and the concurrent AD investigation. Zhongce states that mobile home tires, *i.e.*, tires designated for the transport of mobile homes with a "MH" suffix appearing on the sidewall of the tire, may arguably be covered by the scope of the investigation. Zhongce argues that, because mobile home tires are not produced in the United States and the petitioner is not interested in including them within the scope of these investigations, the Department does not need to include them within the scope of these investigations. Zhongce explains that it is contrary to the intent of the AD and CVD laws to include products for which the petitioner does not seek relief. Zhongce's proposed scope exclusion language reads as follows:

> and (3) tires designed and marketed exclusively for use on mobile homes which, in addition, exhibit each of the following physical characteristics: (a) the designation "MH" is molded into the tire's sidewall as part of the size designation; (b) the tire incorporates a warning, prominently molded on the sidewall, that the tire is for "Mobile Home Use Only;" and (c) the tire is of bias construction as evidenced by the fact that the construction code included in the size designation molded into the tire's sidewall is not the letter "R."

The petitioner states that it does not oppose Zhongce's request as long as each of the criteria listed within Zhongce's proposed scope exclusion language is included in the exclusion language.

**Department's Position:** For this and the concurrent AD final determinations, we have excluded mobile home tires from the scope of the investigation. We used the scope exclusion language proposed by Zhongce, with the exception of the phrase "designed and marketed exclusively for

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[263] *See Allegheny I*, *112 F. Supp. 2d* at *1150 n. 12 (CIT 2000).*
[264] *See Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1353 (CIT 2008); *see Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 543 (1978).

use on mobile homes which, in addition," because this language raises an enforceability concern. Specifically, CBP is unlikely to know or be able to determine at the time of entry how a product was designed or marketed, and, thus such requirements would be difficult for CBP to enforce. Similarly, the terms "designed" and "marketed" are undefined, and there is no basis in the petition or the record overall upon which the Department can rely to clarify the meaning of the terms.

Additionally, the required physical characteristics listed in the exclusion achieve the aim of the "designed" requirement in the phrase we deleted. Specifically, the exclusion provides clear guidance on how to identify tires designed for exclusive use on mobile homes, *i.e.*, "tires that exhibit each of the following characteristics: (a) the designation 'MH' is molded into the tire's sidewall as part of the size designation; (b) the tire incorporates a warning, prominently molded on the sidewall, that the tire is for 'Mobile Home Use Only;….'" The scope of the investigation in the *Preliminary Determination* states that the designation code "MH" identifies tires for mobile homes.[265] Further, the Petition also identified tires with the designation code "MH" as tires for mobile homes.[266] Therefore, we find that, even with the omission of the designed requirement from the scope exclusion proposed by Zhongce, this scope exclusion is limited to those tires that are only for use with mobile homes.

Additionally, we find that there is no basis to include a marketing requirement in the scope exclusion. The annually updated Tire and Rim Association Year Book, which is included in the scope of the investigation as a reference, lists the designation code "MH" for tires for mobile homes and nothing else, the designation code "TR" for tires for trucks and buses, and the designation code "HC" for a 17.5 inch rim diameter code tire for use on low platform trailers.[267] The Tire and Rim Association Year Book also states that these designation codes "are included, when necessary, as part of Tire Size Designations to differentiate between tires for service conditions which may require different loads and inflations and/or tires, which *must be* used on different types of rims."[268] Because these different designation codes serve the purposes of differentiating "between tires for services conditions which may require different loads and inflations and/or tires, which must be used on different types of rims," it is unlikely that tires that are designated with "MH" and satisfy the two other criteria for the exclusion of mobile home tires would be marketed as tires for any other purposes than mobile homes. Moreover, there is no record evidence indicating that mobile home tires are in fact marketed towards use, or actually used, with other vehicles.

**Comment 33: Whether to Limit the Exclusion of Tires Attached to Vehicles**

Cheetah Chassis requests a limitation on the exclusion of truck and bus tires that enter attached to a vehicle from the scope of the investigation. Specifically, Cheetah Chassis argues that this exclusion should be narrowed to exclude truck and bus tires that enter attached to a vehicle capable of self-propulsion, to be consistent with the petitioner's intent for this exclusion.

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[265] *See Preliminary Determination*, 81 FR at 43579.
[266] *See* "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Truck and Bus Tires from the People's Republic of China" dated January 29, 2016, at Exhibit I-14, at XV – Suffix Letters Used by the Tire and Rim Association in Tire Size Designations and Their Definitions (the Petition).
[267] *Id*.
[268] *Id*. (emphasis added).

Cheetah Chassis explains that this investigation covers truck and bus tires and thus indicates that the type of vehicles this investigation is concerned with are motorized vehicles capable of self-propulsion. For this reason, Cheetah Chassis claims, it is necessary to refer to vehicles capable of self-propulsion and vehicles incapable of self-propulsion, to identify particular tires that are subject to this investigation to ensure that all truck and bus tires are properly subject to this investigation.

According to Cheetah Chassis, HTSUS code 8716 covers trailers and semi-trailers and other vehicles that are not mechanically propelled, and container chassis and intermodal chassis are normally imported under this HTS code. Cheetah Chassis explains that HTSUS code 8701 covers tractors and semi-trailers not defined in HTSUS code 8716. Cheetah Chassis believes that tractors and semi-trailers not defined under HTSUS code 8716 would have to be mechanically propelled. Cheetah Chassis asserts that only tires attached to those vehicles capable of self-propulsion as defined in the HTSUS should be excluded from the scope: (1) to be consistent with the intent to only exclude finished vehicles with significant value added; and (2) in order to prevent possible circumvention that can take place with the inclusion of other types of vehicles in this exclusion. Cheetah Chassis claims that it is less likely that companies will import large numbers of complete vehicles with engines simply to remove tires for resale in the United States because the value of a vehicle capable of self-propulsion with mounted tires ready for use upon importation is significantly greater than the possible duty liability on the tires. Cheetah Chassis contends that, because HTSUS 8716 classifies even shopping carts as vehicles, truck and bus tires attached to shopping carts would satisfy this exclusion, which is irrational and contrary to the petitioner's intent. Cheetah Chassis explains that, although Chapter 87 of HTSUS includes the word "vehicles," because the general rule of interpretation of HTSUS requires that, for legal purposes, classification is determined according to the terms of the headings and any relative section or chapter notes, the Department should not ignore HTSUS code 8716.

Cheetah Chassis expresses a concern that, because this exclusion does not define the word "attached," an importer could simply lash multiple tires to a trailer, claim that they are attached to a vehicle, and avoid duties. Cheetah Chassis reiterates that the exclusion contemplates tires mounted to complete motorized vehicles that are ready for use upon importation. Cheetah Chassis points to CIMC Vehicle's own description of its packing configuration as illustrative of the potential for circumvention and evasion of duties. According to Cheetah Chassis, CIMC Vehicles imports chassis kits to which some tires are attached with lashing straps for shipping, removed from the chassis upon importation to the United States, and then reattached. Cheetah Chassis contends that companies could simply claim that they attached tires to the chassis frame for space reasons and then remove those tires upon importation and sell them separately, just as tires subject to duties would enter the United States. Cheetah Chassis argues that CBP would not be able to confirm that the companies, in fact, mount those tires onto the chassis they import, instead of selling the tires separately.

Cheetah Chassis expresses concern with respect to tires attached directly to the chassis axles as well. Cheetah Chassis argues that even those tires are not ready for use upon importation until the axles are attached to the body of the vehicle upon importation. According to Cheetah Chassis, this raises the same circumvention concern as tires that are merely lashed to the chassis frame. Cheetah Chassis explains that it would be burdensome for CBP to determine the type of chassis in the shipment to determine whether the shipment includes any extra unexplained tires. Cheetah Chassis contends that importers can easily lash multiple tires to non-motorized trailers in the empty space of a container to avoid duties.

The petitioner supports Cheetah Chassis' scope request. The petitioner expresses concern that, because this exclusion does not define how the tires must be attached or to what type of vehicle, the exclusion could be used to circumvent a possible order. The petitioner reiterates Cheetah Chassis' concern that tires could be attached to any vehicle by methods as simple as lashing them to a chassis in a shipping container, unlashed from the vehicle after importation, and sold separately in the U.S. market along with other domestically produced truck and bus tires and imported truck and bus tires under a possible order. The petitioner also reiterates Cheetah Chassis' concern that truck and bus tires can be loaded in an empty space of a container in which a chassis is loaded for purposes of circumvention of a possible order. The petitioner contends that limiting this exclusion to truck and bus tires mounted ready for use on a self-propelled vehicle would prevent such circumvention by requiring that excluded truck and bus tires be imported as a legitimate step in the actual commercial chain of the merchandise as it will ultimately be used and would account for only a small portion of the value of the product that is entered and sold.

The petitioner explains that, on the issue of whether to modify a scope in an investigation, the Department's primary concerns are to: (1) ensure that the revised scope accurately reflects the products for which the petitioner seeks relief; (2) provide interested parties with sufficient opportunity for comments for the Department's review; and (3) ensure that the revised scope would be administrable by CBP and that it is not susceptible to circumvention. The petitioner states that its intent for this exclusion was to alleviate the burden on CBP in applying a possible order to the extent possible, not to provide a route for a circumvention of a possible order by importing tires with a vehicle that the tires are not intended to ultimately be used with. The petitioner expresses its intent to limit the susceptibility of a possible order to circumvention by limiting this exclusion. The petitioner states that the Department recognizes the significance of the enforceability of a possible order and relevant concern to the Department in making scope determinations.

The petitioner explains that the Department's standard practice is to provide ample deference to the petitioner with respect to the definition of the products for which it seeks relief during an investigation. The petitioner requests that the Department modify this exclusion following the petitioner's stated support for the modification proposed by Cheetah Chassis in order to better prevent circumvention.

CIMC Vehicles first points out that neither Cheetah Chassis nor the petitioner contests the legitimacy of CIMC Vehicles' chassis imports or the potential disruption to them embodied in Cheetah Chassis' request. CIMC Vehicles characterizes the proposed limitation on this exclusion an unjustifiable, unnecessary, and a destructive means to damage CIMC Vehicles' business beyond the enforcement of a possible order on truck and bus tires from the PRC. CIMC Vehicles contends that a possible order on one product should not disrupt long-established and legitimate imports of another product.

CIMC Vehicles argues that, although some trucks and buses are more expensive than chassis, because non-tire components of a chassis account for the majority of a finished chassis' value, the alleged circumvention strategy would cost more than would the payment of AD/CVD duties themselves, unless those duties exceed several hundred percent. Even in such a case, CIMC Vehicles explains, the prohibitive cost of adding to the container an expensive chassis that lacked a downstream purchaser would discourage any potential circumvention activity. CIMC Vehicles contends that, because chassis kits are vehicles too, and because the value of the vehicle would significantly exceed the value of the tires, any incentive to circumvent a possible order by using the vehicle to import the tires would be negligible to non-existent.

CIMC Vehicles denies any physical possibility of stuffing extra tires in a container in which a chassis kit is loaded but explains that, even if it were possible, a substantial increase of the number of tires per chassis kit would jeopardize the imported product's proper tariff classification as a chassis because chassis components other than tires would no longer impart the whole import's essential character. In such an instance, CIMC Vehicles explains, the importer needs to enter the tires as tires and the chassis components as chassis components. CIMC Vehicles claims that an assumption that an importer would declare an incorrect tariff classification ignores the practical reality that a superabundance of tires would be visible to CBP and increase the importer's risk of getting caught. CIMC Vehicles explains further that only a gargantuan number of excess tires would make the alleged circumvention strategy cost-effective and a gargantuan number of excess tires would consume so much space as to stand out. CIMC Vehicles argues that the fact that tires constitute a smaller portion of the production cost for trucks and buses than they do for chassis means that including chassis tires in the scope of this investigation would disrupt the chassis business more.

CIMC Vehicles contends that Cheetah Chassis cannot argue, on one hand, that spotting one or two extra unexplained tires would impose burden on CBP and, on the other hand, an importer wanting to evade duties could simply lash presumably a large number of tires to a chassis. CIMC Vehicles explains that CBP's difficulty in spotting a small number of extra tires would prove that the tires and other chassis parts that CIMC Vehicles imports are closely integrated kit components, rather than slapped-together circumvention ploys that Cheetah Chassis is concerned about. CIMC Vehicles explains further that a more reasonable packing arrangement for shipping a large number of tires intended for resale would segregate them from the chassis.

CIMC Vehicles expresses concern that Cheetah Chassis' request, if adopted by the Department, would impose undue burden on CBP because CBP would need to check whether the shipment of a chassis included undeclared tires. According to CIMC Vehicles, if the shipment includes tires as part of a complete chassis kit, CBP's assessment of AD and CVD duties could not use the statutorily preferred transaction-value method of appraisement, unless the commercial invoice segregated the cost of each tire from the rest of the chassis. Even in creating such segregation for CBP, according to CIMC Vehicles, an importer could not use the original "price paid or payable" for the tires because their overseas purchase would have been for production of chassis in the PRC, not for exportation to the United States. CIMC Vehicles states that Cheetah Chassis' proposal ignores the difference between legitimately traded goods, *e.g.*, chassis, and allegedly dumped and subsidized goods, *e.g.*, tires., and would distort this investigation.

CIMC Vehicles disagrees with Cheetah Chassis' reliance on the HTSUS codes to redefine the word "vehicle" in this exclusion. CIMC Vehicles argues that classifications of trucks, buses, and chassis all under different HTSUS codes for different reasons make it irrelevant to rely on them to redefine the word "vehicle." For example, according to CIMC Vehicles, HTSUS code 8701 classifies mechanically-propelled tractors and semi-trailers, HTSUS code 8702 classifies buses that transport ten or more persons, and HTSUS code 8716 classifies container chassis and intermodal chassis, and the relevant tires which are designed for use on all these varieties of vehicles. CIMC Vehicles also points out that the word "vehicles" exists in the titles of HTSUS Chapter 87 and the specific language of HTSUS code 8716 and, in this context, the word "vehicle" applies to chassis. CIMC Vehicles argues that HTSUS 8716 expressly characterizes the container chassis and intermodal chassis as vehicles, regardless of their being not mechanically propelled.

CIMC Vehicles claims that it does not suggest an exclusion of truck and bus tires imported with shopping carts. CIMC Vehicles does not expect such an exclusion because, although they are designed for use on chassis, truck and bus tires are not designed for use on shopping carts. CIMC Vehicles believes CBP would require separation of tires imported with shopping carts, instead of calling the combination of them a kit or set. CIMC Vehicles argues that chassis kits are vehicles under HTSUS General Rules of Interpretation.

CIMC Vehicles explains that merely lashed tires are not truly attached. In response to Cheetah Chassis' contention that some of the imported tires are already mounted on axles does not make the tire ready for use on importation, CIMC Vehicles argues that the most reasonable interpretation of the word "attached" in this context is "imported together for relatively prompt end-use together." CIMC Vehicles claims that the fact that a driver has to open the door of a truck or a bus before entering the vehicle, or that a truck or bus during shipment lacks motor fuel prevents the truck or bus from being ready for immediate use on importation, as well. CIMC Vehicles argues that these facts do not prevent the vehicle from being a truck or a bus.

CIMC Vehicles argues that, although Cheetah Chassis and the petitioner characterize their most recent interpretation of this exclusion as what the petitioner intended all along, no one in this investigation challenged or questioned this exclusion until Cheetah Chassis made its request. According to CIMC Vehicles, the petitioner's intent of this exclusion was to alleviate the burden on CBP in applying a possible order to the extent possible, not to provide a circumvention route for tires imported with a vehicle that the tires are not intended to ultimately be used with. CIMC Vehicles reiterates that a chassis is a vehicle that the tires are intended ultimately to be used with and that tires lashed to a chassis frame are imported with the chassis for use with the chassis. CIMC Vehicles explains that, even during an investigation, the Department may reject a petitioner's later interpretation of its own earlier language.

Cheetah Chassis argues that the issue is not whether importers are required to import tires separately from other vehicle components, but whether the vehicles are entered under different HTSUS subheadings depending on whether they are self-propelled or not.

The petitioner argues that the information CIMC Vehicles submitted concerning the treatment of chassis kits from various outside sources, *e.g.*, HTSUS and Internal Revenue Service, *etc.*, are not dispositive for purposes of defining subject merchandise with the scope. The petitioner explains that the treatment of a chassis kit outside this investigation does not address whether this exclusion may allow circumvention or a proper implementation of a possible order.

**Department's Position:** For the final determination, we did not modify the exclusion of truck and bus tires that enter attached to a vehicle. The scope exclusion at issue states: "Truck and bus tires that enter attached to a vehicle are not covered by the scope." Under this exclusion, truck and bus tires that enter attached to a vehicle are not covered by the scope regardless of the type of the vehicle to which truck and bus tires are attached.

Cheetah Chassis requests that the Department limit this exclusion to the truck and bus tires that enter attached to a vehicle capable of self-propulsion. The petitioner specifically requests modification of this exclusion as follows:

> Truck and bus tires that enter attached to a *self-propelled* vehicle *in such a way that the vehicle is ready for immediate use upon importation* are not covered by the scope.[269]

The proposed limitation to this exclusion would ensure truck and bus tires that enter attached to "a self-propelled vehicle in such a way that the vehicle is ready for immediate use upon importation" will continue to be excluded but truck and bus tires attached to all other types of vehicles will be newly covered by the scope of the investigation. Although the petitioner characterizes the modification of the exclusion language as a clarification the intent behind the exclusion, we find that the proposed limitation to this exclusion is in fact an expansion of the scope, not a clarification of the scope. The petitioner has not identified any language in the Petition indicative of its intent, and appears to have expressed its intent for this exclusion for the first time in its October 31, 2016, letter in support of Cheetah Chassis' scope request, where it stated that its intent for this exclusion was to alleviate the burden on CBP in applying a possible order to the extent possible.[270]

In their requests for this scope expansion, both Cheetah Chassis and the petitioner express their concern with respect to the prevention of a circumvention of a possible order on truck and bus tires from the PRC. Cheetah Chassis and the petitioner claim that this limitation is necessary in order to prevent importers from lashing large quantities of truck and bus tires to chassis and claim them as truck and bus tires attached to a vehicle and outside the scope.

Neither Cheetah Chassis nor the petitioner, however, adequately explained how the inclusion of truck and bus tires attached to a vehicle not capable of self-propulsion, *e.g.*, chassis, within the scope would prevent a circumvention of a possible order. Despite their expressed concern for a potential circumvention, Cheetah Chassis and the petitioner continue to support the exclusion of truck and bus tires attached to a vehicle capable of self-propulsion, *e.g.*, trucks, from the scope. In other words, neither Cheetah Chassis nor the petitioner adequately explained why importers would use only chassis, but not trucks or any other vehicles capable of self-propulsion and transporting a large quantity of goods, to circumvent a possible order by attaching excessive

[269] *See* Petitioner's Support for Cheetah Chassis' Scope Request, at 3-4.
[270] *Id.*

quantities of truck and bus tires. Other than expressing concern for potential circumvention of a possible order, Cheetah Chassis and the petitioner did not explain how and why their proposed scope expansion would prevent the circumvention.

Cheetah Chassis does explain that it is less likely that companies will import large numbers of complete vehicles with engines simply to remove tires for resale in the United States because the value of a vehicle capable of self-propulsion with mounted tires ready for use upon importation is significantly greater than the possible duty liability on the tires. However, Cheetah Chassis does not address whether there is a possibility for such a circumvention involving the use of a vehicle capable of self-propulsion. Even assuming that an importer might be more likely to use a chassis than a vehicle capable of self-propulsion for purposes of such circumvention, the possibility of circumvention involving the use of a vehicle capable of self-propulsion may also exist. Although Cheetah Chassis and the petitioner express their concern over a potential circumvention of a possible order, their proposed scope modification does not justify targeting certain types of vehicles, rather than tires, which are the subject merchandise. For these reasons, we find that, if the proposed scope expansion is added to the scope of the investigation, it would result in discrimination against one type of vehicle over another type of vehicle with no certainty that the modification would address the underlying circumvention concern.

Additionally, we find that the proposed limitation is also inappropriate because the phrase "vehicle is ready for immediate use upon importation" could create confusion for CBP. As CIMC Vehicles correctly observes, the fact that a driver has to open the door of a truck or a bus before entering the vehicle, that a truck or bus during shipment lacks motor fuel, or any other possible situation involving the readiness of a truck or bus upon importation would create a situation in which CBP must evaluate the readiness of a truck or bus at the time of entry and determine whether the imported vehicle meets this requirement. Neither Cheetah Chassis nor the petitioner clearly defined what is meant by "when an imported vehicle capable of self-propulsion is ready for immediate use upon importation." Cheetah Chassis and the petitioner simply stated that a vehicle capable of self-propulsion is ready for immediate use upon importation whereas a vehicle incapable of self-propulsion is not. The potential confusion arising from this additional language could undermine the petitioner's stated intent of alleviating the burden on CBP.

We disagree with Cheetah Chassis on its assertion that, because this investigation covers truck and bus tires, the type of vehicles this investigation is concerned with are limited to motorized vehicles capable of self-propulsion. The tires within the scope of this investigation are not just those that are used with trucks and buses, but also those used with trailers. The scope of the investigation states, in part:

> Subject tires may also have one of the following suffixes in their tire size designation, which also appear on the sidewall of the tire:
>
>> TR – Identifies tires for service on trucks or buses to differentiate them from similarly sized passenger car and light truck tires; and
>>
>> HC – Identifies a 17.5 inch rim diameter code for use on low platform *trailers*.

All tires with a "TR" or "HC" suffix in their size designations are covered by this investigation regardless of their intended use. (Emphasis added.)

Therefore, we are not aware of a basis to interpret that the type of vehicles this investigation is concerned with are only motorized vehicles of self-propulsion. Also, the different HTSUS classifications of trucks, buses, and other vehicles capable and incapable of self-propulsion are not issues pertinent to our analysis on the reasonableness of this proposed scope expansion.

## XII. 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

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
For Enforcement and Compliance

January 19, 2017
Date