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International Trade Administration
Washington, D.C. 20230

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Administrative Review
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June 9, 2017

MEMORANDUM TO: Ronald Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Final Results and Partial Rescission of Review of Countervailing Duty Administrative Review: Chlorinated Isocyanurates from the People's Republic of China

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I. SUMMARY

The Department of Commerce (the Department) has completed this administrative review of the countervailing duty (CVD) order on chlorinated isocyanurates (chloro isos) from the People's Republic of China (PRC), for the period of review (POR) February 4, 2014, through December 31, 2014, in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). The mandatory respondents are Hebei Jiheng Chemical Co., Ltd (Jiheng) and Heze Huayi Chemical Co., Ltd. (Heze). We find that the mandatory respondents received countervailable subsidies during the POR. We have analyzed the case and rebuttal briefs submitted by interested parties following the *Preliminary Results*[1] and address the issues raised in the "Analysis of Comments" section below.

II. BACKGROUND

The Department published the *Preliminary Results* of this administrative review in the *Federal Register* on December 13, 2016, preliminarily rescinding the review with respect to Kangtai and finding the remaining respondents received countervailable subsidies during the POR related to certain programs.[2] We invited interested parties to comment on the *Preliminary Results.* On May 19, 2017, we received jointly filed case briefs from Clearon Corp and Occidental Chemical

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[1] *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Preliminary Intent to Rescind Review, in Part; 2014*, 81 FR 89896 (December 13, 2016) and accompanying Preliminary Decision Memorandum (PDM) (collectively, *Preliminary Results*).
[2] *See Preliminary Results*.

Corporation (the petitioners). On May 19, 2017, we also received case briefs from the Government of China (GOC)[3] On May 24, 2017, we received rebuttal comments from the petitioners, Jiheng, and Heze.[4] On May 31, 2017, we issued the results of our post-preliminary decision on the China Export Import Bank's (China Ex-Im) Export Buyer's Credit Program (Post-Preliminary Results),[5] finding the program to be countervailable and invited comments on the decision. On June 2, 2017, Heze provided comments on the Post-Preliminary Results.[6] On June 5, 2017, we received rebuttal comments on the Post-Preliminary Results from the petitioners and the GOC.[7]

III. LIST OF INTERESTED PARTY COMMENTS

Below is a complete list of the issues raised in this administrative review for which we received comments from interested parties. We analyzed these comments in the "Analysis of Comments" section below.

Comment 1: Provision of Electricity for Less Than Adequate Remuneration (LTAR)
Comment 2: Export Buyer's Credit Program

IV. SCOPE OF THE ORDER

The products covered by the order are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) trichloroisocyanuric acid ("TCCA") ($Cl_3(NCO)_3$); (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3$ X $2H_2O$); and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isocyanurates are available in powder, granular and solid *(e.g.,* tablet or stick) forms.

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[3] *See* Case Brief Submitted to the Record from Petitioners (May 19, 2017) (Petitioners' Case Brief); Letter to the Secretary of Commerce from the GOC, "GOC Administrative Case Brief: First Administrative Review of the Countervailing Duty Order on Chlorinated Isocyanurates from the People's Republic of China (C-570-991)" (May 19, 2017) (GOC's Case Brief).

[4] *See* Rebuttal Case Brief Submitted to the Record from Petitioners (May 24, 2017); Letter to the Secretary of Commerce from the GOC, "GOC Administrative Rebuttal Brief: First Administrative Review of the Countervailing Duty Order on Chlorinated Isocyanurates from the People's Republic of China (C-570-991)" (May 19, 2017) (GOC's Case Brief); *see* Letter to the Secretary of Commerce from Heze, "Certain Chlorinated Isocyanurates from China Rebuttal Brief" (May 24, 2017) (Heze's Rebuttal Brief); Letter to the Secretary of Commerce from the Jiheng, "Certain Chlorinated Isocyanurates from China Rebuttal Brief of Hebei Jiheng Chemical Co., Ltd." (May 24, 2017) (Jiheng's Rebuttal Brief).

[5] *See* Memorandum from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Ronald Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, "Countervailing Duty Administrative Review of Chlorinated Isocyanurates from the People's Republic of China: Post-Preliminary Results Decision Memorandum" (May 31, 2017).

[6] *See* Letter to the Secretary of Commerce from Heze, "Certain Chlorinated Isocyanurates from China Comments on Post-Preliminary Results" (June 2, 2017) (Heze's Post-Prelim Comments).

[7] *See* Letter to the Secretary of Commerce from the Petitioners, "Chlorinated Isocyanurates from the People's Republic of China: Post-Preliminary Determination Rebuttal Comments" (June 5, 2017) (Petitioners' Post-Prelim Rebuttal Comments); Letter to the Secretary of Commerce from the GOC, "GOC Comments in Response to Post-Prelim Comments: First Administrative Review of the Countervailing Duty Order on Chlorinated Isocyanurates from the People's Republic of China (C-570-991)" (June 5, 2017) (GOC's Post-Prelim Rebuttal Comments).

Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.50.4000, 3808.94.5000, and 3808.99.9500 of the Harmonized Tariff Schedule of the United States (HTSUS). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. The tariff classifications 3808.50.4000, 3808.94.5000 and 3808.99.9500 cover disinfectants that include chlorinated isocyanurates. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

V. CHANGES FROM THE PRELIMINARY RESULTS AND POST-PRELIMINARY RESULTS

Based on case briefs, rebuttal briefs, and all supporting documentation, we made certain changes from the *Preliminary Results* and Post-Preliminary Results. For Heze, the Department has corrected the average useful life range from 9 to 10 years. With respect to the Export Buyer's Credit Program, for both respondents, the Department has adjusted the AFA rate to 0.87 percent *ad valorem*, the rate calculated for Jiheng for the Export Seller's Credit Program in the investigation, for these final results.

VI. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

We continue to find that Kangtai made no shipments to the United States during the POR. As noted in the *Preliminary Results*, on May 16, 2016, the Department received a questionnaire response from Kangtai indicating that it did not make any shipments during the POR.[8] We received no information from CBP to contradict the claims of Kangtai that it had no sales, shipments, or entries of subject merchandise to the United States during the POR.[9] Because Kangtai timely filed its no-shipment certifications and CBP has not provided information to contradict the Kangtai's claims, we are rescinding the review of Kangtai, pursuant to 19 CFR 351.213(d)(3).

VII. SUBSIDIES VALUATION INFORMATION

Allocation Period

The Department made no changes to the allocation period and the allocation methodology used in the *Preliminary Results*.[10] However, in the *Preliminary Results*, the Department inadvertently applied an AUL for 9 years instead of 10 years to both Jiheng's and Heze's calculations. In these final results, we corrected that error.[11]

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[8] *See* PDM at 3.
[9] *Id.*
[10] *See* PDM.
[11] *See* Memorandum to the File from Omar Qureshi, International Trade Compliance Analyst, AD/CVD Operations, Office V, through Paul Walker, Program Manager, Office V, AD/CVD Operations, Office V, "Countervailing Duty Administrative Review of Chlorinated Isocyanurates from the People's Republic of China: Final Calculation Memorandum for Heze Huayi Chemical Co., Ltd." filed concurrently with this memorandum; *See* Memorandum to the File from Omar Qureshi, International Trade Compliance Analyst, AD/CVD Operations, Office V, through Paul

Attribution of Subsidies

The Department made no changes to the attribution methodologies used in the *Preliminary Results* for attributing subsidies.[12]

VIII. BENCHMARKS

The Department made no changes to the loan benchmark and discount rates used in the *Preliminary Results*.[13]

IX. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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.[14] 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.

Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available ("AFA") rate from among the possible sources of information, the Department's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[15] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated

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Walker, Program Manager, Office V, AD/CVD Operations, Office V, "Countervailing Duty Administrative Review of Chlorinated Isocyanurates from the People's Republic of China: Final Calculation Memorandum for Hebei Jiheng Chemical Co., Ltd." filed concurrently with this memorandum

[12] *Id.*

[13] *Id.*

of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this review.

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

fully."[16]

Section 776(c) of the Act also 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. However, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.[17]

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.[18]

In a CVD case, as discussed further below, the Department requires information from both the foreign producers and exporters of the merchandise under investigation and the government of the country where those producers and exporters are located. When the government fails to provide requested and necessary information concerning alleged subsidy programs, the Department, as AFA, may find that a financial contribution exists under the alleged program and that the program is specific. However, where possible, the Department will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit conferred, to the extent that those records are useable and verifiable.

Otherwise, consistent with section 776(d) of the Act and our established practice of the hierarchal methodology for selecting an AFA rate in reviews, for certain of the programs discussed below, as appropriate, we selected as AFA the highest calculated rate for the same or a similar program.[19] The AFA hierarchy for reviews has four steps, applied in sequential order. The first step is to apply the highest non-*de minimis* rate calculated for a cooperating respondent for the identical program in any segment of the same proceeding. If there is no identical program match within the proceeding, or if the rate is *de minimis*, the second step is to apply the highest non-*de minimis* rate calculated for a cooperating company for a similar program within any segment of the same proceeding. If there is no non-*de minimis* rate calculated for a similar program within same proceeding, the third step is to apply the highest non-*de minimis* rate calculated for an identical or similar program in another countervailing duty proceeding involving the same country. If no such rate exists under the first through third steps, the fourth

[16] *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.
[17] *See* section 776(c)(2) of the Act.
[18] *See* section 776(d)(3) of the Act.
[19] *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*) 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) (*Essar Steel*) (upholding "hierarchical methodology for selecting an AFA rate").

step is to apply the highest rate calculated for a cooperating company for any program from the same country that the industry subject to the investigation could have used.

In the *Preliminary Results* and the Post-Preliminary Results, we relied on "facts otherwise available," including AFA, for several findings. In the *Preliminary Results*, 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.[20] We also relied on an adverse inference to determine the existence and the amount of the benefit; we selected as our benchmark the highest electricity rates on the record for the applicable rate and user categories.[21] Because the rates were derived from information submitted during this review, they do not constitute secondary information and there is no requirement to corroborate them, pursuant to section 776(c) of the Act. As discussed below, for purposes of these final results, we have not changed these AFA findings.

In the Post-Preliminary Results, we found that the GOC had not provided information with respect to: (1) whether it uses third party banks to disburse/settle Export Buyer's Credits; (2) the interest rates it used during the POR; and (3) whether the China Ex-Im limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million.[22] Without this information, we were unable to analyze fully how the Export Buyer's Credits flow to/from foreign buyers and the China Ex-Im and found that the GOC had not cooperated to the best of its ability and, as AFA, found that Jiheng and Huayi used and benefited from this program, despite their claims of non-use and certifications of non-use from their customers.[23]

Due to the failure of the GOC to cooperate to the best of its ability, for the Export Buyer's Credit program discussed below, the Department applied AFA. To select the AFA rate for this program, as discussed further below, the Department applied step two of the AFA hierarchy for reviews and selected a rate from a similar program from the investigation of this proceeding. Pursuant to section 776(c)(2) of the Act, the Department is not required to corroborate the rate under these circumstances.

X. PROGRAMS DETERMINED TO BE COUNTERVAILABLE

The Department has made certain changes to its *Preliminary Results* and Post-Preliminary Results with regard to the methodology used to calculate the subsidy rates for the programs listed below with regards to Jiheng and Heze. Also, except where noted, no issues were raised by interested parties in case briefs regarding these programs. The final program rates calculated for Jiheng and Heze are as follows:

Jiheng:

1. Export Buyer's Credit: 0.87 percent *ad valorem*
2. Electricity for LTAR: 18.65 percent *ad valorem*

[20] *See* PDM at 8-9.
[21] *Id*. at 9.
[22] *See* Post-Preliminary Results at 6.
[23] *Id*.

3. Grants for Export Credit Insurance: 0.09 percent *ad valorem*
4. Special Fund for Energy Saving Technology: 0.62 percent *ad valorem*
5. Self-reported grants – Rebate for Land Use Fee; Model Enterprise Fund; Count Magistrate Awards; International Market Development Funds; Science and Technology Fund; Technological Innovation Funds; Boiler Improvement Fund; and Awards for Star Enterprises 2014: 1.52 percent *ad valorem* combined

Heze:

1. Export Buyer's Credit: 0.87 percent *ad valorem.*
2. Electricity for LTAR: 0.91 percent *ad valorem.*
3. Self-reported grants – Basic Construction Cost of National Debt Special Fund in 2006; Special Fund for Constructional Adjustment of Key Products in 2007; Financial Special Subsidy Fund and Local Supporting Fund for Prevention and Control of Water Pollution Project in "Three Rivers and Three Lakes" (Environmental Protection Part); and State Subsidy on Evaluation Award Fund for Prevention and Control of Water Pollution (Comprehensive Improvement Project of Water Environment) in Regions of "Three Rivers and Three Lakes" and the Songhua River in 2011: 0.55 percent *ad valorem* combined.

XI. PROGRAMS DETERMINED NOT TO CONFER MEASURABLE BENEFITS

We find that the following programs do not confer a measurable benefit during the POR:

1. Industrial Technology Research and Development Fund in 2006
2. Fund for Eco-compensation Pilot Projects in Regions South of the Yellow River and Provincial Region of Huaihe River under South-to-North Water Transfer
3. Heze Municipal Key Special Project Fund for Promotion of Technology Creation in 2011
4. Heze Municipal Intellectual Property Technology Award in 2014
5. Subsidy Fund
6. Financial Fund
7. Market Development Funds
8. "Government Subsidy"
9. Patent Awards
10. Awards for Patent Application
11. Technological Innovation Funds

XII. PROGRAMS DETERMINED NOT TO BE USED DURING THE POR

We find that the following programs were not used during the POR:

1. Grants under the Haixing County Science and Technology Research & Development Plan Project
2. Special National Bond Fund for Energy Conservation and Waste Recycling Projects
3. Export Seller's Credits from China Ex-Im
4. Shandong Industrial Structure Adjustment Entrusted Loan
5. Corporate Income Tax Law Article 33: Reduction of Taxable Income for the Revenue Derived from the Manufacture of Products that are in Line with State Industrial Policy and Involve Synergistic Utilization of Resources
6. Enterprise Income Tax Reduction for High and New Technology Enterprises

7. Land and Land Usage for Foreign Invested Enterprises ("FIEs") in National Economic and Technological Zones at Preferential Rates
8. "Two Free/Three Half" Program for FIEs
9. Income Tax Benefits for FIEs Based on Geographic Location
10. Value Added Tax and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
11. VAT refunds for FIEs on purchases of Chinese-made equipment
12. Preferential direct tax treatment on purchases of domestically produced equipment for FIEs
13. Policy Loans under the Chlor-alkali Industry Second Five Year Plan
14. Stamp Tax exemption on share transfers under Non-Tradable Share Reform
15. State Key Technology Renovation Project Fund
16. Shareholder loans (debt forgiveness)
17. Discounted Loans for Export-Oriented Enterprises
18. VAT rebate on domestically produced equipment
19. VAT exemption on imports by encouraged industries
20. Preferential lending for industrial readjustment
21. Export credit insurance from Sinosure
22. Preferential loans provided by China Ex-Im "Going-out" for Outbound Investments
23. Foreign Trade Development Fund
24. "Famous Brands" program
25. Preferential policies to attract foreign investment in Jiangsu Province
26. Outline of light industry restructuring and revitalization plan in Jiangsu Province
27. Jiangsu province grants for legal fees in foreign trade remedy proceedings
28. Shandong Province: grants to enterprises exporting key product
29. The Clean Production Technology Fund
30. Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies
31. VAT Tax Rebate for Comprehensive Utilization of Resources

XIII. ANALYSIS OF COMMENTS

Comment 1: Electricity for LTAR

The petitioners' Comments:

- The calculation of the net benefit from the provision of electricity at LTAR should be adjusted in the final determination to reflect the fact that the GOC failed to provide information requested by the Department pertaining to the provision of electricity for LTAR, and has consistently failed to cooperate on this issue in prior investigations. Failure of the GOC to cooperate should result in the application of the highest reported electricity rate as AFA.[24]
- The GOC's noncooperation means that an adverse inference is warranted and the highest rate determined for this program should be applied to respondents.[25]
- The Department preliminarily determined to apply the highest rate reported for any

[24] *See* Petitioners' Case Brief at 3.
[25] *Id.* at 2.

province for purposes of calculating the benchmark electricity rate, but this approach assumes that Heze and Jiheng were, in fact, "large industry" users and within the "10kv" category, an assumption that is not supported by the record.[26] However, neither Jiheng nor Heze have offered any supporting evidence that either qualifies for the "large industry use" category.[27]
- Furthermore, the "large scale industry" rates are not the highest rates on record. [28] The Department should use the higher general industry rate as the benchmark electricity rate in the final results.[29]

Heze's Comments:
- The Department has no basis for applying adverse inferences against Heze in the manner suggested by the petitioners because Heze has cooperated fully with the Department's requests for information on its electricity purchases during the POR.[30]
- Heze cooperated with the Department to the best of its abilities and correctly reported its electricity usage and rate category, including proper classification and usage as a "large scale industry."[31]
- The Department should calculate the benefit of receiving electricity for LTAR by applying Heze actual electricity usage rates.[32]

Jiheng's Comments:
- Jiheng's responses and those of GOC constitute substantial evidence on the record. [33] The petitioners' information and arguments contained in their case brief do not.[34] Accordingly, the Department should continue to use Jiheng's information and not find any of the petitioners' arguments persuasive.[35]

Department's Position: We disagree with the petitioners that the net benefit from the provision of electricity for LTAR should be adjusted to reflect the fact that the GOC failed to provide information requested by the Department pertaining to the provision of electricity for LTAR. As discussed above, in a CVD case, the Department requires information from both the foreign producers and exporters of the merchandise under investigation and the government of the country where those producers and exporters are located. When the government fails to provide requested and necessary information concerning alleged subsidy programs, the Department, as AFA, may find that a financial contribution exists under the alleged program and that the program is specific. However, where possible, the Department will rely on the responsive

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26 *Id.* at 4.
27 *Id.* at 9.
28 *Id.* at 6.
29 *Id.*
30 *See* Heze's Rebuttal Brief at 5.
31 *Id.* at 5 and 7.
32 *Id.* at 1.
33 *See* Jiheng's Case Brief.
34 *Id.*
35 *Id.*

producer's or exporter's records to determine the existence and amount of the benefit conferred, to the extent that those records are useable and verifiable. [36]

Here, based on the record evidence and consistent with our practice for electricity for LTAR programs in PRC CVD cases,[37] we have continued to apply AFA to the benchmark electricity rates by comparing the electricity usage rates reported by the respondents to the AFA benchmark electricity rate, which is the appropriate highest provincial rate in the PRC, for each category reported by the respondents. For example, Heze reported electricity usage for its meters that show that, at certain points during the POR, Heze qualified for multiple energy usage categories.[38] Because Heze reported energy usage in more than one energy category, we applied the highest provincial rate for each of the categories under which Heze qualified to the amount of energy usage that Heze reported in each of these energy categories. Further, the petitioners argue that applying the highest rate reported for any province for purposes of calculating the benchmark electricity rate assumes that Heze and Jiheng were, in fact, "large industry" users and within the "10kv" category, which is an assumption that is not supported by the record. We find that the respondents provided record evidence pertaining to their respective electricity usage and rate category, including proper classification and usage as a "large scale industry."[39] The petitioners' argument that the GOC's lack of cooperation should be reflected on the mandatory respondents through an adverse inference by applying the highest rate for this program to each respondent's reported energy usage rate goes beyond the Department's practice and is contrary to the record evidence and, therefore, is not warranted in this instance.

The petitioners also state that the highest reported benchmark rate for electricity is the "general industry" rate and not the "large scale industry" rate and that the Department should use the higher "general industry" rate as the benchmark electricity rate in the final determination. However, the Department did not assume that both companies were "large industry" users and then compared the "large industry" benchmark rate to the respondents' respective energy usage rate. Again, in the *Preliminary Results*, the Department compared the electricity usage rates reported by the respondents, which is supported by record evidence,[40] to the AFA benchmark electricity rate for each usage category reported by each respondent. As a result, as stated above, the Department did not choose the "large industry category" over the "general industry" category. Rather, we relied on the respondents' reporting of their respective energy usage, then applied the highest benchmark for each rate to each category the respondents reported. Therefore, we disagree with the petitioners, and will not adjust the net benefit of the provision of

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36 *See e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2013* and accompanying Issues and Decision Memorandum at Comment 10.

37 *See e.g., Countervailing Duty investigation of 1-Hydroxyethylidene-1, 1-diphosphonic acid from the People's republic of China: Final Affirmative Determination*, 82 FR 14872 (March 23, 2017) and accompanying Issues and Decision Memorandum at Comment 1.

38 We note that Heze's reporting of it energy usage is proprietary. *ee* Heze's initial questionnaire response, dated May 17, 2016, at Exhibit 10, for more information on Heze's energy usage.

39 *See*, *e.g.*, Heze's initial questionnaire response, dated May 17, 2016, at Exhibit 10; Jiheng's initial questionnaire response, dated May 17, 2016, at Exhibit 12.

40 *See*, *e.g.*, Heze's initial questionnaire response, dated May 17, 2016, at Exhibit 10; Jiheng's initial questionnaire response, dated May 17, 2016, at Exhibit 12.

electricity for LTAR. The Department will continue use the methodology used in the *Preliminary Results* to calculate the electricity benefits conferred to Jiheng and Heze. Accordingly, for the provision of electricity for LTAR, we determine a countervailable subsidy of 0.91 percent *ad valorem* for Heze, and 18.65 percent *ad valorem* for Jiheng.

Comment 2: Export Buyer's Credit Program

GOC's Comments:

- The Export Buyer's Credit Program was not used.[41] The Department found that the China Ex-Im Export Buyer's Credit Program was not used during the POR.[42] The Department should maintain this finding in its final results.[43]
- In the original investigation, the Department conducted a verification of this program at China Ex-Im and found that the program was not used.[44] The Department should find the same non-use here.[45]
- In other cases, the Department found that it could not verify use at China Ex-Im, and concluded that the program was not used.[46]
- The petitioners' argument that AFA is warranted for the use of the Export Buyer's Credit Program is without merit and should be rejected.[47] The petitioners have not identified the necessary "gap" in the record regarding non-use and the Department has an obligation to use the respondents' evidence of non-use.[48] Specifically, the petitioners have not addressed the threshold question in considering the application of an adverse inference, which is whether there is a "gap" in the record.[49] Absent any such "gap", the Department lacks the authority to apply facts otherwise available pursuant to section 776(a) of the Act or any adverse inference under section 776(b) of the Act.[50]
- If the Department applies AFA to this program, it should use the rate from the Export Seller's Credit Program as an AFA rate as this program is the most similar program to the Export Buyer's Credit Program.[51]

Heze's Comments:

- The Department should find that Heze did not benefit from the export buyer's credit program.[52]
- Heze has provided evidence, explanations, and certifications to the Department demonstrating that neither Heze nor any of its customers benefited from the Export

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41 *See* GOC's Case Brief at 1.
42 *Id.*
43 *Id.*
44 *Id.* citing *Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 Fed. Reg. 56,560 (Sept. 22, 2014), and accompanying Issues and Decisions Memorandum (IDM) at 15.
45 *See* GOC's Case Brief at 2.
46 *Id.* citing for example, *Solar Cells* at Comment 1.
47 *See* GOC's Rebuttal Brief at 1.
48 *Id.*
49 *Id.*
50 *Id.* at 4
51 *Id.* at 7.
52 *See* Heze's Rebuttal Brief at 8.

Buyer's Credit program.[53]

- The Department fails to show that the requested information from the GOC was relevant for determining whether the respondents in this review used and benefitted from the export buyer's credit program.[54] AFA is not warranted for the use of the export buyer credit program. [55] Contrary to the Department's conclusion that such information is critical to understanding whether Heze benefitted from the Export Buyer's Credit Program, the record evidence overwhelmingly demonstrates that the respondents did not use or benefit from this program.[56]
- The Department should find the petitioners' arguments to apply AFA regarding this program without merit and disregard them in their entirety.[57]
- The Department may not apply adverse facts available to hypothetical subsidies received under the program when the record evidence shows that the respondents received no benefit from the program, as is the case in this review.[58]
- The Department used the incorrect methodology to calculate the respondents' AFA rate for the Export Buyer's Credit Program.[59] If the Department should find reason to apply AFA to this program based on a perceived lack of cooperation from the GOC, the Department should apply its methodology as in the *Solar World Remand Redetermination*, calculating a rate that would be 0.87% *ad valorem* based on a similar loan program from the investigation.[60]

Jiheng's Comments:

- Jiheng's responses and those of GOC constitute substantial evidence on the record. [61] The petitioners' information and arguments contained in their case brief do not.[62] Accordingly, the Department should continue to use Jiheng's information and not find any of the petitioners' arguments persuasive.[63]

The petitioners' Comments:

- The Department should find that the Export Buyer's Credit Program to be a countervailable subsidy and apply AFA because the GOC refused to provide key information requested by the Department[64] and the record evidence does not support the claim that the program was not used.[65]
- The lack of cooperation by the GOC has led to a lack of key information needed to

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[53] *Id.*
[54] *See* Heze's Post-Prelim Comments at 1.
[55] *See* GOC's Rebuttal Brief at 1.
[56] *Id.* at 2.
[57] *Id*. at 11.
[58] *Id.* at 14.
[59] *See* Heze's Post-Prelim Comments at 7.
[60] *Id.* at 15 citing to *SolarWorld Americas, Inc. v. United States,* 182 F. Supp. 3d 1372 (Ct. Int'l Trade Oct. 14, 2016).
[61] *See* Jiheng's Case Brief.
[62] *Id.*
[63] *Id.*
[64] *See* Petitioners' Case Brief at 10.
[65] *See* Petitioners' Rebuttal Brief at 2.

analyze the program and the net benefits received by the Chinese producers on the record, which has significantly impeded the Department's investigation and calls for the application of an adverse inference pursuant to the statute.[66]

Department's Position: As explained in the Post-Preliminary Results, the Department continues to find that the information on the record does not support finding non-use of the Export Buyer's Credit Program, as the GOC and Heze have argued. In prior proceedings in which we have examined this program, we have found that the China Ex-Im, as the lender, is the primary entity that possesses the 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.[67] As we noted in the Post-Preliminary Results, the GOC has not provided the requested information and documentation necessary for the Department to develop a complete understanding of this program, *i.e.*, the use of third-party banks to disburse/settle Export Buyer's Credits, information on the interest rates China Ex-Im established during the POR, and information on the size of the business contracts for which Export Buyer's Credits are applicable.[68] Such information is critical to understanding how Export Buyer's Credits flow to and from foreign buyers and China Ex-Im. Absent the requested information, the GOC's claims that the respondent companies did not use this program are not reliable. Moreover, without a full and complete understanding of the involvement of third-party banks, the respondent companies' (and their customers') claims are also not reliable.

We disagree with the GOC's assertion that the information on the record of this review is analogous to the information submitted in, for example, *Solar Cells*. In this case, we have information on the record regarding the 2013 revisions to the program and the involvement of third-party banks.[69] When we asked the GOC to explain how these revisions affected the operation of the program, especially *vis-a-vis* eligibility for borrowing and approved lending institutions, the GOC was not responsive.[70] Moreover, in *Solar Cells,* 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.[71] 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

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66 *Id.* at 2-8.

67 *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.

68 *See* Post-Preliminary Results at 4 - 5.

69 *See* Letter to the Secretary from the GOC, "GOC Third Supplemental Questionnaire Response: First Administrative Review of the Countervailing Duty Order on Certain Chlorinated Isocyanurates from the People's Republic of China (C-570-991) (February 8, 2017).

70 *Id.*

71 *See Solar Cells* at Comment 1.

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.[72] Therefore, while we did consider the customer certifications provided by the respondents, without a complete and reliable understanding of the program's operation, especially with regard to the involvement of third-party banks, the information provided by the respondents is also unreliable.

We disagree with the GOC's and Heze's arguments that AFA should not be applied with respect to this program. As explained above, we continue to find the GOC withheld necessary information that was requested of it, and thus, that the Department must rely on facts otherwise available in issuing these results, 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 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 identical to the application of AFA in *Truck & Bus Tires*.[73] In both proceedings, the Department requested operational program information from the GOC, noting that there were substantial changes to the program in 2013 and that the Department is requesting information on how this program works, yet 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 statements of non-use provided by the respondent companies; however, as explained above and in the Post-Preliminary Results, we are unable to rely on information provided by respondent companies due to the Department's lack of a complete and reliable understanding of the program.[74] 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.[75] Thus, without the GOC's necessary information, the information provided by the respondent companies is incomplete for reaching a determination of non-use.

Regarding the rate to be applied to this program, upon consideration of post-preliminary comments, we agree with the GOC and Heze that the rate for the Export Seller's Credit Program from the investigation qualifies as a similar program within any segment of the same proceeding according to step two of the AFA hierarchy for reviews.[76] On this basis, we have adjusted the AFA rate to 0.87 percent *ad valorem*, the rate calculated for Jiheng for the Export Seller's Credit Program in the investigation, for these final results.

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[72] *See* Post-Preliminary Results at 6.

[73] *See Truck and Bus Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 8606 (January 27, 2017) (*Truck & Bus Tires*) and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences," and Comments 2 – 6.

[74] *See* Post-Preliminary Results at 6.

[75] *Id.*; *Truck & Bus Tires* at Comment 5.

[76] *See*, *e.g.*, *Shrimp* IDM at 13; *see also Essar Steel*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate for an uncooperative respondent").

XII. CONCLUSION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results in the *Federal Register*.

☒ ☐

Agree Disagree

6/9/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald Lorentzen
Acting Assistant Secretary
for Antidumping and Countervailing Duty Operations