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

C-570-061
Investigation
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DATE: January 16, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided above the *de minimis* level to producers and exporters of fine denier polyester staple fiber (PSF) from the People's Republic of China (China), as provided for in section 705 of the Tariff Act of 1930, as amended (the Act).[1] Below is the complete list of issues in this investigation for which we received comments from interested parties.

Issues:

Comment 1:	Application of AFA to the Electricity Program
Comment 2:	Export Buyer's Credit Program
Comment 3:	Market Distortion in the MEG/PTA Industry
Comment 4:	Input Benchmarks
Comment 5:	Hailun Verification Minor Corrections
Comment 6:	Huahong Verification Minor Corrections
Comment 7:	Exclusion of Finance Leasing and Margin Trading from the Policy Loans Benefit Calculation
Comment 8:	Treatment of Hailun's Other Types of Financing under the Policy Loan Program

[1] *See also* section 701(f) of the Act.

BACKGROUND

A. Case History

On November 6, 2017, we published the *Preliminary Determination* for this investigation.[2] In the *Preliminary Determination*, we calculated above *de minimis* rates for Jiangyin Hailun Chemical Fiber Co. Ltd. (Hailun)[3] and Jiangyin Huahong Chemical Fiber Co. Ltd.[4] We conducted verifications of the questionnaire responses submitted by Hailun and Huahong between October 31, 2017, and November 4, 2017.[5]

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[2] *See Fine Denier Polyester Staple Fiber from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 51396 (November 6, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[3] References to Hailun through this decision memorandum are specific to Hailun itself. Reference to the Hailun companies include Hailun and its cross-owned affiliates: Jiangyin Bolun Chemical Fiber Co., Ltd. (Bolun); Jiangyin Fenghua Synthetic Fiber Co., Ltd. (Fenghua); Jiangsu Hailun Petrochemicals Co., Ltd. (Hailun Petrochemical); Jiangyin Huamei Special Fiber Co., Ltd. (Huamei); Jiangyin Huasheng Polymerization Co., Ltd. (Huasheng); Jiangyin Huaxing Synthetic Co., Ltd. (Huaxing); Jiangying Huayi Polymerization Co., Ltd. (Huayi); Jiangsu Sanfangxiang Group Co., Ltd. (Sanfangxiang Group); Jiangsu Sanfangxiang International Trading Co., Ltd. (Sanfangxiang Trading); Sanhai International Trading PTE Ltd. (Sanhai); Jiangyin Xingsheng Plastic Co., Ltd. (Xingsheng Plastic); Jiangyin Xingtai New Material Co., Ltd. (Xingtai); Jiangsu Xingye Plastic Co., Ltd. (Xingye Plastic); Jiangsu Xingye Polytech Co., Ltd. (Xingye Polytech); Jiangyin Xingyu New Material Co., Ltd. (Xingyu); Jiangyin Xinlun Chemical Fiber Co., Ltd. (Xinlun); Jiangyin Xinyuan Thermal Power Co., Ltd. (Xinyuan Thermal); and Jiangyin Yunlun Chemical Fiber Co., Ltd. (Yunlun) (collectively, Hailun companies).

[4] References to Huahong throughout this memorandum include Jiangyin Huahong Chemical Fiber Co. Ltd. and Jiangsu Huahong Industrial Group Co., Ltd. Huahong also reported on behalf of its cross-owned input suppliers Jiangyin Hongkai Chemical Fiber Co., Ltd.; Jiangyin Huahong International Trade Co., Ltd.; and Jiangyin Huakai Polyester Co., Ltd. As explained in the PDM at 8, we attributed benefits only for subsidies that were transferred to sales of Huahong. We did not include these input suppliers in Huahong's cash deposit rate.

[5] *See* Memoranda, "Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Verification Report of Jiangyin Hailun Chemical Fiber Co., Ltd.," (Hailun Verification Report) and "Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Verification Report of Jiangyin Huahong Chemical Fiber Co., Ltd.," (Huahong Verification Report), both dated November 15, 2017.

On November 9, 2017, the Government of China filed a ministerial error allegation.[6] On November 21, 2017, Commerce notified parties that it would establish a separate briefing period for issues relating to the November 9, 2017 ministerial error allegation.[7] On December 11, 2017, Commerce issued a memorandum concerning the November 9, 2017 ministerial error allegation.[8]

We received case briefs regarding the *Preliminary Determination* from the petitioners,[9] Hailun, Huahong, the Government of China, and David C. Poole, *et al.*[10] on November 28, 2017.[11] On December 1, 2017, we rejected the case briefs submitted by Hailun and Huahong because they contained new factual information not on the record of this investigation, and provided an opportunity for Hailun and Huahong to resubmit their case briefs after redacting such information.[12] On December 4, 2017, we extended the deadline for all parties to submit rebuttal briefs until December 6, 2017.[13] On December 4, 2017, Hailun and Huahong resubmitted their case briefs in accordance with Commerce's instructions, and we received rebuttal briefs from the petitioners, Hailun, Huahong, and other interested parties.[14]

We provided a separate briefing period for parties to submit case briefs relating to the November 9, 2017 ministerial error allegation.[15] On December 20, 2017, the Government of China

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[6] *See* Government of China's Letter, "GOC Ministerial Error and Post-Prelim Comments: Countervailing Duty Investigation of Fine Denier Polyester Staple Fibers from the People's Republic of China," dated November 9, 2017 (November 9, 2017 ministerial error allegation).

[7] *See* Memorandum, "Fine Denier Polyester Staple Fiber from the People's Republic of China: Countervailing Duty Investigation: Extension of Deadline to Submit Case Briefs," dated November 21, 2017.

[8] *See* Commerce Letter, re: Countervailing Duty Investigation: Fine Denier Polyester Staple Fiber from the People's Republic of China; Response to Ministerial Error Comments filed by the Government of China, dated December 11, 2017 (Ministerial Error Response).

[9] The petitioners to this investigation are DAK Americas LLC, Nan Ya Plastics Corporation, America, and Auriga Polymers, Inc. (the petitioners).

[10] David C. Poole Company Inc., Suominen Corporation, Green Bay Nonwovens, Inc., and Hollander Sleep Products (collectively, David C. Poole, *et al.).*

[11] *See* Petitioner's Letter, "Fine Denier Polyester Staple Fiber from The People's Republic Of China: Petitioners' Case Brief," dated November 28, 2017 (Petitioners' Case Brief); Hailun's Letter, "Fine Denier Polyester Staple Fiber from China: Hailun Case Brief," dated November 28, 2017; Huahong's Letter, "Fine Denier Polyester Staple Fiber from China: Huahong Case Brief," dated November 28, 2017; Government of China's Letter, "GOC Administrative Case Brief: Countervailing Duty Investigation of Fine Denier Polyester Staple Fibers from the People's Republic of China (C-570-061)," dated November 28, 2017 (Government of China's Case Brief), and Interested Party's Letter, "Fine Denier Polyester Staple Fiber from the People's Republic of China: Case Brief of David C. Poole Company Inc., Suominen Corporation, Green Bay Nonwovens, Inc., and Hollander Sleep Products, LLC," dated November 28, 2017 (David C. Poole *et al.* Case Brief).

[12] *See* Commerce Letters to Hailun and Huahong, dated December 1, 2017.

[13] *See* Commerce Letter, re: Revised Deadline to Submit Rebuttal Briefs, dated December 4, 2017.

[14] *See* Petitioner's Letter, "Fine Denier Polyester Staple Fiber from The People's Republic of China: Petitioners' Rebuttal Brief," dated December 4, 2017 (Petitioners' Rebuttal Brief); Hailun's Letter, "Fine Denier Polyester Staple Fiber from China: Hailun Rebuttal Brief," dated December 4, 2017 (Hailun's Rebuttal Brief); and Huahong's Letter, "Fine Denier Polyester Staple Fiber from China: Huahong Rebuttal Brief," dated December 4, 2017 (Huahong's Rebuttal Brief); Interested Party's Letter, "Fine Denier Polyester Staple Fiber from the People's Republic of China: Rebuttal Brief of David C. Poole Company Inc., Suominen Corporation, Green Bay Nonwovens, Inc., and Hollander Sleep Products, LLC," dated December 6, 2017 (David C. Poole, *et al*. Rebuttal Brief).

[15] *See* Memorandum, "Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Case and Rebuttal Brief Schedule for Ministerial Error Allegation," dated December 12, 2017.

submitted its case brief related to the November 9, 2017 ministerial error allegation, and the petitioners filed a rebuttal brief on December 26, 2017.[16]

Between December 4, 2017, and December 6, 2017, the Government of China, Hailun, and Huahong timely filed requests for a hearing.[17] Also, on December 6, 2017, the petitioners filed a request to participate in a hearing should a hearing be held at the request of another party.[18] On January 4, 2018, the Government of China, Hailun, and Huahong withdrew their requests for a hearing.[19]

The "Analysis of Programs" and "Subsidies Valuation" sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Based on our verification findings, we made certain modifications to the *Preliminary Determination*, which are discussed under each program, below. For details of the resulting revisions to Commerce's rate calculations resulting from those modifications, *see* the final calculation memoranda.[20] We recommend that you approve the positions we describe in this memorandum.

B. Period of Investigation

The POI for which we are measuring subsidies is January 1, 2016, through December 31, 2016.

II. SCOPE OF THE INVESTIGATION

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

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[16] *See* Government of China's Letter, "GOC Electricity Case Brief in the Countervailing Duty Investigation of Fine Denier Polyester Staple Fibers from the People's Republic of China (C-570-061)," dated December 20, 2017 (Government of China's December 20, 2017 Case Brief). *See also* Petitioners' Letter, "Fine Denier Polyester Staple Fiber from The People's Republic of China: Petitioners' Electricity Rebuttal Brief," dated December 26, 2017 (Petitioners' December 26, 2017 Rebuttal Brief).

[17] *See* Government of China's Letter, "GOC Hearing Request: Countervailing Duty Investigation of Fine Denier Polyester Staple Fibers from the People's Republic of China (C-570- 061)," dated December 4, 2017. *See also* Respondents' Letter, "Fine Denier Polyester Staple Fiber from the People's Republic of China - Hearing Request," dated December 6, 2017.

[18] *See* Petitioners' Letter, "Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China – Petitioners' Request to Participate in Hearing If Requested," dated December 6, 2017.

[19] *See* Government of China's Letter, "GOC – Hearing Request: Countervailing Duty Investigation on Fine Denier Polyester Staple Fiber from the People's Republic of China (C-570-061)," dated January 4, 2018; Respondents' Letter, "Fine Denier Polyester Staple Fiber from the People's Republic of China - Withdraw Hearing Request," dated January 4, 2018.

[20] *See* Memoranda, "Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Jiangyin Hailun Chemical Fiber Co. Ltd.; Final Analysis Memorandum," dated January 16, 2017 (Hailun's Final Calculation Memorandum) and "Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Jiangyin Huahong Chemical Fiber Co. Ltd.; Final Analysis Memorandum," dated January 16, 2017 (Huahong's Final Calculation Memorandum).

III. SCOPE COMMENTS

Commerce set aside a period of time for parties to address scope issues.[21] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*, as well as additional language proposed by Commerce. Therefore, the scope of this investigation has been modified for this final determination. For a summary of the product coverage comments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[22]

IV. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce has made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination*, and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination*.[23]

B. Attribution of Subsidies

Interested parties submitted comments regarding the attribution of subsidies used in the *Preliminary Determination* in their case and rebuttal briefs.[24] Commerce has considered these comments and has made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies. For a more in-depth discussion of the comments and Commerce's analysis, *see* Comments 10 and 11, below. For a description of the methodology used for this final determination, *see* the *Preliminary Determination* and the calculation memoranda prepared for this determination.[25]

C. Denominators

In accordance with 19 CFR 351.525(b), Commerce considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in

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[21] *See Fine Denier Polyester Staple Fiber from India and the People's Republic of China: Initiation of Countervailing Duty Investigations*, 82 FR 29029 (June 27, 2017) (*Initiation Notice*).
[22] *See* Commerce Memorandum, "Fine Denier Polyester Staple Fiber from the People's Republic of China, India, Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this determination and hereby adopted by this notice (Final Scope Memorandum).
[23] *See* PDM at 5-8.
[24] *See* Hailun's Case Brief at 24 and 27, and Petitioners' Rebuttal Brief at 36.
[25] *See* Hailun's Final Calculation Memorandum and Huahong's Final Calculation Memorandum.

the *Preliminary Determination* and the calculation memorandum prepared for this final determination.[26]

V. BENCHMARKS AND DISCOUNT RATES

Interested parties submitted comments regarding the benchmarks used in the *Preliminary Determination* in their case and rebuttal briefs.[27] Commerce has considered these comments and has not made changes to the benchmarks. For a more in-depth discussion of the comments and Commerce's analysis, *see* Comment 4, below. For a description of all other unchanged benchmarks and discount rates used for these final results, *see* the *Preliminary Determination* and the accompanying *Preliminary Determination Memorandum* (PDM).[28]

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Commerce relied on "facts otherwise available," including adverse facts available (AFA), for several findings in the *Preliminary Determination.*[29] For a description of these decisions, *see* the *Preliminary Determination*. Commerce has not made any changes to its decisions in the *Preliminary Determination* to use facts otherwise available and AFA. Interested parties submitted comments regarding the use of facts otherwise available and AFA in the *Preliminary Determination* in their case and rebuttal briefs.[30] For a more in-depth discussion of the comments and Commerce's analysis, *see* Comment 1, below.

VII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. <u>Policy Loans</u>

We received no comments in either case or rebuttal briefs regarding our finding this program countervailable. We made no changes to the methodology used to attribute subsidies under this program since the *Preliminary Determination*.[31]

Huahong submitted comments regarding the inclusion of finance leasing and margin trading in the Policy Loan calculation. As explained below, at Comment 7, for this final determination, we excluded margin trading from Huahong's Policy Loan calculation. The petitioners, Hailun, and Huahong submitted comments concerning the inclusion of minor corrections presented at verification and the exclusion of intercompany sales from certain sales denominators. As described at Comments 5, 6, and 14, we revised the determination of the denominators used for Hailun and Huahong to conform with minor corrections identified at verification and to exclude certain intercompany sales from Hailun's denominator.

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[26] *Id*.
[27] *See* Petitioners' Case Brief.
[28] *See* PDM at 8-13.
[29] *Id.* at 13-29.
[30] *See* Government of China's Case Brief, Hailun's Case Brief and Petitioners' Rebuttal Brief.
[31] *See* PDM at 29-31.

Hailun: 4.94 percent *ad valorem*
Huahong: 3.95 percent *ad valorem*

2. Export Buyer's Credit

As discussed below, for purposes of this final determination, we determine that this program is countervailable and have selected a subsidy rate of 10.54 percent based on AFA, unchanged from the *Preliminary Determination*.[32] We address the comments provided by interested parties in Comment 2, below.

3. Import Tariff and VAT Exemptions on Imported Equipment for Encouraged Industries

We have not changed the methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.[33] However, as described at Comments 5, 6, and 14, we revised the determination of the denominators used for Hailun and Huahong to conform with minor corrections identified at verification and to exclude certain intercompany sales from Hailun's denominator.

Hailun: 0.63 percent *ad valorem*
Huahong: 0.07 percent *ad valorem*

4. Government Provision of Inputs for LTAR

   a. *MEG for LTAR*
   b. *PTA for LTAR*
   c. *Electricity for LTAR*

The petitioners, Hailun, Huahong, and the Government of China submitted comments in their case briefs regarding these programs. As explained below at Comments 1 and 3, Commerce has not modified its methodology for calculating subsidy rates for these programs from the *Preliminary Determination*.[34] However, as described at Comments 5, 6, 13, and 14, we revised the denominators used for Hailun and Huahong to conform with minor corrections identified at verification, to correct an incorrect cell reference in Huahong's calculations, and to exclude certain intercompany sales from Hailun's denominator.

Hailun: a. MEG for LTAR: 1.77 percent *ad valorem*
c. Electricity for LTAR: 20.06 percent *ad valorem*

Huahong: a. MEG for LTAR: 0.41 percent *ad valorem*
b. PTA for LTAR: 12.49 percent *ad valorem*
c. Electricity for LTAR: 20.06 percent *ad valorem*

[32] *See* PDM at 31-32.
[33] *Id.* at 32-33.
[34] *Id.* at 33-36.

5. Government of China and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands

Commerce has not changed its methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.[35] However, as described at Comments 5, 6, and 14, we revised the determination of the denominators used for Hailun and Huahong to conform with minor corrections identified at verification and to exclude certain intercompany sales from Hailun's denominator.

Huahong: 0.05 percent *ad valorem*

6. Export Assistance Grants

Commerce has not changed its methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.[36] However, as described at Comments 5, 6, and 14, we revised the determination of the denominators used for Huahong to conform with minor corrections identified at verification.

Huahong: 0.01 percent *ad valorem*

7. "Other Subsidies"

Commerce has not changed its methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.[37] However, as described at Comments 5, 6, and 14, we revised the determination of the denominators used for Hailun and Huahong to conform with minor corrections identified at verification and to exclude certain intercompany sales from Hailun's denominator.

The calculation of the benefit received by the Huahong companies resulted in a rate that is less than 0.005 percent ad valorem, and, as such, does not have an impact on Huahong's overall subsidy rate.[38] Consistent with our past practice, we did not include this program in our net subsidy rate calculations for Huahong.[39]

B. Programs Determined to Be Not Used by, or Not to Confer a Measurable Benefit to, Hailun and/or Huahong

1. Export Loans from Chinese State-Owned Banks
2. Export Credits from Export-Import Bank of China: Export Seller's Credit
3. Export Credits from Export-Import Bank of China: Export Credit Guarantees
4. Income Tax Reduction for High or New Technology Enterprises

[35] *See* PDM at 36-37.
[36] *Id.* at 37.
[37] *Id.* at 37-38.
[38] *See* Huahong's Final Calculation Memorandum.
[39] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS China Final*).

5. Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law
6. VAT Rebates for FIEs Purchasing Domestically Produced Equipment
7. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund
8. Provision of Land in Special Economic Zones for LTAR
9. The State Key Technology Renovation Project Fund
10. Special Fund for Energy Savings Technology Reform
11. SME International Market Exploration/Development Fund
12. SME Technology Innovation Fund

VIII. ANALYSIS OF COMMENTS

Comment 1: Application of AFA to the Electricity Program

Hailun and Huahong Case Briefs:

- For the final determination, Commerce cannot apply an adverse inference to timely, relevant information submitted by cooperating respondents, as it did for the *Preliminary Determination*. This unprecedented determination, was contrary to law and Commerce practice.[40]
- While the PDM elaborated on the reasons for drawing an adverse inference for the Government of China's alleged lack of cooperation, it did not make any mention as to how Huahong and Hailun failed to cooperate in this investigation regarding electricity usage. Nevertheless, contrary to law and its practice, Commerce applied the highest CVD rate for electricity usage from a different proceeding, *Chlorinated Isocyanurates from China Final*.[41]
- Commerce cannot make a final decision in a preliminary determination and choose not to verify data submitted on the record by respondents. In accordance with section 782(i)(1) of the Act, Commerce must fulfill its statutory obligation to continue its investigation of a respondent, including verification of information relied upon in making a final determination, or must allow the respondent to supplement the record; otherwise, it must accept the respondent's information as true and conclusive.[42]
- The Government of China's failure to submit all provincial electricity rates was unintentional and, therefore, the Government of China should be permitted to correct the record. Further, Commerce should itself supplement the record with any information it believes is still lacking to calculate an electricity benefit for respondents.
- In previous cases, such as *Tool Chests from China*, where the Government of China failed to provide certain information, Commerce has historically applied AFA only to the

[40] *See* Hailun's Case Brief at 14-15.
[41] *Id.* at 14 (citing *Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012,* 79 FR 56560 (September 22, 2014) (*Chlorinated Isocyanurates from China Final*), and accompanying IDM at 22.
[42] *Id.* at 15-16 (citing *Shandong Dongfang Bayley Wood Co., Ltd. v. United States*, 236 F. Supp. 3d 1346, 1351 (CIT 2017) (*Shangdong Dongfang*); *Firth Rixson Special Steels Ltd. v. United States*, Court No. 02-00273, Slip Op. 03-70 (CIT June 27, 2003) (*Firth Rixson*)).

electricity benchmark itself and not the cooperating respondents' electricity hours and prices and sales denominators.[43] Accordingly, Commerce needs only the knowledge of the Chinese province with the highest electricity rate, which is the only item Commerce is potentially missing. The record contains all of the benchmarks necessary to calculate an adverse rate for electricity.[44] Further, as a party to this proceeding, the petitioners also bear some of the responsibility to supplement the record with the requisite information.[45]

- Should Commerce determine that information, such as electricity rates, is lacking, it can easily obtain this information from other investigations and administrative reviews and place it on the current record, a practice often availed by Commerce.[46] Because Commerce already has certain information on the record to calculate an electricity benefit, and can easily obtain it from other cases, where necessary, Commerce should use such information to calculate an electricity benefit, rather than apply an adverse inference, for the final determination.

Government of China Case Brief:

- Commerce is able to place factual information on the record of the proceeding at any time, in accordance with 19 CFR 351.301(c)(4). Commerce's failure to place on the record information that it developed, obtained, and reviewed during the course of this investigation runs contrary to section 516A(b)(2)(A)(i) of the Act.[47]
- The electricity rate schedules that are missing from the record of this case are a part of the record despite their physical absence from it.[48]
- If Commerce obtained information demonstrating that portions of the Government of China's response were missing, that information must be included in the record of this investigation.[49]
- Commerce's regulations at 19 CFR 301.104(a) define "official record" to include all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of a proceeding that pertains to the

[43] *Id.* at 17 (citing *Certain Tool Chests and Cabinets from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 43331 (September 15, 2017) (*Tool Chests from China*), and accompanying IDM, at 18-22).
[44] *Id.* at 18 (citing, *e.g.*, *Tool Chests from China*).
[45] *Id.* at 18.
[46] *Id.* at 19-21 (citing, *e.g.*, *Tool Chests from China; Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel Preliminary Affirmative Countervailing Duty Determination*, 82 FR 44562 (September 25, 2017) (*Mechanical Tubing from China Prelim*); and *Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 82 Fed. Reg. 37844 (August 14, 2017) (*Aluminum Foil from China*)).
[47] *See* Government of China's December 20 Case Brief at 4.
[48] *See* Government of China's December 20 Case Brief at 3-4 (citing *PPG Industries, Inc. v. United States*, 13 CIT 183, 184 (1989) (*PPG*); *Zhejiang Native Produce & Animal By-Products Import & Export Grp. Corp. v. United States*, 227 F. Supp. 3d 1375, 1378 (CIT 2017)).
[49] *See* Government of China's December 20 Case Brief at 3-4 (citing *Kao Hsing Chang Iron & Steel Corp. v. United States*, 140 F. Supp. 2d 1379, 1382 (2001) (requiring Commerce to place on the record an *ex-parte* memo that it failed to include on the record); *Mitsui & Co. v. United States*, 15 CIT 521, 522-523 (October 15, 1991) (explaining that the Court can add documents to the record of review "when it appears that the agency has relied upon documents not included in the record.")).

proceeding.[50] In the *Preliminary Determination*, Commerce developed and/or obtained and reviewed information directly relevant to the issue posed in this investigation. This information must be included in the record of this case.[51]

- Commerce's long-standing practice of independently seeking benchmark data and supplementing the record requires that it do so here.[52]
- Commerce's statement in its ministerial error memo that it misstated its basis for its preliminary AFA determination is an attempt to sidestep its obtaining and comparing information that was not on the record of this case.[53]
- The Government of China's response in this case was intended to mirror the Government of China's response in the CVD investigation in *Tool Chests from China*.[54]
- Provincial electricity schedules have never been the subject of a Government of China verification in any CVD proceeding; thus, the decision not to verify the Government of China has no impact on Commerce's ability to accept this information on the record of this case.[55]
- Commerce should permit the Government of China to correct its clerical/ministerial error and use the electricity rate schedules from other proceeding to calculate the proper benchmark and countervailing duty rates.[56]
- Commerce failed to properly notify the Government of China of the specific deficiency in its response as required by section 782(d) of the Act.[57]
- Commerce should use the tariff schedules placed on the record by the petitioners to calculate the *ad valorem* rate for each respondent. Commerce is required to limit its application of AFA to only the information that is missing from the record.[58] Because it is missing only a portion of the benefit calculation, it cannot reject the electricity use data

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[50] *See* Government of China's December 20 Case Brief at 5.
[51] *Id*. at 6 (citing *Preliminary Determination* at 26-27).
[52] *See* Government of China December 20 Case Brief at 6-10.
[53] *Id.* at 10.
[54] *Id.*
[55] *Id*. at 11 (citing *Ta Chen Stainless Steel Pipe v. United States*, Court No. 97-08-01344, Slip Op. 99-117 23 (CIT October 28, 1999) (*Ta Chen*) ("Even if Commerce's procedures and questions are clear, this may be insufficient to prevent Commerce from having to provide a respondent with the opportunity to remedy a deficient submission when it discovers the omission early enough for remediation to occur.")).
[56] *Id*. at 12 (citing *Union Camp Corp. v. United States*, 53 F. Supp. 2d 1310 (CIT 1999) (*Union Camp)*, where the court considered whether Commerce was required to take administrative notice of relevant information on the available on the record of another proceeding in order to remove a potentially significant error in its surrogate value calculations).
[57] *Id.* at 13 (citing *Ta Chen*).
[58] *Id.* at 14-17 (citing sections 776(a) and (b) of the Act and *Shandong Huarong Mach. Co., Ltd. v. United States*, 435 F. Supp. 2d 1269, 1289 (CIT 2006) (*Shandong Huarong*). *See also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1381 (Fed. Cir. 2003) (*Nippon Steel*) (stating that the use of facts otherwise available is to "fill in the gaps" when "Commerce has received less than the full and complete facts needed to make a determination")*;* *Ningbo Dafa Chem. Fiber Co. v. United States*, 580 F.3d 1247, 1255 (Fed. Cir. 2009) (*Ningbo*); Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994), reprinted at 1994 U.S.C.C.A.N. 4198-99 (SAA) at 869; *NTN Bearing Corp. of America v. United States*, 368 F.3d 1369, 1377 (Fed. Cir. 2004); *NSK Ltd. v. United States*, 358 F. Supp. 2d 1276, 1290 (CIT 2005) (*NSK*); *Zhejiang Dunan Hetian Metal Co., Ltd. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011) (*Zhejian Dunan Hetian Metal*)).

provided by the respondents. The electricity use information is not deficient under the law and must be used.

- Commerce cannot use the 20.06 percent AFA electricity rate because it was based on partial AFA, and, therefore, the benefit treatment is not similar to the treatment of the benefit generally for this program. The statute states that Commerce may select an AFA rate from "the same or similar program in a countervailing duty proceeding involving the same country."[59] In adhering to the statute, Commerce seeks to select the highest calculated rate from an identical program in a past case.
- The statue requires that Commerce "shall, to the extent practicable, corroborate from independent sources that are reasonably at {its} disposal," and satisfy itself that the secondary information to be used has probative value. The 20.06 percent rate is not a fully calculated rate, and, thus cannot be corroborated.[60]

David C. Poole, et al. Case Brief:

- Commerce's incorrectly applied AFA to the provision of electricity for LTAR in the preliminary determination.[61]
- The Government of China submitted electricity tariff schedules for all provinces in other proceedings and the failure to do so in the instant investigation amounts to only a ministerial error, as presented in the November 9, 2017 ministerial error allegation. Accordingly, Commerce should allow the Government of China to provide the requisite electricity rates for the final determination.[62]
- The CIT has held that Commerce is required to correct clerical errors that are egregious, in nature, resulting in an error of more than 25 percent of the overall CVD rates for each mandatory respondent.[63] This inequitably harms U.S. importers responsible for paying the CVD duties.[64]
- Commerce's refusal to permit the Government of China to supplement the record with the missing electricity rates is inconsistent with Commerce's mandate to fairly administer the CVD law with accurately, calculated margins.[65]

Petitioners' Rebuttal Brief:

- The Government of China's assertion that it intended to provide all electricity schedules is belied by the narrative statement in its IQR that it was not "necessary, nor possible, to provide all the electricity rate schedules in effect covering the whole POI."[66]

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[59] *Id.* at 17-19 (citing section 776(d)(A) of the Act; *Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 58175 (December 11, 2017) (*Cold Drawn Mechanical Tubing Final)*, and accompanying IDM at Comment 9).
[60] *Id.* (citing section 776(c)(1) of the Act and SAA at 870).
[61] *See* David C. Poole, *et al.* Case Brief at 4.
[62] *Id.* at 4.
[63] *Id.* at 5 (citing *Technoimportexport v. United States*, 766 F. Supp. 1169, 1178 (CIT 1991) (*Technoimportexport*); *NTN Bearing Corp. v. United States*, 74 F.3d 1204 (Fed. Cir. 1995) (*NTN Bearing*)).
[64] *Id.* at 5.
[65] *Id.* (citing, *e.g., Chia Far Indus. Factory Co., Ltd. v. United States*, 343 F. Supp. 2d 1344, 1362 (2004)).
[66] *See* Petitioners' December 26 Rebuttal Brief at 5.

- In its deficiency comments, the petitioners themselves noted that the Government of China had failed to comply with Commerce's request for all the electricity tariff schedules, naming four specific provinces for which the information was missing. The Government of China, therefore, was notified about the missing schedules more than one month prior to the preliminary determination.[67]
- In its supplemental questionnaire response, the Government of China purposefully noted that although only Jiangsu Province was relevant there were "other," not "all," provincial electricity schedules for Commerce's reference. The Government of China's contention that it did not understand the question, therefore, seems entirely disingenuous.[68] Further, Commerce's supplemental question matches its initial question nearly verbatim.
- The Government of China's initial and supplemental questionnaire responses here, challenging the relevancy of Commerce's request for all provincial electricity schedules, demonstrate that, in contrast to other proceedings, the Government of China elected to be even more uncooperative in this investigation, thus supporting Commerce's ultimate application of AFA.[69]
- Commerce fulfilled its statutory obligation in notifying the Government of China of deficiencies in its questionnaire response. Further, Commerce's obligation to provide an opportunity to remedy any deficiencies is not without limit. The statute makes clear that deficiencies can be corrected to the extent practicable and in light of the established time limits.[70]
- The Government of China's reliance on *Union Camp* is misplaced as it involved an error made by Commerce with respect to factual information already on the record. Here, in contrast, there has been no "error" in the investigation – just the Government of China's decision not to provide certain information. Thus, the Government of China is asking that Commerce add factual information to the record, or allow the Government of China to submit such information, that the Government of China was required to provide but failed to submit.[71]
- The CAFC has held that a party's compliance with the best of its ability standard is determined by assessing whether the party has put forth its maximum effort to provide Commerce with "full and complete" answers to all inquiries in an investigation.[72] The statutory purpose of the AFA rule is to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. Allowing the Government of China or Commerce to place new information on the record, or use the electricity schedules already on the record, would result in a favorable result to the Government of China, essentially rewarding its non-compliance.[73]
- The Government of China, Hailun, and Huahong are incorrect that Commerce is required to use the respondent companies' electricity usage information to determine the existence

[67] *Id.* at 6.
[68] *Id*. at 6-7.
[69] *Id*. at 7.
[70] *Id.* at 7-8 (citing section 782(d) of the Act; *Gerber Food (Yunnan) Co. v. United States*, 491 F. Supp. 2d 1326, 1336 (CIT 2007)).
[71] *Id*. at 7.
[72] *Id*. at 7 (citing *Nippon Steel*; 337 F.3d at 1382; SAA at 870).
[73] *Id*. at 9-10.

of a benefit from this program because this information was not found to be deficient. In a CVD proceeding, a government's failure to cooperate is a legitimate basis to apply an adverse inference that nonetheless affects a cooperating respondent that has benefited from subsidies from the government.[74]

- The Government of China's argument concerning Commerce's responsibility to place information on the record is wrong. The statutory provision cited by the Government of China lists information that is created by and in control of Commerce, and not factual information generated and kept by an interested party.[75]
- The Government of China's reference to Commerce's regulations is misplaced, as 19 CFR 351.104(a)(1) states that Commerce must maintain information developed by, presented to, or obtained by the agency.[76]
- The entire premise of respondents' arguments - that the Government of China's provincial electricity tariff schedules are similar to other types of benchmark information - ignores the critical distinction between the type benchmark information at issue and the Government of China's failure to cooperate in this investigation.[77]
- Parties are responsible for developing their own administrative record. For Commerce to put the missing information on the record despite the Government of China's refusal to do so would reward the Government of China's non-cooperation – in stark contrast to the purpose of the AFA provision of the statute.[78]
- Commerce's decision not to verify the respondents' electricity consumption data has no bearing on its decision to apply an AFA rate for the program benefit. Verification of the respondents' consumption data would not have mitigated the lack of benchmark information.[79]
- The Government of China's contention that the *Chlorinated Isocyanurates from China* rate is not fully calculated, and, therefore, not corroborated, is wrong. The 20.06 percent *ad valorem* rate was calculated based on actual usage data, and, therefore, is a corroborated rate.[80]
- The respondents' arguments that the 20.06 percent rate is "punitive" because the companies cooperated by providing their consumption data are without merit. Commerce considered these same arguments in the context of the Export Buyer's Credit program and declined to accept them. Court precedent has confirmed this practice, and, under the

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[74] *Id*. at 10-11, citing *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1372 (Fed. Cir. 2014) (*Fine Furniture)*; *see also KYD. Inc. v. United States*, 607 F.3d 760, 768 (Fed. Cir. 2010); *RZBC Grp. Shareholding Co. v. United States*, 222 F. Supp. 3d 1196, 1208 (CIT 2017) (*RZBC Grp. Shareholding*) ("Commerce has authority to apply AFA when, as here, a government is uncooperative but a respondent is cooperative."); *Hebei Jiheng Chemicals Co. v. United States*, 161 F. Supp. 3d 1322, 1332 (CIT 2016).
[75] *Id.* at 12 (citing section 516A(b)(2)(A) of the Act).
[76] *Id.* at 12.
[77] *Id.* at 13-14.
[78] *Id.* at 14-15 (citing *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992) (*Tianjin Machinery*)).
[79] *Id.* at 15-17.
[80] *Id*. at 17-18 (citing *Chlorinated Isocyanurates from China* IDM at Comment 2).

Trade Preferences Extension Act of 2015, Commerce is permitted to apply the highest rate when AFA is warranted.[81]

Commerce's Position: We disagree that our application of AFA to measure the subsidy benefit under the electricity program was contrary to law and practice. As explained in the *Preliminary Determination*, we requested from the Government of China all electricity price schedules in effect during the POI.[82] In response to our first request for this information, the Government of China responded that, "the electricity price schedules were formulated or generated by the provinces themselves rather than by National Development Reform Commission {(NDRC)}. Thus, it is not necessary, nor possible, to provide all the electricity rate schedules in effect covering the whole POI."[83] Commerce asked a second time that the Government of China provide all electricity schedules in effect during the POI.[84] Instead of providing all of the schedules for all provinces and municipalities in China, the Government of China responded:

> All the respondents' companies are located in Jiangsu Province so only electricity schedules of Jiangsu Province in effect during the period of investigation are related to the question. The Government of China provides Jiangsu electricity schedules in Exhibit II-D-4-Q in Initial Questionnaire Response. There are also other electricity schedules from other provinces for Commerce's consideration and reference.[85]

We are unpersuaded by the Government of China's claim that its failure to provide the requested electricity schedules was an unintentional error or misunderstanding. Both the original and supplemental questionnaire responses by the Government of China contain argument concerning the necessity of providing a complete response to the requested information. As upheld in *Ansaldo Componenti* and discussed in the recent *OCTG from China Administrative Review*, it is Commerce, and not interested parties, who determines whether information requested is necessary and a response is therefore required.[86] As such, the respondents cannot unilaterally decide to withhold necessary information from Commerce that may require further analysis. Otherwise, Commerce would be unable to conduct an accurate and complete investigation, because interested parties would consistently decide whether to provide necessary information

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[81] *Id*. at 18-19 (citing *Tool Chests from China* and accompanying IDM at 33, 37; *Fine Furniture*, 748 F.3d at 1373 ("Although it is unfortunate that cooperating respondents may be subject to collateral effects due to the adverse inferences applied when a government fails to respond to Commerce's questions, this result is not contrary to the statute or its purposes, nor is it inconsistent with this court's precedent."); Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362, 384 (2015), at 502(3)).

[82] *See* PDM at 23-27. *See also* Government of China's September 8, 2017 Initial Questionnaire Response (Government of China September 8, 2017 IQR) at 80.

[83] *See* Government of China's September 8, 2017 Initial Questionnaire Response (Government of China September 8, 2017 IQR) at 80.

[84] *See* Government of China's October 11, 2017 Supplemental Questionnaire Response (Government of China October 11, 2017 SQR) at 10.

[85] *See* Government of China's October 11, 2017 Supplemental Questionnaire Response (Government of China October 11, 2017 SQR) at 10.

[86] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 49475 (February 8, 2013) (*OCTG from China Administrative Review*), and accompanying IDM at Comment 5; and *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (*Ansaldo Componenti*).

based on their own viewpoints and judgment. However, the facts available provisions of section 776(a) of the Act specifically contemplate the application of facts available when an interested party withholds requested, necessary information and allows Commerce to take appropriate action in response.

As a result of the Government of China's failure to reply accurately and completely to requests for information regarding electricity rates in China, necessary information is not on the record in accordance with section 776(a)(1) of the Act. Moreover, pursuant to section 776(a)(2) of the Act, Commerce finds that the Government of China withheld information that was requested, failed to provide such information by the deadlines for submission, and significantly impeded the proceeding by not providing accurate or complete responses to Commerce's questions about the electricity market in China. Without the complete and reliable data upon which to calculate electricity subsidies to the respondents, Commerce cannot accurately calculate the electricity subsidy rates for this final determination. Consequently, we find that the use of facts available is warranted in accordance with sections 776(a)(1) and (a)(2) of the Act.

Further, we find that the Government of China did not act to the best of its ability because it did not provide information that was in its possession, and, as such, the application of AFA is warranted, pursuant to section 776(b) of the Act and as discussed above in "Adverse Facts Available." As mentioned above, Commerce made two requests that the Government of China provide all electricity price schedules in effect in China during the POI.[87] Initially, the Government of China stated that it was "not necessary, nor possible, to provide all the electricity rate schedules in effect covering the whole POI."[88] Subsequently, in its supplemental questionnaire response, the Government of China indicated that "{a}ll the respondents' companies are located in Jiangsu Province so only electricity schedules of Jiangsu Province in effect during the period of investigation are related to the question."[89] Then, the Government of China claimed that the fact that it had not submitted all the provincial schedules in this case came as a "complete surprise to counsel" because it has provided all the electricity tariff schedules in every case in which it has participated.[90] Regardless of the reason why the Government of China did not provide necessary information regarding electricity rate schedules in this investigation, as opposed to prior cases, the "best of its ability" standard does not require an assessment of motivation or intent.[91]

Specifically, in *Nippon Steel*, the Federal Circuit held that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."[92] Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. Although the Federal Circuit held that the "best of its ability" standard does not require perfection, it does

[87] *See* Government of China September 8, 2017 IQR at 80; Government of China October 11, 2017 SQR at 10.
[88] *See* Government of China September 8, 2017 IQR at 80.
[89] *See* Government of China's October 11, 2017 Supplemental Questionnaire Response (Government of China October 11, 2017 SQR) at 10.
[90] *See* Government of China's December 20 Case Brief at 6.
[91] *Id.*
[92] *See Nippon Steel*, 337 F.3d at 1382-83.

not condone inattentiveness, carelessness, or inadequate record keeping.[93] The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.[94] Accordingly, we find that the Government of China failed to act to the best of its ability in providing all of the electricity rates in effect in China during the POI, after Commerce made two requests for this information. The Government of China acknowledges that it had the ability to do so, and at the very least, failed to provide the necessary information because of its inattentiveness or carelessness.

Moreover, although Commerce stated that it compared the electricity schedules provided in the instant investigation to other recent investigations with the same POI to determine that the Government of China failed to provide all electricity schedules, we intended to state that the Government of China's own statements on the record formed a sufficient basis to determine that certain electricity schedules were missing from the record.[95] Therefore, we disagree with the Government of China's assertion that Commerce failed to place on the record information that it developed, obtained, and reviewed during the course of this investigation.

Further, Commerce's regulations require that the Secretary maintain an official record that includes all factual information, written argument, or other material developed by, presented to, or obtained during the course of the proceeding.[96] We continue to find that the electricity rate schedules were not provided by the Government of China, and the information is, thus, missing from the record. Given that the information continues to be missing from the record, the electricity rate schedules are not material that was presented to or obtained by Commerce. The missing information is benchmark data that is not publicly available and is solely in the possession of the Government of China. Therefore, it is also not material that was developed by Commerce. The Government of China's failure to provide the requested information, after two attempts were made by Commerce, has caused the record of this proceeding to be deficient.

The respondents and the Government of China assert that Commerce's practice of independently seeking benchmark data to supplement the record require it to do so here. We disagree. The provincial electricity rate schedules that are missing from the record in this investigation are distinguishable from other types of third-party benchmark information, including the Global Trade Atlas data, World Bank *Doing Business* statistics, interest rate information, and international freight values referred to by the respondents. These latter types of publicly available data come from independent, third-party sources and, thus, are reliable and corroborated by those sources. In contrast, the provincial electricity tariff rate schedules are Chinese governmental documents, which is why Commerce requested the Government of China to submit the schedules on the record. It was the Government of China's responsibility, not Commerce's, to place the requested information on the record of this investigation, which is maintained and controlled by the Government of China.[97]

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[93] *Id.* at 1382.
[94] *Id.*
[95] *See* Ministerial Error Response at 3 (citing Government of China's September 8, 2017 IQR at 80).
[96] *See* 19 CFR 351.104(a).
[97] *See Tianjin Machinery*, 806 F. Supp. at 1015 (finding that "The burden of creating an adequate record lies with respondents and not with Commerce."

The respondents and the Government of China are incorrect that Commerce is required to use the respondent companies' electricity usage information to determine the existence of a benefit from this program because the usage information was not found to be deficient. In a CVD proceeding, a government's failure to cooperate is a legitimate basis to apply an adverse inference that nonetheless affects a cooperating respondent that has benefited from subsidies from the government. The Federal Circuit has found a "collateral impact on a cooperating party does not render the application of adverse inferences in a CVD investigation improper."[98] Moreover, verification of the respondents' electricity usage data would not have cured the Government of China's failure to provide information required to calculated a benefit for the subsidy. Therefore, Commerce's decision to not verify the respondents' usage information is irrelevant to our application of AFA to the Government of China's failure to provide the requested electricity benchmark information.

We disagree that our reliance on the 20.06 percent rate calculated in *Chlorinated Isocyanurates from China* is incorrect. The majority of this rate was calculated using Commerce's standard electricity methodology. The application of partial AFA did not involve using the standard hierarchy to assign an AFA benefit. Rather, Commerce calculated a rate using one month of data from the company's own electricity usage data, based on the assumption that the company paid the lowest rate, when it should have paid the highest rate for the province in which it was located for each month of the POI. The 20.06 percent *ad valorem* rate is, therefore, a corroborated rate.[99]

In past proceedings, Commerce has applied adverse facts available and found that this program provides 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 due to the Government of China's failure to provide requested program information.[100] However, in prior proceedings, there has been no indication that the Government of China failed to provide complete information about electricity rates in China. Commerce was, thus, able to rely on the Government of China's information to determine the appropriate benchmark to use to measure a benefit for this program. In particular, Commerce has relied on the Government of China's electricity rate information and selected the highest rates in China as a benchmark to calculate a benefit, using the respondent's electricity usage data.

Consistent with case precedent, at the *Preliminary Determination*, as an adverse inference for the Government of China's failure to submit requested information, we found that this program provides a financial contribution and is specific in accordance with the statute.[101] However, unlike prior investigations, evidence on the record of the instant investigation shows that the Government of China failed to provide complete information that we could use to measure this program's benefit.[102] Specifically, the Government of China's failure to provide a complete record of the electricity rates in China precluded Commerce from selecting the highest rates to use as a benchmark. Thus, Commerce could not follow the methodology that it has employed in prior proceedings to measure a benefit for this program.

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[98] *See Fine Furniture*, 748 F.3d at 1372-73.
[99] *See Chlorinated Isocyanurates from China* IDM at Comment 2.
[100] *See* PDM at 27; *see also Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 56582 (November 29, 2017).
[101] *See* PDM at 27.
[102] Government of PRC September 8, 2017 IQR at 80. *See also* Government of PRC October 11, 2017 SQR at 10.

As noted above, the Government of China was uncooperative and refused to provide crucial information Commerce needed to measure a benefit for this subsidy program. In drawing our adverse inference from the facts available as to this LTAR program, we selected the program-specific rates calculated for respondents in a prior China CVD case for the government provision of electricity for LTAR. In accordance with the statute, we applied an adverse inference to the information for which we did not have usable information to measure the benefit received by the mandatory respondents for this subsidy program. In accordance with section 776(d)(3)(A), Commerce is not required to make estimates or adjustments to a countervailable subsidy rate based on assumptions about information the interested party would have provided if the interested party had complied with the request for information.[103] Commerce is entitled to use AFA, and apply an adverse inference to the facts used to determine the benefit for this program, in order to encourage future compliance.

As explained in *Yantai Xinke Steel Structure*,[104] a rate based on AFA is designed to provide respondents with an incentive to cooperate with Commerce's investigations.[105] Congress "{i}ntended for an adverse facts available rate to be a reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to noncompliance."[106] Thus, in selecting a reasonably adverse facts-available rate, Commerce must balance the statutory objectives of finding an accurate subsidy rate and inducing compliance, rather than creating an overly punitive result.[107] Although the respondents and the Government of China maintain that Commerce should use the respondents' electricity use data to calculate a benefit, doing so would defeat the purpose of purpose of the Act, which, according to the SAA is to encourage future cooperation.[108] We do not find that relying on the respondents' electricity data would deter the Government of China's future non-compliance. We currently rely on the respondents' electricity data in instances when the Government of China provides electricity rates, but does not provide requested information pertaining to financial contribution and specificity.

As noted above, we believe that the 20.06 percent rate is sufficiently corroborated. Accordingly, we continue to rely on this rate as AFA for the electricity for LTAR program benefit.

Comment 2: Export Buyer's Credit Program

Government of China's Case Brief:

- The information Commerce points to as missing from the record and warranting AFA has nothing to do with determining the non-use of this program. None of this missing information impacts how the respondents' customers could have been searched in China

[103] *See* section 776(b)(B) of the Act.
[104] *See Yantai Xinke Steel Structure Co., Ltd. v. United States*, Court No. 10-00239, Slip Op. 15-103 (CIT September 15, 2015).
[105] *See KYD, Inc. v. United States*, 607 F.3d 760, 767 (Fed. Cir. 2010) (quoting *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995); *F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (*De Cecco*)).
[106] *De Cecco*, 216 F.3d at 1032.
[107] *Timken Co. v. United States*, 354 F.3d 1334, 1345 (Fed. Cir. 2004) (citing *De Cecco*, 216 F.3d at 1032).
[108] *See SAA* at 870.

Export-Import Bank's (China Ex-Im) database, and none of it impacts the customer declarations on the record.[109]

- Commerce failed to investigate whether the absence of this information on the record had any real impact on the usage determination and whether it in fact created a gap in the record that required the application of AFA.[110]
- Commerce failed to make a rational connection between the missing information requested – a list of third party banks – and the conclusion made – that without this information Commerce could not verify non-use.[111]
- The Government of China's failure to provide certain information in this case is no different from its failure to provide information regarding certain grant programs. In the absence of this information, usage could still be determined by (1) the Government of China's questionnaire response; (2) review of China Export-Import Bank's computer systems; and (3) declarations of non-use from the respondents' customers.
- The respondents submitted declarations from all of their U.S. customers attesting to the fact that they did not use this program. This is the same evidence Commerce relied on in *Solar Cells from China* to establish non-use.[112]
- If information on the record indicates that the respondent did not use the program, Commerce will find the program was not used regardless of whether the foreign government participated to the best of its ability.[113]
- The Court has deemed it "inappropriate for Commerce to apply AFA for no reason other than to deter the {government's} non-cooperation in future proceedings when relevant evidence existed elsewhere on the record."[114]
- The decision to not verify this program does not prevent a finding of non-use.[115]
- The rate selected cannot be corroborated and is otherwise unreasonable. It is mathematically impossible for U.S. companies receiving U.S. dollar loans under this program to receive an *ad valorem* rate that is higher than the U.S. dollar benchmark interest rate in this case.[116]

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[109] *See* Government of China's Case Brief at 1-6.
[110] *See* Government of China's Case Brief at 5-6 (citing *Zhejiang Dunan Hetian Metal*, 652 F.3d 1333, 1348 (Fed. Cir. 2011)).
[111] *See* Government of China's Case Brief at 6 (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962) (explaining that agencies must "articulate a {} rational connection between the facts found and the choice made")).
[112] *See* Government of China's Case Brief at 8-11 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 46904 (July 19, 2016) (*Solar Cells from China POR 2*), and accompanying IDM at Comment 1).
[113] *See* Government of China's Case Brief at 6-10 (citing *Countervailing Duty New Shipper Review: Certain In-shell Roasted Pistachios from the Islamic Republic of Iran*, 73 FR 9993 (February 25, 2008) (*Pistachios from Iran*), and accompanying IDM at Comment 2. *See also Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1342 (CIT 2013)).
[114] *See* Government of China's Case Brief at 8 (citing *Changzhou Trina Solar Energy Co. v. United States*, 255 F. Supp. 3d 1312, 1318 (CIT 2017)).
[115] *See* Government of China's Case Brief at 11 (citing *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015), and accompanying IDM at Comment X).
[116] *See* Government of China's Case Brief at 12-14.

- The AFA rate is unreasonable and cannot be corroborated under the statute. Therefore, if Commerce's AFA finding stands, the AFA rate applied in the Final Determination must be less than 0.56 percent.[117]

Huahong and Hailun Case Brief:

- Hailun and Huahong have fully cooperated in this investigation by submitting complete declarations of non-use of the Export Buyer's Credit program for themselves and their unaffiliated U.S. customers.[118]
- The declarations submitted in this investigation contain more detailed information than those in previous investigations. For instance, they included the purpose of the loans at issue, which show they do not meet the criteria under this program and are not related to purchases of subject merchandise from China. They also contain certifications that no funding was received from the China ExIm Bank, either directly, or indirectly through any third-party bank. Furthermore, Hailun's US. customers have indicated their willingness to participate in verification of the submitted information, which Commerce did not conduct. Because Commerce has not verified the declarations, it must accept them as true *prima facie*.[119]
- Unlike other cases in which declarations were submitted in which the underlying circumstances rendered the declarations "unverifiable," or did not contain the necessary information (*e.g.*, loan purpose), such as in *Off-the-Road Tires from China*, the circumstances are different in this investigation. Here, the declarations included the outstanding loans of Hailun's customers, their purpose (*e.g.*, polymer purchasing), along with certifications that one customer had no loans outstanding, while the remaining customers' loans were for sourced for purposes other than the Export Buyer's Credit program.[120]
- Hailun provided information in its pre-preliminary comments that explains the nature of the program, as taken from the China Ex-Im Bank's official website, which is consistent with the petitioners' own understanding of the purpose of this program, and is consistent with the underlying petition. Regardless of the China Ex-Im Bank's operation of this program, the declarations provide sufficient evidence that Huahong's and Hailun's importers and customers did not use this program.[121]
- The Government of China confirmed that the respondents themselves would know whether their customers or importers of subject merchandise used the Export Buyer's Credits program. Given the declarations Huahong and Hailun submitted on the record of this investigation, Commerce must use this record information, even when it does not

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[117] *See* Government of China's Case Brief at 12-14.
[118] *See* Hailun's Case Brief at 2-3 and Hailun's September 11, 2017 Initial Questionnaire Response (Hailun September 11, 2017 IQR) at 1 and Exhibit 15. *See also* Huahong's Case Brief at 3-5 and Huahong's September 8, 2017 Initial Questionnaire Response (Huahong September 8, 2017 IQR) at 8.3.
[119] *Id.*, at 3-7.
[120] *Id.* (citing *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 18285 (April 18, 2017) (*Off-the-Road Tires from China*), and accompanying IDM).
[121] *Id.* at 7-8 and Huahong Case Brief, at 3-5.

meet all requirements, provided such information is timely and can be verified, as set forth in Section 782(e)(1)-(5) of the Act.[122]

- The Court of International Trade found in *SKF USA* that "{a}llowing an interested party's failure to cooperate to affect adversely the dumping margin of another interested party who is a party to the proceeding, about whom Commerce did not make a finding of non-cooperation, violates Commerce's obligation to treat fairly every participant in an administrative proceeding."[123] Also, in *Fine Furniture*, the Federal Circuit found that it is improper to apply to a cooperating party an adverse inference determined for a non-cooperating party, such as the Government of China.[124]
- In these situations, and consistent with Commerce's practice,[125] Commerce should apply an adverse inference to program financial contribution and specificity, but it should measure the benefit using the respondents' own data. For the final determination, Commerce should find that Huahong and Hailun acted to the best of their ability and submitted usable and complete information, which should either be verified or accepted as true and conclusive, consistent with Section 782(e)(1)-(5) of the Act.[126]

David C. Poole, et al. Case Brief:

- Commerce's AFA determination of the Export Buyer's Credit Program was inappropriate and unsubstantiated. Commerce cannot apply an unjustifiably high, punitive rate that ignores facts on the record of this investigation.[127]
- Contrary to the preliminary determination, Commerce received complete, detailed non-use claims from the mandatory respondents and the Government of China, along with an explanation by the Government of China as to how the Government of China made this determination.[128]
- Commerce had an opportunity to verify the submitted information related to this program. Further, the verification reports issued by Commerce do not include any indication that suggests benefits were provided under this program.[129]
- The circumstances under which an adverse inference is determined must be reasonable and show less than full cooperation by a party.[130] Here, the Government of China complied with Commerce's requests for information, indicating the mandatory respondents did not avail themselves of benefits under this program.[131]

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[122] *Id.* at 8-9, and 14. *See also* Huahong's Case Brief at 4; Government of China's September 8, 2017 Initial Questionnaire Response (Government of China September 8, 2017 IQR) at 14-15 and Exhibit 8.2; Respondents' Letter re: "Fine Denier Polyester Staple Fiber from the People's Republic of China-Hailun Pre-Preliminary Comments- Buyers Credit," dated October 2, 2017 (Hailun Pre-Preliminary Comments) at 6 and Exhibit 1 (containing information on the program requirements).
[123] *Id.*, at 10, and Huahong Case Brief, at 5-6, citing *SKF USA Inc. v. United States*, 675 F. Supp. 2d 1264, 1276 (CIT 2009) (*SKF USA); Taian Ziyang Food Co. v. United States*, 637 F. Supp. 2d 1093, 1102 (CIT 2009); *Calgon Carbon Corp. v. United States*, Slip Op. 11-21, at 27–28 (CIT 2011).
[124] *Id.*, at 10, and Huahong Case Brief, at 7-8, citing *Fine Furniture*, 748 F.3d at 1372.
[125] *See, e.g., Chlorinated Isocyanurates from China*.
[126] *Id.* at 11-14; *see also* Huahong's Case Brief at 4.
[127] *See* David C. Poole, *et al*. Case Brief at 2 and 4.
[128] *Id.* at 2-3.
[129] *Id.* at 3.
[130] *Id.* at 3 (citing *Nippon Steel* 337 F.3d 1373, 1381).
[131] *Id.* at 3.

Petitioners' Rebuttal Brief:

- The Government of China concedes each critical piece of evidence that it failed to provide, including its failure to complete the Standard Questions Appendix as required by Commerce's Initial CVD Questionnaire.[132]
- The Government of China's refusal to provide the missing information evinces a failure of the Government of China to act to the best of its ability.[133]
- The Federal Circuit has recognized that it is within Commerce's purview to determine the information needed to conduct its investigation.[134]
- The missing information has impeded Commerce's ability to understand how the program operates and how it can be verified, distinguishing it from *Pistachios from Iran.*[135]
- Commerce has properly found in other investigations that importer declarations regarding non-use are insufficient as this program may also disburse funds through third-party partner-banks, which the Government of China has refused to identify.[136]
- The Federal Circuit has found that "collateral impact on a cooperating party does not render the application of adverse inferences in a CVD investigation improper.[137]
- The AFA rate is consistent with Commerce's AFA hierarchy and has been corroborated.[138]
- The Government of China's argument that the highest CVD rate a company could conceivably receive is 0.56 percent is unpersuasive because it is based on assumptions without record support. Commerce declined to accept this very argument in *Tool Chests from China.*[139]

Commerce's Position: Consistent with the *Preliminary Determinatio*n, and Commerce's past practice, we continue to find that the record of the instant investigation does not support a finding of non-use regarding the Export Buyer's Credit program.[140] In prior examinations of this program, we found that the China Ex-Im, as a lender, is the primary entity that possesses the supporting information and documentation that are necessary for Commerce to fully understand the operation of this program, which is a prerequisite to Commerce's ability to verify the accuracy of the respondents' claimed non-use of the program.[141] As we discussed in the

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[132] *See* Petitioners' Rebuttal Brief at 3-5.
[133] *See* Petitioners' Rebuttal Brief at 5 (citing section 776(b) of the Act).
[134] *See* Petitioners' Rebuttal Brief at 5 (citing *PPG*, 978 F.2d 1232, 1238).
[135] *See* Petitioners' Rebuttal Brief at 6-9.
[136] *See* Petitioners' Rebuttal Brief at 9-17 (citing *Off-the-Road Tires from China*, and accompanying IDM at Comment 10).
[137] *See* Petitioners' Rebuttal Brief at 17-20 (citing *Fine Furniture*, 748 F.3d 1365, 1372; and distinguishing this case from *SKF USA*).
[138] *See* Petitioners' Rebuttal Brief at 20-22 (citing *Tool Chests from China*, and accompanying IDM at 38-39).
[139] *See* Petitioners' Rebuttal Brief at 22 (citing *Tool Chests from China* IDM at 30, 33-34, 38-39).
[140] *See* PDM at 15-17. *See also* C*rystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017) (*Solar Cells from China POR 3*), and accompanying IDM at Comment 1.
[141] *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*

Preliminary Determination, and in the "Use of Facts Otherwise Available and Adverse Inferences," section above, the Government of China did not provide the requested information or documentation necessary for Commerce to develop a complete understanding of this program (*i.e.*, information regarding whether China Ex-Im uses third-party banks to disburse/settle export buyer's credits, and information on the size of the business contracts for which export buyer's credits are applicable).[142] Furthermore, as we stated in the *Preliminary Determination*, this information is critical for Commerce to understand how export buyer's credits flow to and from foreign buyers and China Ex-Im.[143] Absent the requested information, the Government of China's claims that the respondent companies did not use the 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 because Commerce cannot be confident in its ability to verify those claims.

We disagree with the Government of China's argument that Commerce did not need to review the 2013 Administrative Measures or consider the $2 million contract minimum to determine non-use of the program. As we explained in the *Preliminary Determination*, we requested the 2013 Administrative Measures because information on the record of this proceeding indicated that the 2013 Administrative Measures affected important program changes. For example, the 2013 Administrative Measures may have eliminated the $2 million contract minimum associated with this lending program.[144] By refusing to provide the requested information, and instead asking Commerce to rely upon unverifiable assurances that the 2000 Rules Governing Export Buyer's Credit remained in effect, the Government of China impeded Commerce's understanding of how this program operates and how to verify it, with both the Government of China and the respondent companies. In addition, record evidence indicates that the loans associated with this program are not limited to direct disbursements through China Ex-Im.[145] Specifically, the record information indicates that customers can open loan accounts for disbursements through this program with other banks, whereby the funds are first sent to the China Ex-Im to the importer's account, which could be at the China Ex-Im or other banks, and that these funds are then sent to the exporter's bank account.[146] Given the complicated structure of loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary. Thus, the Government of China's refusal to provide the most current 2013 Administrative Measures, which provide internal guidelines for how this program is administered by the China Ex-Im, impeded Commerce's ability to conduct its investigation of this program.

Part, 81 FR 35308 (June 2, 2016) and accompanying IDM at Comment 6; *see also Chlorinated Isocyanurates from China*, and accompanying IDM at Comment 2 (concluding that "without the Government of China's necessary information, the information provided by the respondent companies is incomplete for reaching a determination of non-use").

[142] *See Preliminary Determination* at 15-17.

[143] *Id*. at 16.

[144] *See* Memorandum to the File, "Certain Tool Chests and Cabinets from the People's Republic of China: Placing Information on the Record," dated August 17, 2017, at Attachment 5 (containing Citric Acid and Certain Citrate Salts from China verification report, dated October 7, 2014 (Citric Acid verification report)).

[145] *See* Government of China September 8, 2017 IQR at Exhibit II-A-3-b-1.

[146] *Id*.

In this investigation, we have information on the record indicating that there were revisions to the 2013 Administrative Measures program and the involvement of third-party banks, which were not present on the record of *Solar Cells from China POR 2*, and *Chlorinated Isocyanurates from China,* which have been cited by the Government of China and the respondent companies to support their arguments.[147] In addition, we find that, with respect to *Chlorinated Isocyanurates from China*, Commerce has since modified its position with respect to the Export Buyer's Credit program in the most recent administrative review (*i.e.*, *Chlorinated Isocyanurates from China AR 2014*)[148] where it determined that AFA was warranted because the Government of China did not cooperate to the best of its ability in responding to Commerce's request for additional information regarding the operations of the Export Buyer's Credit program.[149] As such, we find the Government of China's and the respondent companies' reliance on *Chlorinated Isocyanurates from China* is unpersuasive.

Moreover, in *Solar Cells from China POR 2*, we specifically stated that, even though we found the record in those cases supported a conclusion of non-use, we intended to continue requesting the Government of China's cooperation regarding this program in future proceedings, and we would base subsequent evaluations of this program on the record for each respective proceeding.[150] Thus, by not responding to our requests for additional information regarding the operation of this program, the Government of China was uncooperative in the instant proceeding. Without this additional information, Commerce determines that the information provided by the Government of China and our understanding of this program is incomplete and unreliable. As such, we recognize that we cannot rely on information about this program provided by parties, other than the Government of China (*i.e.*, the respondent company's customers' certifications of non-use).[151]

With respect to the arguments that AFA should not be applied for this program, we continue to find that the Government of China withheld necessary information that was requested and significantly impeded the proceeding and, thus, that Commerce must rely on facts otherwise available in issuing the final determination, pursuant to sections 776(a)(2)(A) and 776(a)(2)(C) of the Act. Moreover, we determine that the Government of China failed to cooperate by not acting to the best of its ability to comply with our request for information. Specifically, the Government of China 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

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[147] *See Solar Cells from China POR 2,* and accompanying IDM at Comment 1. *See also* Citric Acid verification report.
[148] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014.* 82 FR 27466 (June 15, 2017) (*Chlorinated Isocyanurates from China AR 2014*), and accompanying IDM at Comment 2. (concluding that "without the Government of China's necessary information, the information provided by respondent companies is incomplete for reaching a determination of non-use").
[149] *See Chlorinated Isocyanurates from China AR 2014* and accompanying IDM at Comment 2.
[150] *See Solar Cells from China POR 2* IDM at Comment 2.
[151] *See Certain Crystalline Silicon Photovoltaic Product from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014-2015,* 82 FR 42792 (September 12, 2017), and accompanying IDM at Comment 11 (*Certain Crystalline Silicon from China*).

financial contribution, is specific, and provides a benefit to the respondent companies within the meaning of sections 771(5)(D), 771(5A), and 771(5)(E), respectively, of the Act. This finding is identical to the application of AFA in prior proceedings. Specifically, we find that the circumstances in this case are like those in *Chlorinated Isocyanurates from China AR 2014*, where Commerce requested operational program information from the Government of China on this program, pointing out that there were substantial changes to the 2013 Administrative Measures, which the Government of China declined to provide. As we explained in the *Preliminary Determination*, this information is necessary to the analysis of this program.[152]

Furthermore, we disagree with arguments that non-use of the program is verifiable and cannot be found otherwise because Commerce decided not to verify the customers' certifications of non-use. Commerce is not finding the mandatory respondents' customers' certifications of non-use to be unreliable because it declined to verify them. Rather, Commerce finds the mandatory respondents' customers' certifications of non-use to be unreliable because, without a complete understanding of the operation of the program, which could only be achieved through a complete response by the Government of China to Commerce's questionnaires, verification of the respondents' customers' certifications of non-use are meaningless.

Commerce considered all the information on the record of this proceeding, including the statements of non-use provided by the mandatory respondents. As explained above and in the *Preliminary Determination*, we are unable to rely on the information provided by the respondents because Commerce lacks complete and reliable understanding of the program.[153]

With respect to the Government of China's and respondents' claim that the 10.54 percent AFA is punitive, we reviewed the comments from interested parties, and made no change to the AFA rate selected in the *Preliminary Determination* for this program. As we explained in the *Preliminary Determination*, it is Commerce's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[154] When selecting AFA rates, section 776(d) of the Act provides that Commerce may use a countervailable subsidy rate applied for the same or similar program in a countervailable duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the

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[152] *See* PDM at 15-17.
[153] *Id.* at 15-17.
[154] *Id.* at 14, under "Use of Facts Otherwise Available and Adverse Inferences" section*; see also*, *e.g.*, *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) and accompanying PDM (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009) (*Certain Tow-Behind Lawn Groomers from China*), and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences"); *see also Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

highest of such rates.[155] Accordingly, when selecting AFA rates, if we have cooperating respondents, as we do in this investigation, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program. If there is no identical program that resulted in a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).[156] If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use.[157]

Further, in applying AFA to each of the non-responsive companies, we are guided by Commerce's methodology detailed above. We begin by selecting, as AFA, the highest calculated program-specific above-zero rates determined for the cooperating respondents in the instant investigation. In relying on AFA for the selection of a subsidy rate, we point out that there is no identical program in this investigation for which we have calculated a rate; neither has Commerce calculated a rate for this program in any other CVD proceeding involving China. On this basis, we find that using an AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in *Coated Paper from China*,[158] as the rate for this program, is appropriate. We find that this methodology is consistent with Commerce's practice in the selecting an appropriate AFA rate.

With regard to the Government of China's and respondents' argument that the AFA rate is uncorroborated, we disagree. As we explained in the *Preliminary Determination*, section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[159] 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

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[155] *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 IDM at 13; *see also Essar Steel, Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

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

[157] *See Shrimp from China* IDM at 13-14.

[158] *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, 70202 (November 17, 2010) (*Coated Paper from China*) (revised rate for "Preferential Lending to the Coated Paper Industry" program).

[159] *See* PDM at 14.

any previous review under section 751 concerning the subject merchandise."[160] The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.[161]

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.[162] Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[163]

With respect to the reliability aspect of corroboration, we point out that the rate on which we are relying, as indicated above, is a subsidy rate calculated in *Coated Paper from China*, another China CVD proceeding. Further, we find that the calculated rate was based on information about the same or similar program. Moreover, no information has been presented that calls into question the reliability of the calculated rate that we are applying for this program. Finally, unlike other types of information, such as publicly available date on a country's national inflation rate or national average interested 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, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, Commerce will not use it.[164]

Due to the failures of the Government of China to cooperate to the best of its ability, Commerce, as explained above, relied on a subsidy rate from another CVD proceeding involving China. Commerce corroborated this rate to the extent practicable for this final determination. Because this rate reflects the actual behavior of the Government of China with respect to similar subsidy programs, and lacking adequate information demonstrating otherwise, Commerce corroborated the rate that it selected to the extent practicable.

With regard to the Government of China's contention that the preferential government lending program is not similar to the Export Buyer's Credit program, we find that because the Government of China did not provide the necessary information requested with respect to the 2013 Administrative Measures, there is no evidence on the record that indicates that the Government Policy Lending program from *Coated Paper from China*, is dissimilar to the Export Buyer's Credit program. As such, we find the Government of China's assumption in this regard is unpersuasive. We are similarly unpersuaded that the highest CVD rate a company could receive under this program is 0.56 percent. The Government of China's argument concerning calculation methodology is dependent upon an understanding of the program that we do not possess, due to the Government of China's failure to provide the requested information. As

[160] *See* SAA at 870.
[161] *Id.*
[162] *Id.* at 869-870.
[163] *See* section 776(d)(3) of the Act.
[164] *See* PDM at 13-14.

such, the record does not contain information to support the Government of China's suggested calculation methodology. Therefore, as noted above, we find that that the 10.54 percent rate is sufficiently corroborated. Accordingly, we continue to rely on this rate as AFA for the export buyer's credits program benefit.

Comment 3: Market Distortion in the MEG/PTA Industry

Government of China's Case Brief:

- There is no missing information regarding the AFA market distortion finding. Therefore, Commerce lacks the authority to apply AFA.[165]
- Commerce's finding that the Government of China had to corroborate the various industry associations' designation of input producers as state-owned enterprises (SOE) through the Government of China's ECIPS system is unreasonable.[166] Commerce never requested that the Government of China perform this specific task, and there is no information on the record to suggest that the SOE designations provided are not accurate. Moreover, Commerce could have looked through ECIPS at verification and confirmed the provided information.
- Commerce's finding that the Customs data provided did not show the "imports" into special customs supervision areas is incorrect. These imports can be easily seen in the data provided.[167]
- If the Customs data was unclear to Commerce, Commerce was required to notify the Government of China of this deficiency before simply deeming information deficient for purposes of AFA.[168]
- Commerce's belief that it had to issue and receive answers to numerous questionnaires prior to its preliminary determination without regard to the Government of China's holiday schedule was an abuse of discretion. This abuse is more apparent when juxtaposed against Commerce's disregard of its own preliminary determination deadline in a concurrent antidumping duty investigation.[169]

Petitioners' Rebuttal Brief:

- There are numerous gaps on the record as a result of the Government of China's failure to provide full and complete verifiable information.[170]
- The statute requires that a respondent put forth maximum effort to respond to Commerce's inquiries, which the Government of China failed to do here.[171]

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[165] *See* Government of China's Case Brief at 14-17 (citing Section 776(a)(1) and (a)(2) and 776(b) of the Act; *Shandong Huarong*, 435 F. Supp. 2d 1261, 1289; *Nippon Steel*, 337 F.3d at 1381; *Ningbo*, 580 F.3d at 1255; SAA at 869).
[166] *Id.* at 18-21 (citing *Chlorinated Isocyanurates from China,* 79 FR at 56,560*; Ta Chen*, 23 CIT at 820 (1999); *NSK*, 19 CIT at 1328; *SKF USA*, 263 F.3d at 1382).
[167] *Id.* at 21-23.
[168] *Id.* at 22-23 (citing 19 U.S.C. 1677m(d); *Fresh Garlic Producers Ass'n v. United States*, 133 at 22 (CIT 2015)).
[169] *Id.* at 23-24. *See also Certain Aluminum Foil from the People's Republic of China: Deferral of Preliminary Determination of the Less-Than-Fair-Value Investigation*, 82 FR 47481 (October 12, 2017).
[170] *See* Petitioners' Rebuttal Brief at 23-26 (citing *Nippon Steel*, 337 F.3d at 1382).
[171] *Id.*

- Commerce would not have had to issue so many supplemental questionnaires if the Government of China's initial responses were sufficient for Commerce to conduct a thorough investigation.[172]
- The Government of China's 2016 breakdown of special customs supervision categories demonstrates that these categories accounted for 35.5 percent of the total quantity initially identified by the Government of China as "MEG importation," and domestic production accounted for 61.8 percent of Chinese MEG consumption during the POI. Commerce has previously found that a similar share of government control can cause significant market distortion. The record evidence supports Commerce's *Preliminary Determination*.[173]

Commerce's Position: As described at length in the *Preliminary Determination*, the Government of China failed to provide crucial, necessary information that was requested by Commerce about China's MEG and PTA markets.[174] Commerce requested such information to inform its analysis of the degree of the Government of China's presence in the MEG and PTA markets and whether that presence and role of the Government of China results in the distortion of prices.

With respect to MEG, in its September 8, 2017 IQR, the Government of China identified 17 SOEs among 32 producers of MEG.[175] However, it failed to provide the requested production data by these companies. Instead of providing the requested information, the Government of China stated that it "does not have a survey system to cover all the suppliers and producers" and "does not have the statistics to respond to this question."[176] Further, the Government of China did not provide the requested production and ownership information for companies in which it maintains less than majority ownership interest, and it also did not provide the requested discussion of laws, plans, and policies that address the pricing of MEG, the levels of MEG production, the importation or exportation of MEG, or the development of MEG capacity.[177] Additionally, it did not identify which, if any, central and sub-central level industrial policies pertain to the MEG industry, and instead responded that it could not provide a precise response as the industry is "featured by private ownership and is dynamic."[178]

For PTA, in its September 8, 2017 IQR, the Government of China identified SOEs that it claims accounted for 29 percent of the industry in terms of number of enterprises.[179] The Government of China also provided the metric ton production data for the entities that it identified as state-owned.[180] However, the Government of China failed to provide the requested production and ownership information for companies in which it maintains less than majority ownership interest, and it also did not provide the requested discussion of laws, plans, and policies that address the

[172] *Id. (*citing *PPG,* 978 F.2d 1232, 1238).
[173] *See* Petitioners' Rebuttal Brief at 26-28.
[174] *See* PDM at 18-23.
[175] *See* Government of China's September 8, 2017 IQR at 46-47.
[176] *Id.*
[177] *Id.*
[178] *Id*. at 46-47.
[179] *Id.* at 65.
[180] *Id.*

pricing of PTA, the levels of PTA production, the importation or exportation of PTA, or the development of PTA capacity.[181] Additionally, it did not identify which, if any, central and sub-central level industrial policies pertain to the PTA industry, and instead responded that it could not provide a precise response as the industry is "featured by private ownership and is dynamic."[182]

The Government of China's claim that it could not identify companies in which it holds less than majority ownership is belied by other statements in its September 8, 2017 IQR. We find that the Government of China's ability to identify 17 SOEs among the 32 producers of MEG supports the notion that it is able to identify the full universe of MEG producers, *i.e.*, that the MEG industry within China consists of 32 producers. Similarly, the Government of China's claim that SOEs accounted for 29 percent of the PTA industry, in terms of number of enterprises, requires knowledge of the full universe of PTA producers. Elsewhere in its September 8, 2017 IQR, the Government of China stated that the Enterprise Credit Government Publicity System (ECIPS) was "established requiring the authorities for administrations for industry and commerce to publish details regarding the registration, filings, supervision and administration of enterprises and other entities."[183] The Government of China relied on ECIPS data to demonstrate the ownership status of input producers that are not majority Government-owned and that produced the input purchased by the respondent companies.[184]

Moreover, in prior proceedings, Commerce has verified the operation of the Government of China's "Enterprise Credit Information Publicity System," which requires that the administrative authorities release detailed information of enterprises and other entities and is intended to bring clarity to companies registered in China.[185] This system is a national-level internal portal that holds certain information regarding all China-registered companies.[186] Among other information, each company must upload its annual report, make public whether it is still operating, and update any changes in ownership.[187] The Government of China has stated that all companies operating within China maintain a profile in the system, regardless of whether they are private or an SOE.[188] Therefore, we determine that information related to the operation and ownership of companies within the MEG and PTA industry is available to the Government of China.

Contrary to the Government of China's argument, the *Preliminary Determination* did not suggest that the Government of China had to corroborate the various industry associations' designation

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[181] *Id.*
[182] *Id.* at 65-66.
[183] *Id*. at 53-54.
[184] *Id.* at 54.
[185] *See Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016), and accompanying PDM at 21-22 (unchanged in *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017).
[186] *Id.*
[187] *Id.*
[197] *See* Government of China's September 8, 2017 IQR at 54.

of input producers as SOEs through ECIPS.[189] Instead, Commerce notes that, given the Government of China's ability to identify the universe of domestic MEG and PTA producers, the requested ownership information pertaining to any non-majority owned enterprises was within its purview via ECIPS. Assuming, *arguendo*, that we accept the Government of China's claim that it cannot identify the remaining non-SOE MEG producers and PTA producers, then the Government of China's claim that it has identified all SOE companies is baseless and unverifiable. The Government of China's refusal to provide complete, verifiable information about its ownership in input-producing companies impedes our ability to analyze the Government of China's presence in the MEG and PTA markets. This analysis is fundamental to our determination regarding market distortion.

Because the Government of China refused to provide requested information regarding the MEG and PTA industry in China (*i.e.*, information regarding the total volume and value of domestic production that is accounted for by companies in which the government maintains an ownership or management interest either directly or through other government entities), we determine that the Government of China withheld necessary information with regard to the Chinese MEG and PTA industry and market for the POI.[190] The Government of China's failure to provide this information warrants the use of facts available, with adverse inference, under sections 776(a)(2)(A), 776(a)(2)(C), 776(a)(2)D), and 776(b) of the Act.

In addition to the Government of China's failure to provide the requested ownership information, it also failed to provide the requested MEG import data. In the Initial CVD Questionnaire, we asked that the Government of China report the percentage of domestic consumption accounted for by domestic production.[191] This information is crucial to our market distortion analysis because it informs us of the degree to which domestically produced MEG pervades the Chinese market of that input. In its response, the Government of China reported that imports of MEG accounted for 59 percent of domestic MEG during the POI.[192]

In a supplemental questionnaire, we asked whether this reported import data includes sales of MEG that were produced in China and subsequently attained import designation via movement through special customs supervision areas (*e.g.*, bonded warehouse, free trade zone, bonded port, export processing zone).[193] The Government of China confirmed that the data includes sales through special customs supervision areas.[194] It also provided a chart of MEG Chinese Customs data for 2016 imports.[195] The chart organized the import data by country names and various "trade levels" such as General Trade, Processing with imported materials, Special Supervision Area Cargo Logistics, Inbound and outbound goods in bonded supervision, Special supervision area imported equipment, and Other. Embedded among the list of countries was a heading titled, "The Separate Customs Territo." The Government of China, however, did not provide

[189] *See* Government of China's Case Brief at 18-21 (citing *Chlorinated Isocyanurates from China*; *Ta Chen*, 23 CIT 804, 820; *NSK*, 19 CIT 1319, 1328; *SKF USA Inc*. 263 F.3d 1369, 1382).
[190] *See* Initial CVD Questionnaire, at Section II, "Input Producer Appendix;" *see also* Government of China October 16, 2017 SQR at 3, 8.
[191] *See* Government of China September 8, 2017 IQR at 46.
[192] *Id.*
[193] *See* Government of China October 23, 2017 SQR at 2.
[194] *Id.*
[195] *Id.* at Exhibit S5-7.

information demonstrating the amount or percent of imports from non-Chinese production; nor did it provide an explanation of the categories or how the data was categorized in that chart. Without such explanation, any attempt to adjust the Government of China's previously reported MEG import data would be purely speculative. Therefore, we do not have record information as to what percent of domestically consumed MEG was accounted for by domestic production and what percent by imports.

We asked that the Government of China identify the source of its reported market data and explain how it was attained.[196] For MEG, the Government of China stated that an industry association obtained the data from a private consulting firm.[197] The consulting firm was able to obtain production and sales data from "subordinate enterprises" of Sinopec Group, China National Petroleum Corp., and China National Offshore Oil Corporation.[198] For information outside those entities, the consulting firm collected data through public information, industry seminars, or communication with sales people.[199] For PTA, the Government of China stated that an industry association obtained information from different sources, including statistical data from third parties, its membership, or the public.[200]

In its supplemental questionnaire response, the Government of China noted that its reported 2016 data were predictions from an industry report.[201] We asked the Government of China how it verified the accuracy of these predicted data.[202] The Government of China stated that it was unnecessary for it to verify the accuracy of the data that it reported to Commerce because industry associations strive to collect the most accurate information possible for their own industry knowledge and market trends.[203]

As noted above, the Government of China did not report the percentage of domestic consumption accounted for by domestic production, as its import data included domestically produced goods. Commerce was not informed of the inclusion of the domestic production data until seven days before the deadline for the *Preliminary Determination*, when the Government of China confirmed in a supplemental questionnaire response that these imports included domestic Chinese production shipped through bonded warehouses.[204] The Government of China did not provide additional explanation why it considers such domestically produced goods to be characterized as imports; nor did it specify what percentage of total imports were sourced from domestic production. Further, the MEG domestic consumption values that the Government of China reported are uncorroborated predictions. Therefore, we determine that the record does not contain information indicating the relative domestic Chinese consumption of MEG composed of domestic production and imports. This information is necessary to a determination as to whether

[196] *Id.*
[197] *Id.*
[198] *See* Government of China October 23, 2017 Supplemental Questionnaire (Government of China October 23, 2017 SQR) at 1.
[199] *Id.*
[200] *Id.* at 4.
[201] *Id.*
[202] *See* Government of China October 23, 2017 SQR at 2.
[203] *Id.*
[204] *See* Government of China October 23, 2017 SQR at 2.

the extent to which domestic, Chinese SOE producers of MEG supply the domestic market, and thus whether the Chinese MEG market is potentially distorted by the significant presence of such SOEs. Consequently, we find that the application of adverse facts available is warranted.[205]

We agree with the Government of China that this investigation required the issuance of numerous supplemental questions; however, this would not have been necessary had the Government of China's initial responses been more complete. Commerce granted numerous extensions to the Government of China for its questionnaire responses throughout this proceeding.[206] Commerce's CVD investigations are controlled by statutory deadlines, which are mandatory in nature. By failing to provide complete responses in its Initial CVD Questionnaire, the Government of China limited its own time to provide the requested information in the context of supplemental questionnaires.

Accordingly, as adverse facts available, we determine that the Government of China owns or controls all of domestic production of MEG and PTA in China. As described above, we also determine as AFA that record information regarding imports of MEG is not probative as to the level of domestic consumption accounted for by imports. For these reasons, and for the reasons explained in the *Preliminary Determination*, we determine that the significant involvement by the Government of China in the MEG and PTA markets in China results in significant distortion of the prices of MEG and PTA such that they cannot be used as a tier one benchmark and, hence, the use of an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the Provision of MEG and PTA for LTAR.

Comment 4: Input Benchmarks

Petitioners' Case Brief:

- The inclusion of Chinese export prices undermines Commerce's finding of market distortion and the need to resort to a tier two benchmark. If the respondents purchased MEG from government authorities (as Commerce preliminarily found), and if government authorities dominate domestic production of each input (as Commerce also found in making its market distortion finding), then the use of Chinese prices is effectively a comparison of the government price to itself, thereby undermining the purpose of a tier-two benchmark.[207]
- Commerce's preliminary decision to include Chinese export prices in the input benchmarks is inconsistent with its prior practice.[208]
- In the context of antidumping investigations and reviews involving non-market economy (NME) countries like China, Commerce's practice is to exclude prices from other NMEs in order to derive a market-based surrogate value. Thus, the inclusion of Chinese prices

[205] *See* section 776(b) of the Act.
[206] *See* Department Letters to the Government of China dated August 28, 2017; September 29, 2017; October 10, 2017; October 11, 2017; October 18, 2017, and October 19, 2017.
[207] *See* Petitioners' Case Brief at 4.
[208] *Id.* at 4-5. *See also, 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 2013*), and accompanying IDM at 4, Comment 6.

> in the input benchmarks are just as distortive as they would be if included in surrogate values established in an antidumping investigation.[209]

No Rebuttal Briefs were submitted for this issue.

Commerce's Position: In order to measure the benefit received by the respondents for the provision of MEG and PTA for LTAR, we compared the prices paid by the respondents to the domestic MEG and PTA suppliers, to the world-market price. Consistent with 19 CFR 351.511(a)(2)(ii), we averaged world-market prices using Global Trade Atlas data to establish a comparable benchmark for evaluating the price that would have been available to MEG and PTA purchasers in China. When determining the world-market price, we included all relevant data points listed within the raw data. This methodology is consistent with prior determinations.[210]

When calculating the benchmark, we did not exclude prices pertaining to China, as the regulations do not instruct Commerce to exclude such data in a tier (ii) analysis. Export prices from China are properly considered tier (ii), world market prices under Commerce's adequate remuneration hierarchy. As tier (ii) world market prices, these prices are not affected by the price dynamics in China, which we have determined to be distorted. We, therefore, disagree with the petitioner that we should change this calculation methodology for the final determination.

Petitioners citation to *Solar Cells from China 2013*,[211] is unavailing.[212] In selecting an appropriate benchmark to measure the benefit from the government provision of goods and services, Commerce's regulations provide for a clear distinction between tier (i), in-country prices, which would include imports to that country, and tier (ii), world market prices.[213] This distinction reflects the different commercial dynamics governing such prices. The fact that domestic, in-country prices, including imports for a good or service have been found to be distorted for purposes of this analysis does not lead to the conclusion that the prices for goods exported from that market are also necessarily distorted. Rather, such export prices would reflect, under this analysis, the commercial realities on the world market for such goods or services. It would therefore not be appropriate to disregard world market prices for a good or service stemming from a country whose *domestic market* has been found to be distorted under the analysis for the benefit determination in this circumstance.

We also disagree with petitioners' argument that relying partly on Chinese export prices as part of the world market price would result in comparing the government price to itself. This argument conflates the examination of the benefit with that of the financial contribution. Under

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[209] *See* Petitioners' Case Brief at 5-6. *See also, e.g., Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Intent to Rescind, in Part; 2013-2014*, 80 FR 18814, and accompanying IDM at 17-18.

[210] *See Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017), and accompanying IDM at Comment 14.

[211] *See Solar Cells from China 2013*, at Comment 6.

[212] That determination discusses removing "any PRC imports from these data sets", not exports from China to the world market.

[213] *See* 19 CFR 351.511(a)(2)(i) & (ii).

the benefit analysis for the provision of goods or services, Commerce must determine the appropriate benchmark to measure the adequacy of remuneration for government provided goods or services. That analysis properly focuses on the selection of a market-determined benchmark, and the appropriate source for such prices. Where the domestic market has been found to be distorted due to the significant role of the government in that market, the focus shifts to the world market for a comparable good or service. The regulations provide that "{w}here there is more than one commercially available world market prices, the Secretary will average such prices, to the extent practicable…"[214] As noted above, the mere fact that domestic prices for a good or service are found to be distorted is insufficient to disregard such prices on the world market under this analysis. As such, even though the domestic prices may have been found to be stemming from government sources, such prices are not necessarily unusable for benchmark purposes when they are not determined to be distorted under entirely different market conditions, *i.e.*, the world market.

Comment 5: Hailun Verification Minor Corrections

Petitioners' Case Brief:

- For the final determination, Commerce should take into account several minor corrections reported at Hailun's verification. Specifically, Hailun reported numerous revisions to various affiliates' sales figures that are intercompany sales and, accordingly, should be excluded from the reporting company's combined sales denominator, consistent with Commerce's stated methodology.[215]

Commerce's Position: We agree with the petitioners. For the final determination, we revised the Hailun companies' net subsidy rate by incorporating all of the minor corrections which were presented at the outset of verification and subsequently verified.[216] Specifically, we accounted for revisions to sales figures that included removing the necessary intercompany sales, as specified in the verification report of the Hailun companies.[217]

Comment 6: Huahong Verification Minor Corrections

Petitioners' Case Brief:

- For the final determination, Commerce should take into account several minor corrections reported at Huahong's verification. Specifically, Commerce should: 1) adjust reported sales values to exclude domestic freight and marine insurance; 2) correct the value of the total exemptions that were reported by Hongkai under the Import Tariff and VAT Exemptions on Imported Equipment program; and 3) correct the amount of financial assistance received in 2007 for a reported grant.[218]

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[214] *Id.*
[215] *See* Petitioners' Case Brief at 6-8. *See also* Hailun Verification Report at 2-3.
[216] *See* Hailun's Final Calculation Memorandum for detail concerning these calculation changes.
[217] *Id. See also* Hailun Verification Report at 2-3.
[218] *See* Petitioners' Case Brief at 9-10. *See also* Hauhong Verification Report at 2-4.

- Commerce should apply AFA to previously unreported grants that Huahong presented as minor corrections. Commerce was unable to examine the supporting documentation or otherwise verify these unreported grants.[219]

Huahong's Rebuttal Brief:

- Application of AFA to the previously unreported grants is not warranted. Huahong provided information about this program in its initial and supplemental questionnaire responses. As a matter of practice, Commerce does not apply AFA to additional grants presented as minor corrections under a program previously reported by the respondent.[220]
- Commerce verified the values of these grants as minor corrections, and it tied the grants and subsidies examined for Huahong and Huahong Group to the respective accounting records and financial statements.[221]
- The standard for acting to the best of its ability does not require perfection by the respondents.[222]

Commerce's Position: In accordance with the minor corrections presented at verification, we have incorporated sales value adjustments and corrected the amount of financial assistance received in 2007 for a reported grant.[223] However, we did not correct the value of the total exemptions that were reported by Hongkai under the Import Tariff and VAT Exemptions on Imported Equipment program**.** A benefit for this program was not calculated for Hongkai at the *Preliminary Determination* because Hongkai was not the producer of the inputs. Accordingly, for this final determination and consistent with the *Preliminary Determination*, we are attributing, pursuant to 19 CFR 351.525(b)(6)(v), only those subsidies that were transferred to sales of Huahong by Hongkai.[224]

Regarding the three grants that Huahong presented as minor corrections at verification, we disagree that the application of AFA is warranted in this case. We disagree with Huahong's citation to *PET Resin from China* as support for Commerce's practice in applying AFA to additional grants presented as minor corrections. Instead, we stated in *PET Resin from China*,[225] that Commerce's decision to accept minor corrections is made on a case-by-case basis. In this investigation, we found that it was appropriate to accept Huahong's grants as minor corrections during Huahong's verification.[226] Huahong previously reported receipt of grants under this program in its Initial CVD Questionnaire response.[227] Because we had previously investigated

[219] *See* Petitioners' Case Brief at 10-13. *See also* Hauhong Verification Report at 3, 11-12, and Exhibit VE-1 at 10.
[220] *See* Huahong's Rebuttal Brief at 1-4 (citing *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Affirmative Determination*, 81 FR 13337 (March 14, 2016 (*PET Resin from China*), and accompanying IDM at Comment 2).
[221] *Id* at 1-4, citing Huahong Verification Report at 11.
[222] *Id.* at 3-4, citing *Nippon Steel*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).
[223] *See* Huahong Verification Report at "Minor Corrections."
[224] *See Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at 13.
[225] *See PET Resin from China* IDM at Comment 2.
[226] *See* Huahong Verification Report at "Minor Corrections", VE-1.
[227] *See* Huahong IQR, at Exhibit 11. *See also* Huahong's September 8, 2017 IQR at Exhibit 16. *See also* September 25, 2017 SQR at 16, 18.

these specific grants for this respondent, we find that the application of AFA is not warranted for Huahong's grants.

Comment 7: Exclusion of Finance Leasing and Margin Trading from the Policy Loans Benefit Calculation

Huahong's Case Brief:

- Huahong reported finance leasing from a private company and marginal trading deals with securities companies. These should not be treated as policy loan transactions.[228]
- These financial dealings were not alleged in the petition, nor has Commerce established that the financial institutions are state authorities. Commerce should not countervail these financial instruments.[229]

No Rebuttal Briefs were submitted for this issue.

Commerce's Position: Commerce's regulations define "loan" as including other forms of debt financing.[230] Further, Commerce has found that China's banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the financial system and the government's use of banks to effectuate policy objectives.[231] In *Solar Products from China*, we also noted that China's banking system continues to be impacted by the legacy of government policy objectives, which continues to undermine the ability of the "Big Four" and the rest of the domestic banking sector to act on a commercial basis, and allows continued government involvement in the allocation of credit in pursuit of those objectives.[232] Thus, countervailable lending is not necessarily limited to the "big four" or other SOCBs.[233] Therefore, consistent with past practice,[234] we have continued to include Huahong's finance leasing in its rate calculation for the final determination.

Regarding Huahong's margin trading deals with securities companies, we agree that these should be excluded from the policy lending rate calculation. Funds borrowed pursuant to margin trading pertain to trading financial assets, i.e., securities. This borrowing is not related to the respondent's production activities. As such, this type of borrowing is not related to Commerce's determination concerning policy lending. Accordingly, we have excluded them from Huahong's final policy lending calculation.

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[228] *See* Huahong's Case Brief at 19-20.
[229] *Id*.
[230] *See* 19 CFR 351.102(b)(31).
[231] *See CFS China Final*, and accompanying IDM at Comment 10. *See also* Memorandum, "Review of China's Financial System Memorandum," dated August 31, 2017.
[232] *See Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products from China*), and accompanying IDM at Comment 9.
[233] *Id.*
[234] *See 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 POR 1*) at Comment 9.

Comment 8: Whether Other Types of Financing by Hailun are Countervailable Under the Policy Loan Program

Hailun's Case Brief:

- Commerce should find that certain other financing, or "newly added loans" (reflective of bank acceptance discounts, letter of credit discounts, and financial leasing) are not specific to any policy or industry and have no designated usage, and as such, cannot be countervailable.[235]
- The bank acceptance discount is a promised future payment that is guaranteed and held by a bank and is drawn on by the holder (*e.g.*, Hailun) in a specific amount and date. Hailun and its affiliates are also holders of various letters of credits with a bank on which they withdrew money prior to the due date. Because Hailun and its affiliate claimed the money owed to them in advance of the due date, they were required to pay discounted interest to the bank for the early payments.[236]
- The finance leasing used by Hailun Petrochemical was sourced by a company that is neither a banking institution or public body. Commerce did not determine that, nor did it request additional information on whether, this company could be a public body, and therefore, any financing provided by this company cannot be countervailable.[237]
- These forms of financing serve as normal financial instruments provided to Hailun and its affiliates without consideration of industry policies or the government without any designated usage. Accordingly, for the final determination, Commerce should find that no benefit was conferred for use of these financial instruments.[238]

Petitioners' Rebuttal Brief:

- Commerce should reject Hailun's argument because bank acceptances and letters of credit constitute normal financial instruments that are specific given the Government of China's industrial policies aimed at the promotion of the PSF industry.[239]
- Commerce has previously included these types of financial instruments under the Government of China policy lending program, such as in *Tetrafluoroethane from China*,[240] and should continue to include them in the benefit calculation for the final determination.[241]

Commerce's Position: We disagree with Hailun that certain loans, *i.e.*, bank acceptance discounts, letter of credit discounts and finance leasing are not countervailable instruments. As an initial matter, the *Preamble* states that a "…loan is defined to include forms of debt financing other than what one normally considers to be a 'loan,' such as bonds or overdrafts."[242] In this regard, Commerce explains further that "…this definition is intended as a shorthand expression

[235] *See* Hailun Case Brief, at 22.
[236] *Id.* at 22-23.
[237] *Id.* at 23.
[238] *Id.* at 23-24.
[239] *See* Petitioners' Rebuttal Brief at 33-34.
[240] *Id.* at 35, citing *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014) (*Tetrafluoroethane from China*), and accompanying IDM, at Comment 11.
[241] *Id.*
[242] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65349 (November 25, 1998) (*Preamble*).

in order to avoid repetitive use of more cumbersome phrases, such as 'loans or other debt instruments.'" Here, Commerce's regulations make clear that a "loan" includes *other forms* of debt financing, including discounted instruments and finance leasing.

Furthermore, Commerce has a long-standing practice of treating the financial arrangements at issue as loans under section 771(5)(D)(i) of the Act.[243] For instance, with regard to finance leasing, Commerce has previously stated that regardless of whether such finance leasing arrangements are from non-bank commercial entities, they are still considered a form of debt financing covered under the policy loan program.[244] Concerning discounted financial instruments, such as letters of credit, Commerce has also stated that our subsidy analysis is not concerned with whether such instruments fit into a narrow definition of a loan. Where non-traditional loans provide a discounted benefit to the company, whether on the face value of the debt instrument in question, or in the form of a reduced interest rate, a benefit is conferred in the form of a reduction in payment to the lending party.[245]

Additionally, regarding the loans at issue, including financing leasing, the Hailun companies stated the following:

> {C}ompanies received discounting of bank acceptance with the banks, discounting letter of credit with the banks, and paying interests for financing leasing of equipment with institutions. Hailun does not understand that these forms of interests incurred should be constituted as loans or fall under the policy loan program to the PSF industry. These interests are not the bank's money, rather the money is the companies' money and they received it earlier from the bank before the due date of the document at a discount rate.[246]

The Hailun companies do not dispute the fact that these loans were bestowed to them at a discounted rate and the data submitted to Commerce lends further support to this fact.[247] Consequently, for the final determination, Commerce continues to find that these financial instruments provide a financial contribution, confer a benefit and are specific within the meaning of sections 771(5)(D), 771(5)(E), and 771(5A), of the Act, respectively.

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[243] *See, e.g.*, (*Solar Cells from China POR 1)* at comment 9; *Tetrafluoroethane from China; Citric Acid and Certain Citrate Sales from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010*, 77 FR 72323 (December 5, 2012) (*Citric Acid from China; 2010*), and accompanying IDM at 15.
[244] *See Solar Cells from China POR 1.*
[245] *See Tetrafluoroethane from China*, and accompanying IDM at Comment 11; *Citric Acid from China; 2010*, and accompanying IDM at 15.
[246] *See* Hailun's October 16, 2017 Supplemental Questionnaire Response (Hailun October 16, 2017 SQR) at 10 *See also* Hailun's Final Calculation Memorandum for further explanation containing business proprietary information.
[247] *See* Hailun's Final Calculation Memorandum, at Attachment II.6.

Comment 9: PTA for LTAR Benefit

Huahong's Case Brief:

- At the *Preliminary Determination*, Commerce removed all intercompany purchases and calculated the PTA for LTAR purchases on a company-specific basis for Huahong Group, Hongkai, Huakai, and Huahong International. Because these companies had multiple intercompany sales of PTA, the benefit was passed through among all the five companies. Therefore, the benefit should be calculated on a consolidated basis.[248]
- Commerce should not countervail PTA purchased for trading purposes because those purchases were not for the production of merchandise under consideration.[249]

Petitioners' Rebuttal Briefs:

- All PTA transactions between the Huahong companies were properly excluded from the preliminary calculations, and, therefore, Huahong's claim regarding the alleged double- or over-counting of benefits is in error.[250]
- Commerce rejected the same revision suggested by Huahong in recent countervailing duty investigations.[251]
- Huahong's requested exclusion of purchases for trading purposes should be rejected in the final determination, in accordance with Commerce's standard practice.[252]

Commerce's Position: As the petitioners correctly note, we have addressed Huahong's argument about calculating the benefit on a consolidated basis in prior cases.[253] Pursuant to 19 CFR 351.525(iv)-(v), the appropriate denominator to attribute subsidies received by cross-owned input producers is the combined sales of only the subject merchandise producer and the one input producer that received the subsidy. Therefore, we have not changed our attribution methodology for this program for the final determination.

We have also previously addressed Huahong's argument concerning the inputs that it purchased for trading purposes.[254] Commerce's regulations state that: "In determining whether a benefit is conferred, the Secretary is not required to consider the effect of the government action on the firm's performance, including its prices or output, or how the firm's behavior otherwise is

[248] *See* Huahong's Case Brief at 21.
[249] *Id.* at 21-22. *See also* Huahong Group's September 8, 2017 Initial Questionnaire Response (Huahong Group September 8, 2017 IQR) at 7 and Exhibit 7; 11.1; 11.2.
[250] *See* Petitioners' Rebuttal Brief at 29-30.
[251] *Id.* at 30-31, citing C*ountervailing 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 IDM at Comment 12.
[252] *See* Petitioners' Rebuttal Brief at 31-32, citing C*ircular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 73 FR 39657, 39663 (July 10, 2008) (*Austenitic Pipe from China Preliminary Determination*), affirmed in *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009) (*Austenitic Pipe from China Final Determination*).
[253] *See PET Resin from China* IDM at Comment 12.
[254]*See Austenitic Pipe from China Preliminary Determination*, 73 FR at 39663, unchanged in *Austenitic Pipe from China Final Determination*.

altered."[255] Further, the *Preamble* adds that: "In analyzing whether a benefit exists, we are concerned with what goes into a company, such as enhanced revenues and reduced-cost inputs in the broad sense that we have used the term, not with what the company does with the subsidy."[256] Therefore, in accordance with our regulations, we do not consider the manner in which Huahong used its inputs as a factor that is germane to Commerce's subsidy analysis and, thus, we have for purposes of this final determination included all of Huahong's MEG and PTA purchases from Government of China authorities in our LTAR subsidy analysis.

Comment 10: Sales Denominator for the Sanfangxing Group

Hailun's Case Brief:

- Commerce used an incorrect sales denominator in its benefit calculation for the preliminary determination. Commerce attributed the benefit received by Hailun's parent company, Sanfangxiang Group, to individual total sales of Sanfangxiang Group during the POI plus the total sales of the producers of subject merchandise (*i.e.*, Hailun Chemical, Bolun, Fenghua, Xinlun, Yunlun, and Huamei) (subject merchandise producers). For the final determination, Commerce should revise the sales denominator and attribute the benefit received by Sanfangxiang Group to the consolidated sales of Sanfangxiang Group and <u>all</u> of its subsidiaries during the POI and AUL, rather than limiting the denominator to sales of Sanfangxiang Group and only those subsidiaries that were involved in the production or sales of subject merchandise.[257]
- Commerce's regulations at 19 CFR 351.525(b)(6)(iii) and the preamble to Commerce's regulations clearly provide for attributing subsidies to <u>all</u> consolidated sales of the parent company coupled with sales by <u>all</u> affiliates. For instance, this subsection of the regulation states that "…the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries." Further, Commerce explains in the *Preamble* that under this subsection of the regulation "…subsidies to a holding company will normally be attributed to the consolidated sales of the holding company (including the sales of subsidiaries)." Nowhere is there mention of limiting sales to only those subsidiaries involved in the production or sale of subject merchandise.[258]
- Commerce has applied this understanding in previous cases, citing to *Aluminum Extrusions from China* and *Seamless Pipe from China*, in which it attributed subsidies received by the parent and/or holding company to the consolidated sales of <u>all</u> its subsidiaries, because all subsidiary companies could also benefit from the subsidies received by the parent company.[259]

No Rebuttal Briefs were submitted for this issue.

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[255] *See* 19 CFR 351.503(c).
[256] *See Preamble*, 63 FR at 65361; *see also Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008), and accompanying IDM at Comment 8 (explaining that because the imported equipment at issue could be used to make subject merchandise, the respondent failed to demonstrate that subsidy benefits were tied to non-subject merchandise, pursuant to 19 CFR 351.525(b)(5)).
[257] *See* Hailun Case Brief, at 24.
[258] *Id.* at 24-25.
[259] *Id.* at 25-26.

Commerce's Position: We agree with the Hailun companies. Consistent with 19 CFR 351.525(b)(iii), we revised the sales denominator to reflect the consolidated sales of the Sanfangxiang Group and all of its subsidiaries for purposes of attributing benefit received by the Sanfangxiang Group and all of its subsidiaries during the POI and AUL.[260]

Comment 11: Sales Denominator for Hailun Petrochemical

Hailun's Case Brief:

- Commerce incorrectly calculated the sales denominator of Hailun Petrochemical for the *Preliminary Determination*. Specifically, Commerce calculated the benefits of Hailun Petrochemical's total sales during the POI plus the total sales of the subject merchandise producers. For the final determination, Commerce should revise the denominator to reflect the combined sales of Hailun Petrochemical, cross-owned subject merchandise producers, and cross-owned producers of certain polyethylene terephthalate (PET) resin (excluding intercompany sales).[261]
- Commerce's regulations at 19 CFR 351.525(b)(6)(iv) support inclusion of sales of cross-owned PET resin producers, which states:

  > If there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream product produced by both corporations (excluding the sales between the two corporations).[262]

- Commerce explains in the *Preamble* that, because such sales are specific to production of the input, this regulation is intended to address situations where "…the input and downstream production takes place in separately incorporated companies with cross-ownership and the production of the input is primarily dedicated to the production of the downstream product," requiring Commerce "…to attribute the subsidies received by the input producer to the combined sales of the input and downstream products." This legal requirement is concerned with benefit passing on to the downstream producers, and not for the input, itself. [263]
- In previous cases, such as *Shrimp from Thailand*, Commerce has indicated that it looks at whether the input *could* be used, and not whether it was actually used, to produce the subject merchandise during the period of interest.[264] In the instant investigation, the record makes clear that during the POI, Hailun's producer and supplier of PTA, *i.e.*, Hailun Petrochemical, produced and supplied PTA to certain cross-owned producers, which is dedicated to the production of PSF and PET resin. Despite the fact that this

[260] *See* Hailun's Final Calculation Memorandum for further explanation.
[261] *See* Hailun case brief, at 27.
[262] *Id.*
[263] *Id.* at 27-28.
[264] *Id.* at 28-29, citing, *e.g.*, *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying IDM (*Shrimp from Thailand*), at Comments 5 and 10; *see also Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63,535 (October 20, 2015) (*Supercalendered Paper from Canada*), and accompanying IDM at comment 19.

methodology was not employed in the PET Resin from China investigation, and should have been, Commerce should attribute the benefits conferred upon Hailun Petrochemical to the combined sales of Hailun Petrochemical and all cross-owned producers of PSF and PET resin in the final determination.[265]

Petitioners' Rebuttal Brief:

- Commerce should reject Hailun's contention that 19 CFR 351.525(b)(6)(iv) pertains to *all* downstream products manufactured with a given input, including both subject and non-subject merchandise. This regulation does not envision attribution of downstream production to non-subject producers.[266]
- Hailun does not provide any case precedent demonstrating that Commerce has expanded its attribution methodology to include downstream production of non-subject merchandise.[267]
- Commerce already took into account Hailun Petrochemical's sales of PTA to the PET resin producers when it used the company's 2016 revised total sales value (*i.e.,* the sales denominator used to attribute countervailable benefits received by the company)..[268]

Commerce's Position: We considered Hailun's argument that the benefit conferred upon Hailun Petrochemical should be attributed to the combined sales of Hailun Petrochemical, cross-owned PSF producers, and cross-owned PET resin producers (excluding intercompany sales), pursuant to 19 CFR 351.525(b)(6)(iv). However, we did not make a revision to Hailun Petrochemical's sales denominator for the final determination. This issue was raised too late in the proceeding to collect necessary information and fully analyze the issue. Therefore, we have not revised Hailun Petrochemical's sales denominator for the final determination. To the extent appropriate, however, we will consider and analyze this argument in any future administrative review.

Comment 12: Treatment of Foreign-Purchased Inputs

Petitioners' Case Brief:

- Commerce should apply adverse facts available to the financial contribution aspect of the MEG purchases calculation, under section 776(a) of the Act, as stated in the *Preliminary Determination*. Commerce should find that <u>all</u> unknown producers from which this input was purchased constitutes a financial contribution under section 771(5)(D)(iii) of the Act and include all unknown producers in the program benefit calculation.[269]

Commerce's Position: We agree with the petitioners, in part.

As explained in the *Preliminary Determination*, the Hailun companies reported "unknown" for the names of the producers of certain purchases of MEG and PTA that were made during the

[265] *Id.* at 29-32.
[266] *See* Petitioners' Rebuttal Brief at 36-37.
[267] *Id.* at 37.
[268] *Id.*
[269] *See* Petitioners' Case Brief at 16-18.

POI.[270] Where the supplier was a producer, the Hailun companies reported the supplier as a producer. However, where the supplier was a trading company, the Hailun companies reported "unknown."[271] Based on this information, we preliminarily determined that we did not have the necessary information on the record of this investigation to determine that these "unknown" producers were not "authorities" within the meaning of section 771(5)(B) of the Act.

Accordingly, pursuant to section 776(a)(1) of the Act, as facts available, we found that a portion of the MEG and PTA supplied by these "unknown" enterprises constitutes a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act.[272] We also determined that Hailun received a benefit to the extent that the price the Hailun companies paid for the MEG and PTA produced by these unknown producers was for LTAR, consistent with Commerce's practice.[273] We have not changed this finding from our *Preliminary Determination*.

However, as identified by the petitioners, we inadvertently did not apply the facts available determination for "unknown" producers of MEG and PTA purchases of inputs from trading companies in the *Preliminary Determination*. Therefore, consistent with our facts available finding under 776(a)(1) of the Act, Commerce modified its treatment of these input purchases for the final determination. Specifically, for input purchases by trading companies from "unknown" producers related to, for instance, inward processing in which the merchandise is entered into a Customs trade zone, we determined these "unknown" producers to be "authorities" within the meaning of section 771(5)(B) of the Act and included such purchases in our benefit calculation.

However, we do not find it appropriate to apply our facts available determination to *all* input purchases by trading companies from "unknown" producers, as suggested by the petitioners. For those purchases from "unknown" producers located outside of China, we determine such purchases should be excluded from the benefit calculation because, under this program, the financial contribution component is from SOEs subsidized by the Government of China. Therefore, where inputs are imported into China from unaffiliated non-PRC suppliers, the government subsidies would not extend to those inputs.[274] The Hailun companies stated in their questionnaire response that to determine whether such purchases were sourced domestically or from a country other than China, they used the Bill of Lading and/or the Certificate of Origin.[275] This information was submitted in accordance with Commerce's regulatory requirements at 19

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[270] *See Preliminary Determination* at 18.
[271] *Id.* at 14-15; *see also*, Hailun's October 20, 2017 Supplemental Questionnaire Response (Hailun October 20, 2017 SQR) at 2.
[272] *See Preliminary Determination* at 18-20.
[273] S*ee, e.g., Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at "Provision of Primary Aluminum for LTAR" and Comment 18; *see also, Aluminum Extrusions from the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 77325 (December 14, 2015), and accompanying IDM at "Application of Adverse Facts Available for Primary Aluminum for LTAR."
[274] *See Preliminary Determination*, section entitled, "Use of Facts Otherwise Available and Adverse Inferences," at 13-15; *see also* Countervailing Duty Investigation Initiation Checklist (June 20, 2017) (Initiation Checklist) under "Government Provision of Goods and Services for Less Than Adequate Remuneration (LTAR), at 17-19.
[275] *See* Initial CVD Questionnaire.

CFR 351.303(g) for submitting factual information that is certified as complete and accurate.[276] Therefore, information on the record supports not including input purchases by trading companies from "unknown" producers located outside of China. Accordingly, for the final determination, we are removing from the benefit calculation input purchases by trading companies from "unknown" producers that were sourced from outside of China.

Comment 13: Correction of Calculation Errors for Huahong

Petitioners' Case Brief:

- Commerce should correct errors made in the calculation of the benefit for purchases of PTA and the inadvertent exclusion of certain intercompany sales.[277]

No Rebuttal Briefs were submitted for this issue.

Commerce's Position: For Huahong, we corrected the benefit calculation for purchases of PTA for the single company in which an incorrect purchase month was associated with the benchmark. We also corrected the inadvertent exclusion of certain intercompany sales. For further discussion, *see* Huahong's Final Calculation Memorandum.

Comment 14: Correction of Calculation Errors for Hailun

A. <u>Non-operational Income</u>

Petitioners' Case Brief:

- Commerce should remove non-operational and service-related income in the total sales denominators for certain Hailun companies.[278]

Hailun's Rebuttal Brief:

- The petitioners misconstrue the nature of the income at issue. The reported service income is directly related to the production of subject merchandise activities, as specified in Hailun's questionnaire response, and as verified by Commerce.[279]
- The petitioners' reliance on *Washers from Korea* is misplaced, because, in that case, the service income was specific to non-production related activities, such as royalties.[280]

Commerce's Position: We find it appropriate to continue to include income associated with non-operational and service-related (hereinafter referred to as "non-operational") activity, *e.g.*, tolling, in the total sales denominator for the final determination, consistent with our past practice. Commerce examines whether the value of such non-operational income should be

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[276] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013).
[277] See Petitioners' Case Brief at 22-23.
[278] *Id.* at 14.
[279] *See* Hailun's Rebuttal Brief at 2.
[280] *Id.* at 3.

included in the denominator on a case-by-case basis.[281] Commerce stated in *Steel Products from Austria GIA*:

> We determine that the value of services sold should be included in a company's total sales when the subsidy for which we are measuring the benefit is not tied to the production of merchandise. This determination derives from the reasonable presumption that, to the extent a government provides a subsidy which is not tied to a company's productive activities, a recipient company can be presumed to use that subsidy to benefit its entire operations, including its services functions.[282]

Furthermore, we note that in those instances where the subsidy is not tied *per se* to merchandise production, such a subsidy benefits a company's entire operation, which would include its service activities.[283]

In this instance, we reviewed Hailun's activities associated with the non-operational income during verification. Specifically, we examined documentation of selected companies and found that the non-operational income was related to production activities of the merchandise under investigation.[284] These activities, as verified by Commerce, are consistent with the information submitted by Hailun on the record of this investigation.[285] Thus, we find that record evidence demonstrates that the non-operational income at issue was related to the production of merchandise under investigation. Conversely, in *Washers from Korea*, the income at issue related only to non-production related activities.[286] Accordingly, consistent with our past practice,[287] we included Hailun's income from non-operational activities in the total sales denominator for this final determination.

B. <u>Intercompany sales</u>

Petitioners' Case Brief:

- Commerce should exclude *all* intercompany sales between the cross-owned companies in the total sales denominators.[288]

Hailun's Rebuttal Brief:

- The sales denominator for any benefit under any program received by the Sanfangxiang Group should be the consolidated sales of the Sanfangxiang Group, which includes the

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[281] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination,* 81 FR 47349 (July 21, 2016) (*Rectangular Pipes and Tubes from Turkey*), and accompanying IDM at Comment 4.
[282] *See Rectangular Pipes and Tubes from Turkey*, at Comment 4; *see also, Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37217, 37238 (July 9, 1993), General Issues Appendix at "C. Services" (*Steel Products from Austria GIA*).
[283] *Id.*
[284] *See e.g.,* Hailun Verification Report at 7 and Verification Exhibit (VE)-8.
[285] *See* Hailun's August 31, 2017 Affiliation Questionnaire Response, at Exhibit 1.
[286] *See Washers from Korea* at 52.
[287] *See, e.g., Rectangular Pipes and Tubes from Turkey* at Comment 4 and *Steel Products from Austria GIA.*
[288] *See* Petitioners' Case Brief at 16.

sales of all its subsidiaries, regardless of whether they are involved with the subject merchandise.
- The consolidated sales figures exclude intercompany sales between Sanfangxiang Group and its subsidiaries.
- Regarding the petitioners' argument that intercompany sales between certain companies, other than Sanfangxiang Group, should be excluded from the sales denominators, such exclusion is wholly contingent upon the type of subsidy program at issue.

Commerce's Position: We agree with the petitioners that we should exclude intercompany sales between cross-owned producers and between cross-owned producers and inputs suppliers of subject merchandise. Commerce's practice is to exclude intercompany sales for purposes of determining the denominator when attributing the benefit from subsidies, consistent with 19 CFR 351.525(b)(6)(ii) and (iv).[289] In the *Preliminary Determination*, we stated our intention to remove all such sales from the sales denominator, but inadvertently continued to include certain intercompany sales in that denominator.[290] Therefore, we have revised the final calculations to properly exclude all intercompany sales between the cross-owned companies, where applicable, for the final determination.

C. Grant Received by Sanfangxiang Group

Petitioners' Case Brief:
- Commerce inadvertently excluded a grant received by Sanfangxiang Group, which should be included in the "other subsidies" benefit calculation for the final determination.[291]

Hailun's Rebuttal Brief:

- If Commerce uses Sanfangxiang Group's consolidated sales as the sales denominator in the final determination, it should the use of the consolidated sales figures of Sanfangxiang Group. However, the grant in question should not be included in the calculation of the final CVD subsidy rate if it fails to pass the 0.05 percentage threshold.[292]

Commerce's Position: We agree with the petitioners, and find that we inadvertently excluded one grant received by the Sanfangxiang Group in the *Preliminary Determination*. However, for the final determination, we revised the total sales denominator for Sanfangxiang Group to reflect the consolidated sales of Sanfangxiang Group and all its subsidiaries, as discussed in Comment 10,, above. As a result of this modification, all of Sanfangxiang Group's reported other

[289] *See, e.g.*, Subsidies Valuation section, above; *see also Certain Oil Country Tubular Goods from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 78 FR 9368 (February 8, 2013), and accompanying IDM, at "Subsidies Valuation" section, unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 49475 (August 14, 2013).
[290] *See Preliminary Determination*, "Summary of Attribution of Subsidies to Hailun" section at 6.
[291] *See* Petitioners' Case Brief at 18.
[292] *See* Hailun's Rebuttal Brief at 4-5.

subsidies, including the grant at issue, are below the 0.05 threshold.[293] Accordingly, we have not included this grant in the Hailun companies' final subsidy rate.

D. Import Tariff Exemptions

Petitioners' Case Brief:

- Commerce erred in the *Preliminary Determination* by not including certain import tariff exemption benefits received by Huayi and Huasheng in the benefit allocation for the Import Tariff and VAT Exemptions program.[294]

Hailun's Rebuttal Brief:

- The petitioners fail to note that, with respect to Huayi, Commerce erred in its calculation by not using Huayi's varied import duty rate, as reported in its supplemental response.
- Regarding Huasheng, Commerce should calculate the benefit using the combined sales of Huayi and the subject merchandise producers' total sales.

Commerce's Position: We agree with the petitioners that we did not properly calculate the benefit for the Import Tariff and VAT Exemptions on Imported Equipment program in the *Preliminary Determination*. Specifically, Commerce erred by not including in the benefit calculation the actual VAT exempted for Huayi and Huasheng. Accordingly, for the final determination, we have modified the benefit calculation to include both the actual VAT exempted and the import tariffs exempted in the benefit calculation.[295] Because the revision to the benefit calculation for this program exceeded the 0.05 percent threshold, we allocated the benefit over the AUL years using the individual total sales of Huayi and Huasheng combined with the producers of subject merchandise for the final determination.[296]

Additionally, we agree that we should use the varied VAT rates reported by the Hailun companies in their supplemental questionnaire response.[297] Section 351.401(c) of Commerce's regulations requires Commerce to rely on price adjustments that are "reasonably attributed to the subject merchandise." At verification, we examined this program for several Hailun companies and confirmed the use of varied rates, which are product-specific and consistent with the Customs Import and Export Tariff tables.[298] Accordingly, for the final determination, we incorporated Huayi's varied VAT rates into our benefit calculation for this program.[299]

[293] *See* Hailun's Final Calculation Memorandum for additional explanation.
[294] *See* Petitioners' Case Brief at 19.
[295] *Id.*
[296] *See* Hailun's Final Calculation Memorandum.
[297] *See* Hailun October 16, 2017 Supplemental Questionnaire Response (Hailun October 16, 2017 SQR) at Exhibit SQ-19.
[298] *See* Hailun Verification Report at 13 and VE-13 at 11-14.
[299] *See* Hailun's Final Calculation Memorandum.

E. Bolun’s Loans

Petitioners’ Case Brief:

- Commerce incorrectly excluded Bolun’s loans from the policy loan benefit calculation.[300]

No Rebuttal Comments were submitted for this issue.

Commerce’s Position: We agree with the petitioners that we inadvertently excluded loans for Bolun, one of Hailun Chemical’s cross-owned producers, from the benefit calculation for policy loans. Because discussion of this issue is proprietary, in nature, *see* Hailun’s Final Calculation Memorandum. We have revised Bolun’s policy loan calculation inclusive of this company’s subsidy rate for the final determination.[301]

F. Sales Denominator Correction

Hailun’s Case Brief:

- For the final determination, Commerce should use a sales denominator that reflects not only Huasheng’s total sales, but also the total sales of all the producers of subject merchandise during the POI for purposes of calculating the benefit for the Import Tariff and Value-Add Tax (VAT) Exemptions on Imported Equipment in Encouraged Industries program.

No Rebuttal Comments were submitted for this issue.

Commerce’s Position: We agree with the Hailun companies. Commerce attributes the benefit to the combined sales of the input and downstream products produced by both corporations, excluding intercompany sales, pursuant to 19 CFR 351.525(b)(6)(iv). Thus, because Huasheng is both a producer (and supplier) of the intermediate input, we incorporated into the sales denominator the combined sales of the producers of subject merchandise along with the sales of Huasheng to calculate the benefit for the Import Tariff and Value-Add Tax (VAT) Exemptions on Imported Equipment in Encouraged Industries program for the final determination.

G. Interest Payments Outside of the POI

Hailun’s Case Brief:

- Hailun submitted a loan table identifying loans with interest payments outside of the POI to provide a full picture of interest payments for loans with outstanding principles during the POI. However, in accordance with 19 CFR 351.505(c), Commerce should use only those interest payments made during the POI in the policy loan benefit calculation for the final determination.

No Rebuttal Comments were submitted for this issue.

[300] *See* Petitioners’ Case Brief at 21.
[301] *See* Hailun’s Final Calculation Memorandum.

Commerce's Position: We agree with Hailun. Our practice is to calculate the policy loan benefit using the interest expenses incurred on all types of financing outstanding during the period of investigation or review, consistent with 19 CFR 351.505(c). We request such information in our Initial CVD Questionnaire to respondents.[302] Because Hailun reported loans with interest payments outside of the POI, we have limited the policy loan benefit calculation to only those interest payments made during the POI for the final determination.

H. Freight Costs

Hailun's Case Brief:

- In the benefit calculation for MEG for LTAR, Commerce added the total value of the purchase, the VAT paid, import duties paid, and the delivery charges to construct the Total Amount Paid by Company. However, Commerce erred by using the unit delivery charges per ton, rather than the total value of delivery charges for the transaction. Commerce should correct this error for the final determination and use the actual freight costs for the transactions in the MEG calculation.

Commerce's Position: We agree that we inadvertently used the incorrect unit freight charge, rather than the total value of delivery charges for the transaction. We have corrected this error for the final determination.[303]

No Rebuttal Briefs were submitted for this issue.

[302] *See* Initial CVD Questionnaire, Appendix II, under the "Preferential Lending" section.
[303] *See* Hailun's Final Calculation Memorandum.

IX. RECOMMENDATION

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

☒	☐
Agree	Disagree

1/16/2018

X

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance