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

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Administrative Review
POR: 1/1/2015-12/31/2015
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DATE:	March 8, 2018
MEMORANDUM TO:	Gary Taverman Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and the duties of the Assistant Secretary for Enforcement and Compliance
FROM:	James Maeder Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations
SUBJECT:	Decision Memorandum for the Final Results of 2015 Countervailing Duty Administrative Review: Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China

I. Summary

There is one respondent in the 2015 administrative review of the countervailing duty (CVD) order on narrow woven ribbons with woven selvedge (ribbons) from the People's Republic of China (China): Yama Ribbons and Bows Co., Ltd. (Yama). For these final results, we analyzed the case and rebuttal briefs submitted by interested parties in this administrative review. As a result of our analysis, we made no changes to the *Preliminary Results* and continue to determine that the Yama received a 23.37 percent *ad valorem* net countervailable subsidy rate during the period of review (POR).[1] We address the issues raised in the "Analysis of Comments" section below.

[1] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative; 2015*, 82 FR 42296 (September 7, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

INTERNATIONAL TRADE ADMINISTRATION

II. Background

On September 7, 2017, the Department of Commerce (Commerce) published the *Preliminary Results* for this review. We invited parties to comment on the *Preliminary Results*. On October 10, 2017, Yama requested that Commerce conduct a hearing in this review. On October 24, 2017, we received a case brief from Yama.[2] On October 31, 2017, we received a rebuttal brief from the petitioner, Berwick Offray LLC.[3]

On November 28, 2017, Commerce extended the deadline for the final results of this administrative review until March 6, 2018.[4] On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through January 22, 2018. The revised deadline for the final results of this administrative review is now March 9, 2018.[5] On January 26, 2018, Commerce held a hearing to discuss issues raised in parties' case and rebuttal briefs.

The "Subsidy Valuation Information" and "Analysis of Programs" sections, below, describe the subsidy programs and the methodologies used to calculate the subsidy rates for these final results. Additionally, the "Analysis of Comments" section, below, contains our analysis of the comments submitted by interested parties in their case and rebuttal briefs and Commerce's responses to these issues. Based on the comments received, we made no modifications to the *Preliminary Results*.

Below is the complete list of the issues raised in this administrative review for which we received comments:

Comment 1: The Application of Adverse Facts Available (AFA) to the Provision of Synthetic Yarn and Caustic Soda for Less-than-Adequate Remuneration (LTAR) Programs

Comment 2: The Application of AFA to the Export-Import (EXIM) Buyer's Credit Program

Comment 3: The Application of AFA to a Yama Due to Non-Cooperation of the Government of China (GOC)

Comment 4: Whether Programs Found to be Countervailable Based on AFA are Specific

[2] *See* Letter from Yama, "Narrow Woven Ribbons with Woven Selvedge from People's Republic of China: Case Brief," dated October 24, 2017 (Yama's Case Brief).
[3] *See* Letter from the petitioner, "Narrow Woven Ribbons with Woven Selvedge from People's Republic of China: Rebuttal Brief of Petitioner Berwick Offray LLC," dated October 31, 2017 (Petitioners' Rebuttal Brief).
[4] *See* Memorandum, "Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Extension of Deadline for Final Results of the 2015 Countervailing Duty Administrative Review," dated November 28, 2017.
[5] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

III. Scope of the Order

The merchandise subject to the order is narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man-made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene teraphthalate), metal threads and/or metalized yarns, or any combination thereof. Narrow woven ribbons subject to the order may:

- also include natural or other non-man-made fibers;
- be of any color, style, pattern, or weave construction, including but not limited to single-faced satin, double-faced satin, grosgrain, sheer, taffeta, twill, jacquard, or a combination of two or more colors, styles, patterns, and/or weave constructions;
- have been subjected to, or composed of materials that have been subjected to, various treatments, including but not limited to dyeing, printing, foil stamping, embossing, flocking, coating, and/or sizing;
- have embellishments, including but not limited to appliqué, fringes, embroidery, buttons, glitter, sequins, laminates, and/or adhesive backing;
- have wire and/or monofilament in, on, or along the longitudinal edges of the ribbon;
- have ends of any shape or dimension, including but not limited to straight ends that are perpendicular to the longitudinal edges of the ribbon, tapered ends, flared ends or shaped ends, and the ends of such woven ribbons may or may not be hemmed;
- have longitudinal edges that are straight or of any shape, and the longitudinal edges of such woven ribbon may or may not be parallel to each other;
- consist of such ribbons affixed to like ribbon and/or cut-edge woven ribbon, a configuration also known as an "ornamental trimming;"
- be wound on spools; attached to a card; hanked (*i.e.*, coiled or bundled); packaged in boxes, trays or bags; or configured as skeins, balls, bateaus or folds; and/or
- be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.

Narrow woven ribbons subject to the order include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of this order.

Excluded from the scope of the order are the following:

(1) formed bows composed of narrow woven ribbons with woven selvedge;

(2) “pull-bows” (*i.e.*, an assemblage of ribbons connected to one another, folded flat and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage) composed of narrow woven ribbons;

(3) narrow woven ribbons comprised at least 20 percent by weight of elastomeric yarn (*i.e.*, filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length as defined in the Harmonized Tariff Schedule of the United States (HTSUS), Section XI, Note 13) or rubber thread;

(4) narrow woven ribbons of a kind used for the manufacture of typewriter or printer ribbons;

(5) narrow woven labels and apparel tapes, cut-to-length or cut-to-shape, having a length (when measured across the longest edge-to-edge span) not exceeding eight centimeters;

(6) narrow woven ribbons with woven selvedge attached to and forming the handle of a gift bag;

(7) cut-edge narrow woven ribbons formed by cutting broad woven fabric into strips of ribbon, with or without treatments to prevent the longitudinal edges of the ribbon from fraying (such as by merrowing, lamination, sono-bonding, fusing, gumming or waxing), and with or without wire running lengthwise along the longitudinal edges of the ribbon;

(8) narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher;

(9) narrow woven ribbons constructed from pile fabrics (*i.e.*, fabrics with a surface effect formed by tufts or loops of yarn that stand up from the body of the fabric);

(10) narrow woven ribbon affixed (including by tying) as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non-subject merchandise;

(11) narrow woven ribbon that is (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a “belly band” around a pair of pajamas, a pair of socks or a blanket;

(12) narrow woven ribbon(s) comprising a belt attached to and imported with an item of wearing apparel, whether or not such belt is removable from such item of wearing apparel; and

(13) narrow woven ribbon(s) included with non-subject merchandise in kits, such as a holiday ornament craft kit or a scrapbook kit, in which the individual lengths of narrow woven ribbon(s)

included in the kit are each no greater than eight inches, the aggregate amount of narrow woven ribbon(s) included in the kit does not exceed 48 linear inches, none of the narrow woven ribbon(s) included in the kit is on a spool, and the narrow woven ribbon(s) is only one of multiple items included in the kit.

The merchandise subject to this order is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise under the order is dispositive.

IV. Use of Adverse Facts Available

Commerce relied on "facts otherwise available," including AFA, for several findings in the *Preliminary Results*. Commerce has not made any changes to its use of facts otherwise available and AFA, as applied in the *Preliminary Results*.[6]

V. Subsidies Valuation Information

A. Allocation Period

Commerce made no changes to the allocation period or the allocation methodology used in the *Preliminary Results*.[7]

B. Attribution of Subsides

Commerce made no changes to the attribution methodologies used in the *Preliminary Results*.[8]

C. Denominators

Commerce made no changes to the denominators used in the *Preliminary Results*.[9]

D. Benchmarks and Discount Rates

Commerce made no changes to the benchmarks and discount rates used in the *Preliminary Results*.[10]

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[6] *See Preliminary Results*, and accompanying PDM, at 6-15.
[7] *Id.* at 15.
[8] *Id.* at 15-16.
[9] *Id.* at 16-17.
[10] *Id.* at 17-20.

VI. Programs Determined to be Countervailable

Commerce made no changes to the methodology used to calculate the subsidy rates for the following programs in its *Preliminary Results*. The final program rates for Yama are as follows:

1. *Policy Loans to Narrow Woven Ribbon Producers from State-owned Commercial Banks*

   0.18 percent *ad valorem*

2. *Provision of Synthetic Yarn for LTAR*

   9.52 percent *ad valorem*

3. *Provision of Caustic Soda for LTAR*

   0.09 percent *ad valorem*

4. *Provision of Electricity for LTAR*

   1.47 percent *ad valorem*

5. *Export Buyer's Credits*

   10.54 percent *ad valorem*

6. *Xiamen Municipal Science and Technology Grant Program*

   0.09 percent

7. *International Market Development Fund Grants for Small and Medium-sized Enterprises (SMEs)*

   0.20 percent *ad valorem*

8. *Jimei District Tax Bonus Prize*

   0.01 percent *ad valorem*

9. *Bonus for Fujian Province Famous Brands Program*

   0.08 percent *ad valorem*

10. Other Subsidies[11]

Tax Programs: 0.38 percent *ad valorem*
Grants: 0.81 percent *ad valorem*

VII. Program Found Not to Provide Measurable Benefits During the POR

- *Patent Application Supporting Program*

VIII. Programs Determined Not to be Used During the POR

1. *Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half) Program*
2. *Local Income Tax Exemption and Reduction Programs for "Productive" Foreign-Invested Enterprises*
3. *Xiamen Promotion of Domestic Market Grants*
4. *The State Key Technology Renovation Project Fund*
5. *Export Assistance Grants*
6. *Export Interest Subsidy Funds for Enterprises Located in Zhejiang Province*
7. *Technology Grants for Enterprises Located in Zhejiang Province*
8. *Import Tariff and VAT Exemptions for Foreign-Invested Enterprises (FIEs) Using Imported Technology and Equipment*
9. *Import Tariff and VAT Exemptions for Certain Domestic Enterprises Using Imported Technology and Equipment*
10. *VAT Rebate for FIE Purchases of Domestically Produced Equipment*
11. *Tax Program for High or New Technology FIEs*
12. *Preferential Tax Policies for Research and Development for FIEs*
13. *Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Equipment*
14. *Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises*
15. *Preferential Tax Policies for Township Enterprises*
16. *Tax Subsidies to FIEs in Specially Designated Areas*
17. *Preferential Tax Policies for Export-Oriented FIEs*
18. *Provision of Land in the Xiamen Jimei (Xingling) Taiwanese Investment Zone for LTAR*

[11] These programs are as follows: Tax Program for High or New Technology Enterprise; Preferential Tax Policy for Wages of Disabled Employees; Xiamen Municipal Cleaner Production; Assistance for Recruiting Vocational Institutions and/or College Graduates; Assistance for Recruiting Rural Labor; Interest Assistance for Loans Obtained for Technology Projects; High and New Technology Enterprises Local Government Assistance; Xiamen City SMEs Development Support Fund; Insurance Expense Assistance; SMEs Assistance; Finance Bureau of Xiamen City; Tax Bureau of Jimei District; and unknown.

IX. Analysis of Comments

Comment 1: The Application of AFA to the Provision of Synthetic Yarn and Caustic Soda for LTAR Programs

Yama's Brief

- Yama did not use the provision of synthetic yarn and caustic soda for LTAR programs during the POR.[12] The CVD questionnaire in several instances clearly instructs that if a program is not used by the respondent during the POR only basic information about the program is needed.[13] Thus, Commerce must view the GOC's response to the new subsidy allegation (NSA) questionnaire in light of the non-use requirements set forth in the CVD questionnaire.
- The record of this review demonstrates that the GOC cooperated to the best of its ability because it followed the instructions in the CVD questionnaire, and provided complete responses demonstrating: 1) that Yama's seven yarn suppliers and one of its caustic soda suppliers were privately owned and, thus, not "authorities" within the meaning of section 771(5((B) of the Tariff Act of 1930, as amended (the Act); 2) that there is no government influence over Yama's yarn and caustic soda suppliers; 3) how the yarn and caustic soda industries operate in China; and 4) that there is no influence by the Chinese Communist Party (CCP) or related organizations over these suppliers.[14]
- Commerce never indicated that they were any deficiencies in the GOC's response to the NSA supplemental questionnaire. Therefore, Commerce cannot apply AFA without providing the GOC with an opportunity to remedy such deficiencies.[15]
- Commerce's determination cannot be based on AFA because the GOC provided sufficient answers to Commerce's questions and there is no evidence to contradict the information in the GOC's NSA supplemental response that Yama's private synthetic yarn suppliers were influenced by anything other than market forces.
- The information which Commerce placed on the record from certain oil country tubular goods (OCTG) from China, suggesting that the GOC had access to certain information that it claimed it did not have, is misleading. The information from OCTG from China was obtained at verification from the State Administration of Industry and Commerce (SAIC) for Jiangsu Province and Commerce acknowledged in its verification report that within a single province each level of SAIC is independent.[16] Therefore, there is no basis for Commerce's implication that, if the Jiangsu Province SAIC can provide certain information, so too should the Fujian Province SAIC.
- According to the OCTG verification report, no data was collected from SAIC databases that would have answered the questions regarding market distortion posed to the GOC

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[12] Yama notes that, where it does not specifically address the provision of caustic soda for LTAR, its arguments regarding the provision of synthetic yarn for LTAR also apply to the caustic soda for LTAR program.
[13] *See* Yama's Case Brief at 10-12.
[14] *Id.* at 12-26.
[15] *Id.* at 26-27 (citing *Bowe-Passat, et al v. United States*, 17 CIT 335 1993; *Ferro Union, Inc. v. United States*, 23 CIT 178, 44 F. Supp. 2d 1310, 1328, (1999), citing *Borden, Inc v. United States*, 4F. Supp. 2d 1221, 1246).
[16] *Id.* at 15.

regarding the Chinese synthetic yarn and caustic soda industries in this administrative review.[17] Rather the data is limited to ownership information (*e.g.*, capital verification reports, and details gleaned from the articles of association of the companies actually investigated). Therefore, the information in the SAIC databases would not have given Commerce the information it sought regarding market distortion for the synthetic yarn and caustic soda industries. Moreover, Commerce ignored the ownership data the GOC provided in this proceeding, which is the same data on which Commerce relied in OCTG.

- When viewed in its entirety, the record established by the GOC is clear and complete for Commerce to make a determination that Yama did not receive synthetic yarn or caustic soda for LTAR.[18] There is substantial evidence on the record that clearly shows that Yama's suppliers are neither authorities under U.S. law nor public bodies within the meaning of the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement).[19]

Petitioner's Rebuttal Brief

- The GOC's response to the NSA questionnaire and the NSA supplemental questionnaire were insufficient and Commerce has no obligation to ask for the same information again.
- The GOC's failure to provide adequate responses precluded Commerce from analyzing country-wide market information regarding these programs and potential government ownership and control over the individual input suppliers in order to make its determinations.
- However, there is information on the record in the NSA itself which demonstrates that the GOC controls the petrochemical industry and, therefore, by extension, the synthetic yarn subsector. Therefore, Commerce should continue to find that world market prices are appropriate for use in measuring the subsidy benefit.
- In addition, the GOC failed to provide information regarding the government authority status of individual input suppliers and the role of the Chinese Communist Party (CCP). However, there is substantial information on the record in the NSA which demonstrates that Yama's input suppliers are likely under significant influence of the CCP. Therefore, Commerce should continue to find Yama's input suppliers to be government authorities in the final results.

Commerce's Position: In these final results, we continue to find that, in the synthetic yarn and caustic soda markets: 1) Chinese prices are significantly distorted by the involvement of the GOC; and 2) privately-owned input suppliers of synthetic yarn and caustic soda are "authorities" within the meaning of section 771(5)(B) of the Act.

Regarding market distortion, as we stated in the *Preliminary Results,*[20] we requested that the GOC provide the following information regarding the synthetic yarn and caustic soda industries

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[17] *Id.* at 11 and 16 (citing *Preliminary Determination*, and accompanying PDM at 7-8).
[18] *Id.* (citing *Diversified Products Corp v. United States*, 6 CIT 155, 161 (1983)).
[19] *Id.* at 24 (citing section 771(5)(B) of the Act; and WTO SCM Agreement).
[20] *See Preliminary Results*, and accompanying PDM, at 7-8.

to determine whether the GOC is the predominant provider of these inputs and whether its significant presence in the market distorts all transaction prices for both inputs:[21]

a. The total number of producers.
b. The total volume and value of Chinese domestic consumption of {input} and the total volume and value of Chinese domestic production of {input}.
c. The percentage of domestic consumption accounted for by domestic production.
d. The total volume and value of imports of {input}.
e. The percentage of total volume and (separately) 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, including a list of the companies that meet these criteria.
f. A discussion of what laws, plans or policies address the pricing of the input, the levels of production of the input, the importation or exportation of the input, or the development of the input capacity. Please state which, if any, central and sub-central level industrial policies pertain to the input industry.

Commerce requested such information to determine whether the GOC is the predominant provider of these inputs in China and whether its significant presence in the market distorts all transaction prices. In its initial response to the new subsidy allegation questionnaire, the GOC did not provide any of this information for either input.[22] Therefore, Commerce again requested that the GOC provide the required information in a supplemental questionnaire.[23] The GOC responded that it did not have the information available to it as there are no statutory requirements on collecting such information for either of the industries at issue.[24] Thus, the GOC claimed that it could not identify producers in either industry in which the GOC maintains an ownership or management interest, either directly or through other government entities.[25] Consequently, the GOC failed to identify, and provide GOC ownership information for, the companies comprising the synthetic yarn and caustic soda industries.

Information on the record indicates that in prior CVD proceedings, Commerce was able to confirm at verification that the GOC maintains two databases at SAIC: one is the business registration database, showing the most up-to-date company information; a second system, "ARCHIVE," houses electronic copies of documents such as business licenses, annual reports,

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[21] *See* Commerce's new subsidy allegations questionnaire issued to the GOC on March 3, 2017 (GOC NSA questionnaire); *see also* Commerce's new subsidy allegations supplemental questionnaire issued to the GOC on April 28, 2017 (GOC NSA supplemental questionnaire).
[22] *See* Letter from the GOC, "Narrow Woven Ribbons with Woven Selvedge from People's Republic of China, Countervailing Duty: GOC Response to New Subsidy Allegations Questionnaire," dated March 17, 2017 (GOC NSA Questionnaire Response).
[23] *See* GOC NSA supplemental questionnaire.
[24] *See* Letter from the GOC, "Narrow Woven Ribbons with Woven Selvedge from People's Republic of China, Countervailing Duty: GOC Response to New Subsidy Allegations Questionnaire," dated May 12, 2017 (GOC NSA Supplemental Response).
[25] *Id.*

capital verification reports, etc.[26] Therefore, we find that the GOC has an electronic system available to it to gather the industry-specific information Commerce requested.

We disagree with Yama that it is unreasonable for Commerce to expect that the GOC would have provided information similar to that contained in the OCTG verification report. The OCTG verification report demonstrates that SAIC is part of the GOC, and through the provincial, municipal and local branches of SAIC, the GOC has access to companies' registration information and copies of documents such as business licenses, annual reports, capital verification reports, etc.[27] Furthermore, Commerce in the OCTG verification report noted that the provincial SAIC is in charge of the registration and oversight of enterprises in the province, and each branch of SAIC is considered an independent authority within its geographic range, but can be advised from a higher level of SAIC.[28] There is nothing in the OCTG verification report that would suggest that the Jiangsu SAIC and its branches operates differently from any other provincial SAIC in China. Therefore, regardless of the Chinese province where a respondent company is located, we find it reasonable to conclude that the GOC has an electronic system available to it to gather the industry-specific information Commerce requested.[29] Consequently, we find that the GOC could have provided the industry information requested of it for the companies comprising the synthetic yarn and caustic soda industries, but did not do so.

We also disagree with Yama's contention that the information collected from the SAIC databases discussed in the OCTG verification report would not have answered Commerce's questions regarding market distortion in the Chinese synthetic yarn and caustic soda industries. In other cases, the GOC has coordinated with: 1) the industry association responsible for each input at issue (including caustic soda), to obtain a list of the names of companies which produced that input during the POR; and 2) SAIC to determine whether the GOC maintained a management or ownership interest in any of these companies.[30] Thus, this demonstrates that the GOC has provided exactly the SAIC information described in the OCTG verification report to answer Commerce's market distortion questions in other cases which dealt with different provinces, but simply chose not to do so here.

Further, we disagree with Yama's claim that the GOC provided the same ownership information in this administrative review as discussed in the OCTG verification report. Here the GOC provided documents labelled as "basic registration information and other documents" for the producers supplying synthetic yarn and caustic soda to Yama.[31] The information the GOC

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[26] *See* Memorandum to the File, "2015 Countervailing Duty Administrative Review of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Additional Documents for the Preliminary Results," dated August 31, 2017 (Additional Documents for the Preliminary Results), at Attachment II.
[27] *Id*.
[28] *Id*.
[29] Commerce has relied on the information from the OCTG verification report in cases in other provinces when finding that the GOC could have provided the industry information requested of it, but chose not to do so. *See, e.g.*, *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013*, 80 FR 77318 (December 14, 2015) (*Citric Acid 2015 AR*), and accompanying IDM at Comment 2 (where the respondent was located in Shandong province).
[30] *See*, *e.g.*, *Citric Acid 2015 AR*, and accompanying IDM at "GOC – Markets Distorted by Government Presence."
[31] *See* GOC's NSA supplemental response at Exhibits B.1-2 and C.1-2.

provided appears to be printouts from a database which provides shareholder and capital contribution information for these producers. However, not only did the GOC not translate the vast majority of the information on these pages, but also it failed to provide the source of these printouts.[32] In the OCTG verification report, Commerce discusses reviewing capital verification reports and articles of association,[33] information which the GOC did not provide in this administrative review.

Thus, because we determine that the GOC withheld necessary information that was requested of it, Commerce continues to rely on facts available in these final results.[34] Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information.[35] Consequently, an adverse inference is warranted in the application of facts available. In drawing an adverse inference, we continue to find that Chinese prices from transactions involving Chinese buyers and sellers are significantly distorted by the involvement of the GOC.[36]

Moreover, consistent with the *Preliminary Results,* we continue to find that each of the private companies which supplied Yama with synthetic yarn and caustic soda is an "authority" within the meaning of section 771(5)(B) of the Act. As discussed in the *Preliminary Results* under "Certain Producers of Synthetic Yarn and Caustic Soda are 'Authorities,'" in order for Commerce to do a complete analysis of whether producers of synthetic yarn and caustic soda are "authorities" within the meaning of section 771(5)(B) of the Act, we sought information regarding whether any individual owners, board members, or senior managers were government or CCP officials and the role of any CCP primary organization within the companies.[37] Specifically, to the extent that the owners, managers, or directors of a producer are CCP officials or otherwise influenced by certain entities, Commerce requested information regarding the means by which the GOC may exercise control over company operations and other CCP-related information.[38] Commerce explained its understanding of the CCP's involvement in China's economic and political structure in the current and past China CVD proceedings,[39] including why it considers the information regarding the CCP's involvement in China's economic and political structure to be relevant.

The GOC reported that all six of the synthetic yarn producers and one of the caustic soda producers were privately owned, and identified the remaining caustic soda producer as being under the management or control of the GOC.[40] Regarding the seven producers that the GOC identified as privately-owned companies, we asked the GOC to provide information about the

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[32] *Id.*
[33] *See* Additional Documents for the Preliminary Results, at Attachment II.
[34] *See* section 776(a)(2)(A) of the Act.
[35] *See* section 776(b) of the Act.
[36] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998).
[37] *See Preliminary Results*, and accompanying PDM, at 9.
[38] *See* NSA questionnaire and NSA supplemental questionnaire at the Input Producer Appendix.
[39] *See Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014), and accompanying Issues and Decision Memorandum (IDM) at Comment 5 (*Citric Acid 2012 AR*). *See also* Additional Documents for the Preliminary Results at Attachment III, which includes the Public Body Memorandum and its attachment, the CCP Memorandum.
[40] *See* GOC NSA Supplemental Response.

involvement of the CCP in each of these companies, including whether individuals in management positions are CCP members, in order to evaluate whether the privately-owned input suppliers are "authorities" with the meaning of section 771(B) of the Act. While the GOC provided a long narrative explanation of the role of the CCP, when asked to identify any owners, members of the board of directors, or managers of the input suppliers who were government or CCP officials during the POR, the GOC explained that there is "no central informational database to search for the requested information," and directed Commerce to obtain this information directly from Yama's privately-owned input suppliers.[41] In prior CVD proceedings, we found that the GOC was able to obtain the information requested independently from the companies involved, and that statements from companies, rather than from the GOC or CCP themselves, were not sufficient.[42]

As explained in the *Preliminary Results*, we understand that the CCP exerts significant control over economic activities in the PRC.[43] Thus, Commerce continues to find, as it has in prior CVD proceedings,[44] that the information requested regarding the role of CCP officials and CCP committees in the management and operations of Yama's privately-owned input suppliers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. By failing to respond to Commerce's questions, the GOC withheld information requested of it regarding the CCP's role in the ownership and management of Yama's privately-owned input suppliers.

Therefore, we find that the GOC withheld necessary information that was requested of it and that Commerce must rely on facts available in conducting our analysis of Yama's privately-owned input suppliers.[45] As a result of incomplete responses to Commerce's NSA supplemental questionnaire, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, we determine that the GOC withheld information, and that an adverse inference is warranted in selecting from the facts available.[46] As AFA, we find that CCP officials are present in each of Yama's privately-owned input suppliers as individual owners, managers and members of the boards of directors, and that this gives the CCP, as the government, meaningful control over the companies and their resources. As explained in the Public Body Memorandum, an entity with significant CCP presence on its board or in management or in party committees may be controlled such that it possesses, exercises or is vested with governmental authority.[47] Thus, for these final results we continue to find that privately-owned input suppliers of synthetic yarn and caustic soda which supplied Yama are "authorities" within the meaning of section 771(5)(B) of the Act.

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41 *Id*.
42 *See Citric Acid 2012 AR,* and accompanying IDM, at Comment 5.
43 *See* Additional Documents for the Preliminary Results at Attachment III, which includes the Public Body Memorandum and its attachment, the CCP Memorandum.
44 *See e.g.*, *Citric Acid 2012 AR*.
45 *See* section 776(a)(2)(A) of the Act.
46 *See* section 776(b) of the Act.
47 *See, e.g.*, Additional Documents for the Preliminary Results at Attachment III: Public Body Memorandum at 33-36, 38.

Comment 2: The Application of AFA to the EXIM Buyer's Credit Program

Yama's Brief

- Yama claims that its U.S. customers did not use this program during the POR, which absolves the GOC from having to provide specific information regarding this program.
- Based on information it received from the EXIM Bank of China, the GOC reported that no EXIM bank credits were granted to any of Yama's U.S. customers during the POR. Therefore, it was not necessary for the GOC to respond to the standard questions appendix or program-specific questions regarding this program.
- The GOC fully answered the relevant questions regarding the EXIM Bank Credit Program (*i.e.,* that the EXIM Bank of China was in charge of this program and that it had not granted any export buyer's credits to Yama's customers in the POR). In addition, the GOC stated that if the program had been used both the EXIM Bank of China and Yama would have the records.
- Commerce has provided no reasonable rationale as to why the GOC has to answer detailed questions regarding EXIM Bank of China financing but not for any other program that was not used. This is arbitrary and capricious.[48]
- The fact that the GOC did not provide certain information requested by Commerce does not overshadow that none of Yama's U.S. customers received any benefits under this program. Further, while both the GOC's and Yama's statements were subject to verification, Commerce chose not to verify in this administrative review.

Petitioner's Rebuttal Brief

- Commerce should continue to base the subsidy rate for this program on AFA in the final results of this administrative review.
- Historically in other CVD proceedings (*e.g., Solar Cells*) Commerce has applied AFA to this program because the GOC refused to allow Commerce access to information to verify its claims of non-use of the program by respondents' customers.[49] In this instance, the GOC failed to provide specific information requested by Commerce regarding the details of this program.

Commerce's Position: As explained in the *Preliminary Results*, we continue to find that the information on the record does not support Commerce finding that Yama did not use the export buyer's credit program during the POR. In prior CVD proceedings in which we have examined this program, we have found that the EXIM Bank of China, as the lender, is the primary entity that possesses the supporting information and documentation that are necessary for Commerce to fully understand the operation of the program, which is prerequisite to Commerce's ability to

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[48] *See* Yama's Case Brief at 30 (citing *Atlantic Sugar*, 744 F.2d 1556; and *Tung Mung*, 354 F.3d 1371, 1378).
[49] *See* Petitioners' Rebuttal Brief at 16 (citing, *e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012), and accompanying IDM (*Solar Cells*)).

verify the accuracy of Yama's claimed non-use of the program.[50] As we noted in the *Preliminary Results*, the GOC has not provided the requested information and documentation necessary for Commerce to develop a complete understanding of this program (*i.e.*, the Standard Questions Appendix, information pertaining to the 2013 revision to the program, and the use of third-party banks to disburse/settle export buyer's credits).[51] Such information is critical to understanding how export buyer's credits flow to and from foreign buyers and the EXIM Bank of China. Absent the requested information, we are unable to rely on the GOC's and Yama's claims of non-use of this program.

Further, we disagree with Yama that Commerce should not apply AFA with respect to this program. In its response to the NSA questionnaire, the GOC failed to provide any information regarding this program.[52] Therefore, pursuant to section 782(d) of the Act, we requested the information a second time in a supplemental questionnaire, to which the GOC in many instances chose not to provide specific information requested about this program.[53] Thus, as explained above, we continue to find that the GOC withheld necessary information that was requested of it, and thus, Commerce must continue to rely on facts otherwise available in these final results, pursuant to section 776(a)(2)(A) and (2)(C) of the Act. Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for required information. Specifically, it withheld information that we requested that was reasonably available to it. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. As AFA, we determine that this program provides a financial contribution, is specific, and provides a benefit to Yama within the meaning of sections 771(5) and 771(5A) of the Act. This finding is identical to Commerce's applications of AFA regarding this program in both *Truck & Bus Tires* and *Chlorinated Isos*.[54] In each of these proceedings, Commerce requested operational program information from the GOC, noting that there were substantial changes to the program in 2013 and requesting information on how this program works; nonetheless, in each of these cases, the GOC declined to provide Commerce information regarding the operation of this program.

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[50] *See*, *e.g.*, *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016), and accompanying IDM at Comment 6; and *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014), and accompanying IDM at Comment 16.
[51] *See Preliminary Results,* and accompanying PDM, at 10-11.
[52] *See* Letter from the GOC, "Narrow Woven Ribbons with Woven Selvedge from People's Republic of China, Countervailing Duty: GOC Response to New Subsidy Allegations Questionnaire," dated March 17, 2017 (GOC NSA Questionnaire Response).
[53] *Id.*; *see also* Letter from the GOC, "Narrow Woven Ribbons with Woven Selvedge from People's Republic of China, Countervailing Duty: GOC Response to New Subsidy Allegations Questionnaire," dated May 12, 2017 (GOC's NSA Supplemental Response).
[54] *See Truck and Bus Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 8606 (January 27, 2017) (*Truck & Bus Tires*), and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences," and Comments 2 – 6; and *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), and accompanying IDM at Comment 2 (*Chlorinated Isos*).

Commerce has considered all information on the record of this proceeding, including the statements of non-use provided by Yama; however, as explained above and in the *Preliminary Results*, we are unable to rely on information provided by Yama due to Commerce's lack of sufficient information to provide a complete and reliable understanding of the program.[55] Moreover, we disagree with Yama that Commerce's actions in requesting information from the GOC regarding this program are arbitrary or capricious. Commerce's complete understanding of this program's operation is a prerequisite to our reliance on information provided by Yama regarding non-use.[56] Consequently, without the GOC's necessary information, the information provided by Yama is incomplete for Commerce to reach a determination that Yama did not use this program during the POR.

Comment 3: The Application of AFA to a Yama due to Non-Cooperation of the GOC

Yama's Brief

- Commerce cannot use AFA against Yama simply because the GOC allegedly failed to participate to the best of its ability. Even if the GOC is found to be a non-cooperative party in a proceeding, Commerce must take into consideration whether the respondent has any control over the GOC and how an AFA decision against the GOC might be unfair to a cooperative respondent.[57]
- The Courts are clear that respondents cannot be held liable for deficiencies in data in the possession of the parties other than the mandatory respondent.[58]
- In *SKF*, the court rejected Commerce's application of AFA to a cooperative respondent due to another interested party's failure to cooperate to the best of its ability.[59] This ruling applies equally to CVD cases and to the GOC when, as in this instance, Yama has been found to be completely forthcoming.

Petitioner's Rebuttal Brief

- Commerce should continue apply AFA to the GOC, which necessarily impacts Yama's subsidy margin.
- In the context of CVD cases, the courts have considered Yama's argument and rejected it. In *Essar Steel*, the court recognized that Commerce seeks different information from the government and company respondents and the government's failure to provide information can impact a company respondent.[60]

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[55] *See Preliminary Results*, and accompanying PDM, at 11.
[56] *Id*.; and *Truck & Bus Tires* at Comment 5.
[57] *See* Yama's Case Brief at 30-31 (citing *Mueller Comercial de Mexico, S. de R.L. de C.V. v. United States*, 753 F.3d 1227 (*Mueller*)).
[58] *Id.* at 31 (citing *e.g., Luoyang Bearing Corp.et al v. United States* (CIT 2005) (*Luoyang)*; *see also Luoyang Bearing Corp.et al v. United States*, 347 F. Supp. 2d 1326 (CIT May 18, 2004); *see also Shantou Red Garden Foodstuff Co. v. United States*, 815 F. Supp. 2d 1311, 1323 (CIT 2012) (*Red Garden)*).
[59] *Id*. at 32 (citing *SKF USA Inc. v. United States* 675 F. Supp. 2d 1264, 1274-1275 (CIT 2009) (*SKF*)).
[60] *See* Petitioner's' Rebuttal Brief at 19-20 (citing *Essar Steel Limited v. United States*, 721 F. Supp. 2d 1285 (CIT 2010)); *see also Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011) (*Citric Acid 2009 AR*), and

- In *GPX*, the court recognized that parties other than the mandatory respondent possess necessary information in CVD investigations and that application of AFA may indirectly affect the respondent when those parties fail to cooperate.[61]

Commerce's Position: Commerce has previously explained its practice with respect to the application of AFA to governments in the context of CVD proceedings. In general, Commerce's practice is to find, as AFA, that alleged subsidy programs constitute a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively.[62] Therefore, consistent with our practice, where the GOC withheld necessary information and failed to cooperate by not acting to the best of its ability to comply with our requests for information, Commerce applied AFA to the GOC by finding that: 1) the Chinese synthetic yarn and caustic soda markets are distorted by the involvement of the GOC; 2) privately-owned input suppliers of synthetic yarn and caustic soda are "authorities"; 3) the export buyer's credits program constitutes a financial contribution and is specific; 4) the provision of electricity constitutes a financial contribution and is specific; and 5) subsidies reported by Yama for the first time in this administrative review provide a financial contribution and are specific.

In response to Yama's claim that Commerce cannot apply AFA to a cooperative party, we note that we have not applied AFA to Yama. Rather, Commerce applied AFA to the GOC in each of these instances in the *Preliminary Results*.[63] The GOC was the interested party that withheld information and failed to cooperate by not acting to the best of its ability, and section 776(b) of the Act authorizes Commerce to use an adverse inference against the GOC under these circumstances.

However, Commerce acknowledges that the effect of applying AFA to a government may impact respondents.[64] As the CIT has recognized, "{w}here the foreign government fails to act to the best of its ability, Commerce will usually find that the government has provided a financial contribution to a specific industry."[65] This is because the foreign government is in the best position to provide information regarding financial contribution and benefit.[66] Obviously, this has an effect on the respondent company, but this does not mean that Commerce's application of AFA was unlawful. The respondent company has the opportunity to demonstrate that it did not use, or benefit from, the program at issue.

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accompanying IDM at Comment 8).

[61] *Id.* at 21 (citing *GPX Int'l Tire Corp v. United States*, 942 F. Supp. 2d 1343, 1359-60 (CIT 2013) (*GPX*)).

[62] *See, e.g., Citric Acid 2009 AR* at Comment 8. *See also Certain In-Shell Roasted Pistachios from the Islamic Republic of Iran: Final Result of Countervailing Duty New Shipper Review,* 17 FR 9993 (February 25, 2008) (*Pistachios from Iran)*, and accompanying IDM at Comment 2; and *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review,* 73 FR 40295 (July 14, 2008) (*Hot-Rolled from India)*, and accompanying IDM at Comment 6.

[63] *See Preliminary Results*, and accompanying PDM at 6-15 "GOC – Market Distorted by Government Presence," "Certain Producers of Synthetic Yarn and Caustic Soda are Authorities," "Application of AFA: Export Buyer's Credits," "Provision of Electricity for LTAR," and "Other Subsidy Programs."

[64] *See, e.g., Citric Acid 2009 AR* at Comment 8*; Pistachios from Iran* at Comment 2; and *Hot-Rolled Steel from India* at Comment 6.

[65] *See Essar Steel*, 721 F. Supp. 2d at 1297.

[66] *Id*.

Finally, we find Yama's reliance on *SKF*, *Mueller*, *Luoyang, and Red Garden* to be misplaced because those cases involved respondents in antidumping duty (AD) proceedings, and not a foreign government in a CVD proceeding. The CIT has affirmed Commerce's application of AFA to governments in such situations:

> This court has recognized in the CVD context, unlike the typical AD case, that often the government rather than the respondent in the investigation possesses the information needed by Commerce to accurately evaluate and calculate the alleged subsidies. *See, e.g., Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254, 1260–62 (CIT 2012). When the government refuses to cooperate in a CVD case, Commerce may be permitted to draw an adverse inference with regard to government-held information, with possible collateral effects on a respondent. *Id.* at 1262 n.10. Rather than a direct application of the adverse facts available statute, this may be a simple evidentiary expediency.[67]

Therefore, in light of our established practice regarding this issue, as affirmed by the CIT, we find that the application of AFA to the GOC was not unlawful because of its effect on Yama.

Comment 4: Whether Programs Found to be Countervailable Based on AFA are Specific

Yama's Brief

- All of the additional programs which Commerce found to be countervailable based on AFA do not meet the countervailability test in the statute.
- The courts remanded one of these programs, the Preferential Tax Policy for Wages of Disabled Employees program, to Commerce for further review, after which Commerce proposed not countervailing this program.[68] Thus, for the same reasons, this program should be found not countervailable here.
- Even in cases where Commerce appropriately relied on AFA, Commerce must still make the necessary findings to satisfy the requirements for countervailability, and must still point to the factual information on the record to make its determinations.[69]
- Further, because Commerce has not used substantial evidence on the record, all other programs preliminarily found to be countervailable through the use of AFA due to the alleged non-cooperation of the GOC should not be found countervailable.

Petitioner's Rebuttal Brief

- Commerce correctly found all of the additional programs countervailable based on AFA because the GOC failed to provide the requested information on these programs.
- Yama is incorrect that these programs (including the Preferential Tax Policy for Wages of Disabled Employees program) should not be countervailable because the record lacks specificity information. Here, this information is not on the record because of the GOC's

[67] *See GPX*, 942 F. Supp. 2d at 1359-60.
[68] *See* Yama's Case Brief at 33 (citing *Changzhou Trina Solar Energy Co., Ltd. et al. v. United States*, Consol. Ct. No. 15-00068; Slip Op. 16-121 (CIT 2016) and Draft Results of Redetermination Pursuant to Court Remand (undated) (Draft Remand Redetermination)).
[69] *Id.* at 33 (citing Commerce Draft Remand Redetermination, at 6).

failure to provide it, which justified Commerce's use of AFA to determine that these programs were countervailable.

Commerce's Position: We continue to find that, as AFA, the following programs provide a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively: Policy Loans to Narrow Woven Ribbon Producers from State-owned Commercial Banks; Jimei District Tax Bonus Prize; Bonus for Fujian Province Famous Brands Program; Tax Program for High or New Technology Enterprise; Preferential Tax Policy for Wages of Disabled Employees; Xiamen Municipal Cleaner Production; Patent Application Supporting Program; Assistance for Recruiting Vocational Institutions and/or College Graduates; Assistance for Recruiting Rural Labor; Interest Assistance for Loans Obtained for Technology Projects; High and New Technology Enterprises Local Government Assistance; Xiamen City SMEs Development Support Fund; Insurance Expense Assistance; SMEs Assistance; Finance Bureau of Xiamen City; Tax Bureau of Jimei District; and unknown.

As discussed in the *Preliminary Results*, given the GOC's failure to respond to Commerce's initial questionnaire, we find that the use of facts available pursuant to sections 776(a)(2)(A) and 776(a)(2)(D) of the Act is warranted in determining the countervailability of these apparent subsidies reported by Yama. First, necessary information regarding whether these programs provide a financial contribution within the meaning of section 771(5)(D) of the Act, and whether these programs are specific within the meaning of section 771(5A) of the Act, is not on the record of this review. Further, the GOC withheld information that was requested of it by not providing information regarding these subsidies in response to our questionnaire as noted above. Because the GOC failed to provide the requested information, we find that the GOC failed to respond to the best of its ability regarding our request for information on the assistance which the GOC provided. Therefore, we continue to find that an adverse inference is warranted with respect to these subsidies pursuant to section 776(b) of the Act. As a result, we continue to find that, as AFA, these subsidies reported by Yama provide a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively.

Finally, with respect to the Preferential Tax Policy for Wages of Disabled Employees program, we disagree that Commerce must find this program not to be countervailable here because Commerce in its Draft Remand Redetermination found that this program was not specific "under respectful protest." In the Final Remand Redetermination, Commerce stated that "while the record does not indicate that this tax deduction is limited on a *de jure* basis to certain enterprises or industries, we note that the program may still be specific as a factual matter."[70] Therefore, Commerce's decision not to find this program countervailable in the Final Remand Redetermination was based on the specific facts of that case. In that underlying administrative review, Commerce only discovered that the respondent used this tax program during verification; thus, neither the GOC nor the respondent provided any information regarding the program.[71] This fact pattern differs from that of the instant case, where: 1) Yama self-reported the benefit it received under this subsidy program; and 2) we lack any information from the GOC regarding this or any other program because the GOC failed to respond to Commerce's initial

[70] *See* Final Results of Redetermination Pursuant to Court Remand, dated April 28, 2017 (Final Remand Redetermination).
[71] *See Changzhou Trina Solar Energy Co., Ltd. v. United States*, Slip Op 17-122 (CIT 2017) at 15.

questionnaire. Consequently, for the reasons discussed above, we continue to find that, as AFA, the Preferential Tax Policy for Wages of Disabled Employees program provides a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively.

X. **Conclusion**

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this administrative review and the final subsidy rate in the *Federal Register*.

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Agree Disagree

3/8/2018

X

Signed by: GARY TAVERMAN

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