C-570-076
Investigation
Public Document
E&C/Office VII: Team

DATE: December 21, 2018

MEMORANDUM TO: P. Lee Smith
Deputy Assistant Secretary
For Policy and Negotiations

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: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Plastic Ribbon from the People's Republic of China

---

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain plastic ribbon (plastic ribbon) from the People's Republic of China (China), within the meaning of section 705 of the Tariff Act of 1930, as amended (the Act).[1] The petitioner in this investigation is Berwick Offray, LLC (the petitioner). The respondents are the Government of China (GOC); Seng San Enterprises Co., Ltd. (Seng San) and its affiliated producer Xin Seng San Handicraft (ShenZhen) Co., Ltd. (Xin Seng San); Joynice Gifts and Crafts Co., Ltd. (Joynice); and Santa's Collection Shaoxing Co., Ltd. (Santa's Collection) (collectively the respondents).[2] The period of investigation (POI) for which we are measuring subsidies is January 1, 2016, through December 31, 2016.

A complete list of the issues in this investigation on which we received comments is provided below:

Comment 1: Whether plastic garlands and plastic tinsel garlands should be excluded from the scope.

---

[1] *See also* section 701(f) of the Act.
[2] Santa's Collection filed a notice of non-participation in the investigation on April 19, 2018 and thus did not partake in the verification process. *See* Letter from Santa's Collection "Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China: Notice of Non-Participation in Investigation," dated April 19, 2018.

Comment 2: Whether Bows Made from Plastic Garland Should be Excluded from the Scope
Comment 3: Whether Easter Grass, Tinsel, and Decorative Packaging Shred Should be Excluded from the Scope
Comment 4: Whether Fabric Ribbon Should be Excluded from the Scope
Comment 5: Whether Cords Should be Excluded from the Scope
Comment 6: Clarification of the Exclusion for Ribbon Formed into a Bow with Non-Plastic Decorative Coatings
Comment 7: Clarification of the Exclusion for Ribbon Made of Both Plastic and Non-Plastic Strands
Comment 8: Clarification Regarding the Measurement of the Width of Ribbon
Comment 9: Whether Swirl Decorations Should be Excluded from the Scope
Comment 10: Whether Bows Made from Plastic Sheet Should be Excluded from the Scope
Comment 11: Whether Flocked and Unflocked Bows with Flexible Wire, Ribbon, String, or Other Type of Tie at the Base Should be Excluded from the Scope
Comment 12: Whether Commerce Should Impose Partial AFA for Seng San's Failure to Disclose a Predecessor Company
Comment 13: Whether Commerce Should Apply AFA to the Export Buyer's Credit Program
Comment 14: Whether Commerce's Chosen AFA Rate for the Export Buyer's Credit Program is Appropriate
Comment 15: Whether the Export Buyer's Credit Program Should be Considered an Export Subsidy

II. BACKGROUND

On June 22, 2018, Commerce published the *Preliminary Determination* in the countervailing duty (CVD) investigation of plastic ribbon from China.[3] Commerce conducted a verification of the subsidy information submitted by: Seng San and its affiliated producer Xin Seng San from June 25, 2018, through June 27, 2018;[4] and Joynice from June 25, 2018, through June 27, 2018.[5]

---

[3] *See Certain Plastic Decorative Ribbon from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 29096 (June 22, 2018) (*Preliminary Determination*), and accompany Preliminary Decision Memorandum (PDM).
[4] *See* Memorandum, "Verification of the Questionnaire Responses of Seng San Enterprises Co., Ltd. In the Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China," dated July 18, 2018 (Seng San Verification Report).
[5] *See* Memorandum, "Verification of the Questionnaire Responses of Joynice Gifts and Crafts Co., Ltd. In the Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China," dated July 18, 2018 (Joynice Verification Report).

On August 13, 2018, Commerce received case briefs from the petitioner, Seng San and Joynice, and the GOC.[6] On August 20, 2018, Commerce received rebuttal briefs from the petitioner, Seng San, and a foreign interested party.[7]

No public hearing was held for this investigation because the hearing request was withdrawn.[8]

III. PERIOD OF INVESTIGATION

The period of investigation (POI) for which Commerce is measuring subsidies is January 1, 2016, through December 31, 2016.

IV. SCOPE COMMENTS

In accordance with the *Preliminary Determination*, Commerce set aside a period of time for parties to address scope issues in case briefs prior to the final determination.[9] On September 5, 2018, the petitioner submitted a scope clarification request to exclude certain plastic garlands and plastic tinsel garlands from the scope, and on September 7, 2018, Greenbrier International, Inc. (Greenbrier) submitted a response in agreement with the petitioner's request.[10] On September 17, 2018, Commerce declined to issue such a clarification, noting that the petitioner's and Greenbrier's submissions would be considered along with all other comments submitted by interested parties in the final determination.[11] On September 24, 2018, the petitioner and

---

[6] *See* "Certain Plastic Decorative Ribbon from the People's Republic of China: Case Brief" dated August 13, 2018 (Petitioner's Case Brief); "Certain Plastic Decorative Ribbon from the People's Republic of China: Seng San Case Brief" dated August 13, 2018 (Seng San Case Brief); "Certain Plastic Decorative Ribbon from the People's Republic of China: Case Brief" dated August 13, 2018 (Joynice Case Brief); "Countervailing Duty Investigation of Plastic Ribbon from the People's Republic of China: GOC Administrative Case Brief" dated August 13, 2018 (GOC Case Brief).

[7] *See* "Certain Plastic Decorative Ribbon from the People's Republic of China: Rebuttal Brief" dated August 20, 2018 (Petitioner's Rebuttal Brief); "Certain Plastic Decorative Ribbon from the People's Republic of China: Seng San Rebuttal Brief" dated August 20, 2018 (Seng San Rebuttal Brief); "Certain Plastic Decorative Ribbon from the People's Republic of China: Rebuttal Brief" dated August 20, 2018 (Ricai Rebuttal Brief).

[8] *See* Letter from Target Corporation, Expressive Design Group, Inc., and IG Design Group Americas Inc. "Countervailing Duty Investigation on Certain Plastic Decorative Ribbon from the People's Republic of China: Withdraw Hearing Request," dated November 9, 2018.

[9] *See* Memorandum from Edward Yang, "Certain Plastic Decorative Ribbon from the People's Republic of China: Scope Comments Preliminary Decision Memorandum," dated July 30, 2018 (Preliminary Determination Scope Memo).

[10] *See* Letter from the petitioner, "Certain Plastic Decorative Ribbon from the People's Republic of China: Request for Scope Clarification," dated September 5, 2018 (Petitioner Scope Clarification Request), and Letter from Greenbrier, "Certain Plastic Decorative Ribbon from the People's Republic of China: Response to Petitioner's Request for Scope Clarification," dated September 7, 2018 (Greenbrier Scope Clarification Request).

[11] *See* Memorandum to the File, "Certain Plastic Decorative Ribbon from the People's Republic of China: Response to Requests for a Scope Clarification," dated September 17, 2018 (Scope Clarification Memo).

Greenbrier submitted scope case briefs,[12] and on October 1, 2018, the petitioner and Target Corporation (Target) submitted scope rebuttal briefs.[13]

In accordance with the comments discussed below, which include the petitioner's and Greenbrier's submissions regarding a scope clarification, we have made certain changes to the final scope of these investigations. These changes include clarifications regarding the measurement of the width of a bow in paragraph one; ribbon formed into a bow with non-plastic decorative coatings in clause four of paragraph five; and shredded plastic film or shredded plastic strip in paragraph six. Other changes to the scope language include additional exclusions for fabric ribbon, cords, plastic garlands and plastic tinsel garlands, and ribbon made from both plastic and non-plastic strands. The final scope of the investigation is included at Appendix I.

V. SUBSIDIES VALUATION

A. Allocation Period

Commerce has made no changes to the allocation period/methodology used in the *Preliminary Determination* and no issues were raised by interested parties in briefs regarding these topics. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination*.[14]

B. Attribution of Subsidies

Commerce has made no changes to the attribution of subsidies methodology applied in the *Preliminary Determination*.[15]

C. Denominators

In accordance with 19 CFR 351.525(b), Commerce considers the basis for respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to a respondent's export or total sales, or portions thereof. Commerce made no changes to the attribution of subsidies. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the *Preliminary Determination*.[16]

---

[12] *See* Letter from the petitioner, "Certain Plastic Decorative Ribbon from the People's Republic of China: Scope Case Brief," dated September 24, 2018 (Petitioner Scope Comments), and Letter from Greenbrier, "Certain Plastic Decorative Ribbon from the People's Republic of China: Greenbrier's Scope Case Brief," dated September 24, 2018 (Greenbrier Scope Comments).
[13] *See* Letter from the petitioner, "Certain Plastic Decorative Ribbon from The People's Republic Of China: Scope Rebuttal Brief," dated October 1, 2018 (Petitioner Scope Rebuttal Comments), and Letter from Target, "Antidumping and Countervailing Duty Investigations on Certain Plastic Decorative from the People's Republic of China: Rebuttal Scope Brief," dated October 1, 2018 (Target Scope Rebuttal Comments).
[14] *See* PDM at 7.
[15] *Id*. at 7-8.
[16] *Id*. at 8-9.

D. Benchmarks and Interest Rates

1. Short-Term and Long-Term Loans and Discount Rates

There are no allegations of countervailable lending under investigation and no non-recurring subsidies requiring the use of discount rates for allocation purposes. Thus, we have not calculated benchmark interest rates or discount rates for this final determination.[17]

2. Government Provision of Petrochemical Input for Less Than Adequate Remuneration Benchmarks

Commerce made no change to the benchmarks used in the *Preliminary Determination*. For a description of the benchmarks used for the final determination, *see* the *Preliminary Determination*.[18]

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall select from "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[19] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the CVD investigation, a previous administrative review, or other information placed on the record.[20] Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are

[17] *Id.* at 9.
[18] *Id*. at 9-10.
[19] *See* section 776(b)(1)(B) of the Act.
[20] *See* also 19 CFR 351.308(c).

reasonably at its disposal.[21] Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[22] Finally, under the section 776(d) of the Act, when using an adverse inference when selecting from the facts otherwise available, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use.[23] The Act also makes clear that, when selecting from the facts otherwise available with an adverse inference, 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.[24]

Commerce relied on "facts otherwise available," including AFA, for several findings in the *Preliminary Determination*. With the exceptions explained below in response to Comment 1, Commerce has not made any changes to its use of facts otherwise available and AFA from the *Preliminary Determination*. For a description of these decisions, *see* the *Preliminary Determination*.[25] Further, as discussed in the *Preliminary Determination*, Commerce selected Santa's Collection as a mandatory respondent in this investigation, but the company failed to provide a response to Commerce's Section III supplemental questionnaire and instead submitted a notice of non-participation.[26] Santa's Collection subsequently has not participated in this investigation, and as AFA we are continuing to apply a rate of 94.67 percent in this final determination.

VII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

We have made no changes to the *Preliminary Determination* with respect to the methodology used to calculate the subsidy rates for certain programs used by Joynice and Seng San. For further details, see the specific program section below and Both-Well's final determination calculation memorandum. For descriptions, analyses, and calculation methodologies for these programs, see the Preliminary Determination and the Post-Preliminary Analysis Memorandum. Except where noted below, no other issues were raised regarding these programs in the parties' case briefs. The final program rates are as follows:

1. <u>Export Buyer's Credit</u>

We have determined a final countervailable subsidy rate of 10.54 percent *ad valorem* for

---

[21] *See* 19 CFR 351.308(d).
[22] *See* Statement of Administrative Action, H.R. Doc. No. 316, 103rd Congress, 2d Session (1994) (SAA), at 870.
[23] *See* section 776(d)(1) of the Act.
[24] *See* section 776(d)(3) of the Act.
[25] *See* PDM at 10-23.
[26] *Id.* at 11-12; *see also* Letter from Santa's Collection, "Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China: Notice of Non-Participation in Investigation," dated April 19, 2018.

Joynice and Seng San, a rate calculated for a similar program in another CVD proceeding involving imports from China.[27]

2. Government Provision of Petrochemical Inputs for LTAR

We have calculated a final countervailable subsidy rate of 3.48 percent *ad valorem* for Joynice for the provision of petrochemical inputs for LTAR. For Seng San, we have calculated a final countervailable subsidy rate of 1.04 percent *ad valorem* for the provision of petrochemical inputs for LTAR.

3. Government Provision of Electricity for LTAR

We have calculated a final countervailable subsidy rate of 0.25 percent *ad valorem* for Joynice for the provision of electricity for LTAR. For Seng San, we have calculated a final countervailable subsidy rate of 1.23 percent *ad valorem* for the provision of electricity for LTAR.

B. Programs Preliminarily Determined Not to Be Used During the POI

1. Export Seller's Credit
2. Preferential Income Tax Reductions for High and New Technology Enterprises (HNTEs)
3. Preferential Deduction of Research and Development Expenses for HNTEs
4. Preferential Income Tax Policies for Enterprises in Specific Regions, Provinces, or Designated Areas – Northeast Region
5. Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
6. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
7. Income Tax Benefits for Foreign Invested Enterprises (FIEs)
8. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs
9. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises
10. Provision of Land Use Rights for LTAR
11. Provision of Land to SOEs for LTAR
12. Provision of Water for LTAR
13. Foreign Trade Development Fund Grants
14. Export Assistance Grants
15. Export Interest Subsidies
16. Subsidies for Development of "Famous Brands" and "China World Top Brands"

[27] *See Coated Paper from China Investigation Amended Final*, 75 FR 70201 (November 17, 2010) and accompanying Issues and Decision Memorandum, at "Revised Net Subsidy Rate for the Gold Companies" (discussing revised subsidy rate for "Preferential Lending to the Coated Paper Industry").

17. Sub-Central Government Subsidies for Development of "Famous Brands" and "China World Top Brands"
18. Funds for Outward Expansion of Industries in Guangdong Province
19. Provincial Fund for Fiscal and Technological Innovation
20. State Key Technology Renovation Fund
21. Shandong Province's Environmental Protection Industry Research and Development Funds

VIII. DISCUSSION OF THE ISSUES

Comment 1: Exclusion for Plastic Garlands and Plastic Tinsel Garlands

Petitioner's Comments:[28]

- Commerce exercises broad discretion in defining and clarifying the scope of investigations, with particular deference to the petitioner. The petitioner believes that the addition of clarifying language that excludes plastic garlands and plastic tinsel garlands from the scope will ensure that products that the petitioner never intended to be included as part of the investigation will not be treated as subject merchandise.
- Although the petitioner had previously denied Greenbrier's request to exclude bows made from plastic garland in the *Preliminary Determination*,[29] the petitioner acknowledges that certain plastic garlands and plastic tinsel garlands are clearly distinct products from plastic decorative ribbon and should thus be specifically excluded from the scope. The exclusion of certain plastic garlands and plastic tinsel garlands, based on a precise definition of such products, will allow for a necessary, yet measured, tailoring of the scope.
- The petitioner requests the following language to be added to the scope:

  Plastic garlands and plastic tinsel garlands, imported in lengths of not less than three (3) feet, are excluded from the scope of the investigation. The longitudinal base of these garlands may be made of wire or non-wire material, and these garlands may include plastic die-cut pieces. Also excluded are items of decor made of plastic garland and/or plastic tinsel where the items do not have a tab or other means for attaching the decor item to an object using adhesives, including such decor items in the shape of wreaths, trees, hearts, and animals. This exclusion does not apply to plastic garland bows, plastic tinsel bows, or other bow-like products made of plastic garland or plastic tinsel.

Greenbrier's Comments:[30]

- Greenbrier consents to the petitioner's request and its proposed language to exclude plastic garlands and plastic tinsel garlands from the scope. Greenbrier reiterates that such products are clearly a separate class of merchandise and were never intended to be subject to these investigations, and it supports Commerce's established practice of

[28] *See* Petitioner Scope Clarification Request and Petitioner Scope Comments at 4-5.
[29] *See* Preliminary Determination Scope Memo, at 15-16.
[30] *See* Greenbrier Scope Clarification Request and Greenbrier Scope Comments at 2-5.

providing ample deference to petitioners with respect to the definition of products for which they seek relief during investigations.

Target's Rebuttal Comments:[31]

- Target believes that Commerce should continue to defer to the petitioner on scope issues and consents to all the petitioner's proposed modifications, as such changes are necessary to clarify the petitioner's intent and avoid confusion regarding how future orders should be applied.

Commerce Position: Given Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, and the consent of Greenbrier and Target to the proposed changes, we determine that the change to the language of the scope is warranted.[32] Furthermore, the petitioner clearly states that this modification to the scope would more accurately reflect the intent of the petitioner, which warrants a change in the scope as previously defined.[33] The precise description of plastic garlands and plastic tinsel garlands to be excluded, along with the continued inclusion of bows made from these materials as subject merchandise, allows for an unambiguous tailoring of the scope in line with the intent of the petitioner. Although a change to the scope language is warranted, we believe that the list of example items is unnecessary, as the scope is intended to exclude *all* items made of plastic garland and/or plastic tinsel that do not have a means for attaching the item to an object using adhesives and are not bows or bow-like products. To be clear, we agree that those examples would be excluded from the scope, but we also believe that if those examples were described specifically in the scope, it would lead to confusion with respect to other items made of plastic garland and/or plastic tinsel. Additionally, although the proposed exclusion language references "items of *decor*" and "*decor* items" (emphasis added) we find that the use of "decor" is unnecessary and undefined, and that this undefined term would introduce ambiguity and confusion into the scope. Given that no other party has opposed this modification, we are thus partially adopting the petitioner's proposed scope language as follows:

> The scope of the investigation excludes plastic garlands and plastic tinsel garlands, imported in lengths of not less than three (3) feet. The longitudinal base of these garlands may be made of wire or non-wire material, and these garlands may include plastic die-cut pieces. Also excluded are items made of plastic garland and/or plastic tinsel where the items do not have a tab or other means for attaching item to an object using adhesives. This exclusion does not apply to plastic garland bows, plastic tinsel bows, or other bow-like products made of plastic garland or plastic tinsel.

---

[31] *See* Target Scope Rebuttal Comments.

[32] *See e.g., Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 80 FR 34893 (June 18, 2015) (Truck Tires) and accompanying Issues and Decision Memo (IDM) at Comment 1.

[33] *Id.* at Comment 5.

Comment 2: Exclusion for Bows Made from Plastic Garland

Greenbrier's Comments:[34]

- Bows made from plastic tinsel garland and formed from plastic sheet are different products than bows made from plastic ribbon. As stated above, plastic ribbon is a distinct product from plastic sheet, and the current scope language refers to bows made of plastic ribbon. Greenbrier bows made from plastic garland are distinct from subject merchandise and should therefore be excluded from the scope.
- Simply because the end product is a bow does not mean that it is made of subject merchandise, as there are many other bows outside of the scope (*i.e.* clause 4 and clause 9 of paragraph five in the scope, and bows made from excluded materials).

Petitioner's Rebuttal Comments:[35]

- An exclusion of bows made from plastic garland is unnecessary, as a bow made from plastic garland is considered subject merchandise as long as it meets the physical parameter of the scope, regardless of whether it was formed from a ribbon, a sheet, or a garland. Excluding otherwise subject merchandise because it is made from garland could unduly limit the extent of the investigation.

Commerce's Position: Given the petitioner's opposition to adding the language proposed by Greenbrier, and Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, we determine that the suggested change to the language of the scope is not warranted.[36] Absent a concern that the definition of a proposed scope cannot be effectively administered,[37] that there exist potential concerns of evasion and circumvention without amendment,[38] or that the scope language is inconsistent with the intent of the petitioner or industry support, Commerce generally will accept the scope as defined in the petition of the investigation. Furthermore, the petitioners clearly state that any exclusion for plastic garlands and plastic tinsel garlands does not apply to plastic garland bows (*see* Comment 1, above). We are thus not adopting the proposed exclusion language for bows made from plastic garland.

Comment 3: Exclusion for Easter Grass, Tinsel, and Decorative Packaging Shred

Petitioner's Comments:[39]

- Although Commerce partially adopted the petitioner's proposed language regarding these products in the Preliminary Determination,[40] the petitioner requests that Commerce further clarify the scope. Specifically, the new language should acknowledge that not all merchandise covered by the clarification is "imported in bags," and should include the typical labeling of such merchandise.

---

[34] *See* Greenbrier Scope Comments at 8-9.
[35] *See* Petitioner's Rebuttal Comments at 5.
[36] *See Truck Tires* and accompanying IDM at Comment 1.
[37] *Id.* at 5.
[38] *Id.*
[39] *See* Petitioner Scope Comments at 5-6.
[40] *See* Preliminary Determination Scope Memo at 10-11.

- The petitioner requests the following modification to the scope language (emphasis added to denote the proposed changes):

  The scope of the investigation excludes shredded plastic film or shredded plastic strip, in each case where the shred does not exceed 5 mm in width and does not exceed 18 inches in length, *typically labeled as artificial Easter grass, tinsel, or decorative packaging shred*.

Greenbrier's Comments:[41]

- Although Greenbrier requests that Commerce continue to include certain shredded plastic film or shredded plastic strip from the scope of these investigations, it did not respond to the petitioner's proposed language.

Target's Rebuttal Comments:[42]

- Target believes that Commerce should continue to defer to the petitioner on scope issues and consents to all the petitioner's proposed modifications, as such changes are necessary to clarify the petitioner's intent and avoid confusion regarding how future orders should be applied.

Commerce Position: Given Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, as well as Target's consent to the proposed language and Greenbrier's consent to exclude certain shredded plastic film or shredded plastic strip from the scope, we continue to determine that the exclusion for shredded film and plastic strip is warranted.[43] Furthermore, the petitioner clearly states that this modification to the scope would more accurately reflect the intent of the petitioner, which warrants a change in the scope as previously defined.[44] Although we find it is necessary to clarify that not all merchandise covered by the exclusion is "imported in bags," we believe that incorporating a list of typical labeling for such merchandise is unnecessary, as the scope is intended to exclude all shredded plastic film or shredded plastic strip regardless of how such merchandise is labeled. Given that no other party has opposed this modification, we are thus partially adopting the petitioner's proposed scope language by eliminating the phrase, "imported in bags," as follows:

> The scope of the investigation excludes shredded plastic film or shredded plastic strip, in each case where the shred does not exceed 5 mm in width and does not exceed 18 inches in length.

[41] *See* Greenbrier Scope Comments at 5-6.
[42] *See* Target Scope Rebuttal Comments.
[43] *See Truck Tires* and accompanying IDM at Comment 1.
[44] *Id.* at Comment 5.

Comment 4: Exclusion for Fabric Ribbon

Petitioner's Comments:[45]

- Although the petitioner had previously denied Target's request to exclude bows made from fabric ribbon in the Preliminary Determination,[46] the petitioner acknowledges that certain fabric ribbon is clearly distinct from plastic decorative ribbon and thus should be specifically excluded from the scope. The exclusion of certain fabric ribbon, based on a precise definition of such products, will allow for a necessary, yet measured, tailoring of the scope.
- The petitioner requests the following language to be added to the scope:

  Excluded are ribbons made exclusively of fabric formed by weaving or knitting threads together, or by matting, condensing or pressing fibers together to create felt fabric, regardless of thread or fiber composition, including without limitation, fabric ribbons of polyester, nylon, acrylic or terylene threads or fibers. This exclusion does not apply to plastic ribbons that are flocked.

Target's Rebuttal Comments:[47]

- Target believes that Commerce should continue to defer to the petitioner on scope issues and consents to all the petitioner's proposed modifications, as such changes are necessary to clarify the petitioner's intent and avoid confusion regarding how future orders should be applied.

Commerce Position: Given Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, and the consent of Target to the proposed changes, we determine that the change to the language of the scope is warranted.[48] Furthermore, the petitioner clearly states that this modification to the scope would more accurately reflect the intent of the petitioner, which warrants a change in the scope as previously defined.[49] The precise description of fabric ribbon to be excluded allows for an unambiguous tailoring of the scope in line with the intent of the petitioner. Given that no other party has opposed this modification, we are thus adopting the petitioner's proposed scope language.

Comment 5: Exclusion for Cords

Petitioner's Comments:[50]

- Although the petitioner continues to believe that scope language is clear on its face, it requests clarifying language regarding the exclusion of cords, which the petitioner never intended to be included as part of the investigation.

---

[45] *See* Petitioner Scope Comments at 6-7.
[46] *See* Preliminary Determination Scope Memo at 6-7.
[47] *See* Target Scope Rebuttal Comments.
[48] *See Truck Tires* and accompanying IDM at Comment 1.
[49] *Id.* at Comment 5.
[50] *See* Petitioner Scope Comments at 7.

- The petitioner requests the following language to be added to the scope:

  Excluded from the scope are cords, *i.e.*, multiple strands of materials that have been braided, gimped or twisted together to form a cord.

Target's Rebuttal Comments:[51]

- Target believes that Commerce should continue to defer to the petitioner on scope issues and consents to all the petitioner's proposed modifications, as such changes are necessary to clarify the petitioner's intent and avoid confusion regarding how future orders should be applied.

Commerce Position: Given Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, and the consent of Target to the proposed changes, we determine that the change to the language of the scope is warranted.[52] Furthermore, the petitioner clearly states that this modification to the scope would more accurately reflect the intent of the petitioner, which warrants a change in the scope as previously defined.[53] Although an additional exclusion for cords is warranted, we believe that the description provided by the petitioner would be more precise without referencing "cord" in the definition of such merchandise. Given that no other party has opposed this modification, we are thus partially adopting the petitioner's proposed scope language as follows:

> Excluded from the scope are cords, *i.e.*, multiple strands of materials that have been braided, gimped or twisted together.

Comment 6: Clarification of the Exclusion for Ribbon Formed into a Bow with Non-Plastic Decorative Coatings

Petitioner's Comments:[54]

- Although the petitioner had previously denied Target's request to exclude ribbon formed into a bow with non-plastic decorative coatings, such as glitter, in the Preliminary Determination,[55] the petitioner now agrees that adding clarifying language is necessary to reflect the petitioner's intended scope of the investigation.
- The petitioner requests the following language to be added to the scope (emphasis added to denote the proposed changes):

  Excluded from the scope is ... (4) ribbon formed into a bow without a tab or other means for attaching the bow to an object using adhesives, where the bow has: (a) an outer layer that is flocked, made of fabric *or covered by any other decorative coating such as glitter (whether of plastic or non-plastic materials)*, and (b) a flexible metal wire at the base which permits attachment to an object by twist-tying.

---

[51] *See* Target Scope Rebuttal Comments.
[52] *See Truck Tires* and accompanying IDM at Comment 1.
[53] *Id.* at Comment 5.
[54] *See* Petitioner Scope Comments at 8.
[55] *See* Preliminary Determination Scope Memo at 9.

Target's Rebuttal Comments:[56]

- Target believes that Commerce should continue to defer to the petitioner on scope issues and consents to all the petitioner's proposed modifications, as such changes are necessary to clarify the petitioner's intent and avoid confusion regarding how future orders should be applied.

Commerce Position: Given Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, and the consent of Target to the proposed changes, we determine that the change to the language of the scope is warranted.[57] Furthermore, the petitioner clearly states that this modification to the scope would more accurately reflect the intent of the petitioner, which warrants a change in the scope as previously defined.[58] Given that no other party has opposed this modification, we are thus adopting the petitioner's proposed scope language, but have added punctuation in the by adding a comma between the phrases "made of fabric" and "or covered by any other decorative coating."

Comment 7: Exclusion for Ribbon Made of Both Plastic and Non-Plastic Strands

Petitioner's Comments:[59]

- Although the petitioner had previously denied Target's request to exclude ribbon comprised of both plastic and non-plastic strands in the Preliminary Determination,[60] the petitioner now agrees that this type of ribbon is not intended to be covered in the investigation and believes that the addition of clarifying language is necessary.
- The petitioner requests the following language to be added to the scope:

  Ribbons having a width of less than 3 millimeters when incorporated by weaving into mesh material (whether flat or tubular) or fabric ribbon, meaning ribbon formed by weaving all or any of the following: man-made fibers, natural fibers, metal threads and/or metalized yarns, in each case only where the mesh material or fabric ribbon is imported in the form of a decorative bow or a decorative bow like-like item.

Target's Rebuttal Comments:[61]

- Target believes that Commerce should continue to defer to the petitioner on scope issues and consents to all the petitioner's proposed modifications, as such changes are necessary to clarify the petitioner's intent and avoid confusion regarding how future orders should be applied.

[56] *See* Target Scope Rebuttal Comments.
[57] *See Truck Tires* and accompanying IDM at Comment 1.
[58] *Id.* at Comment 5.
[59] *See* Petitioner Scope Comments at 9.
[60] *See* Preliminary Determination Scope Memo, at 8.
[61] *See* Target Scope Rebuttal Comments.

Commerce's Position: Given Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, and the consent of Target to the proposed changes, we determine that the change to the language of the scope is warranted.[62] Furthermore, the petitioner clearly states that this modification to the scope would more accurately reflect the intent of the petitioner, which warrants a change in the scope as previously defined.[63] The precise description of the merchandise to be excluded allows for an unambiguous tailoring of the scope in line with the intent of the petitioner. Given that no other party has opposed this modification, we are thus partially adopting the petitioner's proposed scope language as follows (which corrects a typo and adds additional punctuation):

> The scope of the investigation excludes ribbons having a width of less than three (3) mm when incorporated by weaving into mesh material (whether flat or tubular) or fabric ribbon (meaning ribbon formed by weaving all or any of the following: man-made fibers, natural fibers, metal threads and/or metalized yarns), in each case only where the mesh material or fabric ribbon is imported in the form of a decorative bow or a decorative bow-like item.

Comment 8: Clarification Regarding the Measurement of the Width of Ribbon

Petitioner Comments:[64]

- Although the petitioner had previously denied Target's request to clarify the width measurement of ribbon in the Preliminary Determination,[65] the petitioner now agrees that this type of clarification is necessary to reflect the intended scope of the investigation.
- The petitioner requests the following language to be added to the scope (emphasis added to denote the proposed changes):

  The merchandise covered by this investigation is certain plastic decorative ribbon, having a width (measured at the narrowest span of the ribbon) of less than or equal to four (4) inches, *but disregarding any minor decorative or functional features that measure 4 inches or less in width, such as tapering or cutting at the ends or in a bow knot provided that aggregate length of such decorative features comprises no more than 20% of the length of the ribbon*.

Target's Rebuttal Comments:[66]

- Target believes that Commerce should continue to defer to the petitioner on scope issues and consents to all the petitioner's proposed modifications, as such changes are necessary to clarify the petitioner's intent and avoid confusion regarding how future orders should be applied.

---

[62] *See Truck Tires* and accompanying IDM at Comment 1.
[63] *Id.* at Comment 5.
[64] *See* Petitioner Scope Comments at 9-10.
[65] *See* Preliminary Determination Scope Memo at 11-12.
[66] *See* Target Scope Rebuttal Comments.

Commerce's Position: Given Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, and the consent of Target to the proposed changes, we determine that the change to the language of the scope is warranted.[67] Furthermore, the petitioner clearly states that this clarification to the scope would more accurately reflect the intent of the petitioner, which warrants a change in the scope as previously defined.[68] The precise description of width measurement allows for an unambiguous tailoring of the scope in line with the intent of the petitioner. Although a change to the scope language is warranted, we believe that use of the phrase "minor decorative or functional" and the term "decorative" to describe subject features is unnecessary, and that these undefined terms would introduce ambiguity in the scope. Given that no other party has opposed this modification, we are thus partially adopting the petitioner's proposed scope language as follows:

> The merchandise covered by this investigation is certain plastic decorative ribbon, having a width (measured at the narrowest span of the ribbon) of less than or equal to four (4) inches, but disregarding any features that measure 4 inches or less in width, such as tapering or cutting at the ends or in a bow knot, provided that aggregate length of such features comprises no more than 20% of the length of the ribbon.

Comment 9: Exclusion for Swirl Decorations

Greenbrier's Comments:[69]

- Swirl decorations are made by cutting a plastic sheet in a circular pattern, which can then be expanded to create a whirling/spinning effect. The petitioner has already excluded similar material in the scope, namely "imitation raffia made of plastics having a thickness not more than one mil when measured in an unfolded/untwisted state." Like imitation raffia, swirl decorations consist of long, narrow pieces of plastic that provide a decorative finish. As such, Greenbrier requests a specific exclusion for these similar products to provide consistency and an unambiguous reading of the scope for U.S. importers and Customs and Border Protection (CBP).
- Greenbrier requests the following language to be added to the scope:

  Excluded from the scope are swirl decorations, made of plastics having a thickness not more than one (1) mil when measured in an unfolded/untwisted state.

Petitioner's Rebuttal Comments:[70]

- An exclusion for swirl decorations is not necessary and would unduly restrict of the scope of the investigation, as a product's inclusion or exclusion should be based on whether the merchandise in question satisfies the parameters of the scope (*i.e.* in-scope swirl decorations are subject merchandise while out-of-scope swirl decorations are not).
- If swirl decorations are similar to imitation raffia, they would simply fall under the exclusion already in the scope and would therefore not need to be otherwise excluded.

[67] *See Truck Tires* and accompanying IDM at Comment 1.
[68] *Id.* at Comment 5.
[69] *See* Greenbrier Scope Comments at 6-7.
[70] *See* Petitioner Scope Rebuttal Comments at 3-4.

Commerce's Position: Given the petitioner's opposition to adding the language proposed by Greenbrier, and Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, we determine that the suggested change to the language of the scope is not warranted.[71] Absent a concern that the definition of a proposed scope cannot be effectively administered,[72] that there exist potential concerns of evasion and circumvention without amendment,[73] or that the scope language is inconsistent with the intent of the petitioner or industry support, Commerce generally will accept the scope as defined in the petition of the investigation. Greenbrier asserts that swirl decorations are similar to imitation raffia (in that they both consists of long, narrow pieces of plastic that provide a shimmery and/or decorative finish) and should be excluded from the scope, like imitation raffia. However, the mere fact that two finished products may share some similarities is not in itself probative as to whether the merchandise is covered by the scope. Moreover, the petitioner states that Greenbrier's proposed language would unduly restrict the scope of the investigation, because whether swirl decorations are subject to the scope depends on whether the particular merchandise meets the physical description of the merchandise described in the scope. We believe that the current scope language is consistent with the intent of the petitioner and can be effectively administered. An additional exclusion for scope decorations is therefore unnecessary, as the current scope provides ample description regarding what types of products are within the scope.

Comment 10: Exclusion for Bows Made from Plastic Sheet

Greenbrier's Comments:[74]

- The scope covers certain plastic decorative ribbon, which is defined as "a long, narrow strip of fabric, used for tying something or for decoration" or "a long, narrow strip," according to the Oxford English Dictionary. The petitioner has focused on ribbon that meets this definition in the scope. Greenbrier bows, on the other hand, are made from shapes/slits cut into ribbon sheet, which is defined as "a broad flat piece of material" and cannot be included rationally within the definition of ribbon.
- In the Preliminary Determination, Commerce incorrectly claimed that the scope's current language, which limits the investigation to "ribbon having a width…of less than or equal to four (4) inches in actual measurement," already covers Greenbrier's proposed language, which requests a specific exclusion for "plastic bows formed from cut plastic sheet having a *width of at least 4 inches* (measured at the widest span of the plastic sheet) when measured in an unfolded/untwisted state."[75] This language would clarify that bows made from plastic sheet that is equal to or greater than four inches are excluded from the scope.
- Greenbrier requests the following language to be added to the scope:

[71] *See Truck Tires* and accompanying IDM at Comment 1.
[72] *Id.* at 5.
[73] *Id.*
[74] *See* Greenbrier Scope Comments at 7-8.
[75] *See* Preliminary Determination Scope Memo at 15.

> Excluded from the scope of this investigation are: Plastic bows formed from cut plastic sheet having a width of at least 4 inches (measured at the widest span of the plastic sheet) when measured in an unfolded/untwisted state.

Petitioner's Rebuttal Comments:[76]

- An exclusion for bows made from plastic sheet is overly broad and could exclude a wide range of products otherwise intended to be covered by the scope.
- Greenbrier's attempt to differentiate between "ribbon" and "sheet" is misplaced. Although a product may not originate from a "long narrow strip" of ribbon, it may still be comprised of the same plastic material, undergo a similar production process, and take the same final form as subject merchandise. A bow should be considered subject merchandise as long as it meets the physical parameters of the scope, regardless of the form of plastic from which is originated.

Commerce's Position: Given the petitioner's opposition to adding the language proposed by Greenbrier, and Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, we determine that the suggested change to the language of the scope is not warranted.[77] Absent a concern that the definition of a proposed scope cannot be effectively administered,[78] that there exist potential concerns of evasion and circumvention without amendment,[79] or that the scope language is inconsistent with the intent of the petitioner or industry support, Commerce generally will accept the scope as defined in the petition of the investigation. The petitioner clearly states that Greenbrier's proposed language could exclude products that are intended to be covered by the investigation. Furthermore, whether bows made from plastic sheet are subject to the scope of the investigation depends on whether the particular merchandise meets the physical description of the merchandise described in the scope. We are therefore not adopting the proposed exclusion language, as we believe that the current scope language is consistent with the intent of the petitioner and can be effectively administered.

Comment 11: Exclusion for Flocked and Unflocked Bows with Flexible Wire, Ribbon, String, or Other Type of Tie at the Base

Greenbrier's Comments:[80]

- The current scope language in clause four of paragraph five is overly narrow and does not include bows that are the same kind of coating as flocking and fabric, nor does it account for the multitude of component pieces that would make the exclusion realistic and administrable.
- The exclusion should include unflocked ribbons with metal wire, string, ribbon, or other type of tie at the base that is suitable for attaching the bow to an object, as such bows have the same purpose and function as flocked or fabric bows with the same design. The addition of clarifying language is consistent with Commerce's intention to "focus the

---

[76] *See* Petitioner Scope Rebuttal Comments at 4-5.
[77] *See Truck Tires* and accompanying IDM at Comment 1.
[78] *Id.* at 5.
[79] *Id.*
[80] *See* Greenbrier's Comments at 9-11.

investigations on the physical characteristics of ribbon," and would help avoid confusion among U.S. importers and CBP.

- Greenbrier requests the following language to be added to the scope (emphasis added to denote the proposed changes):

  (4) ribbon formed into a bow without a tab or other means for attaching the bow to an object using adhesives, where the bow has: (a) an outer layer that is either flocked, *unflocked* or made of fabric, and (b) a flexible metal wire, *string, ribbon, or other type of tie* at the base which permits attachments to an object by twist-tying;…

Petitioner's Rebuttal Comments:[81]

- Greenbrier's proposed language needlessly expands the scope's exclusion, as the current language is unambiguous. The proposed language would, in fact, exclude products that the petitioner intends to be covered by the investigation, as bows that satisfy the parameters of the scope remain covered by the scope and thus subject to the investigation.

Commerce's Position: Greenbrier has requested an exclusion for flocked[82] and unflocked bows with ties at the base. Given the petitioner's opposition to adding the language proposed by Greenbrier, and Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, we determine that the suggested change to the language of the scope is not warranted.[83] Absent a concern that the definition of a proposed scope cannot be effectively administered,[84] that there exist potential concerns of evasion and circumvention without amendment,[85] or that the scope language is inconsistent with the intent of the petitioner or industry support, Commerce generally will accept the scope as defined in the petition of the investigation. The petitioner clearly states that Greenbrier's proposed language would exclude products that are intended to be covered by the investigation. We are therefore not adopting the proposed exclusion language, as we believe that the current scope language is consistent with the intent of the petitioner and can be effectively administered.

Comment 12: Partial AFA for Seng San's Failure to Disclose a Predecessor Company

Petitioner's Case Brief:[86]

- Commerce should apply partial AFA to Seng San because it failed to report its predecessor company. Commerce's longstanding practice is to examine non-recurring subsidies over the AUL of the assets of the company and any predecessor company,

---

[81] *See* Petitioner Scope Rebuttal Comments at 6.
[82] Although the scope language does not contain a description of flocked ribbons, the U.S. International Trade Commission (ITC) has defined flocking as "a process in which short chopped lengths of fiber (flock) are applied to an adhesive coated backing fabric or other substrate." *See* Publication 4763 by the ITC, *Plastic Decorative Ribbon from China Investigation Nos. 701-TA-592 and 731-TA-1400* (*Preliminary*), dated February 2018, at I-11.
[83] *See* Truck Tires and accompanying IDM at Comment 1.
[84] *Id.* at 5.
[85] *Id.*
[86] *See* Petitioner Case brief at 1-7.

unless the respondent can demonstrate that those subsidies were extinguished in an arm's-length acquisition of all or substantially all of another company's assets.

- The record demonstrates that Seng San failed to disclose that it is effectively a continuation of a predecessor tolling company. When discussing the company's corporate history, "company officials indicated that, although Xin Seng San was incorporated in 2012, its predecessor company, Bao'an District Shajing Seng San Handiwork Factory, operated as a tolling company in the same factory from 1998 to 2012."[87] Seng San additionally stated that "many of the employees" and the "person in charge" remained in place after the change in ownership.[88]
- When Commerce officials asked at verification why Seng San reported that it "never obtained all or substantially all of the assets of another company during the AUL period," Seng San officials claimed that it did not matter from an "accounting perspective."[89] Seng San admitted that it changed its registration because the Chinese government "stopped supporting processing/tolling companies and, instead, started to support 'high tech companies."[90] In other words, Seng San had to change its corporate structure in order to continue to receive subsidies.
- When Commerce asked if Seng San's questionnaire responses reflected subsidies received during the AUL period including the processor tolling company, "company officials stated that the tolling company was not included in the questionnaire responses."[91] Seng San officials indicated that all prior records were "not kept" and then made an unverifiable claim that they "knew" the "tolling company had not received any subsidies."[92]
- It was not until verification that this information was disclosed, and Seng San company officials made unsupported "claims" that the predecessor company did not receive any subsidies.
- In *Large Diameter Welded Pipe from Korea*,[93] SeAH failed to provide a questionnaire response for a predecessor company, SPP Steel Pipe. As partial AFA, Commerce made an adverse inference that SeAH benefitted from all non-recurring programs.

Seng San's Rebuttal Brief:[94]

- Commerce should not apply partial AFA to Seng San because there is no necessary information missing from the record and Seng San acted to the best of its ability to comply with information requests. Commerce has all the available and necessary information to determine that the predecessor company, Bao'an District Shajing Seng San Handiwork Factory, no longer exists.
- The questionnaire only required the reporting of acquisitions of existing entities so Seng San and Xin Seng San did not report the tolling company. Despite not keeping records

---

[87] *Id.* at 3 (citing Seng San Verification Report at 2).
[88] *Id.*
[89] *Id*. at 4 (citing Seng San Verification Report at 3).
[90] *Id*.
[91] *Id.*
[92] *Id.*
[93] *See Large Diameter Welded Pipe from the Republic of Korea*, 83 FR 30693 (June 29, 2018) and accompanying PDM at 14-15.
[94] *See* Seng San Rebuttal Brief at 1-5.

for the defunct company, Xin Seng San answered all questions about the defunct company during verification, including providing a copy of the company's business license and informing the verifiers that the defunct company had not received any subsidies. Xin Seng San's general manager was available for questions during verification and the verifiers gave every indication they were satisfied with the given answers.

- Seng San and Xin Seng San did not include the tolling company in its questionnaire response only because they believed the questionnaire was concerned with existing companies. Section III, title D of the questionnaire contains a two-fold requirement, requiring Seng San to report if it "obtained all or substantially all the assets of another company during the AUL period" only if that company still exists.[95] The tolling company Seng San allegedly failed to disclose was deregistered in 2012 and thus did not exist as an ongoing entity during the POI. Under *Nippon Steel*, for a company to act within the best of its ability does not require perfection and allows mistakes such as this.[96]
- Xin Seng San rejects the petitioner's comparison to *Large Diameter Welded Pipe from Korea*.[97] There, Commerce issued a specific supplemental questionnaire regarding a spin-off company that was likely still in existence at the time of the POI. Here, Commerce has not issued a specific supplemental questionnaire and the tolling company is separate and no longer in existence.
- If Commerce chooses to apply partial AFA, it should not include the land use LTAR program because Xin Seng San has established that it never received land rights from the GOC or any local government. Xin Seng San has provided the requisite paperwork and the GOC stated in its questionnaire that Xin Seng San has not received land or land-use rights after December 11, 2001. The determination of non-use of the Land LTAR program was verified during verification.
- Commerce should not apply partial AFA for any grant programs because Commerce did not originally ask about the defunct company in its questionnaire. Commerce has not issued a supplemental questionnaire about the defunct company and Seng San answered to the best of its ability when questioned about the defunct company and any subsidies it received. Seng San did not benefit from any programs that the defunct company might have benefited from and there is no evidence on the record that any programs existed during Seng San's corporate existence.

Ricai's Rebuttal Brief:[98]

- Commerce should not apply partial AFA to Seng Sen but if it does, it must conduct an Eighth Amendment evaluation to determine whether the amount is an excessive fine, penalty or forfeiture. The Eighth Amendment's Excessive Fines Clause is applicable if an imposition has a deterrent effect, such as is the case with countervailing duties. The

[95] *Id.* at 2 (citing Letter from Seng San, "Certain Plastic Decorative Ribbon from the People's Republic of China – Seng San Section III Questionnaire Response," dated March 19, 2018, at 3).
[96] *Id.* at 3 (citing *Nippon Steel Corp. & United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003)).
[97] *Id.* at 4 (citing 83 FR 30693 (June 29, 2018)).
[98] *See* Ricai Rebuttal Brief at 1-4.

Eighth Amendment requires proportionality between the amount of the duty and the gravity of the offense.[99] Seng San's alleged failure to disclose certain information that could have led to a subsidy is unlikely to have led to the finding of an additional subsidy. As this alleged omission is slight, any partial AFA should be proportionally small.

- Commerce must use an Eighth Amendment analysis to determine whether an application of partial AFA is appropriate based on the conduct of the "China-wide entity." The China Cooperative Companies[100] (CCC), the China-wide entity concerned here, cooperated with Commerce. As the application of partial AFA would be intended to deter a lack of cooperation, it would be inappropriate and excessive here and should not be included in the calculation of the China-wide rate.

Commerce's Position: The questionnaire clearly asks for a complete description of company history. In addition, it also explicitly instructs mandatory respondents that it is "essential to include a discussion of all such 'change in ownership' transactions within your responses to the questions below regarding your company's history."[101] The questionnaire also defines a change-in-ownership transaction as one where "your company obtained all or substantially all the assets of another company during the AUL period."[102] Seng San, however, did not mention that it had a predecessor company, which operated as a tolling company producing the same merchandise in the same factory from 1998 until 2012, until verification. Moreover, Seng San stated flatly in its questionnaire response that it "never obtained all or substantially all the assets of another company during the AUL period."[103] This response is simply inaccurate. Seng San later confirmed at verification that it had not included the predecessor company in its questionnaire response,[104] and that it had no documentation available to support its claims that the predecessor had received no subsidies.[105] This statement is at odds with Seng San's assertion that it had deregistered the predecessor company because the Shenzen government had "stopped supporting processing/tolling companies and, instead, started to support 'high tech' companies."[106]

Seng San's citation to language in the questionnaire indicating that it only needed to provide a questionnaire response if the predecessor company were still in existence is irrelevant. Seng San still needed to inform Commerce that it had a predecessor and that the change-in-ownership (CIO) took place, as required by the corporate structure and history section of the questionnaire, discussed above. As the petitioner notes, Commerce analyzes subsidies across the AUL of the

---

[99] *Id.* at 3-4 (citing *United States v. Bajakajian*, 524 U.S. 321 (1998)).
[100] The China Cooperative Companies is collectively made up of Dongguan Ricai Plastic Technology Co., Ltd., Ricai Film Artwork Materials Co., Ltd., and Sun Rich (Asia) Ltd.
[101] Commerce Letter to GOC re: Countervailing Duty Questionnaire, dated February 2,2018 (Initial CVD Questionnaire) at Section III, page 4.
[102] *Id.* at Section III, page 4.
[103] *See* Seng San February 23, 2018 Questionnaire Response at 4.
[104] The questionnaire states: "If any government assistance, as enumerated below, was received by companies which have since been merged with or purchased by your company, you are responsible for answering the questions with respect to such assistance to the merged or purchased company." *See* Initial CVD Questionnaire at Section III, page 8.
[105] *See* Seng San Verification Report at 3.
[107] *See* Initial CVD Questionnaire at Section III, page 4.

assets of the industry at issue,[107] in this case 11 years;[108] *i.e.*, Commerce examines any non-recurring subsidies received by a predecessor that might have been allocated to the POI. By not informing Commerce earlier of the CIO and the predecessor, Seng San impeded the investigation, under section 776(a)(2)(C) of the Act, by denying the petitioner the opportunity to comment on the relevancy of the predecessor to the investigation and on whether the predecessor may have received non-recurring subsidies that might have been allocated to the POI. Likewise, because Seng San did not disclose the CIO and the predecessor until verification, at which point the record was closed and the information gathering phase of the investigation was over, Commerce did not have the opportunity to issue a supplemental questionnaire and investigate possible subsidies provided to the predecessor or Seng San's claims that it maintained none of the predecessor's records. Verification is not the time to examine new factual issues for the first time.[109] Whether the predecessor received subsidies relevant to the POI or whether its claim of having no records is accurate are issues that Commerce could have been able to explore through supplemental questionnaires if Seng San had provided complete, timely responses to Commerce's questionnaire. For example, if the CIO and predecessor had been disclosed in the IQR, as requested, Commerce could have asked the GOC to confirm whether or not the predecessor had received non-recurring subsidies, if Commerce had first concluded that Seng San's claim that it did not maintain any books and records from a company that existed as recently as six years ago was plausible. Therefore, Seng San's failure to timely disclose the CIO and predecessor precluded Commerce from asking such questions, and thereby impeded the investigation, notwithstanding its statements at verification.

Commerce did not attempt to verify whether or not subsidies had been provided to the predecessor. During verification, after being informed of the existence of the CIO and predecessor, Commerce briefly discussed the CIO and predecessor with Seng San merely for the purpose of confirming the nature of the disclosure in order to determine whether it was, in fact, untimely new factual information that should have been reported earlier in the investigation, and to determine the significance of the late disclosure to the accuracy of the investigation. Therefore, the verification team asked whether Seng San's questionnaire response incorporated the predecessor and whether books and records were even available by which Seng San might be able to demonstrate whether or not the predecessor had received non-recurring subsidies.[110] After receiving responses to its questions, the verification team moved on to verify other matters. Commerce's decision to move forward without further questions on the CIO and predecessor after ascertaining that it has been presented with new factual information is not an indication by the verification team that it is "satisfied" that the issue has been resolved in favor of the respondent. The verification report, therefore, does not demonstrate that grants or other non-recurring subsidies were not received. Non-recurring grants received by the predecessor in a lump sum at an earlier point during the AUL would have appeared in the predecessor's books and records and Commerce has no way of knowing whether such grants received by the predecessor would be accounted for in a recognizable manner in the books and records of Seng San years later after the CIO.

---

[107] *See* Initial CVD Questionnaire at Section III, page 4.
[108] *See* PDM at 7.
[109] *See* Seng San Verification Agenda, dated June 12, 2018, at 2.
[110] *See* Memorandum, "Countervailing Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China" Verification of the Questionnaire Responses of Seng San Enterprises Co., Ltd.," dated July 18, 2018 (Seng San Verification Report) at 2-3.

Regarding land-use rights, however, Commerce agrees that the verification's conclusions do not warrant applying AFA to either land program under investigation. Unlike grants, Commerce countervails land use rights when a respondent possesses land-use rights during the POI. If land-use rights received by the predecessor were transferred to Seng San and Seng San still possessed the land-use rights, they would still be apparent in Seng San's books and records. As Seng San notes, Commerce verified that Seng San rented its factory space and found no evidence that it possessed a land-use certificate. Thus, even if the predecessor had previously held a land-use certificate itself, it was not transferred to Seng San. Thus, Commerce determines that the record supports finding Seng San does not benefit from any land-use rights program.

Separate from land, however, we find that Seng San's failure to disclose the predecessor company in a timely manner as requested in the questionnaire constitutes a failure to provide necessary information which impeded the proceeding pursuant to section 776(a) of the Act, and thus necessitates that Commerce use facts otherwise available. Further, because Seng San did not timely and completely respond to the questionnaire, we find that it failed to cooperate by not acting to the best of its ability to comply with a request for information, under section 776(b) of the Act. Therefore, we determine that application of partial AFA is warranted in determining subsidy rates for the non-recurring subsidy programs under investigation, namely grant programs. Moreover, because we have determined that Seng San acted uncooperatively by not disclosing the predecessor to Commerce in a timely manner, we determine AFA is warranted in selecting rates and we are applying the CVD hierarchy to the following subsidy programs:

- Foreign Trade Development Fund Grants
- Export Assistance Grants
- Export Interest Subsidies
- Subsidies for Development of "Famous Brands" and "China World Top Brands"
- Sub-Central Government Subsidies for Development of "Famous Brands" and "China World Top Brands"
- Funds for Outward Expansion of Industries in Guangdong Province
- Provincial Fund for Fiscal and Technological Innovation
- State Key Technology Renovation Fund
- Shandong Province's Environmental Protection Industry Research and Development Funds

In selecting AFA rates for the above programs, we are following the CVD hierarchy as explained in detail in the *Preliminary Determination*,[111] and are, in fact, applying the same AFA rates for the above programs to Seng San as to Santa's Collection. Accordingly, we determine a combined AFA rate for the above programs of 5.22 percent *ad valorem* for Seng San.

Regarding Ricai's contention that Commerce must apply an Eight Amendment analysis in applying AFA to either Seng San or "all other" producers and exporters,[112] the Eighth

[111] *See* PDM at 12-15.
[112] Ricai refers to the "China-wide entity." However, there is no "China-wide entity" in a CVD investigation or review, there are only the mandatory respondents selected for individual examination and "all other" producers and

Amendment applies only in the context of punishment, while the CVD law, including the AFA provisions, is remedial and not punitive.[113] Indeed, the Court of International Trade (CIT) has addressed this argument in the past and held that the Eighth Amendment is not applicable in this context because "a statutorily proper AFA rate is remedial rather than punitive."[114] Therefore, because Commerce has properly determined an AFA rate pursuant to the Act and its well-established CVD practice, Commerce does not need to perform the Eight Amendment evaluation as Ricai argues.

Comment 13: Application of AFA to Export Buyer's Credits

GOC's Case Brief:[115]

- The GOC's alleged failures to provide information concerning the operation of the Export Buyer's Credits program do not support Commerce's conclusion that AFA is warranted in determining the respondents' use of the program.
- The GOC's failure to provide 2013 administrative measures revisions is irrelevant to whether Commerce could have conducted the usage verification at the EX-IM Bank or at the offices of respondents and/or their customers. The GOC explained clearly in its questionnaire responses how the EX-IM Bank determined usage in this case. These methods were no different from the methods the EX-IM Bank has used and explained to determine usage prior to the 2013 revisions. Commerce has never even inquired as to how the 2013 revisions might affect the determination of usage. Therefore, no "gap" in the record arises from the GOC's failure to provide the 2013 revisions.
- A list of partner or correspondent banks involved in the program is also unnecessary. Regardless of whether, for example, the program could be disbursed through the Bank of America in the United States, program usage could still be determined though the EX-IM Bank's system in China. Thus, Commerce fails to make a rational connection between the information requested and the conclusion made.
- The GOC's failure to provide certain information in this case is no different from the GOC's failure to provide information regarding certain grant programs. The information that was not provided goes to the countervailability of the program, not usage. In the absence of this kind of information, usage can still be determined by (1) the GOC's questionnaire response; (2) a review of the EX-IM Bank's computer systems; and (3) the various forms of declarations of non-use provided to Commerce by the respondents' customers.
- The GOC explained how it determined non-use through a review of the bank's records. The missing information does not impeach this dispositive evidence. Additionally, the

exporters. We assume Ricai is referring to the "all others" rate when it refers to the China-wide entity, as the rate determined for "all other" producers and exporters is the rate that will apply to Ricai.

[113] *See Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, Final Results of CVD Administrative Review; 2010*, 78 FR 21594 (April 11, 2013) (*Kitchen Shelving PRC Final*), and accompanying IDM at 19.

[114] *See KYD, Inc. v. U.S.*, 779 F. Supp. 2d 1361, 1384 n. 24 (CIT 2011). *See also GPX Int'l Tire Corp. v. U.S.*, 89 F. Supp. 2d 1296, 1310 (CIT 2013); *KYD, Inc. v. U.S.*, 836 F. Supp. 2d 1410, 1415 (CIT 2012).

[115] *See* GOC Case Brief at 2-10.

respondents placed substantial evidence on the record in the form of affidavits and certified customer statements to demonstrate that they have not benefited from the Export Buyer's Credits program.

- While the CIT has found that the application of AFA to the GOC may adversely impact a cooperating party, Commerce should seek to avoid such impact if relevant information exists elsewhere on the record.[116] Such information exists on the record of this investigation: the affidavits and certified customer statements provided by the respondents.
- In the second administrative review of *Solar Cells*,[117] Commerce determined the Export Buyer's Credits program was not used based on information provided by the respondents despite also determining that the GOC had failed to cooperate. Commerce must follow that precedent here.

From Joynice's Case Brief:[118]

- Commerce should not apply the 10.54 percent AFA rate because Joynice's customers could not qualify for the Export Buyer's Credit. The GOC cooperated and provided sufficient evidence making the imposition of AFA unsupported.
- The GOC has established a firm floor of $2,000,000 in sales contracts that a company must meet in order to receive a buyer's credit.[119] Commerce has verified that none of Joynice's buyers had sales contracts valued over $2,000,000 – both Joynice's total export sales and its individual sales during the POI were well under $2,000,000. Even if the floor is a guideline rather than a firm floor, as understood by Commerce's translation, Joynice could not have received the buyer's credit during the POI based on this sales number.
- There is no evidence beyond the allegations of the petitioner that any company in the industry, including Joynice, benefited from an export credit. If Joynice had received the export credit, its customers would have benefited from it as well. As shown in the record, none of Joynice's customers received a benefit from such an export buyers credit.[120]

[116] *Id.* at 7 (citing *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1342 (CIT 2013) (citing a similar finding in *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254 (CIT 2012) (". . . in the context of a CVD investigation, an inference adverse to the interest of a non-cooperating government respondent may collaterally affect a cooperative respondent. While such an inference is permissible under the statute, it is disfavored and should not be employed when facts not collaterally adverse to a cooperative party are available.")).
[117] *Id.* at 8 (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 2013*) and accompanying IDM at Comment 1)).
[118] *See* Joynice Case Brief at 2-5.
[119] *Id.* at 2 (citing GOC documents and *RZBC Group Shareholding Co., Ltd., et al v. United States*, Slip Op. 16-64 (CIT June 30, 2016)).
[120] *Id.* at 3.

Seng San's Case Brief:[121]

- The GOC has confirmed that none of the Chinese exporters, including Seng San, benefited from the Export Buyers Credit program. Seng San never applied for the credit and informed its customers as much. According to the GOC, the China Ex-Im Bank disbursed the credit and notified the exporter of the disbursement on the day it occurred. Because of this notification by the Ex-Im Bank, Seng San could not have benefited from the credit without knowing it was receiving it.[122]
- Commerce has verified non-use of programs in the past and can do so again with Seng San.[123] If Seng San had benefited from the program, Commerce would have seen a payment from the China Ex-Im Bank on Seng San's books and records. Seng San cooperated with Commerce and cannot be held accountable for Commerce's decision not to verify Seng San's assertions that it did not benefit from the credit. Commerce cannot assume Seng San benefited from the credit just because Commerce does not understand how the benefit is received.
- Making an adverse inference finding that Seng San benefited from the credit would go against the evidence on record and flout the prohibition on the application of adverse inferences against a cooperating respondent.[124] The Court of International Trade has found that Commerce may not draw an adverse inference against a cooperative party based on the non-cooperation of another interested party.[125] Generally, if the GOC does not respond adequately to Commerce's requests for information, Commerce applies the respondent's own data to measure the benefit received and applies an adverse inference to the benchmark information requested.[126] Since Seng San was willing to cooperate with Commerce, Commerce must use Seng San's data rather than drawing an adverse inference that Seng San received loans.

Petitioner's Rebuttal Brief:[127]

- Commerce was correct in applying AFA to the export buyer's credit program as the GOC and Chinese companies have repeatedly failed to provide adequate information regarding the program. Commerce has been unable to verify companies' claims of non-use of the program in the past due to the GOC's refusal to allow Commerce to examine the Ex-Im

---

[121] *See* Seng San Case Brief at 1-6.
[122] *Id.* at 2.
[123] *Id.* at 2-3 (citing *Chlorinated Isocyanurates Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014), and accompanying IDM at 15 (*Chlorinated Isocyanurates 2012*); *Boltless Steel Shelving Units Prepackaged for Sale Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015) (*Boltless Steel Shelving from China*), and accompanying IDM at Comment X).
[124] *Id.* at 4-5 (citing section 782(e)(1)-(5) of the Act; *Calgon Carbon Corp. v. United States*, 2011 Ct. Intl. Trade LEXIS 21, 32 (CIT 2011); *Taian Ziyand Food Co. v. United States*, 637 F. Supp. 2d 1093, 1102 (CIT 2009)).
[125] *Id.* at 5-6 (citing *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1372 (Fed. Cir. 2014); *SKF USA Inc. v. United States*, 675 F. Supp. 2d 1264, 1276 (CIT 2009)).
[126] *Id.* at 6-7 (citing *Chlorinated Isocyanurates; 2012*, 79 FR 56560 and IDM at 21; *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent to Rescind, in Part; 2014,* 82 FR 2317 (January 9, 2017, and accompanying Decision Memo at 38).
[127] *See* Petitioner Rebuttal Brief at 2-7.

Bank loan database and search for respondents' customer names.[128] In this investigation, like in other investigations and administrative reviews, the GOC refused to provide information regarding the program and it became clear that any further requests for information would be futile. The GOC's lack of cooperation warrants the application of AFA to the program.

- There is insufficient information on the record to demonstrate that the respondents' customers did not benefit from the export credit program. Commerce cannot verify respondents' claims that their customers did not benefit from the program because the GOC will not provide information on its operation of the program or on whether third-party banks are involved in the operation of the program.[129]

Commerce's Position: Consistent with the *Preliminary Determination*, 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.[130] In prior examinations of this program, we found that the authority administering this lending program, the China Ex-Im Bank, 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.[131] As discussed in the *Preliminary Determination*, the GOC did not provide the requested information or documentation necessary for Commerce to develop a complete understanding of this program (*i.e.*, information regarding whether the China Ex-Im Bank 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).[132] Furthermore, this information is essential for Commerce to understand how export buyer's credits flow to and from foreign buyers and the China Ex-Im Bank.[133] Absent the requested information, the GOC'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 accurately verify those claims.

We disagree with the GOC's argument that Commerce did not need to review the 2013 revisions, see a list of correspondent banks, or consider the $2 million contract minimum to determine non-use of the program. As Commerce explained in the *Preliminary Determination*,[134] we requested

[128] *Id.* at 3-4.
[129] *Id*. at 5-6.
[130] *See* PDM at 16-17. *See also Solar Cells; 2014*, and accompanying IDM at Comment 1.
[131] *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) (*CORE from China*), and accompanying IDM at Comment 6; *see also 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; 2014)*, 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").
[132] *See* PDM at 16-17.
[133] *Id.* at 17.
[134] *Id.* at 16-17.

the 2013 revisions because information on the record of this proceeding indicated that the 2013 revisions affected important program changes. For example, the 2013 revisions may have eliminated the $2 million contract minimum associated with this lending program.[135] 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 GOC impeded Commerce's understanding of how this program operates and how to verify it with both the GOC and the respondent companies. In addition, record evidence indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank.[136] Specifically, the record information indicates that customers can open loan accounts for disbursements through this program with third-party banks, whereby the funds are first sent to the importer's account, which could be at the China Ex-Im Bank or third-party banks, and that these funds are then sent to the exporter's bank account.[137] Because of the complicated structure of loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary.[138] Thus, the GOC's refusal to provide the 2013 revisions to the administrative measures, which provide internal guidelines for how this program is administered by the China Ex-Im Bank constitutes withholding necessary information and impeded Commerce's ability to conduct its investigation of this program.

In this investigation, information on the record indicates that there were 2013 revisions to the administrative measures and the involvement of third-party banks, which were not present on the record *of Solar Cells from China; 2013*, *Chlorinated Isocyanurates from China; 2012*, and *Boltless Steel Shelving Units from China*, which have been cited by the GOC and the respondent companies to support their arguments.[139] In addition, we find that, with respect to *Chlorinated Isocyanurates from China; 2012*, *Boltless Steel Shelving Units from China*, and *Solar Cells from China; 2013*, Commerce has since modified its position with respect to the Export Buyer's Credit program. Commerce explained this in *Chlorinated Isocyanurates from China; 2014*,[140] where it determined that AFA was warranted because the GOC 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.[141] As such, we find the GOC's and the respondent companies' reliance on *Chlorinated Isocyanurates from China* and *Boltless Steel Shelving Units from China* is misplaced and unpersuasive.

We disagree with the GOC's argument that Commerce did not need to review the 2013 revisions, see a list of correspondent banks, or consider the $2 million contract minimum to determine non-use of the program. As Commerce explained in the *Preliminary Determination*,[142] we requested the 2013 revisions because information on the record of this proceeding indicated that the 2013

---

[135] *See* Initial CVD Questionnaire, dated February 2, 2018, at Attachment D.
[136] *See* Government of China's March 22, 2018 Questionnaire Response at Exhibit 5.
[137] *Id.*; *see also* Initial CVD Questionnaire, dated February 2, 2018, at Attachment D.
[138] *See* PDM at 17.
[139] *See* Initial CVD Questionnaire, dated February 2, 2018, at Attachment D.
[140] *See Chlorinated Isocyanurates from China; 2014* 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").
[141] *See Chlorinated Isocyanurates from China; 2014* IDM at Comment 2.
[142] *Id.* at 16-17.

revisions affected important program changes. For example, the 2013 revisions may have eliminated the $2 million contract minimum associated with this lending program.[143] 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 GOC impeded Commerce's understanding of how this program operates and how to verify it with both the GOC and the respondent companies. In addition, record evidence indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank.[144] Specifically, the record information indicates that customers can open loan accounts for disbursements through this program with third-party banks, whereby the funds are first sent to the importer's account, which could be at the China Ex-Im Bank or third-party banks, and that these funds are then sent to the exporter's bank account.[145] Because of the complicated structure of loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary.[146] Thus, the GOC's refusal to provide the 2013 revisions to the administrative measures, which provide internal guidelines for how this program is administered by the China Ex-Im Bank constitutes withholding necessary information and impeded Commerce's ability to conduct its investigation of this program.

In this investigation, information on the record indicates that there were 2013 revisions to the administrative measures and the involvement of third-party banks, which were not present on the record *of Solar Cells from China; 2013, Chlorinated Isocyanurates from China; 2012,* and *Boltless Steel Shelving Units from China*, which have been cited by the GOC and the respondent companies to support their arguments.[147] In addition, we find that, with respect to *Chlorinated Isocyanurates from China; 2012*, *Boltless Steel Shelving Units from China*, and *Solar Cells from China; 2013*, Commerce has since modified its position with respect to the Export Buyer's Credit program. Commerce explained this in *Chlorinated Isocyanurates from China; 2014*,[148] where it determined that AFA was warranted because the GOC 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 GOC's and the respondent companies' reliance on *Chlorinated Isocyanurates from China* and *Boltless Steel Shelving Units from China* is misplaced and unpersuasive.

Moreover, in *Solar Cells from China; 2013*, Commerce specifically stated that, even though we found the record in those cases supported a conclusion of non-use, we intended to continue requesting the GOC's full cooperation regarding this program in future proceedings, and we would base subsequent evaluations of this program on the record of each respective proceeding.[150] Thus, by not responding to our requests for additional information regarding the

---

[143] *See* Initial CVD Questionnaire, dated February 2, 2018, at Attachment D.
[144] *See* Government of China's March 22, 2018 Questionnaire Response at Exhibit 5.
[145] *Id*.; *see also* Initial CVD Questionnaire, dated February 2, 2018, at Attachment D.
[146] *See* PDM at 17.
[147] *See* Initial CVD Questionnaire, dated February 2, 2018, at Attachment D.
[148] *See Chlorinated Isocyanurates from China; 2014* 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; 2014* IDM at Comment 2.
[150] *See Solar Cells from China; 2013* IDM at Comment 2.

operation of this program, the GOC was uncooperative in the instant proceeding.[151] Furthermore, in *Solar Cells from China; 2014*, Commerce revised its position, stating that "…the Department finds the mandatory respondent's 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 GOC to the Department's questionnaires, the Department could not verify the respondent's customer's certifications of non-use."[152] Accordingly, Commerce can no longer rely on declarations of non-use.

In response to respondents' claims that they provided declarations from customers claiming non-use of the program, similar to documents provided in *Chlorinated Isocyanurates from China* and *Solar Cells from China; 2013*, we find that the facts of this case are different. As discussed above, in this investigation, we are unable to verify the accuracy of these documents because the primary entity that possesses such supporting records is the China Ex-Im Bank. We find respondents' customers' certifications of non-use to be unverifiable because, without a complete understanding of the operation of the program, which could only be achieved through a complete response by the GOC to our questions on this program, verification of the respondents' customer's certifications of non-use would be meaningless.

Importantly, notwithstanding Commerce's inability to verify such certifications, in this investigation, neither respondent provided certifications for all customers regarding non-use.[153] Therefore, even disregarding the modification to Commerce's position as to whether it can verify customer usage, the facts of this investigation are different from both *Chlorinated Isocyanurates from China* and *Solar Cells from China; 2013*, in which the respondents provided certifications of non-use from all of their customers. We also do not find persuasive Joynice's argument that a certain customer's failure to provide a certification of non-use is evidence that that particular customer did not, in fact, use the program.[154] Even assuming that Joynice's speculation regarding that customer's silence could somehow confirm non-use, the fact remains that there are other customers who did not submit certifications of non-use. Therefore, neither *Chlorinated Isocyanurates from China* nor *Solar Cells from China; 2013* provide support for Joynice's argument. The CIT has found, in fact, that Commerce's application of AFA in determining usage of this program in the absence of customer certifications to be reasonable.[155]

The GOC's failure to provide the 2013 revisions to the administrative measures also renders Joynice's arguments regarding the $2,000,000 threshold irrelevant. Joynice argues that none of its customers could have benefited from the export buyer's credits because their purchases were less than $2,000,000.[156] However, without the most recent administrative measures on the record, Commerce has no way to determine whether the $2,000,000 requirement still exists or whether it would be applicable in this situation.

---

[151] *See* GOC's April 23, 2018 First Supplemental Questionnaire Response (GOC April 23, 2018 SQR) at 1.
[152] *See Solar Cells from China*; *2014* IDM at Comment 1.
[153] *See* Joynice IQR at Exhibits 8-9 and Seng San IQR at Exhibits 7-8.
[154] The exact details of this argument are BPI. *See* Joynice Case Brief at 3-4.
[155] *Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334, 1355 (CIT 2016).
[156] *See* Joynice Case Brief at 2-3.

With respect to the arguments that AFA should not be applied for this program, we continue to find that the GOC withheld necessary information that was requested and significantly impeded the proceeding. Thus, we 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 GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Specifically, the GOC withheld information that we requested that was reasonably available to it. As such, we find that an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. As AFA, we determine that this program provides a financial contribution, is specific, and provides a benefit to the respondent companies within the meaning of sections 771(5)(D), 771(5A), and 771(5)(E) of the Act, respectively. This finding is identical to the application of AFA in prior proceedings. Specifically, we find the circumstances in this case to be similar to those in *Chlorinated Isocyanurates from China; 2014* and *Truck and Bus Tires from China*,[157] where Commerce requested operational program information from the GOC on this program, pointing out that there were substantial changes to the administrative measures in 2013, which the GOC declined to provide. As we explained in the *Preliminary Determination*, this information is necessary to the analysis of this program.[158]

The GOC argues that, while it may not have provided specific information regarding the mechanics of the Export Buyer's Credit program, information that it did not provide only goes to the countervailability of this program and not to usage.[159] As stated above and in our *Preliminary Determination*, we disagree. Our complete understanding of the operation of this program is a prerequisite to our reliance on the information provided by the company respondents regarding non-use. Therefore, without the necessary information that we requested from the GOC, the information provided by the company respondents is incomplete for reaching a determination of non-use.[160] Accordingly, information regarding the operation of this program and the respondents' usage would come from the GOC.

In particular, the GOC's failure to provide the 2013 revisions to the administrative measures and other omissions concerning the operation of the program prevented Commerce from verifying usage at either the Ex-Im Bank itself or at the respondents. There simply is inadequate information on the record concerning the operation of the program to allow Commerce to determine what to look for at verification at either the Ex-Im Bank or the company respondents or even which appropriate names should be sought. Verification at the respondents' customers is also not an option as certifications of non-use were not provided for all customers and, importantly, the GOC refused to provide a list of correspondent banks involved in the program.[161] Without such a list, Commerce would not know which loans from which banks to

[157] *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 and Bus Tires from China*), and accompanying IDM at Comment 5.
[158] *See* PDM at 16-17.
[159] *See* GOC Case Brief at 2-10.
[160] *See, e.g., Chlorinated Isocyanurates from China; 2014* IDM at Comment 2.
[161] We asked the GOC twice to provide the 2013 revisions and a list of correspondent banks. The GOC's responses to our questions were not helpful. See, e.g., GOC SQR April 23, 2018 at 1 (the GOC replied: "The EIBC reviewed its databases and confirmed that none of the respondents' U.S. customers used this program. This database contains

examine at verification or what indicia might exist in the underlying loan documentation that the loan is in fact a buyer's credit originating with the Ex-Im Bank. Therefore, non-usage information on the record from the GOC, the respondents, and their customers is unverifiable.

Commerce considered all the information on the record of this proceeding, including the incomplete 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 a complete and reliable understanding of the program.[162]

The U.S. Court of Appeals for the Federal Circuit (CAFC) has affirmed that certain information comes from the government and that Commerce can take an action that adversely affects a respondent if the government fails to provide requested information:

> Fine Furniture is a company within the Country of China, benefitting directly from subsidies the {GOC} may be providing, even if not intending to use such subsidy for anticompetitive purposes. Therefore, a remedy that collaterally reaches Fine Furniture has the potential to encourage the {GOC} to cooperate so as not to hurt its overall industry. Unlike *SKF*, Commerce in this case did not choose the adverse rate to punish the cooperating plaintiff, but rather to provide a remedy for the {GOC's} failure to cooperate.[163]

---

records of Export Buyer Credit usage that would be disbursed ether through EIBC or through partner/correspondent banks. Since none of these banks were used with respect to respondents' U.S. customers, this question is not applicable.").

[162] *See* PDM at 16-17.

[163] *See Fine Furniture*, 748 F.3d at 1365, 1373.

IX. CONCLUSION

We recommend approving all the above positions. If these Commerce 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

12/21/2018

X

Signed by: PRENTISS SMITH

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain plastic decorative ribbon, having a width (measured at the narrowest span of the ribbon) of less than or equal to four (4) inches, but disregarding any features that measure 4 inches or less in width, such as tapering or cutting at the ends or in a bow knot, provided that aggregate length of such features comprises no more than 20 percent of the length of the ribbon. Subject merchandise includes but is not limited to ribbon wound onto itself; a spool, a core or a tube (with or without flanges); attached to a card or strip; wound into a keg- or egg-shaped configuration; made into bows, bow-like items, or other shapes or configurations; and whether or not packaged or labeled for retail sale. The subject merchandise is typically made of substrates of polypropylene, but may be made in whole or in part of any type of plastic, including without limitation, plastic derived from petroleum products and plastic derived from cellulose products. Unless the context otherwise clearly indicates, the word "ribbon" used in the singular includes the plural and the plural "ribbons" includes the singular.

The subject merchandise includes ribbons comprised of one or more layers of substrates made, in whole or in part, of plastics adhered to each other, regardless of the method used to adhere the layers together, including without limitation, ribbons comprised of layers of substrates adhered to each other through a lamination process. Subject merchandise also includes ribbons comprised of (a) one or more layers of substrates made, in whole or in part, of plastics adhered to (b) one or more layers of substrates made, in whole or in part, of non-plastic materials, including, without limitation, substrates made, in whole or in part, of fabric.

The ribbons subject to this investigation may be of any color or combination of colors (including without limitation, ribbons that are transparent, translucent or opaque) and may or may not bear words or images, including without limitation, those of a holiday motif. The subject merchandise includes ribbons with embellishments and/or treatments, including, without limitation, ribbons that are printed, hot-stamped, coated, laminated, flocked, crimped, die-cut, embossed (or that otherwise have impressed designs, images, words or patterns), and ribbons with holographic, metallic, glitter or iridescent finishes.

Subject merchandise includes "pull-bows" 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, and "pre-notched" bows, an assemblage of notched ribbon loops arranged one inside the other with the notches in alignment and affixed to each other where notched, and which the end user forms into a bow by separating and spreading the loops circularly around the notches, which form the center of the bow. Subject merchandise includes ribbons that are packaged with non-subject merchandise, including ensembles that include ribbons and other products, such as gift wrap, gift bags, gift tags and/or other gift packaging products. The ribbons are covered by the scope of this investigation; the "other products" (i.e., the other, non-subject merchandise included in the ensemble) are not covered by the scope of this investigation.

Excluded from the scope of this investigation are the following: (1) ribbons formed exclusively by weaving plastic threads together; (2) ribbons that have metal wire in, on, or along the entirety of each of the longitudinal edges of the ribbon; (3) ribbons with an adhesive coating covering the entire span between the longitudinal edges of the ribbon for the entire length of the ribbon; (4) ribbon formed into a bow without a tab or other means for attaching the bow to an object using adhesives, where the bow has: (a) an outer layer that is either flocked, made of fabric, or covered by any other decorative coating such as glitter (whether of plastic or non-plastic materials), and (b) a flexible metal wire at the base which permits attachment to an object by twist-tying; (5) elastic ribbons, meaning ribbons that elongate when stretched and return to their original dimension when the stretching load is removed; (6) ribbons affixed 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; (7) ribbons that are (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where the ribbon comprises a 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; (8) imitation raffia made of plastics having a thickness not more than one (1) mil when measured in an unfolded/untwisted state; (9) cords, *i.e.*, multiple strands of materials that have been braided, gimped or twisted together; and (10) ribbons in the form of bows having a diameter of less than seven-eighths (7/8) of an inch, or having a diameter of more than 16 inches, based on actual measurement. For purposes of this exclusion, the diameter of a bow is equal to the diameter of the smallest circular ring through which the bow will pass without compressing the bow.

The scope of the investigation excludes shredded plastic film or shredded plastic strip, in each case where the shred does not exceed 5 mm in width and does not exceed 18 inches in length.

The scope of the investigation excludes plastic garlands and plastic tinsel garlands, imported in lengths of not less than three (3) feet. The longitudinal base of these garlands may be made of wire or non-wire material, and these garlands may include plastic die-cut pieces. Also excluded are items made of plastic garland and/or plastic tinsel where the items do not have a tab or other means for attaching the item to an object using adhesives. This exclusion does not apply to plastic garland bows, plastic tinsel bows, or other bow-like products made of plastic garland or plastic tinsel.

The scope of the investigation excludes ribbons made exclusively of fabric formed by weaving or knitting threads together, or by matting, condensing or pressing fibers together to create felt fabric, regardless of thread or fiber composition, including without limitation, fabric ribbons of polyester, nylon, acrylic or terylene threads or fibers. This exclusion does not apply to plastic ribbons that are flocked.

The scope of the investigation excludes ribbons having a width of less than three (3) mm when incorporated by weaving into mesh material (whether flat or tubular) or fabric ribbon (meaning ribbon formed by weaving all or any of the following: man-made fibers, natural fibers, metal threads and/or metalized yarns), in each case only where the mesh material or fabric ribbon is imported in the form of a decorative bow or a decorative bow-like item.

Further, excluded from the scope of the antidumping duty investigation are any products covered by the existing antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from the People's Republic of China (China). *See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates*, 73 FR 66595 (November 10, 2008).

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3920.20.0015 and 3926.40.0010. Merchandise covered by this investigation also may enter under subheadings 3920.10.0000; 3920.20.0055; 3920.30.0000; 3920.43.5000; 3920.49.0000; 3920.62.0050; 3920.62.0090; 3920.69.0000; 3921.90.1100; 3921.90.1500; 3921.90.1910; 3921.90.1950; 3921.90.4010; 3921.90.4090; 3926.90.9996; 5404.90.0000; 9505.90.4000; 4601.99.9000; 4602.90.0000; 5609.00.3000; 5609.00.4000; and 6307.90.9889. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.