C-570-953
Administrative Review
POR: 1/1/2016-12/31/2016
Public Document
AD/CVDOps/II/TKS/MVT

DATE: March 19, 2019

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Final Results of 2016 Countervailing Duty Administrative Review: Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China

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I. Summary

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain narrow woven ribbons with woven selvedge (ribbons) 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] There is one respondent in the 2016 administrative review of the countervailing duty (CVD) order on ribbons from China (China): Yama Ribbons and Bows Co., Ltd. (Yama). For these final results, we analyzed the case and rebuttal briefs submitted by interested parties in this administrative review. As a result of our analysis, we made no changes to the *Preliminary Results* and continue to determine that the Yama received a 23.70 percent *ad valorem* net countervailable subsidy rate during the period of review (POR).[2] We address the issues raised in the "Analysis of Comments" section below.

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[1] *See also* section 701(f) of the Act.
[2] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative; 2016*, 83 FR 50891 (October 10, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

II. Background

On October 10, 2018, the Department of Commerce (Commerce) published the *Preliminary Results* for this review. We invited parties to comment on the *Preliminary Results*. On November 9, 2018, we received case briefs from the government of the People's Republic of China (GOC) and Yama.[3] On November 21, 2018, we received a rebuttal brief from the petitioner, Berwick Offray LLC.[4]

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[5] Therefore, the revised deadline for the final results of this administrative review is March 19, 2019.

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

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

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

Comment 2: The Application of AFA to the Provision of Electricity for LTAR Program

Comment 3: The Application of AFA to the Export Buyer's Credit Program

Comment 4: The Application of AFA to Yama Due to Non-Cooperation of the GOC

Comment 5: Whether Programs Found to be Countervailable Based on AFA are Specific

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[3] *See* Letters, dated November 9, 2018, from the GOC, "Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Case Brief" (GOC's Case Brief); and Yama, "Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China, Countervailing Duty: Case Brief" (Yama's Case Brief).
[4] *See* Petitioner's Letter, "Narrow Woven Ribbons with Woven Selvedge from People's Republic of China: Rebuttal Brief of Petitioner Berwick Offray LLC," dated November 21, 2018 (Petitioner's Rebuttal Brief).
[5] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day.

III. Use of Adverse Facts Available

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

IV. Subsidies Valuation Information

A. Allocation Period

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

B. Attribution of Subsides

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

C. Denominators

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

D. Benchmarks and Discount Rates

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

V. Programs Determined to be Countervailable

Commerce made no changes to the methodology used to calculate the subsidy rates for the following programs in its *Preliminary Results*. For descriptions, analyses, and calculation methodologies for these programs, *see* the Preliminary Results. The final program rates for Yama are as follows:

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

   0.03 percent *ad valorem*

2. *Income Tax Reduction for High and New Technology Enterprises*

   0.41 percent *ad valorem*

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

3. *Preferential Tax Policy for Wages of Disabled Employees*

    0.01 percent *ad valorem*

4. *Provision of Synthetic Yarn for LTAR*

    10.45 percent *ad valorem*

5. *Provision of Caustic Soda for LTAR*

    0.26 percent *ad valorem*

6. *Provision of Electricity for LTAR*

    1.07 percent *ad valorem*

7. *Export Buyer's Credits*

    10.54 percent *ad valorem*

8. *Xiamen Municipal Science and Technology Grant Program*

    0.34 percent *ad valorem*

9. *International Market Development Fund Grants for Small and Medium-sized Enterprises*

    0.21 percent *ad valorem*

10. *Assistance for Recruiting Rural Labor*

    0.04 percent *ad valorem*

11. *Assistance for Recruiting Vocational Institution and/or College Graduates*

    0.03 percent *ad valorem*

12. *Insurance Expense Assistance*

    0.09 percent *ad valorem*

13. *Interest Assistance for Loans Obtained for Technology Projects*

    0.18 percent *ad valorem*

14. *Assistance for Textile Exhibition*

    0.01 percent *ad valorem*

15. *Training Fee Rebate*

    0.01 percent *ad valorem*

16. *Payments from Xiamen Commerce Bureau*

    0.02 percent *ad valorem*

VI. Programs Found to be Not Countervailable

- *Yellow Standard Vehicle*

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

- *Rural Labor Training Assistance*

VIII. Programs Determined Not to be Used During the POR

1. *Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half) Program*
2. *Local Income Tax Exemption and Reduction Programs for "Productive" Foreign-Invested Enterprises*
3. *Xiamen Promotion of Domestic Market Grants*
4. *Jimei District Tax Bonus Prize*
5. *The State Key Technology Renovation Project Fund*
6. *Bonus for Fujian Province Famous Brands*
7. *Export Assistance Grants*
8. *Export Interest Subsidy Funds for Enterprises Located in Zhejiang Province*
9. *Technology Grants for Enterprises Located in Zhejiang Province*
10. *Xiamen Municipal Cleaner Production*
11. *High and New Technology Enterprises Local Government Assistance*
12. *Xiamen City Small Medium Enterprises Development Support Fund*
13. *Small Medium Enterprises Assistance*
14. *Finance Bureau of Xiamen City*
15. *Tax Bureau of Jimei District*
16. *Patent Application Supporting Program*
17. *Import Tariff and Value-Added Tax (VAT) Exemptions for Foreign-Invested Enterprises (FIEs) Using Imported Technology and Equipment*
18. *Import Tariff and VAT Exemptions for Certain Domestic Enterprises Using Imported Technology and Equipment*
19. *VAT Rebate for FIE Purchases of Domestically Produced Equipment*
20. *Tax Program for High or New Technology FIEs*
21. *Preferential Tax Policies for Research and Development for FIEs*

22. *Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Equipment*
23. *Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises*
24. *Preferential Tax Policies for Township Enterprises*
25. *Tax Subsidies to FIEs in Specially Designated Areas*
26. *Preferential Tax Policies for Export-Oriented FIEs*
27. *Provision of Land in the Xiamen Jimei (Xingling) Taiwanese Investment Zone for LTAR*

IX. Analysis of Comments

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

Yama's Case Brief

- Yama did not use the provision of synthetic yarn and caustic soda for LTAR programs during the POR.[11] The CVD questionnaire in several instances clearly instructs that, if a program is not used by the respondent during the POR, only basic information about the program is needed; full reporting is limited to those programs which a respondent used.[12] Thus, Commerce must view the GOC's April 20 and July 12, 2018, supplemental questionnaire responses in light of Commerce's general requirements regarding the non-use of programs.
- Commerce found that the GOC withheld information regarding both its role and the role of the Chinese Communist Party (CCP) in the ownership and management of certain of Yama's input producers and applied AFA in the calculation of the duty rate for these input LTAR programs.
- However, the record of this review demonstrates that the GOC cooperated to the best of its ability because it followed the instructions in the CVD questionnaire and provided complete responses demonstrating: 1) that Yama's six synthetic yarn suppliers and one caustic soda supplier were privately owned and, thus, not "authorities" within the meaning of section 771(5((B) of the Tariff Act of 1930, as amended (the Act); 2) that there is no government influence over Yama's synthetic yarn and caustic soda suppliers; 3) how the synthetic yarn and caustic soda industries operate in China; and 4) that there is no influence by the CCP or related organizations over these suppliers.[13]
- There is no evidence to suggest that Yama's private synthetic yarn and caustic soda suppliers were under any influence by the GOC. Instead, Commerce based its decision on speculation.[14]

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[11] Yama notes that, where it does not specifically address the provision of caustic soda for LTAR program, its arguments regarding the provision of synthetic yarn for LTAR program also apply to the caustic soda for LTAR program.
[12] *See* Yama's Case Brief at 11-12.
[13] *Id.* at 12-22 (citing the GOC's January 3, 2018, questionnaire response; the GOC's April 20, 2018, supplemental questionnaire response (GOC's SQR); and the GOC's July 12, 2018, supplemental questionnaire response (GOC's 2SQR)).
[14] *Id.* at 14.

- Commerce may not automatically resort to adverse inferences once it decides that a party has failed to comply with its request. The GOC's responses either directly answered Commerce's questions regarding the provision of synthetic yarn and caustic soda for LTAR or stated why such data did not exist or was unavailable to the GOC. The GOC cannot provide information that it does not have; hence, the information the GOC provided should have been sufficient to Commerce.
- Commerce did not inform the GOC of any deficiencies in its submissions, nor did it provide the GOC with an opportunity to remedy any such deficiencies.[15]
- Commerce's determination cannot be based on AFA because the GOC provided sufficient answers to Commerce's questions and there is no evidence to contradict the information in the GOC's April 20 and July 12, 2018, supplemental responses that Yama's private synthetic yarn and caustic soda suppliers were influenced by anything other than market forces.[16]
- Commerce's determination cannot be based on "isolated tidbits of data which suggest a result contrary to the clear weight of the evidence."[17]
- Commerce may only apply AFA when evidence on the record is lacking and Commerce must fill gaps by relying on other sources of information.[18] Moreover, Commerce may not use AFA to disregard information on the record that is neither missing nor deficient.[19]
- In addition, Commerce may not use AFA against a government where there is no evidence that it maintained the data it refused to give Commerce.[20] There is no central information database to search for the information Commerce requested which would identify if any individual owners, members of the board of directors, or senior managers are government or CCP officials. This type of information is not public and is subject to the confidentially laws of China. Further, the courts have held that Commerce cannot hold a government liable for not disclosing confidential information.[21]
- Yama is the respondent in this administrative review and Commerce has made no finding that Yama deserves AFA, only that the GOC deserves such treatment. The courts have ruled that a respondent cannot be penalized for the alleged transgressions of another party.[22]
- When viewed in its entirety, the record established by the GOC is clear and complete for Commerce to make a determination that Yama did not receive synthetic yarn or caustic soda for LTAR.[23] There is substantial evidence on the record that clearly shows that Yama's suppliers are neither authorities under U.S. law nor public bodies within the

[15] *Id.* at 15 and 22 (citing *Ferro Union, Inc. v. United States*, 23 CIT 178, 44 F. Supp. 2d 1310, 1328 (1999), citing *Borden, Inc v. United States*, 4F. Supp. 2d 1221, 1246).
[16] *Id.* at 15 and 19.
[17] *Id.* at 19 (citing *USX Corp. v. United States*, 11 CIT 82, 84, 655 F. Supp. 487, 489 (1987)).
[18] *Id.* (citing *Zhejiang Dunan Hetian Metal Co. v. United States,* 652 F.3d 1333, 1346 (Fed. Cir. 2011) (*Zhejiang Dunan)*; and *Nippon Steel Corp. v. United States*, 37 F.3d 1373 (Fed. Cir. 2003)).
[19] *Id.* at 20 (citing *Zhejiang Dunan*, 653 F.3d at 1346).
[20] *Id.* (citing *Maverick Tube Corp. v. United States*, 857 F.3d 1353 (Fed. Cir. 2017) (*Maverick*)).
[21] *Id.* at 20 (citing *Maverick*, 857 F.3d 1353).
[22] *Id.* at 22 (citing *e.g.*, *Mueller Comercial de Mex., S. de R.L. de C.V. v. United States*, 753 F.3d 1227; and *Shantou Red Garden Foodstuff Co. v. United States*, 815 F. Supp. 2d 1311, 1323 (CIT 2012) (*Red Garden*)).
[23] *Id.* at 19 (citing *Diversified Products Corp v. United States*, 6 CIT 155, 161 (1983)).

meaning of the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement).[24]

GOC's Case Brief

- The GOC acted to the best of its ability in providing information on the ownership of Yama's synthetic yarn and caustic soda suppliers.
- Contrary to Commerce's Public Body Memorandum, the existence of CCP primary party organizations inside private companies do not make the private companies "government authorities." Even if an owner, a director, or a manager of a private company supplier is a member or representative of any of the CCP organizations, this would not make the management and business operations of the company subject to any intervention by the GOC. Therefore, Commerce's application of AFA due to the CCP's involvement in a private company is insufficient to transform the company into a government authority because the Company Law and the Chinese Civil Servant Law stipulate that companies must operate independently without being subject to any governmental intervention.[25]
- There is a distinction between the presence of CCP primary party organizations in state-owned enterprises (SOEs) and those in private companies. The Public Body Memorandum focuses mainly on CCP primary party organizations' presence in SOEs and does not provide support that these organizations "hold meetings that shadow formal board meetings and often trump their decisions" in private companies. Thus, the memorandum does not indicate that CCP primary party organizations exert control over private businesses or that their presence is sufficient to vest a company with government authority.[26]
- The most common activities for CCP primary party organizations within private companies entail activities tied to corporate social responsibility. The CCP cannot project direct authority over the operation of the private company and does not fund the enterprise or control any of the company's funds. Further, the CCP cannot appoint or dismiss board member or managers. Thus, the CCP does not project authority over the operation of the private company.[27]
- The case Commerce cited in the *Preliminary Results* in support of its finding that the provision of synthetic yarn and caustic soda for LTAR programs are specific pertains to a "Provision of Electricity" program in *Hardwood Plywood*. As such, this case does not provide any support for the specificity finding in the synthetic yarn and caustic soda for LTAR programs at issue in this proceeding.[28]

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[24] *Id.* at 20 (citing section 771(5)(B) of the Act; and WTO SCM Agreement).
[25] *See* GOC's Case Brief at 12-17 (citing Memorandum, "2016 Countervailing Duty Administrative Review of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Additional Documents for the Preliminary Results," dated October 2, 2018 (Additional Documents for the Preliminary Results), at Attachment III: Public Body Memorandum; GOC's SQR; and GOC's 2SQR).
[26] *Id.* at 14 (citing Additional Documents for the Preliminary Results, at Attachment III: Public Body Memorandum).
[27] *Id.* at 14-15.
[28] *Id.* at 17-18 (citing *Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013) (*Hardwood Plywood)*, and accompanying Issues and Decision Memorandum (IDM) at Comment 3).

- To be consistent with prevailing market conditions, in accordance with section 771(5)(E)(iv) of the Act, the tier two benchmark prices for synthetic yarn and caustic soda should not be inclusive of ocean freight or VAT.[29]
- In past CVD proceedings, input VATs have been credited against output VATs and have not been a part of the charge to the cost of raw materials that are ultimately sold as a component of a finished good. In such instances, upon exportation, exporters would receive a rebate to the input VAT amount paid on the previously purchased raw material. Therefore, the VAT is not part of the cost of the raw material because it will either be offset against the output VAT or rebated upon exportation. No evidence on the record suggests that the VAT levied on synthetic yarn and caustic soda was not rebated or not offset when imported into China. Thus, Commerce should not add VAT on the two inputs to the benchmark price.[30]

Petitioner's Rebuttal Brief

- Commerce should reject Yama's and the GOC's arguments that the synthetic yarn and caustic soda for LTAR programs are not countervailable. Instead, Commerce should continue to find that the GOC did not act to the best of its ability and apply AFA to these programs.[31]
- The GOC did not provide Commerce with the necessary country-wide market information relating to market distortion with regard to these programs. Commerce has verified in the past that the GOC maintains databases that contain the necessary information, which the GOC should have provided in this review.[32]
- In addition, the GOC failed to provide information regarding the government authority status of individual input suppliers and the role of the CCP. However, there is substantial information on the record which demonstrates that Yama's input suppliers are likely under significant influence of the CCP. Therefore, Commerce should continue to find Yama's input suppliers to be government authorities in the final results because the GOC has failed to provide critical information on the CCP and its control over Yama.[33]

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

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[29] *Id.* at 18-23 (citing section 771(5)(E)(iv) of the Act; Article 14 of the WTO SCM Agreement; and Appellate Body Report, United States – *Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R (December 8, 2014) at paras. 4.249 and 4.306).
[30] *Id.* at 22 (citing *Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*; *2008*, 74 FR 64045 (December 7, 2009), and accompanying IDM at Comment 33; and Petitioner's Letter, "Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China/Benchmark Data," dated September 4, 2018).
[31] *See* Petitioner's Rebuttal Brief at 10.
[32] *Id.* at 10-12 (citing *Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 77 FR 75978 (December 26, 2012), and accompanying IDM at Comment 13).
[33] *Id.* at 12-13 (citing *Preliminary Results* PDM at 9).

Regarding market distortion, as we stated in the *Preliminary Results,*[34] we requested that the GOC provide the following information regarding the synthetic yarn and caustic soda industries to determine whether the GOC is the predominant provider of these inputs and whether its significant presence in the market distorts all transaction prices for both inputs:[35]

a. The total number of producers.
b. The total volume and value of Chinese domestic <u>consumption</u> of {input} and the total volume and value of Chinese domestic <u>production</u> of {input}.
c. The percentage of domestic consumption accounted for by domestic production.
d. The total volume and value of imports of {input}.
e. The percentage of total volume and (separately) value of domestic production that is accounted for by companies in which the Government maintains an ownership or management interest, either directly or through other Government entities, including a list of the companies that meet these criteria.
f. A discussion of what laws, plans or policies address the pricing of the input, the levels of production of the input, the importation or exportation of the input, or the development of the input capacity. Please state which, if any, central and sub-central level industrial policies pertain to the input industry.

Commerce requested such information to determine whether the GOC is the predominant provider of these inputs in China and whether its significant presence in the market distorts all transaction prices. The GOC provided the following: 1) the total number of enterprises and the total value of production regarding Chinese producers of synthetic yarn and caustic soda; 2) the total volume and value of domestic consumption and production of synthetic yarn and caustic soda; and 3) the percentage of domestic consumption accounted for by domestic production and the volume and value of imports of synthetic yarn and caustic soda.[36]

Commerce issued a supplemental questionnaire requesting further information regarding the two inputs, including that the GOC provide a list with the number of producers in which it maintains an ownership or management interest.[37] In response, the GOC stated that the National Bureau of Statistics of China has a database with the names of these companies; however, these company names cannot be disclosed under Article 25 of the Statistics Law of China and, therefore, the GOC stated that it could not provide the requested information.[38] Further, the GOC stated that it does not maintain information of the industries in China that purchase synthetic yarn and caustic soda directly.[39] Consequently, the GOC failed to identify, and provide GOC ownership information for, the companies comprising the synthetic yarn and caustic soda industries.

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[34] *See Preliminary Results* PDM at 7-8.
[35] *See* Commerce's supplemental questionnaire issued to the GOC on March 23, 2018 (GOC SQ); *see also* Commerce's second supplemental questionnaire issued to the GOC on June 21, 2018 (GOC 2SQ).
[36] *See* GOC's SQR at 32-54.
[37] *See* GOC's 2SQ at 2-4.
[38] *See* GOC's 2SQR at 40-44.
[39] *Id.*

Information on the record indicates that in prior CVD proceedings, Commerce was able to confirm at verification that the GOC maintains two databases at the State Administration of Industry and Commerce: one is the business registration database, showing the most up-to-date company information; a second system, "ARCHIVE," houses electronic copies of documents such as business licenses, annual reports, capital verification reports, etc.[40] Therefore, we find that the GOC has an electronic system available to it to gather the industry-specific information Commerce requested, but elected not to assist Commerce in obtaining necessary information for this proceeding.

Thus, because we determine that the GOC withheld necessary information that was requested of it, Commerce continues to rely on facts available in these final results.[41] Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information.[42] Consequently, an adverse inference is warranted in the application of facts available. In drawing an adverse inference, we continue to find that Chinese prices from transactions involving Chinese buyers and sellers are significantly distorted by the involvement of the GOC.[43]

Moreover, consistent with the *Preliminary Results*, we continue to find that each of the private companies which supplied Yama with synthetic yarn and caustic soda is an "authority" within the meaning of section 771(5)(B) of the Act. As discussed in the *Preliminary Results* under "Certain Producers of Synthetic Yarn and Caustic Soda are 'Authorities,'" in order for Commerce to do a complete analysis of whether producers of synthetic yarn and caustic soda are "authorities" within the meaning of section 771(5)(B) of the Act, we sought information regarding whether any individual owners, board members, or senior managers were government or CCP officials and the role of any CCP primary organization within the companies.[44] Specifically, to the extent that the owners, managers, or directors of a producer are CCP officials or otherwise influenced by certain entities, Commerce requested information regarding the means by which the GOC may exercise control over company operations and other CCP-related information.[45] Commerce explained its understanding of the CCP's involvement in China's economic and political structure in the current and past China CVD proceedings,[46] including why it considers the information regarding the CCP's involvement in China's economic and political structure to be relevant.

The GOC reported that all eight of the synthetic yarn producers and the one caustic soda producer were privately owned.[47] Regarding these nine producers which the GOC identified as

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[40] *See* Additional Documents for the Preliminary Results at Attachment II.
[41] *See* section 776(a)(2)(A) of the Act.
[42] *See* section 776(b) of the Act.
[43] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998).
[44] *See Preliminary Results* PDM at 9-10.
[45] *See* GOC SQ at the Input Producer Appendix; *see also* GOC 2SQ.
[46] *See Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014), and IDM at Comment 5 (*Citric Acid 2012 AR*). *See also* Additional Documents for the Preliminary Results at Attachment III, which includes the Public Body Memorandum and its attachment, the CCP Memorandum.
[47] *See* GOC's SQR at 17-58 and Exhibit C.1-1; and GOC's 2SQR at Sup1.Exhibit C.1-1.

privately-owned companies, we asked the GOC to provide information about the involvement of the CCP in each of these companies, including whether individuals in management positions are CCP members, in order to evaluate whether the privately-owned input suppliers are "authorities" with the meaning of section 771(B) of the Act. While the GOC provided a long narrative explanation of the role of the CCP, when asked to identify any owners, members of the board of directors, or managers of the input suppliers who were government or CCP officials during the POR, the GOC explained that there is "no central informational database to search for the requested information,"[48] and directed Commerce to obtain this information directly from Yama's privately-owned input suppliers.[49] In *Citric Acid 2012 AR*, we found that the GOC was able to obtain the information requested, independently from the companies involved, and that statements from companies, rather than from the GOC or CCP themselves, were not sufficient.[50]

As explained in the *Preliminary Results*, we understand that the CCP exerts significant control over economic activities in China.[51] Thus, Commerce continues to find, as it has in prior CVD proceedings,[52] that the information requested regarding the role of CCP officials and CCP committees in the management and operations of Yama's privately-owned input suppliers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act.

Therefore, we find that the GOC withheld necessary information that was requested of it and that Commerce must rely on facts available in conducting our analysis of Yama's privately-owned input suppliers.[53] As a result of the incomplete responses to Commerce's supplemental questionnaires, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, we determine that the GOC withheld information, and that an adverse inference is warranted in the application of facts available.[54] As AFA, we find that CCP officials are present in each of Yama's privately-owned input suppliers as individual owners, managers and members of the boards of directors, and that this gives the CCP, as the government, meaningful control over the companies and their resources. As explained in the Public Body Memorandum, an entity with significant CCP presence on its board or in management or in party committees may be controlled such that it possesses, exercises, or is vested with governmental authority.[55] Thus, for these final results we continue to find that privately-owned input suppliers of synthetic yarn and caustic soda which supplied Yama are "authorities" within the meaning of section 771(5)(B) of the Act.

Moreover, we disagree with the GOC that our reliance on *Hardwood Plywood* in the *Preliminary Results* (to support finding that the provision of synthetic yarn and caustic soda for LTAR

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[48] *See* GOC's SQR at 30.
[49] *Id*.
[50] *See Citric Acid 2012 AR* IDM at Comment 5.
[51] *See* Additional Documents for the Preliminary Results at Attachment III, which includes the Public Body Memorandum and its attachment, the CCP Memorandum.
[52] *See e.g.*, *Citric Acid 2012 AR*.
[53] *See* section 776(a)(2)(A) of the Act.
[54] *See* section 776(b) of the Act.
[55] *See, e.g.*, Additional Documents for the Preliminary Results at Attachment III: Public Body Memorandum at 33-36, 38.

programs provide a financial contribution and are specific) was misplaced. We cited this case in support of the proposition that, when the government fails to provide requested information concerning alleged subsidy programs, as AFA, we typically find that a financial contribution exists under the alleged program and the program is specific.[56] This proposition applies to any alleged subsidy program, and is not limited to the electricity program discussed in *Hardwood Plywood*, as the GOC suggests.

Finally, we disagree with the GOC's argument that we erred in calculating the tier two benchmark prices for synthetic yarn and caustic soda inclusive of both ocean freight and VAT, because such costs are not consistent with prevailing market conditions. Pursuant to 19 CFR 351.511(a)(2)(iv), Commerce will adjust the benchmark prices to reflect the price a firm actually paid or would pay if it imported the product, while also making adjustments for delivery charges and import duties. Commerce adds freight, import duties, and VAT to the world prices in order to estimate what a firm would have paid if it imported the product. As long as VAT is reflective of what an importer would have paid, then VAT is appropriate to include in the benchmark. Accordingly, we find that our regulations require us to consider all adjustments necessary to make a proper comparison. Moreover, we also disagree with the GOC's argument that VAT is not part of the cost of the raw material because, upon exportation, exporters would receive a rebate to the input VAT amount paid on the previously purchased raw material. Commerce has considered and rejected this argument previously.[57] This argument fails to consider Commerce's obligation to conduct a comparison between a market price and the price paid by the respondent. Section 19 CFR 351.511(a)(2) of Commerce's regulations does not contemplate future reimbursements for refunds or taxes, but instead requires us to evaluate the purchases in the form in which they are made. Whether a firm recovers VAT after delivery of the input is immaterial to the delivered price that Commerce must use as the comparison price under 19 CFR 351.511(a)(2)(iv). As a result, and consistent with Commerce's past practice, we have not excluded ocean freight or VAT from our benchmark prices for these final results.[58]

Comment 2: The Application of AFA to the Provision of Electricity for LTAR Program

GOC's Case Brief

- There is no basis for Commerce to apply either facts available or AFA to this program. The GOC cooperated to the best of its ability and timely provided a voluminous amount of information (including final unadjusted and adjusted effective electricity price schedules); however, Commerce's requests for information were often overly broad and unreasonably burdensome such that the GOC could not reasonably accommodate every single request.[59]
- Information on the record contradicts Commerce's finding that the GOC failed to explain the roles and nature of the cooperation between the National Development and Reform

[56] *See Preliminary* Results PDM at 27 (citing Hardwood *Plywood* IDM at Comment 3).
[57] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34828, and accompanying IDM at Comments 7 and 8.
[58] *See e.g.*, *Beijing Tiahai Indus. Co. v. United State*, 52 F. Supp. 3d 1351, 1372-75 (CIT 2015); *see also Zhaoqing New Zhongya Aluminum Co., Ltd. v. United States*, 929 F. Supp. 2d 1324, 1327 (CIT 2013).
[59] *See* GOC's Case Brief at 27-28.

Commission (NDRC) and the provincial authorities in setting electricity price adjustments. Specifically, there are three levels of electricity subject to the Pricing Catalogues of Central Government amended in 2016: on-grid (uploading) price, transmission price, and sales (retail) price. The NDRC has price-setting authority with regard to the first two levels, while the provincial governments are authorized to adjust retail electricity prices within their respective provinces.[60]

- Since April 2015, provincial electricity pricing authorities are no longer required to submit price proposals to the NDRC for approval. The NDRC replaced the provincial price proposals with price adjustment guidelines, in which the provinces may depart from the guidelines in adjusting the retail prices based on their own circumstances. The NDRC has begun delegating total pricing autonomy to the provinces and requires only that the provinces file their designed tariff schedule for recording purposes.[61]
- The GOC provided concrete examples in the electricity price schedule of Fujian province, where Yama is located. This example shows that Fujian province reduced its electricity price by greater than the amount suggested by the NDRC, without obtaining the NDRC's approval.[62]
- Moreover, as shown in the *Notice of National Development and Reform Commission on Lowering Coalfired Electricity On-Grid Price and General Industrial and Commercial Electricity Price (*Notice 3105) Article 8, the GOC now directs that the retail sales price of electricity be determined by the market forces, instead of by the direction of the government.[63] This article demonstrates the NDRC's policy orientation towards market-based price-setting for electricity.
- In addition, the necessary laws and regulations, as well as concrete examples to demonstrate that electricity prices are derived using a formula based on the market price of coal, rather than industrial policies or any other preferential policies, are on the record of this administrative review.[64]
- The alleged provision of electricity for LTAR program is not specific and, thus, is not a countervailable subsidy. Specifically, the effective electricity price schedules provided by the GOC show that: 1) the eligibility criteria do not favor any industry or enterprise; 2) all commercial suppliers must adhere to the electricity price schedules and the relevant electricity prices are applicable to all eligible producers without discretionary reviews; and 3) the electricity prices in effect during the POR were determined at the provincial level, based on market conditions, not by the NDRC.
- The GOC certified the accuracy of the factual statements in its responses, which are subject to verification. Thus, it is unreasonable to question the accuracy of the GOC's explanations when the record contains no evidence to contradict them.

[60] *See* GOC's Case Brief at 24.
[61] *Id*. at 26, 27.
[62] *Id*. at 24 (citing GOC's 3SQR at 4).
[63] *Id*. at 25.
[64] *Id*. (citing GOC's SQR and GOC's 3SQR).

Petitioner's Rebuttal Brief

- Commerce, as it did in the *Preliminary Results,* has applied AFA to the GOC for the same failures with regard to this program many times and it should continue to do so for these final results.
- Commerce found that the information on the record indicates that the GOC is ultimately in control of electricity pricing in China.[65]
- Thus, Commerce should continue find this program countervailable for these final results.

Commerce's Position: In these final results, we continue to find that the GOC did not provide the necessary information Commerce requested pertaining to whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act.

As explained in the *Preliminary Results*, in order to analyze the financial contribution and specificity of this program, we requested that the GOC provide information regarding the roles of provinces, the NDRC, and cooperation between the provinces and the NDRC in electricity price adjustments. Specifically, we requested, *inter alia*: Provincial Price Proposals for the province where Yama is located for applicable tariff schedules that were in effect during the POR; all original NDRC Electricity Price Adjustment Notice(s) that were in effect during the POR; the procedure for adjusting retail electricity tariffs and the role of the NDRC and the provincial governments in this process; the price adjustment conferences that took place between the NDRC and the provinces, grids and power companies with respect to the creation of all tariff schedules that were applicable to the POR; the cost elements and adjustments that were discussed between the provinces and the NDRC in the price adjustment conferences; and how the NDRC determines that the provincial level price bureaus have accurately reported all relevant cost elements in their price proposals with respect to generation, transmission and distribution. We requested this information in order to determine the process by which electricity prices and price adjustments are derived, identify entities that manage and impact price adjustment processes, and examine cost elements included in the derivation of electricity prices in effect throughout China during the POR.

As discussed in detail below, we disagree with the GOC's claims that it: 1) explained the roles and nature of the cooperation between the NDRC and the provincial authorities in setting electricity price adjustments; 2) demonstrated that Fujian province, where Yama is located, reduced its electricity price by greater than the amount suggested by the NDRC, without obtaining the NDRC's approval; 3) provided Notice 3015 Article 8 which demonstrates that the retail sales price of electricity be determined by the market forces rather than by the direction of the government; and 4) provided the necessary laws and regulations, as well as concrete examples to demonstrate that electricity prices are derived using a formula based on the market price of coal, rather than industrial policies or any other preferential policies.

[65] *See* Petitioner's Rebuttal at 13 (citing *Preliminary Results* PDM at 14-15).

As explained in the *Preliminary Results*, we found that both Notice 3105 and the *Notice of National Development and Reform Commission on Adjusting Schedule of Coal-fired Power Generation Grid Purchase Price and Sale Price of Industrial and Commercial Electricity of Each Province (District or City)* (Notice 748) explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC.[66] Article 1 of Notice 748 stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour.[67] Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts.[68] Article 2 indicates that the "price space" formed due to this price reduction "{s}hall be mainly used to lower the sales price of electricity for industrial and commercial use."[69] Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity.[70] Articles 6 and 7 indicate that provincial pricing authorities "{s}hall make and distribute the on grid price of electricity and specific plans of the price adjustment in accordance with the average standard of price adjustment in Annex 1 and submit filings to the National Development and Reform Commission," and that the "{a}forementioned electricity price adjustment shall be enforced since April 20th, 2015."[71] Finally, Article 10 directs that "{a}dministrative departments at all levels in charge of pricing shall guarantee the implementation of the price adjustment."[72] NDRC Notice 3105 also directs additional price reductions, and stipulates at Articles II and X, that local price authorities shall implement in time the price reductions included in its Annex and report NDRC resulting prices to the NDRC.[73]

In addition, as discussed above, we found that both Notice 748 and Notice 3105 explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Article 2 of NDRC Notice 3169 provides that, when the "thermal coal price is fluctuated for more than {Renminbi (RMB)} 30 Yuan (inclusive) comparing with benchmark coal price during the cycle," then an adjustment must be made pursuant to a "tiered regressive linkage for {the} excess portion" using a "linkage coefficient" which is also defined in Article 2.[74] Article 3 stipulates that "{b}enchmark on-grid electricity price of coal-fired machine unit should be strictly measured and determined by coal electricity price linkage mechanism" using a specific formula defined in Appendix 1 of Notice 3169.[75] Article 3 further stipulates that the "industrial and commercial electricity price should be correspondingly adjusted; adjustment level should be determined by on-grid electric quantity of coal-fired machine unit, on-grid electric quantity of other power sources, outsourced electric quantity condition, energy-saving and eco-friendly electricity price and other factors" using a specific formula defined in Appendix 1 of Notice 3169.[76]

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[66] *Id*. at 14.
[67] *Id*. at 14 (citing GOC's SQR at Exhibit II.E.30.)
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.* (citing GOC's 2SQR at Sup2. Exhibit III.13).
[74] *Id.* at 15 (citing GOC's 2SQR at *S*up2 Exhibit III.14.a-3.
[75] *Id.*
[76] *Id.*

Neither Notice 748 nor Notice 3105 explicitly stipulates that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions, as the GOC states to be the case.[77] Rather, both notices indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices, by mandating average price adjustment targets with which the provinces are obligated to comply in setting their own specific prices.[78] Moreover, while Article IV of Notice 3169 does indicate that "local government and relevant departments should not designate the transaction price," Articles 2 and 3 of Notice 3169 also makes clear that the NDRC stipulates the formulae by which prices are to be adjusted.[79]

Furthermore, we disagree the GOC's claim that the examples it provided show that Fujian province (*i.e.*, where Yama is located) reduced its electricity price by greater than the amount suggested by the NDRC, without obtaining the NDRC's approval. The record evidence shows that, during the POR, Fujian province implemented electricity price adjustments at the direction of, and with guidance from, the NDRC (*e.g.*, *Notice of the Fujian Provincial Price Bureau on Implementing the Notice Issued by the National Development and Reform Commission Concerning the Adjustment of Electricity Price*).[80]

We also find no merit to the GOC's argument that, because it certified the accuracy of the factual statements in its responses, it is unreasonable for Commerce to question them. As explained above and in the *Preliminary Results*, not only did the GOC not provide complete responses to Commerce's questions regarding the alleged provision of electricity for LTAR, but also we found evidence on the record (*e.g.*, Notices 748, 3105 and 3169) that contradicts the GOC's claims regarding the role of the NDRC in setting and adjusting electricity prices. Therefore, we are unable to accept the GOC's factual statements related to this program at face value, despite their certifications of accuracy.

As explained in the *Preliminary Results*, the GOC failed on several occasions to explain the roles and nature of cooperation between the NDRC and provinces in deriving electricity price adjustments.[81] Further, the GOC failed to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by provinces themselves.[82] Moreover, the requested information which the GOC did not provide is key to our understanding of the NDRC's role in establishing, implementing, and enforcing electricity pricing at the local provincial level. Thus, in accordance with sections 776(a)(1), 776(a)(2)(A), and 776(a)(2)(C) of the Act, we found that the information necessary to our analysis of financial contribution and specificity was not available on the record, the GOC withheld information requested by us, and the GOC significantly impeded this proceeding. In addition, we noted that the GOC did not ask for additional time to gather and provide such information. Therefore, we relied on "facts

[77] *Id.* (citing GOC's 2SQR at Sup2. Exhibit III.13).
[78] *Id.* at 15 (citing *e.g.,* GOC's SQR at Exhibits II.E.30 (Notice 748 Article 10) and GOC's 2SQR at Sup2. Exhibit III.13 (Notice 3105 Articles II and X).
[79] *Id.* at 15-16.
[80] GOC's 3SQR at Sup3. Exhibit 5.
[81] *See Preliminary Results* PDM at 13-15.
[82] *Id.* at 15-16.

available" in our preliminary results.[83] Moreover, we preliminarily determined, in accordance with section 776(b) of the Act, that the GOC failed to cooperate to the best of its ability to comply with our repeated requests for information. As a result, we preliminarily determined that an adverse inference was warranted in the application of facts available.[84] In applying AFA, we found that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. The GOC failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments. Therefore, we preliminarily relied on AFA in selecting the benchmark for determining the existence and amount of the benefit.[85] The benchmark rates we preliminarily selected are derived from the record of this administrative review and are the highest electricity rates on the record for the applicable rate and user categories.

Thus, consistent with the *Preliminary Results*, we continue to find, based on AFA, that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. Given that the GOC also failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments, we continue to find, consistent with the *Preliminary Results*, that the application of AFA in selecting the benchmark for determining the existence and amount of the benefit is warranted.

Comment 3: The Application of AFA to the Export Buyer's Credit Program

Yama's Case Brief

- The record clearly demonstrates that the GOC gave Commerce complete and verifiable information regarding the Export Buyer's Credit program.
- The GOC confirmed that the Export-Import Bank of China (EXIM Bank) did not provide bank credits to any of Yama's U.S. customers during the POR. The GOC fully answered the relevant questions regarding the Export Buyer's Credit Program. In addition, the GOC explained that if the program had been used, both the EXIM Bank and Yama would have the records. The GOC's and Yama's statements were subject to verification, if Commerce mistrusted the answers it received, but Commerce chose not to verify.
- It was not necessary for the GOC to respond to the standard questions appendix or program-specific questions regarding this program; Commerce found from other sources information regarding the 2013 revisions to the program. Commerce did not need to know how the Export Buyer's Credit Program worked when both the GOC and Yama reported that it was not used. Commerce has provided no reasonable rationale as to why

[83] *Id*. at 16.
[84] *Id*. (citing section 776(b) of the Act).
[85] *Id*. (citing section 776(b)(4) of the Act).

the GOC has to answer detailed questions regarding EXIM Bank financing, but not for any other program that was not used. This is arbitrary and capricious.[86]

- Moreover, the fact that the GOC did not provide certain information requested by Commerce does not overshadow the fact that none of Yama's U.S. customers received any benefits under this program during the POR. Specifically, the GOC's failure to provide a list of banks used by Yama's customers was moot because, since Yama's customers did not use this program, there could not be any banks that were distribution points for the funds received under this program.

GOC's Case Brief

- Commerce's use of AFA to justify finding that Yama used the Export Buyer's Credit program is contrary to law and not supported by the record evidence. The Federal Circuit has repeatedly instructed that the application of AFA requires a two-part inquiry under the Act.[87]
- The record conclusively demonstrates that Yama did not use or benefit from this program during the POR.[88] The GOC affirmatively stated that none of Yama's customers used this program and that if, a buyer's loan was issued, the exporter would have known and been involved in the management of the loan. Therefore, Commerce has a clear path to find non-use by either: 1) accepting the responses of the GOC and Yama; or 2) verifying Yama's books and records to confirm its non-involvement with this program.[89]
- The GOC's alleged failure to provide information concerning the operation of the Export Buyer's Credit program does not justify Commerce's finding whether Yama in fact used and benefited from this program. Commerce stated that the information concerning the 2013 revisions to this program and the participations of third-party banks was needed to determine the countervailability of the program, effectively conceding that the information is not relevant to the question of whether the program was actually used.[90]
- In *Guizhou Tyre*, the Court of International Trade (CIT) examined Commerce's AFA finding regarding this identical program (where the GOC did not provide the 2013 revisions) and found that Commerce's AFA finding was not supported by the record evidence.[91] Moreover, the court found in that case that Commerce chose "a more convoluted route in substituting fact derived from the record with it owns unsupported conclusions."[92]

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[86] *See* Yama's Case Brief at 25 (citing *Atlantic Sugar, Ltd, v. United States*, 744 F.2d 1556 (Fed. Cir. 1984); and *Tung Mung Dev. Co., v. United States*, 354 F.3d 1371, 1378 (Fed. Cir. 2004)).
[87] *See* GOC's Case Brief at 3 (citing *Mueller Commercial de Mex. S. de R.L. de C.V. v. United States*, 753 F.3c 1227, 1231-32 (Fed. Cir. 2014); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1381 (Fed. Cir. 2003); *see also* sections 776(a)(2) and 776(b) of the Act).
[88] *Id*. at 4-5 (citing GOC's SQR; GOC's 2SQR; and Yama's April 9, 2018, questionnaire response (Yama's QR)).
[89] *Id*. at 6-7.
[90] *Id*. 5-6.
[91] *Id*. at 6 (citing *Guizhou Tyre Co., Ltd. v. United States*, Slip Op. 18-140 at 6 (CIT October 17, 2018) (*Guizhou Tyre*)).
[92] *Id*. at 7 (citing *Guizhou Tyre*).

- The record shows that Yama fully cooperated with Commerce with respect to this program. The CIT has held that Commerce must avoid applying AFA to a cooperating respondent if relevant information exists elsewhere on the record.[93]
- Commerce also failed to follow its CVD AFA hierarchy in assigning an AFA rate to this program.[94] Commerce used an AFA rate of 10.54 percent *ad valorem,* determined for the Export Buyer's Credit program in *Truck & Bus Tires*.[95] However, the rate assigned in that investigation was a rate for the "Preferential Lending to the Coated Paper Industry" program assigned in *Coated Paper from China*.[96] In other words, Commerce assigned an AFA rate to this program in this review using information from a different program and a different proceeding, without first determining whether there is a similar or comparable program within this proceeding.[97]
- The "Policy Loans to Narrow Woven Ribbons Producers from State-Owned Commercial Banks" program is a more appropriate program to use as AFA because it is from this same proceeding and involves the same type of banks and loans as the "Preferential Lending to the Coated Paper Industry" program. Resorting to a rate for a different industry and from a case that is more than eight years old is unlawful and cannot be justified.[98]
- In addition, Commerce failed to corroborate the 10.54 percent rate it assigned to this program. While the statute does not require Commerce, when applying AFA, to estimate what a respondent's CVD rate would have been, it does not allow mathematically impossible rates.[99] Even assuming all of Yama's U.S. customers utilized this program, the benefit they could have received is at most an interest-free loan to purchase the subject merchandise from Yama. If this were the case, the maximum amount of benefit these customers could have received is the interest that would have been due on the loans.
- Record evidence shows that the one-year loan interest rate in U.S. dollars applicable to the POR is 1.38 percent.[100] Thus, theoretically the highest benefit Yama could have received under this program is 1.38 percent, making the AFA rate Commerce assigned impossible to corroborate. Commerce should not assign an AFA rate higher than this amount in the final results.

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[93] *Id.* at 7 (citing *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1342 (CIT 2013)).
[94] *Id*. at 8-9.
[95] *Id*. at 9 (citing *Truck and Bus Tire from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017) (*Truck & Bus Tires*)).
[96] *Id*. (citing *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China; Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from China*)).
[97] *Id*.
[98] *Id*. at 8 and 10.
[99] *Id.* at 10 (citing section 776(d)(3) of the Act).
[100] *Id*. (citing. Memorandum, "2016 Countervailing Duty Administrative Review of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Interest Rate Benchmark Memorandum," dated October 2, 2018).

Petitioner's Rebuttal Brief

- Commerce should continue to apply an AFA rate of 10.54 percent to this program in the final results.
- The GOC is the party responsible for fully reporting the details of this program and demonstrating that Yama's customers did not use the program during the POR; however, the GOC has consistently failed to provide this information in other cases.[101]
- As Commerce has previously found, the GOC maintains the information to determine whether this program was used or not.[102]
- Commerce has correctly concluded that it is pointless to pursue any further investigation of this program because of the GOC's intentional refusals.[103]
- It is not reasonable for Commerce to assign a *de minimis* rate of 0.03 percent as AFA in the final results, as the GOC suggests. When assigning a subsidy rate based on AFA, Commerce's practice is to select a rate that is sufficiently adverse as to induce respondents to provide Commerce with complete and accurate information and to ensure that respondents do not obtain a more favorable result by failing to cooperate to the best of their ability than they would obtain through cooperation.[104] Here, the 10.54 percent AFA rate Commerce has been assigning to this program has not been sufficiently adverse to induce a response from the GOC. Therefore, Commerce should raise the AFA rate assigned to this program, not lower it.

Commerce's Position: In these final results, we continue to find that the information on the record does not support finding that Yama did not use the Export Buyer's Credit program during the POR. In prior examinations of this program, we found that the authority administering this lending program, the EXIM 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 Yama's claimed

[101] *See* Petitioner's Rebuttal Brief at 4-6 (citing, *e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012), and accompanying IDM (*Solar Cell I Investigation); see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM (*Solar Cell I AR I*); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014), and accompanying IDM (*Solar Cell II Investigation*) (collectively, *Solar Cells*).

[102] *Id. at 6 (citing, e.g., Solar Cell I Investigation* IDM at Comment 18; Solar Cell I AR1 IDM at Comment 1; and Solar Cell II Investigation IDM at Comment16).

[103] *Id. at 7 (citing Preliminary Results* PDM at 11; and *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) (*Solar Cell I AR3)*, and accompanying IDM at 30-31.

[104] *See* Petitioner's Rebuttal Brief at 8 (citing *Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying IDM at "*Use of Facts Otherwise Available and Adverse Facts Available*" section; *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103-316 (1994) at 870).

non-use of the program.[105] As we noted in the *Preliminary Results*, the GOC failed to provide the requested information and documentation necessary for Commerce to develop a complete understanding of this program (*i.e.*, information pertaining to the 2013 revisions to the program, a list of all third-party banks involved in the disbursement/settlement of export buyer's credits, and a list of all partner/correspondent banks involved in disbursement of funds under this program).[106] This information is necessary for Commerce to understand the details of this program, including: the application process, internal guidelines and rules governing this program, interest rates used during the POR, and whether the GOC uses third party banks to disburse/settle export buyer's credits. By refusing to provide this information, the GOC impeded Commerce's ability to conduct its investigation of this program.

We disagree with the GOC's argument that Commerce did not need to review the 2013 revisions or see a list of correspondent banks to determine non-use of the program. As we explained in the *Preliminary Results*,[107] we requested 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 two million U.S. dollar contract minimum associated with this lending program.[108] Such information is critical to understanding how export buyer's credits flow to and from foreign buyers and the EXIM Bank. Absent the requested information, we are unable to rely on the GOC's and Yama's claims of non-use of this program. In response to Yama's argument that it provided declarations from customers claiming non-use of the program, 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 Yama's 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 these customer's certifications of non-use would be meaningless. Moreover, in *Solar Cell I AR3*, Commerce revised its position regarding customers' certifications of non-use, 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."[109] Accordingly, Commerce can no longer rely on declarations of non-use without a complete response by the GOC to Commerce's questionnaires.

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[105] *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 Isos*), 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").

[106] *See Preliminary Results* PDM at 10-11.

[107] *Id.*

[108] *Id.*

[109] *See Solar Cell I AR3* IDM at Comment 1.

Thus, we continue to find that the application of AFA is appropriate because the GOC failed to provide the requested information needed to fully analyze this program.[110] As explained above, we continue to find that the GOC withheld necessary information that was requested of it, and thus, Commerce must continue to rely on facts otherwise available in these final results, pursuant to sections 776(a)(2)(A) and (2)(C) of the Act. Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for required information. Specifically, the GOC withheld requested information that was reasonably available to it. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. As AFA, we continue to determine that this program provides a financial contribution, is specific, and provides a benefit to Yama within the meaning of sections 771(5)(D), 771(5A), and 771(5)(E) of the Act, respectively. This finding is similar to the application of AFA in prior proceedings. Specifically, we find that the circumstances in this case are similar to those in *Truck & Bus Tires* and *Chlorinated Isos,*[111] where Commerce requested operational program information from the GOC on this program, pointing out that there were substantial changes to the program based on the 2013 revisions, which the GOC declined to provide. As stated above and in our *Preliminary Results*, we continue to find that this information is necessary to our analysis of this program.[112]

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. As stated above and in our *Preliminary Results*, 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.[113] Accordingly, information regarding the operation of this program and the respondents' usage would come from the GOC.

Commerce considered all the information on the record of this proceeding, including the incomplete statements of non-use provided by Yama. As explained above and in the *Preliminary Results*, we are unable to rely on the information provided by Yama because Commerce lacks a complete and reliable understanding of the program.[114]

The U.S. Court of Appeals for the Federal Circuit 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

[110] *Id.*
[111] *See Truck & Bus Tires* IDM at "Use of Facts Otherwise Available and Adverse Inferences" and Comments 2 – 6; and *Chlorinated Isos* IDM at Comment 2.
[112] *See Preliminary Results* PDM at 10-12.
[113] *See Chlorinated Isos* IDM at Comment 2.
[114] *See Preliminary Results* PDM at 10-12.

> 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.[115]

Therefore, we continue to base the rate for the Export Buyer's Credit program on AFA for these final results.

Furthermore, we disagree with the GOC's claims that: 1) Commerce failed to follow the CVD AFA hierarchy in assigning an AFA rate for this program; and 2) the Policy Loans to Narrow Woven Ribbons Producers from State-Owned Commercial Banks program is a more appropriate program to use as an AFA rate. As we explained in the *Preliminary Results*, it is Commerce's practice in CVD proceedings to assign as AFA a countervailable subsidy rate pursuant to its well-established hierarchical methodology, in accordance with section 776(d) of the Act.[116] As we explained in the *Preliminary Results*, under the new section 776(d) of the Act, Commerce may use as AFA a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[117]

Consistent with section 776(d) of the Act and our established practice, we select the highest calculated rate for the same or similar program as AFA.[118] When selecting rates in an administrative review, we first determine if there is an identical program from any segment of the proceeding and use the highest calculated rate for the identical program (excluding *de minimis* rates). If no such identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) within the same proceeding and apply the highest calculated rate for the similar/comparable program, excluding *de minimis* rates. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program in any CVD case involving the same country, but we do not use a rate from a program if the industry in the proceeding cannot use that program.[119]

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115 *See Fine Furniture*, 1365, 1373.
116 *See Preliminary Results* PDM at 12.
117 *Id.* (citing section 776(d)(3) of the Act).
118 *See Preliminary Results* PDM at 12 (citing *see, e.g.*, *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM at 13; *see also Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").
119 *Id.* at 12 (citing *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM at 13; *see also Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

Thus, for the *Preliminary Results,* because we have not previously calculated a rate for the Export Buyer's Credit program in this proceeding, and we found no similar/comparable program within this proceeding without a *de minimis* rate, we relied on the rate determined for this program in another CVD proceeding involving China.[120] Specifically, we assigned an AFA rate of 10.54 percent *ad valorem*, the rate determined for the Export Buyer's Credit program in *Truck & Bus Tires*, as the rate for this program. However, this rate was not calculated in *Truck & Bus Tires*, but in *Coated Paper from China* for the Preferential Lending to the Coated Paper Industry program.[121] As a result, it is not a calculated rate for the identical program, but rather a calculated rate from a non-company specific program in any CVD case involving the same country. While the GOC argues that we should instead use the rate calculated for the Policy Loans to Narrow Woven Ribbons Producers from State-Owned Commercial Banks program, because it is a similar/comparable program in this proceeding, we note that the rate calculated for this program is 0.03 percent *ad valorem*. Commerce's practice in selecting AFA program rates is to normally treat rates of less than 0.5 percent to be *de minimis*.[122] Therefore, it would be inappropriate to assign a *de minimis* rate as AFA to the Export Buyer's Credit program. Finally, we disagree with the GOC that we should not assign a rate to this program higher than 1.38 percent (the amount it calculates as theoretically the highest benefit Yama could have received under this program). As noted above, section 776(d)(3) of the Act provides that Commerce is not required to estimate what the countervailable subsidy rate would have been if a non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party. Consequently, and consistent with our practice in *Ribbons AR 2015,*[123] we continue to assign as AFA the 10.54 percent rate calculated in *Coated Paper from China* to the Export Buyer's Credit program for purposes of the final results.

Comment 4: The Application of AFA to Yama due to Non-Cooperation of the GOC

Yama's Case Brief

- Commerce cannot use AFA against Yama simply because the GOC allegedly failed to participate to the best of its ability. Even if the GOC is found to be a non-cooperative party in a proceeding, Commerce must take into consideration whether the respondent

[120] *See Preliminary Results* PDM at 13.
[121] *Id*. at 13.
[122] *See, e.g.*, *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."
[123] *See Ribbons AR 2015* IDM at Comment 2.

has any control over the GOC and how an AFA decision against the GOC might be unfair to a cooperative respondent.[124]

- The courts are clear that respondents cannot be held liable for deficiencies in data in the possession of the parties other than the mandatory respondent.[125]
- In *SKF*, the CIT rejected Commerce's application of AFA to a cooperative respondent due to another interested party's failure to cooperate to the best of its ability.[126] This ruling applies equally to CVD cases and to the GOC when, as in this instance, Yama has been found to be completely forthcoming.

Petitioner's Rebuttal Brief

- Commerce should continue apply AFA to the GOC, which necessarily impacts Yama's subsidy margin.
- Citing *Essar Steel* as an example, the courts have recognized that Commerce seeks different information from the government and the company respondents and that the government's failure to provide information can impact a company respondent.[127]
- In addition, in *GPX*, the CIT recognized that parties other than the mandatory respondent possess necessary information in CVD investigations and that application of AFA may indirectly affect the respondent when those parties fail to cooperate.[128]

Commerce's Position: Commerce has previously explained its practice with respect to the application of AFA to governments in the context of CVD proceedings, including in *Ribbons AR 2015*.[129] In general, Commerce's practice is to find, as AFA, that alleged subsidy programs constitute a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively.[130] Therefore, consistent with our practice, where the GOC withheld necessary information and failed to cooperate by not acting to the best of its ability to comply with our requests for information, Commerce applied AFA to the GOC by finding that: 1) the Chinese synthetic yarn and caustic soda markets are distorted by the involvement of the GOC; 2) privately-owned input suppliers of synthetic yarn and caustic soda are "authorities"; 3)

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[124] *See* Yama's Case Brief at 26 (citing *Mueller Comercial de Mexico, S. de R.L. de C.V. v. United States*, 753 F.3d 1227 (*Mueller*)).

[125] *Id.* at 27 (citing *e.g., Luoyang Bearing Corp.et al v. United States* (CIT 2005) (*Luoyang*); *Luoyang Bearing Corp.et al v. United States*, 347 F. Supp. 2d 1326 (CIT May 18, 2004); *and Red Garden*).

[126] *Id*. at 27-28 (citing *SKF USA Inc. v. United States,* 675 F. Supp. 2d 1264, 1274-1275 (CIT 2009) (*SKF*)).

[127] *See* Petitioner's Rebuttal Brief at 14-15 (citing *Essar Steel Limited v. United States*, 721 F. Supp. 2d 1285 (CIT 2010)); *see also Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011) (*Citric Acid 2009 AR*), and accompanying IDM at Comment 8).

[128] *Id.* at 15 (citing *GPX Int'l Tire Corp v. United States*, 942 F. Supp. 2d 1343, 1359-60 (CIT 2013) (*GPX*)).

[129] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 11177 (March 14, 2018) (*Ribbons AR 2015*), and accompanying IDM at Comment 3.

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

the export buyer's credits program constitutes a financial contribution and is specific; 4) the provision of electricity constitutes a financial contribution and is specific; 5) policy loans to narrow woven ribbons producers from state-owned commercial banks are specific; and 6) subsidies reported by Yama for the first time in this administrative review provide a financial contribution and are specific.

In response to Yama's claim that Commerce cannot apply AFA to a cooperative party, we note that we have not applied AFA to Yama. Rather, Commerce applied AFA to the GOC in each of these instances in the *Preliminary Results*.[131] The GOC was the interested party that withheld information and failed to cooperate by not acting to the best of its ability, and section 776(b) of the Act authorizes Commerce to use an adverse inference against the GOC under these circumstances.

However, Commerce acknowledges that the effect of applying AFA to a government may impact respondents.[132] As the CIT has recognized, "{w}here the foreign government fails to act to the best of its ability, Commerce will usually find that the government has provided a financial contribution to a specific industry."[133] This is because the foreign government is in the best position to provide information regarding financial contribution and benefit.[134] Obviously, this has an effect on the respondent company, but this does not mean that Commerce's application of AFA was unlawful. The respondent company has the opportunity to demonstrate that it did not use, or benefit from, the program at issue.

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

> This court has recognized in the CVD context, unlike the typical AD case, that often the government rather than the respondent in the investigation possesses the information needed by Commerce to accurately evaluate and calculate the alleged subsidies. *See, e.g., Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254, 1260–62 (CIT 2012). When the government refuses to cooperate in a CVD case, Commerce may be permitted to draw an adverse inference with regard to government-held information, with possible collateral effects on a respondent. *Id.* at 1262 n.10. Rather than a direct application of the adverse facts available statute, this may be a simple evidentiary expediency.[135]

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

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[131] *See Preliminary Results* PDM at 6-15 "GOC – Market Distorted by Government Presence," "Certain Producers of Synthetic Yarn and Caustic Soda are Authorities," "Application of AFA: Export Buyer's Credits," "Provision of Electricity for LTAR," and "Other Subsidy Programs."
[132] *See, e.g., Citric Acid 2009 AR* at Comment 8; *Pistachios from Iran* at Comment 2; and *Hot-Rolled Steel from India* at Comment 6.
[133] *See Essar Steel*, 721 F. Supp. 2d at 1297.
[134] *Id.*
[135] *See GPX*, 942 F. Supp. 2d at 1359-60.

Comment 5: Whether Programs Found to be Countervailable Based on AFA are Specific

Yama's Case Brief

- All other programs which Commerce found to be countervailable based on AFA do not meet the countervailability test in the statute.
- The CIT remanded the Preferential Tax Policy for Wages of Disabled Employees program, to Commerce for further review, after which Commerce proposed not countervailing this program.[136] Thus, for the same reasons, this program should be found not countervailable here.
- Even in cases where Commerce appropriately relied on AFA, Commerce must still make the necessary findings to satisfy the requirements for countervailability and must still point to the factual information on the record to make its determinations.[137]
- Further, all other programs preliminarily found to be countervailable through the use of AFA due to the alleged non-cooperation of the GOC should not be found countervailable.

No other party commented on this topic.

Commerce's Position: We continue to find that, as AFA, the following programs provide a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively: Assistance for Textile Exhibition; and Payment from Xiamen Commerce Bureau.

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

Finally, we disagree that Commerce must find the Preferential Tax Policy for Wages of Disabled Employees program not to be countervailable because of our finding in Commerce Final Remand Redetermination.[138] As an initial matter, unlike in Commerce Final Remand

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[136] *See* Yama's Case Brief at 28 (citing *Changzhou Trina Solar Energy Co., Ltd. et al. v. United States*, Consol. Ct. No. 15-00068; Slip Op. 16-121 (CIT 2016) (*Changzhou Trina Solar)*; *see also* Commerce Results of Redetermination Pursuant to Court Remand in the same case (Commerce Final Remand Redetermination)).
[137] *Id.* at 29 (citing Commerce Final Remand Redetermination).
[138] *See* Commerce Final Remand Redetermination.

Redetermination, we did not apply AFA to this program in this administrative review. As stated in the *Preliminary Results*, the GOC reported in its questionnaire response that there were no changes to this program during the POR and we found that: 1) the tax savings received by Yama constitutes a financial contribution and a benefit under sections 771(5)(D)(ii) and 771(5)(E) of the Act; and 2) this program is *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act. This fact pattern differs from that of *Changzhou Trina Solar*, where the Preferential Tax Policy for Wages of Disabled Employees was discovered at verification, and not reported in the respondent's or the GOC's questionnaire response. Consequently, we continue to find that this program is countervailable for purposes of the final results.

X. **Recommendation**

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

☒ ☐

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Agree Disagree

3/19/2019

X

Signed by: CHRISTIAN MARSH

Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance