C-570-087
Investigation
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DATE: June 17, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Steel Propane Cylinders 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 steel propane cylinders 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 period of investigation (POI) is January 1, 2017 through December 31, 2017.

Below is the complete list of issues in this investigation for which we received comments from interested parties:

Comment 1: Whether to Apply Adverse Facts Available (AFA) to Shandong Huanri Group Co. Ltd. (Huanri) for the Export Buyer's Credit (EBC) Program
Comment 2: Whether to Apply AFA to Huanri for Policy Lending
Comment 3: Whether Policy Loans Provided by State-Owned Commercial Banks (SOCBs) to the Steel Propane Cylinder Industry are Specific
Comment 4: Whether All Hot-Rolled Steel (HRS) Producers are "Authorities" Under Section 771(5)(B) of the Act
Comment 5: Whether the Provision of HRS for Less Than Adequate Remuneration (LTAR) is Specific
Comment 6: Whether the Chinese Domestic HRS Market is Distorted
Comment 7: Whether to Fill in Certain Months with Missing Data in the Ocean Freight Benchmark
Comment 8: Whether to Exclude Routes to Xiamen from the Ocean Freight Benchmark

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

Comment 9: Whether to Exclude the Tokyo to Qingdao Route from the Ocean Freight Benchmark
Comment 10: Which Ports to Use for the Calculation of Inland Freight
Comment 11: Whether to Include Value Added Tax (VAT) in Huanri's Inland Freight Costs
Comment 12: Which HRS Import Tariff Rates to Select
Comment 13: Whether to Use the Government of China's (GOC) Coaster Freight Rates in the Ocean Freight Benchmark
Comment 14: Whether to Apply AFA to Find the Provision of Electricity for LTAR to be Specific
Comment 15: Whether to Remove Shandong Laizhou Steel Cylinder Factory's (SC Factory) Loans from Huanri's Reported Loans
Comment 16: Which Benchmark Interest Rates to Apply in the Export Seller's Credit and Policy Loan Benefit Calculations
Comment 17: Whether to Adjust Huanri's Sales Denominator
Comment 18: Whether to Correct a Translation Error in the Electricity for LTAR Benefit Calculation
Comment 19: Which AFA Program Rates to Apply to the Non-Cooperating Companies

II. BACKGROUND

On October 26, 2018, Commerce published the *Preliminary Determination*.[2] The petitioners in this investigation are Worthington Industries and Manchester Tank & Equipment Co. (the petitioners). The respondents are the GOC; Huanri and its affiliates SC Factory and Shandong Huanri Import & Export Trade Co., Ltd. (Huanri I&E) (collectively, the Huanri Companies); and TPA Metals and Machinery (SZ) Co. Ltd. (TPA Metals). On October 23, 2018, Commerce disclosed the calculations performed in the *Preliminary Determination*.[3]

On October 29, 2018, Huanri timely filed ministerial error allegations.[4] On November 28, 2018, we issued a Ministerial Error Memorandum explaining that the alleged ministerial errors regarding the Huanri Companies' calculated subsidy rates either did not constitute a "ministerial error," as defined under 19 CFR 351.224(f), or did not result in a "significant" error, as defined under 19 CFR 351.224(g), and, as a result, we did not issue an amended preliminary determination.[5]

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[2] *See Steel Propane Cylinders from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 54086 (October 26, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).
[3] *See* Memorandum, "Preliminary Determination Calculations for Shandong Huanri Group Co. Ltd.," dated October 19, 2018.
[4] *See* letter from Huanri, "Steel Propane Cylinders from the People's Republic of China - Ministerial Error Allegations," dated October 29, 2018.
[5] *See* Memorandum, "Countervailing Duty Investigation of Steel Propane Cylinders from the People's Republic of China: Allegation of Ministerial Errors in the Preliminary Determination," dated November 28, 2018 (Ministerial Error Memorandum) at 7.

Commerce conducted verification of the questionnaire responses of the Huanri Companies from February 27 to March 1, 2019, and the questionnaire responses of the GOC on March 4, 2019.[6] In response to our invitation to parties to comment on the *Preliminary Determination*, Commerce received case briefs regarding the *Preliminary Determination*, the GOC, Huanri, and the petitioners submitted case briefs on April 9, 2019.[7] On April 15, 2019, the GOC, Huanri, and the petitioners submitted rebuttal briefs.[8]

No parties requested a hearing for this investigation.

In the *Preliminary Determination*, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we aligned the final CVD determination with the final antidumping duty determination. 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.[9] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for this final determination is now June 17, 2019.

III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are steel propane cylinders from China. Commerce addressed all scope comments received in the Preliminary Scope Decision Memorandum.[10] For a complete description of the scope of this investigation, which is unchanged since the *Preliminary Determination*, *see* Appendix I of the accompanying *Federal Register* notice.

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[6] *See* Memorandum, "Verification of the Questionnaire Responses of the Government of the People's Republic of China," dated March 20, 2019 (GOC Verification Report); *see also* Memorandum, "Verification of the Questionnaire Responses of Shandong Huanri Group Co. Ltd., Shandong Laizhou Steel Cylinder Factory, and Shandong Huanri IMP. & EXP. Trade Co., Ltd.," dated April 2, 2019 (Huanri Verification Report).

[7] *See* letter from the GOC, "Steel Propane Cylinders from the People's Republic of China, Case No. C570-087: Case Brief," dated April 9, 2019 (GOC's Case Brief); letter from Huanri, "Steel Propane Cylinders from the People's Republic of China - Case Brief," dated April 9, 2019 (Huanri's Case Brief); and letter from the petitioners, "Steel Propane Cylinders from the People's Republic of China – Petitioners' Case Brief," dated April 9, 2019 (the Petitioners' Case Brief).

[8] *See* letter from the GOC, "Steel Propane Cylinders from the People's Republic of China, Case No. C-570-087: Rebuttal Brief," dated April 15, 2019 (GOC's Rebuttal Brief); letter from Huanri, "Steel Propane Cylinders from the People's Republic of China - Rebuttal Brief," dated April 15, 2019 (Huanri's Rebuttal Brief); letter from the petitioners, "Steel Propane Cylinders from the People's Republic of China – Petitioners' Rebuttal Case Brief," dated April 15, 2019 (the Petitioners' Rebuttal Brief).

[9] *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.

[10] *See* Memorandum, "Steel Propane Cylinders from the People's Republic of China (China) and Thailand: Scope Decision Memorandum for the Preliminary Antidumping Duty (AD) and Countervailing Duty (CVD) Determinations," dated December 18, 2018.

IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Commerce relied on "facts otherwise available," including AFA, for several findings in the *Preliminary Determination*. Commerce has made certain changes to its use of facts otherwise available and AFA, as applied in the *Preliminary Determination*.[11] Those changes are discussed in detail below.

A. Legal Standard

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or 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.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an AFA rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."[12] Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[13]

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[14] It is Commerce's practice to consider information to be corroborated if it has probative value.[15] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and

[11] *See* PDM at 17-26.
[12] *See, e.g., Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from China*); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).
[13] *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 at 870.
[14] *See, e.g.*, SAA at 870.
[15] *Id.*

relevance of the information to be used.[16] However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.[17] Furthermore, Commerce is not required to corroborate any countervailing subsidy rate applied in a separate segment of the same proceeding.[18]

In a CVD investigation, Commerce requires information from both the foreign producers and exporters of the merchandise under investigation and the government of the country where those producers and exporters are located. When the government fails to provide requested and necessary information concerning alleged subsidy programs, Commerce, applying AFA, may find that a financial contribution exists under the alleged program and that the program is specific.[19] However, where possible, Commerce will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit conferred, to the extent that those records are useable and verifiable.[20]

Otherwise, under section 776(d) of the Act, Commerce may use any 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 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 section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[21]

It is Commerce's practice in CVD proceedings to compute a program-specific AFA rate using the highest calculated program-specific rate determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[22] When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any countervailable subsidy rate applied for the same or similar program in a countervailable duty proceeding involving the same country, or, if there is no same or similar program, use a

[16] *See, e.g.*, SAA at 869.
[17] *See* SAA at 869-70.
[18] *See* section 776(c)(2) of the Act.
[19] *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 (July 23, 2018) and accompanying Issues and Decision Memorandum (IDM) at 6-7.
[20] *Id*.
[21] *See* section 776(d)(3) of the Act.
[22] *See, e.g.*, *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences"); *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and accompanying IDM at "VI. Use of Facts Otherwise Available and Adverse Inferences: Application of Adverse Inferences: Non-Cooperative Companies." Commerce applies a separate CVD AFA hierarchy for investigations and reviews. Below we discuss the CVD AFA hierarchy Commerce applies in investigations.

countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.[23] Accordingly, when selecting AFA rates, if we have cooperating respondents, as we do in this investigation, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program. If there is no identical program that resulted in a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).[24] If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use.[25]

Commerce's methodology is consistent with section 502 of the Trade Preferences Extension Act of 2015 (TPEA). Section 502 of the TPEA added new subsection (d) to section 776 of the Act. Section 776(d)(1)(A) of the Act states that, when applying an adverse inference in selecting from the facts otherwise available, Commerce may (i) use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that Commerce considers reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for Commerce's existing practice of using an AFA hierarchy in selecting a rate "among the facts otherwise available" in CVD cases, should the facts warrant such a selection.

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."[26] No legislative history accompanied this provision of the TPEA. Accordingly, Commerce is left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

[23] *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; *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (*Essar Steel*) (upholding "hierarchical methodology for selecting an AFA rate").
[24] For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent as *de minimis*. *See, e.g.*, *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) (*Steel Wire Strand from China*), 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."
[25] *See Shrimp from China* IDM at 13-14.
[26] *See* section 776(d)(2) of the Act.

We find that the Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: (1) Commerce may apply its CVD AFA hierarchy; and (2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.[27]

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[28] Further, "in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin."[29] It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.[30]

In applying its CVD AFA hierarchy in investigations, Commerce's goal is as follows: In the absence of necessary information from cooperative respondents, Commerce is seeking to find a rate that is a relevant indicator of how much the government of the country under investigation is likely to subsidize the industry at issue, through the program at issue, while inducing cooperation. Accordingly, in sum, the three factors that Commerce takes into account in selecting a rate are: (1) the need to induce cooperation, (2) the relevance of a rate to the industry in the country under investigation (*i.e.*, can the industry use the program from which the rate is derived), and (3) the relevance of a rate to a particular program, though not necessarily in that order of importance.

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a "pool" of available rates that Commerce can rely upon for purposes of identifying an AFA rate

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[27] This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B) of the Act. Under that provision, "any dumping margin from any segment of the proceeding under the applicable antidumping order" may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

[28] *See* SAA at 870; *see also Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012) (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (*De Cecco*) (finding that "{t}he purpose of the adverse facts statute is 'to provide respondents with an incentive to cooperate' with Commerce's investigation, not to impose punitive damages.")).

[29] *See De Cecco*, 216 F.3d at 1032.

[30] Commerce has adopted a practice of applying its hierarchy in CVD cases. *See, e.g.*, *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at Comment 4 (applying the hierarchical methodology within the context of a CVD investigation); *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 at 11-15 (applying the AFA hierarchical methodology within the context of a CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. *See, e.g.*, *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

for a particular program. In investigations for example, this "pool" of rates could include the rates for the same or similar programs used in either that same investigation, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy therefore does not focus on identifying the highest possible rate that could be applied from among that "pool" of rates; rather, it adopts the factors identified above of inducement, and relevancy to the industry and to the particular program.

For investigations, under the first step of the CVD AFA hierarchy, Commerce applies the highest non-zero rate calculated for a cooperating company for the identical program in the investigation. Under this step, we will even use a *de minimis* rate as AFA if that is the highest rate calculated for another cooperating respondent in the same industry for the same program. However, if there is no identical program match within the investigation, or if the rate is zero, then Commerce will shift to the second step of its investigation hierarchy, and either apply the highest non-*de minimis* rate calculated for a cooperating company in another CVD proceeding involving the same country for the identical program, or if the identical program is not available, for a similar program. This step focuses on the amount of subsidies that the government has provided in the past under the investigated program. The assumption under this step is that the non-cooperating respondent under investigation uses the identical program at the highest above *de minimis* rate of any other company using the identical program. Finally, if no such rate exists, under the third step of Commerce's investigation hierarchy, Commerce applies the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.[31]

In all three steps of Commerce's CVD AFA hierarchy for investigations, if Commerce were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the "reward" for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce's investigation AFA hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), Commerce strikes a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.[32]

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[31] In an investigation, unlike an administrative review, Commerce is just beginning to achieve an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

[32] It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. *See, e.g.*, *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*Coated Free Sheet from China*), and accompanying IDM at 2 ("As AFA in the instant case, {Commerce} is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/producer in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed…"). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as AFA under its hierarchy.

Furthermore, we find that section 776(d)(2) of the Act applies as an exception to the selection of an AFA rate under section 776(d)(1) of the Act; that is, after "an evaluation of the situation that resulted in the application of an adverse inference," Commerce may decide that, given the unique and unusual facts on the record, the use of the highest rate within that step is not appropriate.

B. Application of Total AFA to TPA Metals and the Non-Responsive Companies

1. Application of Total AFA: Non-Responsive Companies

As we determined in the *Preliminary Determination*,[33] the Non-Responsive Companies[34] failed to respond to the Quantity and Value (Q&V) Questionnaire.[35] The information in the Q&V Questionnaire was necessary for us to select mandatory respondents in this investigation. Therefore, we find that the Non-Responsive Companies withheld information that had been requested and failed to provide information within the established deadlines. By not providing the requested information, the Non-Responsive Companies significantly impeded this proceeding. Thus, in reaching a final determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we determined the CVD rate for these companies by selecting from among the facts otherwise available on the record.

Moreover, we determine that AFA is warranted, pursuant to section 776(b) of the Act, because by not responding to the Q&V Questionnaire, the Non-Responsive Companies did not cooperate to the best of their abilities to comply with Commerce's requests for information. Accordingly, we determine that the use of an adverse inference in selecting from among the facts otherwise available is warranted to ensure that these companies do not obtain a more favorable result by failing to cooperate than if they had complied with our requests for information.

As AFA, we find that all programs in this proceeding are countervailable with respect to the Non-Responsive Companies – that is, they provide a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act, confer a benefit within the meaning of sections 771(5)(B) and (E) of the Act, and are specific within the meaning of section 771(5A) of the Act. Therefore, we are including each of these programs in the determination of the AFA rate for the Non-Responsive Companies. We selected an AFA rate for each of these programs based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's CVD AFA hierarchy for investigations detailed in Section IV.A above, and we included them in the determination of the AFA rate applied to the Non-Responsive Companies. Commerce has previously countervailed these or similar programs. For a description of the selection of the AFA rate and our corroboration of this rate, *see* sections IV.B.3 and IV.B.4 below.

2. Application of Total AFA: TPA Metals

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[33] *See* PDM at 18-20.
[34] The Non-Responsive Companies are: Guangzhou Lion Cylinders Co. Ltd.; Hubei Daly LPG Cylinder Manufacturer Co. Ltd.; Taishan Machinery Factory Ltd.; Wuyi Xilinde Machinery Manufacture Co., Ltd.; and Zhejiang Jucheng Steel Cylinder Co., Ltd.
[35] *See* Memorandum, "Countervailing Duty Investigation of Steel Propane Cylinders from the People's Republic of China: Issuance of Quantity and Value Questionnaires," dated June 22, 2018 (Q&V Questionnaire).

As we determined in the *Preliminary Determination*,[36] TPA Metals, one of the two mandatory respondents, failed to respond to the Initial Questionnaire or otherwise participate in this investigation.[37] The information in the Initial Questionnaire was necessary for us to determine the total amount of the subsidies on subject merchandise that TPA Metals exported to the United States. Therefore, we find that TPA Metals withheld information that had been requested and failed to provide information within the established deadlines. By not providing the requested information, TPA Metals significantly impeded this proceeding. Thus, in reaching a final determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we determined the CVD rate for TPA Metals by selecting from among the facts otherwise available on the record.

Moreover, we determine that AFA is warranted, pursuant to section 776(b) of the Act, because by failing to provide necessary information, TPA Metals did not cooperate to the best of its ability to comply with Commerce's requests for information. Accordingly, we determine that the use of an adverse inference in selecting from among the facts otherwise available is warranted to ensure that this company does not obtain a more favorable result by failing to cooperate than if it had complied with our requests for information.

As AFA, we find that all programs in this proceeding are countervailable with respect to TPA Metals – that is, they provide a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act, confer a benefit within the meaning of sections 771(5)(B) and (E) of the Act, and are specific within the meaning of section 771(5A) of the Act. Therefore, we are including each of these programs in the determination of the AFA rate for TPA Metals. We selected an AFA rate for each of these programs based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's CVD AFA hierarchy for investigations detailed in section IV.A above, and we included them in the determination of the AFA rate applied to TPA Metals. Commerce has previously countervailed these or similar programs. For a description of the selection of the AFA rate and our corroboration of this rate, *see* sections IV.B.3 and IV.B.4 below.

3. Selection of the AFA Rate

In applying AFA to determine a net subsidy rate for TPA Metals and the Non-Responsive Companies, we applied the CVD AFA hierarchy for investigations detailed in section IV.A above. We began by selecting, as AFA, the highest calculated program-specific above-zero rates determined for Huanri, the cooperating mandatory respondent in the instant investigation. Accordingly, we applied the subsidy rate calculated for Huanri for the following programs:

- Export Seller's Credit
- Provision of Electricity for LTAR
- Policy Loans to the Steel Propane Cylinder Industry
- Provision of HRS for LTAR

[36] *See* PDM at 18-20.
[37] *See* Letter to the GOC, "Countervailing Duty Investigation of Steel Propane Cylinders from the People's Republic of China: Countervailing Duty Questionnaire," dated July 17, 2018 (Initial Questionnaire).

In determining an AFA rate for the following income tax reduction programs on which Commerce initiated an investigation, we are finding, as AFA, that TPA Metals and the Non-Responsive Companies paid no Chinese income tax during the POI:

- Income Tax Reductions for Research and Development (R&D) Expenses Under the Enterprise Income Tax Law
- Income Tax Reduction for High or New Technology Enterprises

The standard income tax rate for corporations in China in effect during the POI was 25 percent.[38] Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, that the seven programs, combined, provide a 25 percent benefit). Consistent with Commerce's practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.[39]

For all other programs not identified above, we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in other CVD proceedings involving China. For this final determination, we are able to match, based on program names, descriptions, and treatment of the benefit, the following programs to the same or similar programs from other CVD proceedings involving China:

Same Programs:

- Special Fund for Energy Savings Technology Reform
- Provincial Government of Guangdong Tax Offset for R&D

Similar Programs:

- Export Loans from Chinese State-Owned Banks
- Export Credit Guarantees
- Export Buyer's Credit
- Provision of Land for LTAR
- Import Tariff and VAT Exemptions for Foreign-Invested Enterprises (FIE) and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
- GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands
- Small- and Medium-sized Enterprise (SME) International Market Exploration/Development Fund
- SME Technology Innovation Fund

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[38] *See* letter from the GOC, "Steel Propane Cylinders from the People's Republic of China, Case No. C-570-087: Initial Questionnaire Response," dated August 31, 2018 (GOC IQR) at 16 at Exhibit OTHER-2 at Chapter 1, Article 4 ("The corporate income tax shall be at the rate of 25 percent.").
[39] *See, e.g., Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions*), and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

- Export Assistance Grants
- VAT Refunds for Foreign Invested Enterprises Purchasing Domestically-Produced Equipment
- Special Fund for Enterprise R&D of Application Technologies
- Labor Position Subsidy for Burden Alleviating Enterprises in Laizhou
- Provincial Patent of Invention Subsidy
- "8515 Program" Enterprise Technology Reform Subsidy in 2011
- "8515 Program" Enterprise Technology Reform Subsidy in 2012
- "8515 Program" Enterprise Technology Reform Subsidy in 2013
- "8515 Program" Enterprise Technology Reform Subsidy in 2015
- VAT Benefit on Deposit of Partial Fixed Assets
- VAT Benefit on Deposit of Used Fixed Assets

See the Appendix to this memorandum for a table containing the AFA rates assigned in this investigation. The sum of the AFA rates applied to TPA Metals and the Non-Responsive Companies is 142.37 percent.

4. Corroboration of the AFA Rate

As discussed above, section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[40] The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.[41]

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.[42] Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[43]

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the

[40] *See* SAA at 870.
[41] *Id*.
[42] *Id.* at 869-70.
[43] *See* section 776(d) of the Act.

relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.[44]

Because TPA Metals and the Non-Responsive Companies failed to provide information concerning their usage of the subsidy programs due to their decision not to participate in the investigation, we have reviewed the available record information as well as information concerning Chinese subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this investigation. The relevance of these rates is that they are actual calculated subsidy rates for the same or similar Chinese programs, from which TPA Metals and the Non-Responsive Companies could actually receive a benefit. Due to the lack of participation by these companies and the limited record information concerning these programs, we have corroborated the rates we selected to use as AFA to the extent practicable.

No interested party commented on our preliminary decision to assign a rate based entirely on AFA to TPA Metals and the Non-Responsive Companies. However, the petitioners and the GOC submitted comments regarding the method in which we selected AFA rates for specific programs that were included in the total AFA rate applied to TPA Metals and the Non-Responsive Companies. Based on these comments and as explained above, we have adjusted our calculation of the total AFA rate in the final determination for the GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands, SME International Market Exploration/Development Fund, and Export Assistance Grants programs. For a further discussion, *see* Comment 19.

C. Application of AFA: Export Buyer's Credit Program

As explained in the *Preliminary Determination* and discussed further in Comment 1 below, the GOC did not provide complete responses to Commerce's questions regarding the EBC program.[45] The questionnaires sought information needed to analyze whether this program constitutes a countervailable subsidy. Consequently, we preliminarily determined that the GOC withheld information that was requested of it for our analysis and significantly impeded the proceeding and, thus, we relied on "facts available" pursuant to sections 776(a)(2)(A) and (2)(C) of the Act in making our preliminary determination.[46] Pursuant to section 776(b) of the Act, we preliminarily determined that the application of AFA was warranted because the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information.[47]

For this final determination, we find it necessary to rely on "facts available" pursuant to sections 776(a)(1), (a)(2)(A), (a)(2)(C), and (a)(2)(D) of the Act because necessary information is not available on the record, the GOC withheld information that was requested of it, the GOC significantly impeded the proceeding, and usage of the program cannot be verified. The

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[44] *See, e.g., Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017), and accompanying IDM at 14 (citing *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996)).
[45] *See* PDM at 26-28.
[46] *Id.* at 27-28.
[47] *Id.* at 27.

application of AFA is warranted pursuant to section 776(b) of the Act because the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Thus, we continue to determine, based on AFA, that the EBC program constitutes a countervailable subsidy. We find that the EBC program provides a financial contribution within the meaning of section 771(5)(D) of the Act. We also find that the EBC program is specific. Although the record regarding this program suffers from significant deficiencies, we note that the GOC's description of the program and supporting materials (albeit ultimately found to be deficient) demonstrates that through this program, state-owned banks, such as the China Export-Import Bank (China Ex-Im Bank), provide loans at preferential rates for the purchase of exported goods from China.[48] In addition, the program was alleged by the petitioners as an example of a possible export subsidy.[49] Finally, Commerce has found this program to be an export subsidy in the past.[50] Thus, taking all such information into consideration indicates the provision of the export buyer's credits is contingent on exports within the meaning of section 771(5A)(B) of the Act. Additionally, although Commerce has accepted certifications of non-use from the respondents' customers to determine whether a benefit has been conferred, the GOC did not provide the requested information needed to allow Commerce to analyze this program fully. A complete understanding of how this program is administered, particularly following the 2013 Revisions to the Administrative Measures to the EBC program (2013 Revisions), is necessary to confirm whether Huanri's customers obtained loans under the program and, absent the requested information, the claims of non-use are not verifiable. Thus, we also find that the EBC program conferred a benefit pursuant to section 771(5)(E) of the Act.

In determining the AFA rate for Huanri under the EBC program, we followed the CVD AFA hierarchy for investigations, as described in section IV.A. We find that section 776(d)(2) of the Act applies as an exception to the selection of an AFA rate under section 776(d)(1) of the Act and that Commerce, based on the facts of a given record, has the discretion to determine that the use of the highest rate within a particular step of the CVD AFA hierarchy is not appropriate. We find there are no facts on the record of the instant investigation indicating that a rate other than the highest rate envisioned under the appropriate step of the CVD AFA hierarchy applied in accordance with section 776(d)(1) of the Act should be applied. As explained above, Commerce is applying AFA to the EBC program because the GOC failed to cooperate to the best of its ability in responding to Commerce's inquiries. Therefore, we find that the record does not support the application of an alternative rate, pursuant to section 776(d)(2) of the Act.

Therefore, because we have not previously calculated a rate for this program in this investigation, we are relying on the highest non-*de minimis* rate calculated for a cooperating company in another CVD proceeding involving the same country for a similar program. On this basis, we are using an AFA rate of 10.54 percent *ad valorem*, the rate assigned to the EBC

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[48] *See* GOC IQR at Exhibits LOAN-12, LOAN-13, and LOAN-14.

[49] *See* letter from the petitioners, "Countervailing Duty Petition Volume V: Subsidies the People's Republic of China," dated May 22, 2018 (Petition), Volume V at 29-30 and Exhibit PRC-CVD-33.

[50] *See, e.g.*, *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 17382 (April 25, 2019) (*Tires from China*), and accompanying IDM at Comment 16.

program in *Steel Wheels from China*, as the rate for this program for Huanri.[51] However, this rate was not calculated in *Steel Wheels from China*, but in *Coated Paper from China* for the Preferential Lending to the Coated Paper Industry program.[52] 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. This rate was also applied to TPA Metals and the Non-Cooperating Companies for this program in the *Preliminary Determination*.[53]

We discuss the requirements of corroboration set forth in section 776(c) of the Act in section IV.A above. Regarding the EBC program, given the failure of the GOC to provide adequate responses to our inquiries, we have reviewed the available record information[54] as well as information concerning Chinese subsidy programs in other cases. We find that, because this is a program Commerce has previously investigated, this information is relevant to the program in this final determination. The relevance of this rate is that it is a calculated subsidy rate for a similar non-company specific program in a different Chinese CVD proceeding,[55] from which Huanri could actually receive a benefit. Due to the lack of cooperation by the GOC and the limited record information concerning this program, we have corroborated the AFA rate we selected to use for the EBC program to the extent practicable for this final determination.

We received comments from interested parties regarding our decision to apply the AFA and our decision to select the AFA rate of 10.54 percent *ad valorem* for the EBC program, *i.e.*, the highest non-*de minimis* rate calculated for a cooperating company in another CVD proceeding involving the same country for a similar program, which we address in Comment 1 below. For the final determination, in accordance with sections 776(a) and (b) of the Act, we have continued to apply AFA for the EBC program in the manner described above.

D. Application of AFA: HRS Steel Inputs for LTAR

1. HRS Producers as "Authorities" Under Section 771(5)(B) of the Act

We are examining whether the respondents received countervailable subsidies in the form of the provision of HRS for LTAR. We requested information from the GOC regarding the specific companies that produced the HRS that the respondents purchased during the POI in order to determine whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.[56] As explained in the *Preliminary Determination*, we found the GOC withheld necessary information that was requested of it and, thus, Commerce relied on "facts otherwise available," pursuant to section 776(a)(2)(A) of the Act.[57] Moreover, in the *Preliminarily Determination*, we

[51] *See Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 11744 (March 28, 2019) (*Steel Wheels from China*), and accompanying IDM at Appendix I.
[52] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China; Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from China*).
[53] *See* PDM at 19-26.
[54] *See* Petition at 29-31 and Exhibits CVD-PRC-25, CVD-PRC-28, and CVD-PRC-33.
[55] *See Steel Wheels from China* IDM at Appendix I.
[56] *See* Initial QNR, Section II, at 24-28 and the Input Producer Appendix.
[57] *See* PDM at 29.

found that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information, and, thus, that AFA is warranted pursuant to section 776(b) of the Act.[58] As AFA, we preliminarily determined that each of the producers of HRS, for which the GOC failed to provide complete information which is necessary for our financial contribution analysis, are "authorities" within the meaning of section 771(5)(B) of the Act and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.[59]

We have reviewed comments submitted by interested parties regarding our decision to apply AFA to the GOC in the manner described above. We find that these comments provide no cause for us to revise our preliminary findings. Thus, for the final determination, in accordance with sections 776(a) and (b) of the Act, we have continued to apply AFA to make our financial contribution finding with regard to the HRS for LTAR program. For further discussion regarding our application of AFA and financial contribution finding, *see* Comment 4.

2. Specificity of the Provision of HRS for LTAR Under Section 771(5A)(D)(iii)(I) of the Act

For purposes of Commerce's *de facto* specificity analysis, we asked the GOC to provide a list of industries that purchase HRS in China.[60] As explained in the *Preliminary Determination*, we found that the necessary information required from the GOC to perform our *de facto* specificity analysis is not available on the record, and also determined that the GOC withheld information that was requested.[61] As a result, we relied on "facts available" in making our *Preliminary Determination*, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Further, because we determined that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information, we found that the application of adverse inferences under section 776(b) of the Act was warranted.[62] Consequently, pursuant to sections 776(a) and (b) of the Act, we found that the purchasers of HRS provided for LTAR are limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act.[63]

As noted, upon review of comments submitted by interested parties regarding our decision to apply AFA to the GOC in the manner described above, we find that these comments provide no cause for us to revise our preliminary findings. Thus, for the final determination, in accordance with sections 776(a) and (b) of the Act, we have continued to apply AFA to make our specificity finding with regard to the HRS for LTAR program. For further discussion regarding our application of AFA and specificity finding, *see* Comment 5.

3. Distortion of HRS Market in China

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[58] *Id*.
[59] *Id*.
[60] *See* Initial Questionnaire at 9.
[61] *See* PDM at 30-31.
[62] *Id*. at 31.
[63] *Id*.

We asked the GOC several questions regarding the structure of the HRS industry and production and consumption of HRS during the POI and the prior two years. We requested such information to inform our analysis as to the degree of the GOC's presence in the market and whether such presence results in the distortion of the HRS market that would preclude Commerce from using the prices of HRS procured from private parties to determine whether the respondents' purchases of HRS from GOC "authorities" was sold for LTAR. As explained in the *Preliminary Determination*, we found that the information necessary to determine whether the HRS market in China is distorted is not on the record and that the GOC withheld the requested information.[64] As a result, we relied on "facts available" in making our *Preliminary Determination*, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Further, because we determined that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information, we found that the application of adverse inferences under section 776(b) of the Act was warranted.[65] Accordingly, as AFA, we preliminarily determined that the GOC's involvement in the HRS market in China results in significant distortion of the prices of the hot-rolled steel industry such that they cannot be used as a tier-one benchmark, and hence, the use of an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the provision of HRS for LTAR.[66]

As noted, upon review of comments submitted by interested parties regarding our decision to apply AFA to the GOC in the manner described above, we find that these comments provide no cause for us to revise our preliminary findings. Thus, for the final determination, in accordance with sections 776(a) and (b) of the Act, we have continued to apply AFA with regard to the HRS for LTAR program in the manner described above. For further discussion regarding our application of AFA and finding that the HRS market in China is distorted, *see* Comment 6.

E. Application of AFA: Electricity

As explained in the *Preliminary Determination*, the GOC did not provide complete responses to Commerce's questions regarding the alleged provision of electricity for LTAR.[67] The questionnaires sought information needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether the provision of electricity conferred a benefit within the meaning of section 771(5)(E) of the Act, and whether the provision of electricity was specific within the meaning of section 771(5A) of the Act. Consequently, we preliminarily determined that the GOC withheld information that was requested of it for our analysis of financial contribution and specificity and, thus, we relied on "facts available" pursuant to section 776(a)(2)(A) in making our preliminary determination.[68] Moreover, pursuant to 776(b) of the Act, we preliminarily determined that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information.[69] Thus, we found on the basis of AFA that the GOC's provision of electricity constitutes a

[64] *See* PDM at 32.
[65] *Id*.
[66] *Id*.
[67] *See* PDM at 32.
[68] *Id.* at 35.
[69] *Id*.

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.[70] Further, for purposes of determining whether a benefit was conferred under section 771(5)(E)(iv) of the Act, we relied upon the highest electricity rates on the record for the applicable electricity rate and electricity user categories to construct a benchmark.[71]

As noted, upon review of comments submitted by interested parties regarding our decision to apply AFA to the GOC in the manner described above, we find that these comments provide no cause for us to revise our preliminary findings. Thus, for the final determination, in accordance with sections 776(a) and (b) of the Act, we have continued to apply AFA for the provision of electricity for LTAR program in the manner described above. For further discussion regarding our AFA decision as it affects the provision of electricity for LTAR program, *see* Comment 14.

V. SUBSIDIES VALUATION

A. Allocation Period

Commerce made no changes to the allocation period, which is 12 years, and the allocation methodology used in the *Preliminary Determination*.[72] No issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology.

B. Attribution of Subsidies

As discussed in the *Preliminary Determination*, we requested additional information from Huanri and the GOC regarding the China Huanri Group.[73] Based on the information that Huanri provided in a supplemental questionnaire response,[74] our examination and reconciliation of the assets and liabilities recorded on the China Huanri Group balance sheet,[75] and our examination of national and provincial databases of business registrations,[76] we continue to find that the China Huanri Group does not meet any of the attribution conditions enumerated under 19 CFR 351.525(b)(6). Accordingly, Commerce made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies.[77]

C. Denominators

Huanri submitted comments in its case brief regarding the sales denominator used to calculate Huanri's benefit. As explained in Comment 17 below, Commerce has modified its methodology

[70] *Id*.
[71] *Id.* However, we have relied on the actual usage data submitted by the cooperating respondent to determine the quantities of electricity purchased during the POI.
[72] *See* PDM at 7.
[73] *See* PDM at 10.
[74] *See* letter from Huanri, "Steel Propane Cylinders from the People's Republic of China - Fourth Supplemental Questionnaire Response," dated October 29, 2018 (Huanri SQR4).
[75] *See* Huanri Verification Report at 3-8.
[76] *See* GOC Verification Report at 2-3.
[77] *Id.* at 7-10.

for calculating Huanri's sales denominator from the *Preliminary Determination*. Specifically, we included Huanri's sales to SC Factory and Huanri I&E in the calculation of Huanri's total product sales. Therefore, the final calculations for Huanri reflect the modifications Commerce made to Huanri's sales denominator.[78]

D. Loan Interest Rate Benchmarks and Discount Rates

The petitioners submitted comments on the methodology Commerce used in the *Preliminary Determination* to select a benchmark loan interest rate to calculate the benefit Huanri received in the Policy Loans to the Steel Propane Cylinder Industry and the Export Seller's Credit programs. As explained in Comment 16, Commerce revised its methodology for selecting benchmark loan interest rates from the methodology used in the *Preliminary Determination*.[79]

VI. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable and Used By Huanri

We made no changes to our *Preliminary Determination* with respect to the methodologies used to calculate the subsidy rates for the following programs, except where noted below. For the descriptions, analyses, and calculation methodologies regarding these programs, *see* the *Preliminary Determination*. Except where noted below, the parties did not raise any issues regarding these programs in their case briefs. The final program rates are as follows:

1. *Policy Loans to the Steel Propane Cylinders Industry*

As discussed in Comment 16, we made changes to our *Preliminary Determination* with respect to the selection of the benchmark loan interest rates used to calculate Huanri's benefit under this program. As discussed in Comment 15, based on a minor correction that Huanri presented at verification, we removed certain loans from Huanri's benefit calculation for this program.[80] The final subsidy rate for Huanri is 2.04 percent *ad valorem*.[81]

2. Export Seller's Credit Program

As discussed in Comment 16, we made changes to our *Preliminary Determination* with respect to the selection of the benchmark loan interest rates used to calculate Huanri's benefit under this program. The final subsidy rate for Huanri is 1.37 percent *ad valorem*.[82]

3. *Export Buyer's Credit Program*

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[78] *See* Memorandum, "Final Determination Calculations for Shandong Huanri Group Co. Ltd.," dated concurrently with this memorandum (Final Calculation Memorandum).
[79] *Id.* at 11-14.
[80] *See* Huanri Verification Report at 2-3 and Exhibit CVE-1.
[81] *See* Final Calculation Memorandum at 2 and Attachment 2.
[82] *Id.*

As discussed in Comment 1, we made no changes to the program rate for Huanri. The final subsidy rate for Huanri remains unchanged at 10.54 percent *ad valorem*.

4. *Provision of Electricity for LTAR*

As discussed in Comment 18, we made changes to our *Preliminary Determination* by correcting a translation error in the Zhejiang province electricity schedule. The final subsidy rate for Huanri is 1.31 percent *ad valorem*.[83]

5. Provision of Hot-Rolled Steel for LTAR

As discussed in Comments 11 and 12, we made changes to our *Preliminary Determination* with regard to the VAT applied to inland freight included in the tier-two HRS benchmark and the import tariff applied to the tier-two HRS benchmark. The final subsidy rate for Huanri is 22.65 percent *ad valorem*.[84]

B. Programs Determined Not to Confer a Measurable Benefit to Huanri

1. "Other Subsidies"

We continue to find that Huanri received funds under certain grant programs during the AUL period, but prior to the POI.[85] However, these amounts do not pass the "0.5 percent test" under 19 CFR 351.524(b)(2) and, thus, they are allocated to the respective pre-POI years of receipt. Therefore, we find that they conferred no benefits to Huanri during the POI.[86]

2. Programs Determined Not to Be Used by Huanri

We made no changes to the *Preliminary Determination* with regard to the following programs determined not to be used by Huanri during the POI.[87]

1. Special Fund for Energy Savings Technology Reform
2. SME Technology Innovation Fund
3. Export Loans from Chinese State-Owned Banks
4. Export Credit Guarantees
5. Income Tax Reduction for High or New Technology Enterprises (HNTE)
6. Income Tax Reductions for R&D Expenses Under the Enterprise Income Tax Law
7. Provincial Government of Guangdong Tax Offset for R&D
8. Income Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

[83] *Id.* at 4 and Attachment 2.
[84] *Id.* at 3 and Attachment 2.
[85] *See* letter from Huanri, "Steel Propane Cylinders from the People's Republic of China - Section III Questionnaire Response," dated August 31, 2018 at Exhibit 16 (Huanri IQR).
[86] *See* PDM at 43.
[87] *Id.* at 44.

9. VAT Refunds for Foreign Invested Enterprises (FIE) Purchasing Domestically-Produced Equipment
10. Provision of Land for LTAR

VII. DISCUSSION OF THE ISSUES

Comment 1: Whether to Apply AFA to Huanri for the EBC Program

The GOC's Case Brief Comments

- Under the EBC program, financial contribution is in the form of a loan or credit provided directly to the U.S. customer or foreign importer, thus there is no direct transfer of a loan or credit to the Chinese respondents and the program does not meet the statutory definition of "financial contribution."[88] The Court of International Trade (CIT) has held that when invoking its authority to use AFA, "{Commerce} must still make necessary factual findings to satisfy the requirements for countervailability," and Commerce has yet to point to record evidence that indicates financial contribution.[89]
- Before applying AFA, Commerce must find that necessary information is missing from the record and that a respondent failed to cooperate to the best of its ability to comply by not providing the requested information; however, in this investigation Huanri has submitted declarations from its U.S. customers certifying non-use and the GOC has confirmed with the China Ex-Im Bank that Huanri did not use this program.[90] The World Trade Organization (WTO) Appellate Body has held that Article 12.7 of the Agreement on Subsidies and Countervailable Measures requires that an investigating authority must use the facts available to reasonably replace the missing "necessary" information that an interested party failed to provide.[91] The record indicates that Huanri did not use the EBC program and that none of Huanri's U.S. customers applied for, used, or benefitted from this program.[92]
- The CIT has reversed Commerce's determinations regarding the EBC program in prior China CVD proceedings and has held that Commerce cannot apply AFA to determine that the EBC program was used when record evidence, such as certificates of non-use and the GOC's statements of non-use, indicates that the program was not used, and that any information relating to the 2013 Revisions was therefore "rendered immaterial."[93]
- Commerce can only apply AFA when "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the

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[88] *See* GOC's Case Brief at 3-4.
[89] *Id.* at 4 (citing Huanri Case Brief at 4-5 (citing *Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334, 1350 (CIT 2016) (*Changzhou Trina Solar I*)).
[90] *Id.* at 4-5 (citing Huanri IQR at 13-14 and Exhibit 12.3).
[91] *Id.* at 5-6 (citing Appellate Body Report, *United States – Countervailing Duty Measures on Certain Products from China*, paragraphs 4.178 – 4.179, WT/DS437/AB/R (December 18, 2014)).
[92] *Id.* at 6 (citing Huanri IQR at 13-14 and Exhibit 12.3; and GOC IQR at 16).
[93] *Id.* at 7-8 (citing *Guizhou Tyre Co., Ltd. v. United States*, 348 F. Supp. 3d 1261, 1270-1271 (CIT 2018) (*Guizhou Tyre*); *Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp. 3d 1316 (CIT 2018) (*Changzhou Trina Solar II*); *Changzhou Trina Solar Energy Co. v. United States*, Slip Op. 2018-167 (November 30, 2018) (CIT 2018) (*Changzhou Trina Solar III*); and *Clearon Corp. v. United States*, Ct. No. 17-00171, Slip Op. 19-13 (CIT 2019) (*Clearon Corp.*)).

administering authority….”[94] The GOC confirmed with respondents and the China Ex-Im Bank that the EBC program was not used and provided several pages of information about the program; thus, there is no factual basis for Commerce to conclude that the GOC has shown less than full cooperation.[95] The U.S. Court of Appeals for the Federal Circuit (CAFC) has held that "{a}n adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made; *i.e.*, under circumstances in which it is reasonable to conclude that less than full cooperation has been shown."[96]

- When Commerce invokes its authority to use AFA, "{it} must still make the necessary factual findings to satisfy the requirements for countervailability," by "searching 'the far reaches of the record'" and must "consider{}… relevant evidence that 'fairly detract{s} from the reasonableness of its conclusions."[97]
- In the *Preliminary Determination*, Commerce based its findings of countervailability solely on AFA; however, the CIT in *Changzhou Trina Solar I* specifically rejected the argument that, when AFA is invoked, "no factual findings or citation to record evidence is required," and the notion that Commerce may determine that government assistance is countervailable based solely on the respondent's non-cooperation.[98]
- The record contains evidence, such as the certifications of non-use, which support the conclusion that the EBC program was not used and therefore did not provide a financial contribution.[99] Commerce did not substantiate its determination that the EBC program is a countervailable subsidy on the basis of AFA with record evidence and did not consider relevant evidence to the contrary.[100]

Huanri's Case Brief Comments

- Commerce failed to demonstrate that the information it requested on the EBC program was relevant to finding whether Huanri used this program (*e.g.*, Commerce requested a list of the partner/correspondent banks involved in this program, the interest rates established during the POI for financing under this program, and an English version of the 2013 Revisions).[101]
- The GOC did not fully answer these requests for information because it reviewed EBC disbursement records and confirmed that Huanri and its customers did not use the program.[102] Further, the GOC provided a detailed explanation that Huanri and its customers would be aware of whether they used and benefitted from the program.[103]

[94] *Id.* at 8 (citing section 776(b)(1) of the Act).
[95] *Id.* (citing GOQ IQR at 14-18).
[96] *Id.* at 8-9 (citing *Nippon Steel v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (*Nippon Steel*)).
[97] *Id.* at 9-10 (citing *Changzhou Trina Solar I*, 195 F. Supp. 3d at 1350 and *RZBC Group Shareholding Co. v. U.S.*, 100 F. Supp. 3d 1288, 1298 (CIT 2015) (*RZBC Group*)).
[98] *Id.* at 10 (citing *Changzhou Trina Solar I*, 195 F. Supp. 3d at 1348-1350).
[99] *Id.*
[100] *Id.* at 9.
[101] *See* Huanri Case Brief at 1-3 (citing PDM at 26-28; and section 776(a)(1) of the Act).
[102] *Id.* at 1-2 (citing PDM at 26; GOC IQR at 14-18; and letter from the GOC, "Steel Propane Cylinders from the People's Republic of China, Case No. C-570-087: 1st Supplemental Questionnaire Response," dated September 27, 2018 at 8-10 (GOC SQR1)).
[103] *Id.* at 2-3 (citing GOQ IQR at 15-16 and Exhibit LOAN-12).

- Huanri submitted declarations from all of its U.S. customers certifying that they did not obtain financing through the EBC program, and Huanri provided information that it is unable to fulfill the basic requirements of the EBC program; therefore, the record evidence demonstrates that Huanri did not use or benefit from this program.[104]
- The CIT found in *Guizhou Tyre* that while certain information regarding the operation of the EBC program was missing from the record, there was no gap in information concerning whether the respondents used the EBC program, and thus, Commerce had no basis to apply AFA.[105]
- In *Changzhou Trina Solar I*, the CIT held that additional documentation from the GOC was necessary to prove the respondents' non-use, such as customer declarations of non-use.[106] In *Changzhou Trina Solar II*, however, the CIT did not accept Commerce's argument that the GOC's and respondent's evidence cannot be verified, and the court instructed Commerce to explain how an adverse inference regarding the operation of the EBC program leads to a finding that respondents used the program and to consider other information, such as loan agreements, that would have made claims of non-use verifiable.[107] The CIT further found that if Commerce is able to verify non-use, it must do so.[108]
- In *Clearon Corp*, the CIT again found that the information the GOC failed to provide (*e.g.*, disbursements through third-party banks, interest rates, and requirements on the underlying business contracts) was not necessary to determine whether the respondent used the EBC program.[109]
- The evidence on the record of this case demonstrates that Huanri did not use or benefit from the EBC program and that it acted to the best of its ability and, in accordance with section 782(e) of the Act, Commerce must use the record information necessary to reach a determination even when it does not meet all of Commerce's requirements.[110]
- The CIT held in *SKF USA Inc.* that Commerce may not allow adverse inferences based on a party's failure to cooperate to adversely affect another cooperating respondent.[111] The CAFC found in *Fine Furniture* that, in the context of a CVD investigation, Commerce may apply adverse inferences against non-cooperating parties, even when this has a collateral impact on cooperating parties, but may not apply adverse rates to cooperating respondents.[112] Further, in *Guizhou Tyre*, the CIT found that when a foreign government fails to respond to the best of its ability, and the application of AFA adversely impacts a cooperating party, Commerce should seek to avoid such impact when relevant information exists on the record.[113]
- Commerce's practice in CVD cases where the respondent company fully responds to requests for information, but the foreign government fails to respond adequately, is to apply AFA to the information requested from the foreign government and to use the respondent company's

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[104] *Id.* at 2 (citing Huanri IQR at 12-14 and Exhibits 12.1-12.3).
[105] *Id.* at 3-4 (citing *Guizhou Tyre*).
[106] *Id.* at 4-5 (citing *Changzhou Trina Solar I*).
[107] *Id.* (citing *Changzhou Trina Solar II*).
[108] *See* Huanri Case Brief at 5 (citing *Changzhou Trina Solar III*).
[109] *Id.* at 5 (citing *Clearon Corp.*, Slip Op. 19-13 at 39-40).
[110] *Id.* at 6.
[111] *Id.* (citing *SKF USA Inc. v. United States*, 675 F. Supp. 2d 1264, 1276 (CIT 2009) (*SKF USA Inc.*)).
[112] *Id.* at 7 (citing *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F. 3d 1365, 1372 (Fed. Cir. 2014) (*Fine Furniture*)).
[113] *Id.* at 7-8 (citing *Guizhou Tyre* at 10).

own data to measure the benefit received.[114] Accordingly, Commerce must use Huanri's own data in determining whether and in what amount Huanri used and benefitted from the EBC program.[115]

- If Commerce continues to find that the GOC failed to respond adequately to Commerce's request for information regarding the EBC program and continues to apply an adverse inference against Huanri, Commerce should select the 0.89 percent rate calculated for Huanri's Export Seller's Credit program in this investigation as it is the most similar loan program (the Export Seller's Credit program is the counterpart to the EBC program) and is associated with the same industry and company.[116] In fact, Commerce applied the Export Seller's Credit rate calculated in *Isos from China 2015* as the AFA rate for the EBC program.[117] The 10.54 percent rate from *Coated Paper from China* that Commerce applied in the *Preliminary Determination* as the AFA rate for Huanri's use of the EBC Program is based on the "Preferential Lending to the Coated Paper Industry" program, which is not available to the steel propane cylinder industry.[118] Further, the "Preferential Lending" program provides assistance in the form of preferential interest rates on various types of loans from Chinese-owned financial institutions, which differs in terms of treatment of the benefit from the EBC program, in which any benefit from preferential interest rates on loans is provided to U.S. customers.[119]

The Petitioners' Rebuttal Comments

- The GOC's arguments against Commerce's application of AFA for the EBC program are entirely predicated on the claim that substantial record evidence demonstrates Huanri's non-use of the program; however, the GOC did not cooperate to the best of its ability and withheld substantial information from Commerce such that the record is lacking information necessary for Commerce to verify Huanri's and its customers' claims of non-use.[120]

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[114] *Id.* at 8-9 (citing *Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Isos from China*), and accompanying IDM at 21; *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 from China 2014 Investigation*), and accompanying IDM at "Provision of Electricity for LTAR;" 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), and accompanying IDM at 38).
[115] *Id.* at 9.
[116] *Id.* at 9-11 (citing PDM at 28, 39-40).
[117] *Id.* at 11 (citing *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 26954, (June 11, 2018) (*Isos from China 2015*), and accompanying IDM at 12-13).
[118] *Id.* at 10-12 (citing *Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 75 FR 10774 (March 9, 2010), and accompanying PDM at 28, 39-40 (unchanged in *Coated Paper from China*)).
[119] *Id.* at 12.
[120] *See* the Petitioners' Rebuttal Brief at 9-10 (citing *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018) (*CAAS from China*), and accompanying IDM at 32 ("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.")).

- The GOC is incorrect in its assertion that "there is no information missing on this record," as the GOC repeatedly failed to provide full and complete responses to Commerce's requests for information regarding the EBC program, most critically the 2013 Revisions and the list of partner banks authorized to distribute program funds.[121]
- The GOC does not contest the fact that it rebuffed Commerce's requests for information related to the EBC program, and Huanri agrees that the GOC "did not fully answer these requests for information."[122] Furthermore, it is the purview of Commerce, not the GOC, to determine the information necessary to conduct its investigation.[123]
- Commerce's preliminary decision to apply AFA when information is missing from the record due to the respondent's failure to act to the best of its ability is consistent with the statute under section 776(a) and (b) of the Act.[124]
- Commerce has explained the significance of both the 2013 Revisions and the involvement of third-party banks in terms of verifying non-use of the EBC program in this investigation and in other China CVD proceedings.[125] The arguments by Huanri and the GOC that the record is complete and contains sufficient evidence to prove non-use is flawed because Commerce has made it clear that understanding how the program works is a "prerequisite" for understanding the program's eligibility requirements, how funds are distributed, and verifying Huanri's and its customers' claims of non-use.[126] Commerce cannot verify claims of non-use based solely on Huanri's records, and Huanri's customers' records cannot be verified as they are not participants in this review.[127] Furthermore, without record evidence on the intermediary Chinese banks that participate in the EBC program, Commerce cannot verify non-use through the China Ex-Im Bank alone.[128]
- The GOC's reliance on *Changzhou Trina Solar I* is flawed, as the CIT upheld Commerce's determination to countervail the EBC program on the basis of AFA while finding that Commerce had not properly applied AFA in countervailing certain grant programs.[129]
- While the GOC and Huanri both cite to recent CIT decisions which found that Commerce may not apply AFA to find a benefit from the EBC program when there is evidence on the

[121] *Id.* at 10-11 (citing GOC IQR at 14; GOC SQR1 at 1; and PDM at 26-27).
[122] *Id.* at 12 (citing Huanri Case Brief at 2).
[123] *Id.* at 15 (citing *PPG Indus., Inc. v. United States*, 978 F.2d 1232, 1238 (Fed. Cir. 1992)).
[124] *Id.* at 12 (citing *Nippon Steel*; and *Tung Mung Dev. Co., Ltd. v. United States*, 25 CIT 752, 788-89 (July 3, 2001)).
[125] *Id.* at 13-15 (citing PDM at 27; *see also CAAS from China* IDM at Comment 4; *Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018) (*Aluminum Foil from China*), and accompanying IDM at Comment 6; *Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination*, 83 FR 3120 (January 23, 2018) (*Polyester Staple Fiber from China*), and accompanying IDM at Comment 2; *Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 58175 (December 11, 2017) (*CDMT from China*), and accompanying IDM at Comment 9; and *Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 56582 (November 29, 2017) (*Tool Chests from China*), and accompanying IDM at Comment 8.
[126] *Id.* at 15-17 (citing *CAAS from China* IDM at 32).
[127] *Id.* at 17.
[128] *Id.*
[129] *Id.* at 17-18 (citing *Changzhou Trina Solar I*, 195 F. Supp. 3d at 1354-1355).

record regarding a respondent's non-use, these decisions are not final as Commerce's remand redeterminations in these cases are still pending, and the broader question of whether Commerce may properly apply AFA for the EBC program when the GOC fails to provide information regarding the mechanics of the program is not resolved by the cited decisions.[130] In *RZBC Group*, the CIT upheld Commerce's reliance on AFA for the EBC program on the basis that, similar to this investigation, the GOC failed to provide information about how the program operated.[131] The CIT also upheld Commerce's use of AFA for the EBC program due to the GOC's failure to provide information from the China Ex-Im Bank in *Changzhou Trina Solar I*.[132] In *Clearon* and *Changzhou Trina Solar II*, the CIT remanding Commerce for further explanation as to why the absence of certain information from the record made the respondents' claims of non-use of the EBC program unverifiable and distinguished this from *Changzhou Trina Solar I*, in which it found Commerce provided a sufficient explanation, as it has in the *Preliminary Determination*.[133]

- While Huanri argues that Commerce may not apply an adverse rate to Huanri when its own data exist on the record to calculate Huanri's benefit from the EBC program, Commerce cannot rely on Huanri's claims that neither it nor its customers used the program because these claims are not verifiable.[134]
- The decision in *SKF USA Inc.* is inapplicable as it involved an antidumping proceeding where unaffiliated suppliers failed to submit certain information, which differs from the circumstances in this investigation in which a foreign government is required to respond to Commerce's questionnaires, resulting in the need for a facts available analysis.[135] Further, the CAFC clarified in *Mueller* that *SKF USA Inc*. does not establish a rule barring Commerce from drawing adverse inferences against a non-cooperating party that have collateral consequences for a cooperating party.[136]
- Huanri's reliance on *Fine Furniture* is also misplaced as the CAFC found that, in the context of a CVD proceeding, a government's failure to cooperate is a legitimate basis to apply an adverse inference that nonetheless affects a cooperating respondent company.[137]
- Commerce should reject Huanri's argument to apply the program rate calculated for the Export Seller's Credit program instead of the 10.54 percent AFA rate applied in the *Preliminary Determination* as it follows Commerce's AFA hierarchy to use the highest calculated rate "from any non-company specific program that the industry subject to the investigation could have used for production or exportation of subject merchandise" if a non-zero rate calculated for the identical program in the investigation or from an identical or similar program in another CVD proceeding involving the same country is not available.[138] In the absence of critical information from the GOC regarding the function of the EBC

[130] *Id.* at 18-19 (citing *Clearon Corp.*, Slip Op. 19-13 at 46-47; *Changzhou Trina Solar II*, 352 F. Supp. 3d at 1343; and *Guizhou Tyre* at 1281).
[131] *Id.* at 19 (citing *RZBC Group* at 1201-02).
[132] *Id.* at 20 (citing *Changzhou Trina Solar I*, 195 F. Supp. 3d at 1354-1355).
[133] *Id.* (citing *Clearon Corp.*, Slip Op. 19-13 at 38-39; and *Changzhou Trina Solar II*, 352 F. Supp. 3d at 1327).
[134] *Id.* at 21.
[135] *Id.* at 21-22 (citing *SKF USA Inc.* at 1273-1274).
[136] *Id.* at 22 (citing *Mueller Comercial de Mexico, S. de R.L. de C.V. v. United States*, 753 F.3d 1227, 1236 (Fed. Cir. 2014) (*Mueller*)).
[137] *Id.* at 22-23 (citing *Fine Furniture* at 1365, 1372, and 1373).
[138] *Id.* at 24 and 27 (citing PDM at 22-23; and *Aluminum Foil from China* IDM at Comment 6).

program, it is unclear whether it is similar to the Export Seller's Credit program.[139] Further, Commerce has rejected similar arguments to apply the Export Seller's Credit program rate to the EBC program in *CAAS from China*, [140] and in *Aluminum Foil from China*, Commerce declined to use an industry-specific rate for the EBC program.[141]

- Commerce's selection of an AFA rate for the EBC program is not tied to a certain industry and under section 776(d)(2), (3) of the Act, Commerce has discretion to apply the highest rate and is not required "to demonstrate that the countervailable subsidy rate . . . reflects an alleged commercial reality of the interested party" when adverse inferences are warranted.[142] The alternative rate proposed by Huanri does not comport with these statutory provisions as it requires assumptions regarding the EBC program and the steel propane cylinders industry that the GOC has not provided.[143]

Commerce's Position: For the reasons detailed below, we continue to find based on AFA that the EBC program constitutes a countervailable subsidy.

Solar Cells from China and the EBC Program

Commerce first investigated and countervailed the EBC program in the 2012 investigation of *Solar Cells from China*.[144] Our initiation in *Solar Cells from China* was based on, among other information, the China Ex-Im Bank's 2010 annual report, demonstrating that the credits provided under this program are "medium-and long-term loans, and have preferential, low interest rates. Included among the projects that are eligible for such preferential financing are energy projects."[145] There, Commerce initially asked the GOC to complete the "standard questions appendix" for the EBC program. The appendix requests, among other information, a description of the program and its purpose, a description of the types of relevant records the government maintains, the identification of the relevant laws and regulations, and a description of the application process, along with sample application documents. The standard questions appendix is intended to help Commerce understand the structure, operation, and usage of the program.[146] The GOC provided none of the information requested by Commerce in the ensuing investigation, despite being given multiple opportunities to do so, but simply stated that "{n}one of the respondents or their reported cross-owned companies applied for, used, or benefited from the alleged programs during the POI."[147] In response to a request from Commerce for information concerning the operation of the EBC program and how we might verify usage of the program, the GOC stated that none of the respondents' customers had used the program either. The GOC

[139] *Id.* at 25.
[140] *Id.* at 26 (citing *CAAS from China* IDM at 33).
[141] *Id.* at 27 (citing *Aluminum Foil from China* IDM at Comment 6).
[142] *Id.* at 26-27.
[143] *Id.* at 27.
[144] *See 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) (*Solar Cells from China*), and accompanying IDM at 9 and Comment 18.
[145] *Id*. at Comment 18.
[146] *Id.*
[147] *Id*.

added: "The GOC understands that this program, including the buyer's credit, cannot be implemented without knowledge of the exporters because the program has a substantial impact on the exporter's financial and foreign exchange business matters."[148] Although asked, the GOC provided no additional information concerning exactly how an exporter's financial and foreign exchange matters would be affected.

Based on the responses the GOC submitted in *Solar Cells from China*, Commerce understood that under this program loans were provided directly from the China Ex-Im Bank to the borrowers (*i.e.*, a respondent's customers), and that a respondent might have knowledge of loans provided to its customers through its involvement in the application process. Commerce then gave the GOC a third opportunity to provide the information requested. Once again, we prefaced our questions by explaining why the information was necessary: "In order for {Commerce} to be able to verify that the respondents' customers have not received these credits…, you must answer {the following questions}."[149] In response, the GOC once again refused to provide the sample application documents or any regulations or manuals governing the approval process, providing instead its statement that none of the respondent companies or their foreign buyers had used the export seller's or buyer's credits from the China Ex-Im Bank. It also provided a very brief description of the application process for export seller's credits and noted that the application process for export buyer's credits was "similar."[150] The description suggested the provision of export credits is a matter between the China Ex-Im Bank and the borrower *only*.[151] The GOC's two-paragraph discussion of the application process mentioned only the China Ex-Im Bank and "borrowers,"[152] thereby indicating that the loans were issued directly from the China Ex-Im Bank to the borrowers.

What little information the GOC provided in *Solar Cells from China* indicated an interaction between the China Ex-Im Bank and the borrowers (*i.e.*, the respondent's U.S. customers, who were not participating in the proceeding), with knowledge by the company respondents. Commerce concluded it could not verify non-use of export buyer's credits with the company respondents (*i.e.*, the exporters), and provided a detailed explanation as to why the lack of information concerning the operation of the EBC program prevented an accurate assessment of usage at verification of the respondent exporters:

> {E}ven if the {respondent exporter} might have been involved in, or might have received some notification of, its customer's application for receiving such export credits, such information is not the type of information that {Commerce} needs to examine in order to verify that the information is complete and accurate. For verification purposes, {Commerce} must be able to test books and records in order to assess whether the questionnaire responses are complete and accurate, which means that we need to tie information to audited financial statements, as well as to review supporting documentation for individual loans, grants, rebates, etc. If all a company received was a notification that its buyers received the

[148] *Id.*
[149] *See Solar Cells from China* IDM at Comment 18.
[150] *Id.*
[151] *Id.*
[152] *Id.*

> export credits, or if it received copies of completed forms and approval letters, we have no way of establishing the completeness of the record because the information cannot be tied to the financial statements. Likewise, if an exporter informs {Commerce} that it has no binder (because its customers have never applied for export buyer's credits), there is no way of confirming that statement unless the facts are reflected in the books and records of the respondent exporter.[153]

Essentially, Commerce concluded in the *Solar Cells from China* investigation that usage of the EBC program could not be confirmed through the respondent exporters' books and records in a manner consistent with its verification methods, which are primarily the methods of an auditor, attempting to confirm usage or claimed non-usage by examining books and records that can be reconciled to audited financial statements,[154] or other documents, such as tax returns, that provide a credible and complete picture of a company's financial activity for the period under examination. Commerce further concluded that a review of ancillary documents, such as applications, correspondence, emails, etc., provides no assurance to Commerce that it has seen all relevant information.[155]

This "completeness" concept is an essential element of Commerce's verification methodology. If Commerce were attempting to confirm whether a respondent exporter had received any loans from a state-owned bank, for example, its first step would be to examine the company's balance sheets to derive the exact amount of lending outstanding during the period of examination. Second, once that figure was confirmed, Commerce would then begin examining subledgers or bank statements providing the details of all individual loans. Because, in this example, Commerce could tie the subledgers or bank statements to the total amount of outstanding lending derived from the balance sheet, it could be assured that the subledgers were complete and that it therefore had the entire universe of loan information available for further scrutiny. After examining the subledgers for references to the state-owned banks (*e.g.*, possibly something like "Account 201-02: Short-term lending, Industrial and Commercial Bank of China"), Commerce's third step in this example would be to select specific entries from the subledger and request to see underlying documentation, such as applications and loan agreements, in order to confirm the accuracy of the subledger details. Thus, confirmation that a complete picture of relevant information is in front of the verification team, by tying relevant books and records to audited financial statements or tax returns, is critical.

In *Solar Cells from China*, however, despite Commerce's repeated requests for information, the GOC failed to offer any guidance as to how Commerce could search for EBC program lending in respondent exporters' books and records that could be tied to financial statements, tax returns,

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[153] *See Solar Cells from China* IDM at Comment 18.
[154] *Id*. We note that the CIT found that Commerce's explanation constituted "detailed reasoning for why documentation from the GOC was necessary" to verify non-use. *See Changzhou Trina Solar Energy Co., Ltd. v. United States*, Court No. 17-00198; Slip Op. 18-166 (CIT 2018) (*Changzhou Trina*) at 9-10.
[155] In *RZBC Group v. United States*, following a remand, the CIT held that Commerce could not verify non-use of the program by examining the respondent-exporter's audited financial statements or other books and records because record evidence demonstrated that the program terms were ambiguous. *See RZBC Group Shareholding Co., Ltd. et al v. United States*, 222 F. Supp. 3d 1196, 1201-02 (CIT 2017).

etc. Therefore, Commerce concluded in that investigation that it could not verify usage of the EBC program at the respondent exporters and instead attempted verification of usage of the program at the China Ex-Im Bank itself because it "possessed the supporting records needed to verify the accuracy of the reported non-use of the export buyer's credit program {and} would have complete records of all recipients of export buyer's credits." We noted our belief that "{s}uch records could be tested by {Commerce} to check whether the U.S. customers of the company respondents had received export buyer's credits, and such records could then be tied to the {China} Ex-Im Bank's financial statements."[156] However, the GOC refused to allow Commerce to query the databases and records of the China Ex-Im Bank.[157] Furthermore, there was no information on the record of *Solar Cells from China* from the respondent exporters' customers.

<u>*Isos from China* and the EBC Program</u>

Two years later, in *Isos from China*, respondents submitted certified statements from all customers claiming that they had not used the EBC program.[158] This appears to have been the first instance of respondents submitting such customer certifications. At that point in time, as explained in detail above, Commerce, based on the limited information provided by the GOC in earlier investigations, was under the impression that the EBC program provided medium and long-term loans and that those loans were provided directly from the China Ex-Im Bank to the borrowers (*i.e.*, the respondents exporter's customers) *only*. Because the respondent's customers were participating in the proceeding, verification of non-usage appeared to be a relatively straightforward matter of examining the financial statements and books and records of the U.S. customers for evidence of loans provided *directly* from the China Ex-Im Bank to the U.S. customer pursuant to verification steps similar to the ones described above. We thought, perhaps incorrectly, that we would see the name "China Ex-Im Bank" in the subledgers themselves. Therefore, despite being "unable to conduct a complete verification of non-use of this program at China {Ex-Im Bank}, . . . {w}e conducted verification . . . in the United States of the customers of {the respondents}, and confirmed through an examination of each selected customers' accounting and financial records that no loans were received under this program."[159]

<u>The 2013 Revisions to the EBC Program</u>

Our understanding of the operation of the EBC program began to change, however, after *Isos from China* had been completed. First, during the administrative review of citric salts, we learned for the first time at verification in October 2014 that the rules for administering the program had been revised in 2013, and sought further information from the GOC in subsequent proceedings.[160]

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[156] *See Solar Cells from China* IDM at Comment 18.
[157] *Id*.
[158] *See Isos from China* IDM at 15.
[159] *Id*.
[160] *See* Memorandum, "Countervailing Duty Investigation of Steel Propane Cylinders from the People's Republic of China: Placing Information on the Record," dated May 23, 2019 at Attachment I at 2-3 (Export Buyer's Credit Additional Documents Memorandum).

In the *Silica Fabric from China* investigation conducted in 2016-2017, we asked the GOC about these changes. In response, the GOC stated that there were three sets of relevant documents pertaining to the EBC program: (1) "Implementing Rules for the Export Buyer's Credit of the Export-Import Bank of China" which were issued by the China Ex-Im Bank on September 11, 2005 (referred to as "1995 Implementation Rules"); (2) "Rules Governing Export Buyer's Credit of the Export-Import Bank of China" which were issued by the China Ex-Im Bank on November 20, 2000 (referred to as "2000 Rules Governing Export Buyer's Credit" or "Administrative Measures"); and (3) the 2013 Revisions of the China Ex-Im Bank. According to the GOC, "{t}he Export-Import Bank of China has confirmed to the GOC that its 2013 guidelines are internal to the bank, non-public, and not available for release."[161] The GOC further stated that "those internal guidelines do not formally repeal or replace the provisions of the {Administrative Measures} which remain in effect."[162]

However, in the *Silica Fabric from China* investigation, we found the GOC's responses incomplete and unverifiable, explaining:

> Through its response to {Commerce's} supplemental questionnaire, the GOC has refused to provide the requested information or any information concerning the 2013 program revision, which is necessary for {Commerce} to analyze how the program functions. We requested the 2013 Administrative Measures revisions (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 USD 2 million contract minimum associated with this lending program. By refusing to provide the requested information, and instead asking {Commerce} to rely upon unverifiable assurances that the 2000 Rules Governing Export Buyers' Credit remained in effect, the GOC impeded {Commerce's} understanding of how this program operates and how it can be verified.
>
> Additional information in the GOC's supplemental questionnaire response also indicated that the loans associated with this program are not limited to direct disbursements through the EX-IM Bank. Specifically, the GOC stated that customers can open loan accounts for disbursements through this program with other banks. The funds are first sent from the EX-IM Bank to the importer's account, which could be at the EX-IM Bank or other banks, and that these funds are then sent to the exporter's bank account. Given the complicated structure of loan disbursements for this program, {Commerce's} complete understanding of how this program is administrated is necessary. Thus, the GOC's refusal to provide the most current 2013 Revisions, which provide internal guidelines for

[161] *See Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017) (*Silica Fabric from China*), and accompanying IDM at 11-12.
[162] *Id.* at Comment 17.

how this program is administrated by the EX-IM Bank, impeded {Commerce's} ability to conduct its investigation of this program.[163]

Further, we determined in the silica fabric investigation that we could not rely on declarations from customers claiming non-use of the program because "we are unable to verify the accuracy of these documents as the primary entity that possesses such supporting records is the Export Import Bank of China."[164] Additionally, we explained that "we now have information on the record that demonstrates the GOC updated certain measures of the program, but the GOC refused to provide the updated measures" and "{b}ecause the GOC withheld critical information regarding this program, we are unable to determine how the program now operates, and, thus, we cannot verify . . . declarations {claiming non-use of the program} as submitted."[165]

The Instant Investigation

In this investigation, we initiated on the EBC Program based on information in the Petition indicating that foreign customers of Chinese exporters have received a countervailable subsidy in the form of preferential export loans from the China Ex-Im Bank.[166] In the Initial Questionnaire issued to the GOC, we requested that the GOC provide the information requested in the Standard Questions Appendix "with regard to all types of financing provided by the China Export-Import Bank {} under the Buyer Credit Facility."[167] The Standard Questions Appendix requested various information that Commerce requires in order to analyze the specificity and financial contribution of this program, including the following: translated copies of the laws and regulations pertaining to the program, a description of the agencies and types of records maintained for administration of the program, a description of the program and the program application process, program eligibility criteria, and program use data. Rather than respond to the questions in the Standard Questions Appendix, the GOC stated it had confirmed "neither Huanri, nor its U.S. customers applied for, used, or benefited from this program during the POI. . . {t}herefore, the GOC understands that the {standard questions} appendix is not applicable."[168]

In our first supplemental questionnaire to the GOC, we again asked the GOC to respond to all items in the Standard Questions Appendix in addition to specific questions asking the GOC to provide specific information, such as a list of correspondent banks involved in the program and the interest rates established during the POI for financing provided under this program.[169] Instead of providing the requested information, the GOC stated that our questions were "not applicable" because the Huanri Companies did not use this program. We noted that "Exhibit

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[163] *Id.* at 12.
[164] *Id.* at Comment 17.
[165] *Id.*
[166] *See* Memorandum, "Enforcement and Compliance Office of AD/CVD Operations Countervailing Duty Initiation Checklist: Steel Propane Cylinders from the People's Republic of China (China)," dated June 11, 2018. (Record evidence indicates that preferential credit is extended under this program "to the importer or its banks" with the purpose of "support{ing} the export of {China's} homebred capital goods and to strengthen the competitiveness of its home products." *See* Petition, Volume V at Exhibit PRC-CVD-33 at 1.)
[167] *See* Initial Questionnaire at 5.
[168] *See* GOC IQR at 14.
[169] *See* GOC SQR1 at 1.

Loan-12 of the GOC IQR contains the GOC's 7th Supplemental Questionnaire Response from the CVD investigation of Certain Amorphous Silica Fabric from China {which} references 'certain internal guidelines' that were 'adopted by the Export-Import Bank in 2013,'" and we asked the GOC to submit an English and Chinese version of those internal guidelines (*i.e.*, the 2013 Revisions).[170] In its response, the GOC failed to provide the 2013 Revisions.[171]

Information on the record indicates that the GOC revised the EBC program in 2013 to eliminate the requirement that loans under the program be a minimum of two million U.S. dollars.[172] Moreover, information on the record also indicates that the China Ex-Im Bank may disburse export buyer's credits either directly or through third-party partner and/or correspondent banks.[173] We asked the GOC to provide the 2013 Revisions, 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 the this program. As noted above, the GOC failed to provide the requested information.[174] Thus, Commerce does not have the information necessary to understand the details of this program, including: the application process, internal guidelines and rules governing this program, interest rates used during the POI, and whether the GOC uses third party banks to disburse/settle export buyer's credits.

The 2013 Revisions were especially significant because record evidence indicates the credits were not *direct* transactions from the China Ex-Im Bank to U.S. customers of the respondent exporters, but rather, that there were intermediary banks involved, the identities of which were unknown to Commerce. As noted above, in prior examinations of this program, we found that the China Ex-Im Bank, as a lender, is the primary entity that possesses the supporting information and documentation that are necessary for Commerce to fully understand the operation of this program following the 2013 Revisions, which is a prerequisite to the Commerce's ability to verify non-use of the program.[175] Performing the verification steps outlined above to verify claims of non-use would require knowing the names of the intermediary banks; it would be their names, not the name "China Ex-Im Bank," that would appear in the subledgers of the U.S. customers if they received the credits. As explained recently in the investigation of aluminum sheet:

> Record evidence indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank. Specifically, the record information indicates that customers can open loan accounts for

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[170] *See* Letter to the GOC, "Supplemental Questionnaire," dated September 13, 2018.
[171] *See* GOC SQR1 at 1.
[172] *See* Export Buyer's Credit Additional Documents Memorandum at 2.
[173] *See* GOC IQR at Exhibit LOAN-12 at 9-10 (internal page numbers 4-5).
[174] *See* GOC IQR at 14-18; *see also* GOC SQR at 1.
[175] *See, e.g.*, *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) and accompanying IDM at Comment 6; *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) (*Isos from China 2014 AR*), and accompanying IDM at Comment 2 (concluding that "without the GOC's necessary information, the information provided by the respondent companies is incomplete for reaching a determination of non-use").

> disbursements through this program with other banks, whereby the funds are first sent to . . . the importer's account, which could be at the China Ex-Im Bank or other banks, and that these funds are then sent to the exporter's bank account.[176]

In other words, there will not necessarily be an account in the name "China Ex-Im Bank" in the books and records (*e.g.*, subledger, tax return, bank statements) of the U.S. customer. Thus, if we cannot verify claims of non-use at the GOC,[177] having a list of the correspondent banks is critical.

Furthermore, although Huanri reported that its U.S. customers did not use the program, when we asked Huanri to explain in detail the steps it took to determine non-use of the EBC program for its customers, its responses hinged on its assertions with respect to the operation of the program – information which Commerce needed and sought directly from the GOC. According to Huanri, its customers "are unable to fulfill the requirements of this program"[178] for various reasons, including:

> 1. The buyer's credit program is used to finance the exports of Chinese capital goods such as mechanic and electronic products, complete sets of equipment, and high and new-tech products & services. The subject merchandise exported by Huanri does not fall within these categories.
>
> 2. The program requires that the exporter must buy export credit insurance in order to apply for the buyer's credit. Huanri did not buy export credit insurance for any of its export transactions during the POI, thus as a threshold matter, the customers can not apply for export buyers credit under this program. The non-use of this program can be demonstrated from the company records or financial ledgers for the POI.
>
> . . .
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> In addition, we understand that the loan, if any, would be directly released to the Chinese exporter, as a kind of proceeds payment. However, Huanri has never received any funds from the China Ex-Im Bank, rather Huanri received the full payment from the customers directly. This is another way to demonstrate non-use of this program by Huanri's customers in the POI.[179]

However, each of the assertions above requires the information necessary to understand the details of this program, including: the application process, internal guidelines and rules governing this program, the types of goods eligible for export financing under this program,

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[176] *See CAAS from China* IDM at 30 (internal citations omitted).
[177] Commerce no longer attempts to verify usage of the EBC program with the GOC given the inadequate information provided in its questionnaire responses, in particular, the GOC's refusal to provide the 2013 revisions to the administrative rules. *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, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017), and accompanying IDM at Comment 1.
[178] *See* Huanri IQR at 13.
[179] *Id.* at 13-14.

interest rates used during the POI, and whether the GOC uses third party banks to disburse/settle export buyer's credits. As noted above, the GOC failed to provide the requested information regarding the EBC program.[180] Additionally, Huanri's assertion that the payments would be issued directly from the China Ex-Im Bank is contradicted by evidence that third party banks may be involved in the disbursement of funds, which also has not been addressed by the GOC. Further, Huanri cites to The Administrative Measures of Export Buyer's Credit, dated November 2000 to support its statements above regarding the eligibility requirements of the EBC program, which may have been superseded by the 2013 Revisions that the GOC has failed to provide.[181] Thus, the explanation and evidence (or lack thereof) on the record from both the GOC and Huanri has failed to support the claim that the program was not used.

Without such explanation and evidence, it would be unreasonably onerous for Commerce to comb through the business activities of Huanri's customers without any guidance as to which loans or banks to subject to scrutiny for each company. The GOC refused to provide a list of all correspondent banks involved in the disbursement of credits and funds under the program. A careful verification of Huanri's non-use of this program without understanding the identity of these correspondent banks would be unreasonably onerous, if not impossible.[182] Because Commerce does not know the identities of these banks, Commerce's second step of its typical non-use verification procedures (*i.e.*, examining the company's subledgers for references to the party making the financial contribution) could not by itself demonstrate that the U.S. customers did not use the program (no correspondent banks in the subledger). Nor could the second step be used to narrow down the company's lending to a subset of loans likely to be the export buyer's credits (*i.e.*, loans from the correspondent banks). Thus, verifying non-use of the program without knowledge of the correspondent banks would require Commerce to view the underlying documentation for *all* entries from the subledger *to attempt* to confirm the origin of each loan – *i.e.*, whether the loan was provided from the China Ex-Im Bank *via* an intermediary bank. This would be an unreasonably onerous undertaking for any company that received more than a small number of loans.

Furthermore, the third step of Commerce's typical non-use verification procedures (*i.e.*, selecting *specific* entries from the subledger and requesting to see underlying documentation, such as applications and loan agreements) likewise would be of no value. This step might serve merely to confirm whether banks were correctly identified in the subledger – not necessarily whether those banks were correspondent banks participating in the EBC program. This is especially true given the GOC's failure to provide other requested information, such as the 2013 Revisions, a sample application, and other documents making up the "paper trail" of a direct or indirect export credit from the China Ex-Im Bank.[183] Commerce would simply not know what to look

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[180] *See* GOC IQR at 14-18; *see also* GOC SQR at 1.
[181] *See* Huanri IQR at 13-14 and Exhibit 12.2.
[182] *See* GOC IQR at 16; *see also* letter from the GOC, "Steel Propane Cylinders from the People's Republic of China, Case No. C-570-087: Initial Questionnaire Response for Huanri IMP. & EXP.," dated September 6, 2018 at 10.
[183] In this investigation, our questionnaire stated: "Provide a sample application for each type of financing provided under the Buyer Credit Facility, the application's approval, and the agreement between the respondent's customer and the China Ex-Im Bank that establish the terms of the assistance provided under the facility." *See* Initial Questionnaire at 5. The GOC responded "{a}s neither Huanri nor {SC Factory} (or any of their U.S. customers) used this program, there is no sample application to provide." *See* GOC IQR at 15.

for behind each loan in attempting to identify a loan provided by the China Ex-Im Bank via a correspondent bank.

This same sample "paper trail" would be necessary even if the GOC provided the list of correspondent banks. Suppose, for example, that one of the correspondent banks is HSBC. Commerce would need to know how to differentiate ordinary HSBC loans from loans originating from, facilitated by, or guaranteed by the China Ex-Im Bank. In order to do this, Commerce would need to know what underlying documentation to look for in order to determine whether particular subledger entries for HSBC might actually be China Ex-Im Bank financing: specific applications, correspondence, abbreviations, account numbers, or other indicia of China Ex-Im Bank involvement. As explained above, the GOC failed to provide Commerce with any of this information. Thus, even were Commerce to attempt to verify respondent's non-use of the EBC program notwithstanding its lack of knowledge of which banks are intermediary/correspondent banks by examining each loan received by each of the respondent's U.S. customers, Commerce would still not be able to verify which loans were normal loans versus EBC program loans due to its lack of understanding of what underlying documentation to expect, and whether/how that documentation would indicate China Ex-Im Bank involvement. In effect, companies could provide Commerce with incomplete loan documentation without Commerce understanding that the loan documentation was incomplete. Even if it were complete and identified China Ex-Im Bank involvement, without a thorough understanding of the program, Commerce might not recognize indicia of such involvement.

That is why Commerce requires disclosure of the 2013 Revisions, as well as other information concerning the operation of the EBC program, in order to verify usage. Understanding the operation of the program is not, therefore, solely a matter determining whether there is a financial contribution or whether a subsidy is specific. A complete understanding of the program provides a "roadmap" for the verifiers by which they can conduct an effective verification of usage. By analogy, consider attempting to verify whether a company has received a tax break without having an adequate understanding of how the underlying tax returns should be completed or where use of the tax break might be recorded.

Thus, Commerce finds it could not accurately and effectively verify usage at Huanri's customers, even were it to have attempted the unreasonably onerous examination of each of its customers' loans. To conduct verification at Huanri's customers without the information requested from the GOC would amount to looking for a needle in a haystack with the added uncertainty that Commerce might not even be able to identify the needle when it was found. Therefore, Commerce concludes that, as a result of the GOC's failure to cooperate, the record of this investigation lacks verifiable information concerning Huanri's use of the EBC program.

As explained in the *Preliminary Determination*, because the GOC failed to provide requested and necessary information, Commerce determined, as AFA, that the EBC program provides a financial contribution and is specific.[184] Additionally, the GOC withheld the requested information described above, which is necessary to determine whether Huanri's U.S. customers actually used the EBC program during the POI. The GOC's withholding of this necessary information prevents us from fully understanding and analyzing the operation of this program,

[184] *See* PDM at 26-28.

thereby impeding this proceeding. Accordingly, we find that we must rely on the facts otherwise available, pursuant to sections 776(a)(1), (a)(2)(A), (a)(2)(C), and (a)(2)(D) of the Act, to determine whether this program was used by Huanri and conferred a benefit.

Furthermore, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding of information and significantly impeding this proceeding, failed to cooperate with Commerce by not acting to the best of its ability. As noted above, the GOC did not provide the requested information needed to allow Commerce to analyze this program fully. As a result, the GOC did not provide information that would permit us to make a determination as to whether this program confers a benefit. Moreover, absent the requested information, we are unable to rely on the GOC's and Huanri's claims of non-use of this program. The GOC has not provided information with respect to whether it uses third-party banks to disburse/settle export buyer's credits from the China Ex-Im Bank. Such information is essential to understanding how export buyer's credits flow to/from foreign buyers and the China Ex-Im Bank. Absent the requested information, the GOC's and Huanri's claims of non-use of this program are not verifiable. We requested the 2013 Revisions because information indicates that the 2013 Revisions implemented important program changes. For example, record evidence indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank.[185] Specifically, the record indicates that: 1) customers can open loan accounts for disbursements through this program with third-party banks; 2) the funds are first sent to the importer's account, which could be at the China Ex-Im Bank or third-party banks; and 3) these funds are then sent to the exporter's bank account.[186] Because of the complicated structure of loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary to confirm whether Huanri's customers obtained loans under the program.

Thus, as discussed above, the GOC's refusal to provide the 2013 Revisions, setting internal guidelines for how this program is administered by the China Ex-Im Bank, and a list of partner/correspondent banks that are used to disburse funds through this program, constitutes withholding necessary information, which impeded Commerce's ability to conduct its investigation of this program. Therefore, we find that: (1) the GOC has not cooperated to the best of its ability; (2) the application of facts available with adverse inferences, as described under sections 776(a) and (b) of the Act is warranted; and (3), as AFA, find that Huanri used and benefited from this program, despite its claims that its U.S. customers had not obtained export buyer's credits from the China Ex-Im Bank during the POI.[187]

Finally, relying on AFA because we do not have complete information, Commerce finds the EBC program to be an export subsidy for this final determination. Although the record regarding this program suffers from significant deficiencies, we note that the GOC's description of the program and supporting materials (albeit ultimately found to be deficient) demonstrates that through this program, state-owned banks, such as the China Ex-Im Bank, provide loans at

[185] *See* GOC IQR at Exhibit LOAN-12 at 9-10 (internal page numbers 4-5).
[186] *Id.*
[187] *See* Huanri IQR at 12-14 and Exhibit 12.3.

preferential rates for the purchase of exported goods from China.[188] Moreover, the program was alleged by the petitioners as an example of a possible export subsidy.[189] Furthermore, Commerce has found this program to be an export subsidy in the past.[190] Thus, taking all such information into consideration indicates the provision of the export buyer's credits is contingent on exports within the meaning of section 771(5A)(B) of the Act.

We disagree with Huanri's assertion that Commerce should not substitute an AFA determination regarding use of the EBC program for alleged record evidence of non-use in the form of customer declarations. In this investigation, we have information on the record indicating that the 2013 Revisions and the involvement of third-party banks, which were not present on the record of *Isos from China 2014* where Commerce 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 EBC program.[191] As such, we find Huanri's reliance on *Isos from China* to be unpersuasive.

We also disagree with Huanri's argument that Commerce may not allow adverse inferences based on a party's failure to cooperate to adversely affect a cooperating respondent. Court precedent allows an adverse inference against a government to impact an otherwise cooperative respondent, when the government is the holder of the missing necessary information.[192] The CIT has recognized that "if a foreign government fails to cooperate in a countervailing duty case, Commerce may apply AFA even if the collateral effect is to 'adversely impact a cooperating party.'"[193] This is because the foreign government is in the best position to provide information regarding the operation of a subsidy program. Obviously, this has an effect on the respondent company, but this does not mean that Commerce's application of AFA was unlawful. The CIT has also stated that Commerce should avoid such collateral effects if relevant information exists elsewhere on the record.[194] However, as explained above, the claims of non-use on the record cannot be verified.

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[188] *See, e.g.* GOC IQR at Exhibit LOAN-13 ("The export buyer's credit {program} managed by {China Ex-Im Bank} is an intermediate and long-term credit to foreigners, used for importers making payment at sight for goods to Chinese exporters, which may promote export of goods and technology services."); *see also* GOC IQR at Exhibit LOAN-12 at 9-10 ("{T}he borrower {under the EBC Program} must be an importer or a bank approved by the China Ex-Im Bank {and} the {China} Ex-Im Bank lending contract requires the buyer (importer) and seller (exporter) to open accounts with either the {China} Ex-Im Bank or one of its partner banks."); and GOC IQR at LOAN-14 at 1 ("{The EBC Program provides} support for the export of China's sets of equipment, ships, and other mechanical and electronic products.").
[189] *See* Petition, Volume V at 29-30 and Exhibit PRC-CVD-33.
[190] *See Tires from China* IDM at Comment 16.
[191] *See Isos from China 2014* IDM at Comment 2 (concluding that "without the GOC's necessary information, the information provided by respondent companies is incomplete for reaching a determination of non-use").
[192] *See KYD, Inc. v. United States*, 607 F.3d 760 (Fed. Cir. 2010) (finding that a collateral impact on a cooperating party does not render the application of adverse inferences in a CVD investigation improper); *see also Fine Furniture* (affirming Commerce's application of adverse inferences when the GOC did not provide requested information despite the respondents' cooperation).
[193] *See Changzhou Trina Solar II*, 352 F. Supp. 3d at 1325 (quoting *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1342 (CIT 2013) (*Archer Daniels*).
[194] *Id.*

With regard to the GOC's and Huanri's reliance on *Changzhou Trina Solar I*, we find that Commerce's decision not to apply AFA in that case was predicated on Commerce's inadequate understanding of the EBC program before additional information became available to Commerce regarding the program in subsequent proceedings. Specifically, as noted above, we have information regarding the 2013 Revisions and the involvement of third-party banks on the record of this case.[195] In *Changzhou Trina Solar I*, we did not have such information. Because the GOC has withheld critical information with respect to the 2013 Revisions, we are unable to determine how the program now operates, and, thus, we cannot verify the respondent company's customers' certifications of non-use.[196]

Huanri argues that if Commerce continues to apply AFA to the EBC program, Commerce should not apply the 10.54 percent AFA rate based on the Preferential Lending to the Coated Paper Industry program from *Coated Paper from China*, which Huanri asserts is "far less comparable" than Huanri's calculated rate for the Export Seller's Credit program.[197] We disagree with Huanri's assertion that Commerce should use Huanri's calculated rate for the Export Seller's Credit program as the AFA rate for the EBC program. As explained in the section IV.A above, the first step under our CVD AFA hierarchy in investigations is to apply the highest non-zero rate calculated for a cooperating company for the *identical* program in the investigation. If there is no identical program match in the investigation or if the rate is zero, under the second step of the investigation hierarchy we apply the highest non-*de minimis* rate calculated for a cooperating company in another CVD proceeding involving the same country for the identical program, or if the identical program is not available, for a similar program. If no such rate exists, under the third step of Commerce's investigation hierarchy, Commerce applies the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise. The rate of 1.37 percent rate calculated as Huanri's final subsidy margin for the Export Seller's Credit Program in this investigation is not the highest calculated rate for a cooperating company for the *identical* program. Nor does Huanri argue that the Export Seller's Credit Program is identical to the EBC program. Here, under the second step of the hierarchy for investigations, Commerce determined that the rate of 10.54 percent *ad valorem* is the highest rate determined for a similar program that provides assistance in the form of preferential interest rates on various types of loans sourced from Chinese-owned financial institutions (from the *Coated Paper from China* proceeding) and should be applied as the AFA rate for the EBC program.[198] Huanri asserts that the 10.54 percent rate was calculated for a program that is "far less comparable" than the Export Seller's Credit Program; however, consistent with section 776(d) of the Act, in an investigation where there is no rate calculated for an identical program, Commerce selects the highest rate determined for a similar, not necessarily the most similar, program calculated for a cooperative company in another CVD proceeding involving the same country.

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[195] *See* Export Buyer's Credit Additional Documents Memorandum at 2-3.

[196] *See Trina Solar I*; *see also Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Crystalline Silicon Photovoltaic Products from China*), and accompanying IDM at Comment 11.

[197] *See* Huanri Case Brief at 10.

[198] *See Coated Paper from China*.

Finally, with respect to the GOC's argument regarding a WTO Appellate Body decision,[199] the CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.[200] Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[201] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Commerce's discretion in applying the statute.[202]

Comment 2: Whether to Apply AFA to Huanri for Policy Lending

The Petitioners' Case Brief Comments

- In response to the Initial Questionnaire, which instructs respondents to report "all forms of financing outstanding during the POI, not only traditional loans {but also} interest expenses on bank promissory notes, invoice discounting, and factoring of accounts receivable,"[203] Huanri and SC Factory stated that they "reported all financing outstanding during the POI as reported in the loan template."[204] In a supplemental questionnaire response, Huanri and SC Factory again confirmed that they had "reviewed against the {China Huanri Group's consolidated} records, including outstanding loans and balance sheets, and reported the loans in a complete manner."[205]
- During the verification of Huanri's questionnaire responses, Huanri officials explained that Huanri "records bank acceptance bills {in the China Huanri Group's} Notes Payable ledger,"[206] and they described the bank acceptance bills as "a guarantee that the bank promises to pay in a later period, which is equivalent to a promissory note… {which Huanri uses} as an instrument to facilitate payments" to its suppliers.[207]
- Huanri erred in failing to report its bank acceptance bills to Commerce, regardless of Huanri's belief that bank acceptance bills should not be considered loans.[208] SC Factory did report bank acceptance bills as lending that was outstanding during the POI; thus, Huanri's view that its bank acceptance bills are not reportable is both incorrect and inconsistent with reporting by SC Factory.[209]

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[199] *See* GOC's Case Brief at 5-6 (citing Appellate Body Report, *United States – Countervailing Duty Measures on Certain Products from China*, paragraphs 4.178 – 4.179, WT/DS437/AB/R (December 18, 2014)).
[200] *See Corus Staal BV v. U.S. Dep't of Commerce*, 395 F 3d. 1343, 1347-49 (Fed. Cir. 2005), *cert. denied* 126 S. Ct. 1023 (2006); *accord Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007).
[201] *See, e.g.*, 19 U.S.C. § 3533, 3538.
[202] *See, e.g.*, 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).
[203] *See* the Petitioners' Case Brief at 6 (citing Initial Questionnaire at Section III, Program-Specific Questions at Question B.1).
[204] *Id.* (citing Huanri IQR at 10 and letter from SC Factory, "Steel Propane Cylinders from the People's Republic of China - Section III Questionnaire Response," dated August 31, 2018 (SC Factory IQR) at 9).
[205] *Id.* (citing letter from Huanri, "Steel Propane Cylinders from the People's Republic of China - Supplemental Section III Questionnaire Response," dated September 20, 2018 (Huanri SQR2) at 2).
[206] *Id.* at 7 (citing Huanri Verification Report at 4).
[207] *Id.* at 9.
[208] *Id.* at 8.
[209] *Id.* at 9 (citing SC Factory IQR at Exhibit 6 and Huanri Verification Report at 14).

- Commerce routinely includes bank acceptance bills and letters of credit as countervailable financing provided under the GOC's Policy Loan program,[210] such as in *1,1,1,2 Tetrafluoroethane from China*,[211] in which Commerce rejected a respondent's request for bills of exchange and letters of credit to be exempted from the Policy Loan program, *Citric Acid from China 2010*,[212] in which Commerce found both loans and bank acceptance notes issued by SOCBs to be countervailable, and *Polyester Staple Fiber from China*, in which Commerce found letters of credit and other forms of non-traditional financing to be countervailable financial instruments.[213]
- Even if Huanri believed that bank acceptance bills are not countervailable, the petitioners argue that Huanri should have disclosed information on these items in its initial questionnaire response, as Commerce's specifically requested financial agreements beyond traditional loans, including "bank promissory notes," which Huanri compared its bank acceptance bills to during verification.[214]
- Commerce has held – and the courts have affirmed – that respondents do not have the discretion to determine which subsidies, whether named in the petition or not, to report to Commerce.[215]
- Huanri's decision to withhold information on its bank acceptance bills and its false claims to have completely and accurately reported all loans outstanding during the POI was discovered at verification, which impeded Commerce's ability to verify Huanri's use of the Policy Loan program, and thereby warrants the application of AFA rate of 10.54 percent *ad valorem* calculated for a similar program in another CVD proceeding involving China.[216]

Huanri's Rebuttal Comments

- As Commerce verified, Huanri asks a bank to issue a bank acceptance bill to a supplier, per the supplier's request for a guarantee of future payment, and Huanri must keep adequate deposits at the bank.[217] Huanri used bank acceptance bills as a form of guaranteed payment to its suppliers, not as a form of financing for Huanri, and accordingly, Commerce noted in

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[210] *Id.* at 8 (citing *CAAS from China* IDM at Comment 6; *see also Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014) (*1,1,1,2 Tetrafluoroethane from China*), and accompanying IDM at Comment 11; *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010*, 77 FR 72323 (December 5, 2012) (*Citric Acid from China 2010*), and accompanying IDM at 15.
[211] *Id.* (citing *1,1,1,2 Tetrafluoroethane from China* IDM at Comment 11).
[212] *Id.* (citing *Citric Acid from China 2010* IDM at 15).
[213] *Id.* at 9 (citing *Polyester Staple Fiber from China* IDM at Comment 8).
[214] *Id.* at 9-11 (citing Initial Questionnaire at Section III, Program-Specific Questions at Question B.1; and Huanri Verification Report at 4).
[215] *Id.* at 11 (citing *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Countervailing Duty Determination*, 82 FR 58172 (December 11, 2017), and accompanying IDM at 41; *see also Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479, June 29, 2017, and accompanying IDM at Comment 4; *CAAS from China* IDM at 47; *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986); *Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Final Affirmative Determination*, 83 FR 3122 (January 23, 2018), and accompanying IDM at Comment 9).
[216] *Id.* at 12-13 (citing *Coated Paper from China* IDM at "Preferential Lending to the Coated Paper Industry;" and *Steel Wheels from China* IDM at 27).
[217] *See* Huanri's Rebuttal Brief at 2-3.

its verification report that Huanri "did not receive monetary funding through bank acceptance bills during the POI."[218]

- The bank acceptance bills that Huanri provided to its suppliers did not provide Huanri with any money, a reduction in payment, or a reduction in interest payments; therefore, Huanri did not receive any financial contribution or benefit.[219]
- The bank acceptance bills Huanri used to guarantee payment to its suppliers should not be characterized under the alleged Policy Loan program and are critically different from the types of nontraditional loans that Commerce has previously found to be countervailable for "provid{ing} a discounted benefit to the company, whether on the face value of the debt instrument in question, or in the form of a reduced interest rate."[220]
- A supplier that receives a bank acceptance bill has the option to go to the bank and request payment before the bill's maturity date, in which case the supplier would take a discount for receiving money before the payment matured, which could be considered a form of financing for *the supplier*.[221] In fact, SC Factory received bank acceptance bills as a supplier and cashed them in before they matured, and SC Factory properly reported these instruments in its questionnaire responses.[222]
- Huanri only issued bank acceptance bills to its suppliers and did not receive or hold any bank acceptance bills; thus, Huanri had no receipt of principal nor did it have any principal and/or interest payments related to bank acceptance bills to report in its questionnaire responses.[223] Huanri and SC Factory fully cooperated and provided all information requested by Commerce regarding all types of financing, including bank acceptance bills where money was received.[224]
- Huanri's bank acceptance bills should be understood in the same manner as the time drafts in the *Hardwood Plywood from China 2017 Investigation*, in which Commerce concluded that the respondent company's time drafts "did not entail the use of any of the banks' funds {} and did not provide a countervailable benefit."[225]
- Commerce found that bank acceptance bills used by a respondent company in the *CDMT from China* investigation to pay its suppliers were not loans because the respondent provided sufficient funds to cover the bank acceptance bills by their maturity date.[226]
- If Commerce nonetheless determines that Huanri should have reported the bank acceptance bills issued to its suppliers as financing and selects an AFA rate for this program, Commerce should apply Huanri's calculated rate for the Policy Loan program as it involves to the exact same industry, or alternatively, the 1.54 percent *ad valorem* rate calculated for the preferential loan program in the *High Pressure Steel Cylinders from China 2016 AR*, which

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[218] *Id.* at 1-2 (citing Huanri Verification Report at 4).
[219] *Id.* at 2-3.
[220] *Id.* at 1-2 (citing the Petitioners' Case Brief at 10).
[221] *Id.* at 3.
[222] *Id.* at 4.
[223] *Id.* at 3.
[224] *Id.* at 4.
[225] *Id.* at 4-5 (citing *Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 53473 (November 16, 2017) (*Hardwood Plywood from China 2017 Investigation*), and accompanying IDM at Comment 5).
[226] *Id.* (citing *CDMT from China* IDM at Comment 8).

involves a similar industry, rather than the 10.54 percent *ad valorem* rate from the *Coated Paper from China* investigation, which relates to the highly dissimilar paper industry.[227]

The GOC's Rebuttal Comments

- Commerce should find, as it found in *CDMT from China*, that bank acceptance notes are not loans but rather, as Huanri officials explained at verification, "a guarantee that the bank promises to pay in a later period."[228] Specifically, in *CDMT from China*, Commerce found that when a respondent company used bank acceptance bills to pay a supplier, the bank "guarantee{d} payment to the supplier for a fee" and the respondent was "obligated to pay the full amount of the bill before the maturity date of the bill."[229]
- Contrary to the cases cited by the petitioners, bank acceptance bills are not loans or alternative financing instruments that offer discounted rates, but rather, as Commerce found while verifying Huanri, "a guarantee" whereby "Huanri uses the bank acceptance bill as an instrument to facilitate payments."[230] The proceedings that the petitioners cite to do not support the conclusion that bank acceptance bills are loans since both of these cases involved alternative financing instruments that Commerce has found to be loans by another name.[231] In *1,1,1,2 Tetrafluoroethane from China*, Commerce found that "the discounts on the face value of the {bills of exchange and letters of credit} function as the 'interest' payments" such that the "instruments can be compared to standard loans for the purposes of determining if and to what extent they provide a subsidy."[232] In *Polyester Staple Fiber from China*, Commerce considered whether bank acceptance discounts, letter of credit discounts, and finance leasing could be loans and concluded that they were in that particular case because the respondent companies "d{id} not dispute the fact that these loans were bestowed to them at a discounted rate..."[233]
- Contrary to the records of the aforementioned proceedings, there is no evidence on this record that the bank acceptance bills Huanri used to facilitate payments to its suppliers provided Huanri with any form of discounted payment or interest rate; thus, there is no financial contribution and the bank acceptance bills should be considered as payment guarantees and not loans.[234]
- If Commerce finds that bank acceptance bills constitute unreported assistance, it must still point to factual evidence on the record to establish each element of a countervailable subsidy as the CIT has found that a respondent's failure to report assistance "is not equivalent to a legal conclusion that the elements necessary for the imposition of a CVD duty . . . were met {} but is simply the threshold determination that further investigation was warranted."[235]

[227] *Id.* (citing *High Pressure Steel Cylinders from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 83 FR 63471 (December 10, 2018) (*High Pressure Steel Cylinders from China 2016 AR*), and accompanying IDM at 5; *see also Coated Paper from China*, 75 FR at 70202).
[228] *See* GOC's Rebuttal Brief at 3 (citing Huanri Verification Report at 4).
[229] *Id.* (citing *CDMT from China* IDM at Comment 8.
[230] *Id.* at 4 (citing Huanri Verification Report at 14).
[231] *Id.* at 4-5 (citing the Petitioners' Case Brief at 8-10).
[232] *Id.* at 5 (citing *1,1,1,2 Tetrafluoroethane from China* IDM at Comment 11).
[233] *Id.* (citing *Polyester Staple Fiber from China* IDM at Comment 8).
[234] *Id.*
[235] *Id.* at 4 (citing *Changzhou Trina Solar I*).

There is no financial contribution when a respondent pays the bank a fee to issue a bank acceptance bill and the supplier is not paid until the respondent pays the bank.[236]

- In *Changzhou Trina Solar I*, the CIT held that Commerce "must still point to actual information on the record" to determine that a subsidy is specific; however, there is no record evidence indicating that bank acceptance bills are only available to a limited number of companies or are in anyway specific under the definition provided in section 771 (5A) of the Act.[237] Even if Commerce were to conclude that Huanri should have reported its bank acceptance bills, there is no relevant factual information on record regarding specificity and financial contribution; thus, Commerce is unable to point to "any other information placed on the record" as required under section 776(b)(4) of the Act to base an adverse inference.[238]
- Since Commerce has previously found bank acceptance bills to not be countervailable, and as neither the petitioners nor the verification report point to any evidence that would contradict the basis of Commerce's prior findings regarding bank acceptance bills, Commerce should determine that Huanri's bank acceptance bills were not unreported assistance and that there is no basis to find them countervailable.[239]
- If Commerce nevertheless finds Huanri's bank acceptance bills countervailable, it should only apply an AFA rate to bank acceptance bills and not to other reported policy loans Huanri reported for the final determination.[240]

Commerce's Position: In *1,1,1,2 Tetrafluoroethane from China*, we found bills of exchange and letters of credit to provide countervailable subsidies because, while these financial instruments are not conventional loans, a respondent company used them to receive payment on its sales in the form of a cash advance, at a cost to the company in the form of a discount on the face value of the amount receivable, plus fees, which functions as interest payment paid entirely up front.[241] Similarly, the bank acceptance bills we found to be countervailable in *Citric Acid from China 2010* and *Polyester Staple Fiber from China* were instruments that respondents received as a form of payment and cashed in before their maturity date.[242] Commerce considered these financial instruments as a form of contingent funding in which the respondent received money it would not otherwise have, and thus, while there is no "principal" as such, the bank is effectively lending money to the company that received the instruments as a form of payment for the time period before the instruments become due, and the discount on the face value of the instrument functions as the "interest" payment.[243]

Upon review of the record facts regarding the bank acceptance bills used by Huanri, as well as Huanri's loans outstanding during the POI, we determine that these particular financial instruments functioned differently from those found in the aforementioned cases. Indeed, the record facts show that Huanri used these bank acceptance bills not to receive payment on its sales but, rather, as forms of payment for its purchases. Specifically, at verification, we

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[236] *Id.* (citing *CDMT from China* IDM at Comment 8).
[237] *Id.* at 6 (citing *Changzhou Trina Solar I*, 195 F. Supp. 3d at 1348).
[238] *Id.*
[239] *Id.*
[240] *Id.* at 7.
[241] *See 1,1,1,2 Tetrafluoroethane from China* IDM at Comment 11.
[242] *See Citric Acid from China 2010* IDM at 15; *see also Polyester Staple Fiber from China* IDM at Comment 8.
[243] *See, e.g.*, *1,1,1,2 Tetrafluoroethane from China* IDM at Comment 11.

confirmed that Huanri used bank acceptance bills to guarantee payment to its suppliers; the company did not receive any payment from a bank, discounted or otherwise.[244] Thus, these bills did not provide Huanri with any bank funds that could be construed as a loan and incurred no costs to Huanri that would function as interest payments. Therefore, we find that these bank acceptance bills that Huanri used to pay its suppliers did not constitute, or give rise to, any form of government financing that Huanri was obligated to report in the same way as the financial instruments Commerce examined in *1,1,1,2 Tetrafluoroethane from China*, *Citric Acid from China 2010*, or *Polyester Staple Fiber from China* and, thus, the application of AFA is not warranted. Moreover, on the other side of these transactions, Huanri's affiliated supplier, SC Factory, did report the bank acceptance bills that it received as loans.[245]

Comment 3: Whether Policy Loans Provided by SOCBs to the Steel Propane Cylinder Industry are Specific

GOC's Case Brief Comments

- There is no evidence on the record that supports the finding that loans issued by SOCBs to the steel propane cylinder industry are *de jure* specific.[246] Section 771(5A)(D)(i) of the Act defines *de jure* specificity as situations where "the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry."[247]
- Although Commerce states that record information indicates that the GOC promoted the steel propane cylinder industry in recent years, there is no reference to the steel propane cylinder industry, or any variant thereof, contained in the GOC plans that Commerce cited in the *Preliminary Determination*; rather, the policy documents cited by Commerce are merely aspirational plans that contain general and vague references to industry that are not specific to the steel propane cylinder industry.[248]
- As explained in the GOC's initial questionnaire response, the issuance and approval of all loans negotiated between SOCBs and members of the steel propane cylinder industry was "based upon {SOCBs'} independent criteria {brought forth} during negotiations between commercial banks and borrowers."[249] Additionally, SOCBs are free of any requirement to implement the GOC's industrial policies, and they are subject to the Capital Rules for Commercial Banks, which constrains them from making lending decisions that are not based on market principles.[250]
- Commerce did not cite to any evidence on the record that lending by SOCBs is provided to a limited number of industries, that the steel propane cylinders industry is the predominant user of such a program, or that the industry receives a disproportionate amount of the loans received; therefore, Commerce has no basis to find *de facto* specificity under section 771(5A)(D)(i) of the Act.[251]

[244] *See* Huanri Verification Report at 4.
[245] *Id.* at 14; *see also* SC Factory IQR at Exhibit 6; and Huanri SQR2 at Exhibit SQ2-17.
[246] *See* GOC Case Brief at 29-30.
[247] *Id.* at 30.
[248] *Id.* at 30-31.
[249] *Id.* at 31-32 (citing GOC IQR at 7-8).
[250] *Id.* (citing GOC IQR at 8-9).
[251] *Id.* at 32-33 (citing PDM at 36-37).

The Petitioners' Rebuttal Comments

- Commerce has developed an analytical framework through previous investigations in which it will find policy lending to be *de jure* specific when the government establishes goals and objectives regarding the development of a certain sector and seeks to implement these goals through the use of financing.[252]
- Commerce cites to record evidence, including numerous national and provincial government plans, which outline a blueprint for achieving the GOC's industrial goals.[253]
- For example, one of the main components of the National 13th Five-Year Plan for Economic and Social Development (2016-2020) (13th Five-Year Plan) is a strategy to encourage the "transformation and upgrading of traditional industries," such as steel, to "improve the supply of consumer goods," a classification that would include the subject merchandise.[254] To achieve this objective, the 13th Five-Year Plan promoted the development of "a number of competitive, well-known brands" and assists enterprises through "proper liquidity and interest rates" and a "national financing guarantee fund" to lower the financial cost of enterprises.[255] The Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment, No. 40 (Decision 40) encourages specific industries including the "manufacturing and processing of metallic packaging products for… daily chemical products."[256] The GOC's industrial policies clearly encouraged the steel propane cylinder industry and, therefore, the loans by SOCBs to this industry are *de jure* specific under section 771(5A)(D)(i) of the Act.[257]
- While the GOC highlights several regulatory forms that have purportedly made the SOCBs operate independently from the government,[258] Commerce reviewed more than 2,500 pages of documents related to the Chinese financial system, directly examined the GOC's recent initiatives, and concluded that "soft budget constraints, non-arm's-length pricing, and government policy directives fundamentally distort the market" and that "interest rates are not yet market-determined."[259] Commerce has exercised its discretion to weigh the record evidence and has appropriately concluded that the record evidence overwhelmingly supports the conclusion that China's financial system does not operate under market principles and that SOCBs provided preferential loans to producers of subject merchandise pursuant to the GOC's industrial policies aimed at encouraging the development of the steel propane cylinders industry.[260]

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[252] *See* the Petitioners' Rebuttal Brief at 47 (citing *Coated Free Sheet from China* IDM at 9-10 and Comment 8; *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009), and accompanying IDM at Comment 5).
[253] *Id.* (citing PDM at 36-38).
[254] *Id.* at 47-48 (citing GOC IQR at Exhibit LOAN-6, 13th Five-Year Plan at Part V, Chapter 22, Section 3).
[255] *Id.* at 48 (citing GOC IQR at Exhibit LOAN-6, 13th Five-Year Plan at Part V, Chapter 22, Section 6).
[256] *Id.* (citing GOC SQR at Exhibit LOAN-17 at Category 3(16)3 in the 2007, 2011, 2015, and 2017 versions).
[257] *Id.*
[258] *Id.* at 49 (citing GOC Case Brief at 31-32).
[259] *Id.* (citing Memorandum, "Placement of Additional Information on the Record," dated October 19, 2018 at Attachment 1 (Financial System Memorandum) at 2).
[260] *Id.* (citing *Wuhan Bee Healthy Co. v. United States*, 374 F. Supp. 2d 1299, 1304 (CIT 2005); *Shandong Huarong Gen. Corp. v. United States*, 159 F. Supp. 2d 714, 723 (CIT 2001)).

Commerce's Position: In the *Preliminary Determination*, Commerce found these loans to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of GOC policy, as articulated in various government plans and directives, which encourage and support the growth and development of the steel propane cylinders industry. We continue to find that loans received by the steel propane cylinder industry from SOCBs were made pursuant to government directives for the reasons discussed in the *Preliminary Determination*.[261]

We disagree with the GOC's position that the record lacks evidence of a Policy Loan program that is *de jure* specific to the steel propane cylinder industry. As noted in the *Preliminary Determination*, Commerce examined various plans, policies and government documents that indicate a *de jure* program of preferential lending to steel manufacturing and the consumer goods industry, which includes steel propane cylinders. For example, the *National 11th Five-Year Plan for Economic and Social Development (2006-2010)* urges the development of high value-added exports and sets forth the goal of promoting industrial restructuring and development in eastern China (where Huanri is located), and in particular, "{c}onstructing bases of advanced equipment {and} top quality steel."[262] We examined the *11th Five-Year National and Economic Social Development Plan of Shandong Province*, which supported the economic growth and "opening up" of Shandong province, where Huanri's production facilities are located, by implementing the national steel industry policy and developing high-performance steel products.[263] We also examined the 13th Five-Year Plan, which outlines a number of measures to support manufacturing, "with a focus on industries such as steel."[264] The 13th Five-Year Plan further encourages the "transform{ation} and upgrade {of} major manufacturing technologies and improv{ing} policies to support enterprises . . . thereby helping key manufacturing sectors move into the medium-high end {and} improv{ing} the supply of consumer goods."[265]

In the *Preliminary Determination*, we also examined the Decision 40 document,[266] which indicates that SOCBs "shall provide credit support in compliance with credit principles" to projects in "encouraged" industries.[267] In addition, we examined the 2017 version of the Catalogue for the Guidance of Foreign Investment Industries, which specifically mentions the "manufacturing and processing of metallic packaging products" industry, a classification which appears to include subject merchandise, as an encouraged industry.[268]

With regard to the GOC's assertion that SOCBs negotiate and approve loans to producers of steel propane cylinders independently and in accordance with market principles, and that they are not required to implement any government industrial policies, the argument is misplaced in the

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[261] *See* PDM at 36-39.
[262] *Id.* at 36 (citing GOC IQR at Exhibit LOAN-6 at 144).
[263] *Id.* at 36-37 (citing GOC IQR at Exhibit LOAN-7 at 43-44 and 50).
[264] *Id.* at 37 (citing GOC IQR at Exhibit LOAN-6 at 606).
[265] *Id*. (citing GOC IQR at Exhibit LOAN-6 at 525).
[266] Commerce has previously found Decision 40 to be *de jure* specific to certain industries. *See, e.g.*, *Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045, December 7, 2009) (*OCTG from China*), and accompanying IDM at Comment 21; *Coated Free Sheet from China* IDM at Comment 8; and *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying IDM at 11-12.
[267] *See* PDM at 38 (citing GOC IQR at Exhibit LOAN-10 at 14).
[268] *Id.* (citing GOC IQR at Exhibit LOAN-17 at 230).

context of our specificity finding. Under Commerce's *de jure* specificity analysis regarding this program, the manner in which SOCBs provide the lending and the question of whether they operate in accordance with market principles are irrelevant to our finding that the lending is expressly limited by operation of the legal measures described above. To the extent that the GOC is arguing that SOCBs do not exercise discretion that favors certain borrowers, the argument might be relevant to a *de facto* specificity analysis which, in light of our *de jure* finding, we need not reach. Thus, we do not find the GOC's factual arguments to be a basis for reconsideration of our *de jure* specificity finding.

Comment 4: Whether All HRS Producers are "Authorities" Under Section 771(5)(B) of the Act

The GOC's Case Brief Comments

- Commerce incorrectly applied AFA to find that all producers who supplied Huanri constitute "authorities" that provided financial contributions.[269]
- As described in the GOC IQR, there is no central government database to search for the requested information as to whether any company officials are GOC or Chinese Communist Party (CCP) officials; therefore, the GOC could not have obtained such information requested, and the GOC cannot be required to provide information that it does not possess.[270] Commerce stated that the GOC has demonstrated in prior proceedings that it is able to access similar information, citing to *High Pressure Steel Cylinders from China*; however, the GOC stated on the record in that case that, as is the case in this investigation, it was unable to obtain information on whether company officials were GOC or CCP officials.[271] Further, the information Commerce requested includes personal information of private persons and entities that are not obligated to respond to this investigation.[272]
- The GOC submitted complete responses to the relevant questions and to Commerce's Input Producers Appendix for HRS input suppliers and explained that the Enterprise Credit Information Publicity System (ECIPS) is the only public official data for registration information regarding the input producers; therefore, no information is missing from the record.[273] Accordingly, there is no factual basis for Commerce to find that the GOC "failed to cooperate by not acting to the best of its ability," and there is no lawful basis to apply AFA.[274]
- The GOC disputes the assessment in Commerce's Public Bodies Memorandum that the presence of CCP party groups and committees, or primary party organizations, in private companies represents a "significant" CCP presence and is relevant to whether an otherwise private company is a government authority.[275] The GOC asserts that the Public Bodies

[269] *See* GOC Case Brief at 11 (citing PDM at 28-29, 31).
[270] *Id.* at 12-13 (citing GOC IQR at Exhibit HRS-1 at 18).
[271] *Id.* at 12 (citing *High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), (*High Pressure Steel Cylinders from China*), and accompanying IDM at 13).
[272] *Id.* at 13 (citing GOC IQR at 22-41 and Exhibit HRS-1).
[273] *Id.* (citing GOC IQR at 22-41 and Exhibit HRS-1 and GOC SQR1).
[274] *Id.* at 12-14 (citing section 776(a), (b) of the Act).
[275] *Id.* at 14-15 (citing Memorandum, "Placement of Additional Information on the Record," dated October 19, 2018, at Attachment 1 (Public Bodies Memorandum)).

Memorandum does not provide evidence that the CCP exerts control over private companies through primary party organizations, and that a private organization in a private company does not make the private company a "government authority." [276] There are no "facts otherwise available" on the record that Commerce can rely on that suggest that CCP involvement in a private company is sufficient to transform the company into a government authority.[277]

- Commerce's application of AFA regarding financial contribution is not supported by substantial evidence and is contrary to law because Commerce did not point to any evidence to demonstrate that HRS producers are authorities nor did it address record evidence contrary to this conclusion.[278] When applying AFA, Commerce must make findings regarding all elements on countervailability and cannot simply rely on a respondent's lack of cooperation.[279]

The Petitioners' Rebuttal Comments

- Commerce found that Huanri purchased HRS from government-owned companies and from companies that the GOC claims are privately-owned firms, so Commerce's preliminary AFA finding only addressed the treatment of HRS producers that were purportedly not majority government-owned.[280] Commerce requested extensive information and supporting documentation regarding whether certain HRS producers were government authorities; the GOC twice refused to submit the requested supporting documentation.[281]
- The GOC also claims that it does not possess requested information regarding key corporate officials' affiliation with the CCP despite the fact that the GOC has provided information on CCP membership in previous investigations.[282]
- While the GOC argues at length that the CCP primary party organizations within private companies are not able to compel the company to do anything and that the Company Law of the People's Republic of China mandates that a company's operation is the sole responsibility of the "company's shareholders, directors, and managers" and not the CCP primary party organizations, Commerce has previously found that the CCP is an essential component of the China's "government" for the purpose of the CVD law and that the Company Law of China does not apply to CCP officials.[283] Further, the Company Law of China states that Chinese companies should promote "the development of the socialist market economy" and "accept supervision of the government and social public" and does not prohibit CCP officials from taking key positions at private companies.[284]

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[276] *Id.* at 15-16 (citing GOC IQR at Exhibit HRS-1 and Public Bodies Memorandum at 35-36).
[277] *Id.* at 14 (citing PDM at 28-29).
[278] *Id.* at 19-21.
[279] *Id.* at 20-21 (citing *Changzhou Trina Solar I*).
[280] *See* the Petitioners' Rebuttal Brief at 28-29 (citing PDM at 28-29).
[281] *Id.* at 29-30 (citing GOC IQR at Exhibits HRS-1, HRS-13 and HRS-17, and GOC SQR at 8).
[282] *Id.* at 30 (citing *High Pressure Steel Cylinders* IDM at 13).
[283] *Id.* at 32-33 (citing Public Bodies Memorandum at 38 and Memorandum, "Placement of Additional Information on the Record," dated October 19, 2018, at Attachment 2 (CCP Memorandum) at 3; *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Affirmative Determination*, 81 FR 13337 (March 14, 2016), and accompanying IDM at 22; and *Seamless Pipe* IDM at 3, 6, and Comment 7).
[284] *Id.* at 35 (citing GOC IQR at Exhibit HRS-19; *PET Resin* IDM at 22; and *High Pressure Steel Cylinders* IDM at 12).

- Regardless of the GOC's view on the relevancy of the requested information, it is Commerce, not the GOC, that has the discretion to determine what information is necessary to conduct an investigation.[285]
- Contrary to the GOC's claim that Commerce did not rely on substantial evidence nor consider evidence to the contrary in applying AFA regarding HRS producers as government authorities, Commerce in fact found that the GOC failed to provide complete information necessary to analyze financial contribution, and thus Commerce used the substantial evidence developed in the CCP Memorandum and Public Bodies Memorandum to conclude that certain HRS producers are "authorities."[286] The GOC failed to comply to the best of its ability with Commerce's request for information by not putting forth its maximum effort to provide full and complete answers regarding HRS providers; thus, Commerce is authorized to apply AFA in accordance with section 776(b)(1) of the Act.[287]

Commerce's Position: For purposes of the final determination, we continue to find, based on AFA, that the privately-owned domestic input producers that supplied HRS to Huanri are "authorities" within the meaning of section 771(5)(B) of the Act and, thus, that such producers provided a financial contribution in supplying HRS to Huanri.

As discussed in the *Preliminary Determination*, in order for Commerce to analyze whether the domestic producers that supplied HRS to Huanri 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 these domestic producers.[288] Specifically, to the extent that the owners, managers, or directors of a producer are CCP officials or otherwise influenced by certain CCP-related entities, Commerce requested information regarding the means by which the GOC may exercise control over company operations and other CCP-related information.[289] Commerce explained its understanding of the CCP's involvement in China's economic and political structure in current and past China CVD proceedings, including why it considers the information regarding the CCP's involvement in China's economic and political structure to be relevant.[290]

The GOC stated that certain companies which it identified as producers of HRS purchased by Huanri during the POI were privately owned.[291] Regarding these input producers, we asked the GOC to provide information about the involvement of the CCP in 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

[285] *Id.* at 34 (citing *PPG Indus., Inc. v. United States*, 987 F.2nd 1232, 1238 (Fed. Cir. 1992); and *Ningbo Dafa Chem. Fiber Co. v. United States*, 577 F. Supp. 2d 1304, 1309 (CIT 2008), *affirmed*, 580 F.3d 1247 (Fed. Cir. 2009)).
[286] *Id.* at 34-35 (citing PDM at 29).
[287] *Id.* at 35-36 (citing *Nippon Steel*, 337 F.3d at 1382).
[288] *See* PDM at 28 (citing Initial Questionnaire, Section II, at 24-28 and Input Producer Appendix).
[289] *See* Initial Questionnaire at Input Producer Appendix.
[290] *See Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid from China 2012*) and accompanying IDM at Comment 5; *see also* Public Bodies Memorandum and CCP Memorandum.
[291] *See* GOC IQR at Exhibits HRS-13 and HRS-17 at 17-20; *see also* GOC SQR1 at 8.

Act.[292] 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 POI, the GOC explained that there is "no central government database to search for the requested information."[293] The GOC claimed that "{t}he suppliers are not obligated to provide data to the GOC, and the GOC does not have any rights to compel this data from them," and the GOC directed Commerce to seek this information directly from Huanri's privately-owned suppliers.[294]

We disagree with the GOC that Commerce should have requested this information directly from Huanri's HRS suppliers. We have found in prior cases that, when examining whether CCP officials are among a company's owners, senior managers, or directors, or if a CCP primary organization such as a party committee is embedded in the company's structure, the entity possessing direct knowledge of these facts is the CCP (or the GOC) itself.[295] Thus, it would have been inappropriate for us to obtain this information, which we requested from the GOC, from Huanri's suppliers instead. In fact, in prior CVD proceedings, we found that the GOC was able to obtain the information requested independently from the companies involved, and that statements from companies, rather than from the GOC or CCP themselves, were not sufficient.[296]

In addition, we disagree with the GOC that it provided Commerce with sufficient information to determine that all of Huanri's input supplier companies are privately-owned entities. It is for Commerce, not the GOC, to determine what information is necessary in order for Commerce to complete its proceedings.[297] For the reasons described above, we find that the GOC failed to provide information necessary for us to analyze whether Huanri's input suppliers are authorities.

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 Huanri's input suppliers.[298] As a result of incomplete responses to Commerce's 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 an adverse inference is warranted in selecting from the facts available.[299] As AFA, we find that CCP officials are present in each of Huanri'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 Bodies Memorandum, an entity with significant CCP presence on its board or in management or in party committees may be controlled such that it

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[292] *See* Initial Questionnaire, Section II, Input Producer Appendix at 21-23.
[293] *See* GOC IQR at Exhibit HRS-1 at 18.
[294] *See* GOC SQR1 at 8; *see also* GOC SQR1 at 19.
[295] *See, e.g., Citric Acid from China 2012* IDM at 4-6.
[296] *See Citric Acid from China 2012* IDM at Comment 5.
[297] *See ABB Inc. v. United States*, 355 F. Supp. 3d 1206, 1222 (CIT 2018) ("Commerce prepares its questionnaires to elicit information that it deems necessary to conduct a review, and the respondent bears the burden to respond with all of the requested information and create an adequate record."); *see also Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (1986) (holding that "it is Commerce, not the respondent, that determines what information is to be provided").
[298] *See* section 776(a)(2)(A) of the Act.
[299] *See* section 776(b) of the Act.

possesses, exercises or is vested with governmental authority.[300] Thus, for the final determination, we continue to find that the HRS input suppliers which supplied Huanri are "authorities" within the meaning of section 771(5)(B) of the Act.

Comment 5: Whether the Provision of HRS for LTAR is Specific

GOC's Case Brief Comments

- Commerce's application of AFA and finding of specificity with regard to the provision of HRS coil because the GOC did not report the specific Chinese industries that purchased HRS coil, and the volume and value of each industry's purchases of HRS coil, is unlawful because the GOC acted to the best of its ability in providing information on specificity.[301]
- The GOC specifically reported in its response that it does not maintain such statistics on the HRS industry.[302] Further, the GOC noted in its response that producers of HRS coil are free to sell their products to anyone and purchasers of HRS coil are free to purchase from any producer.[303]

The Petitioners' Rebuttal Comments

- The information the GOC submitted regarding the industries that consume HRS, which it purports to show that HRS consumption is not specific, in fact indicates that a substantial portion of the input was used by the metal products and equipment industries, which aligns with Commerce's prior findings that HRS is primarily used by "steel consuming industries," and, therefore, is specific in accordance with section 771(5A)(D)(iii)(I) of the Act.[304]
- The GOC's alleged inability to provide industry consumption information for HRS does not preclude Commerce's application of AFA as the GOC provided a similar response in *Tool Chests from China* for industries that purchased HRS and cold-rolled steel and it was rejected.[305] Further, the CIT has affirmed Commerce's decision to apply AFA when, as in this investigation, the record lacks facts relevant to Commerce's specificity analysis.[306]

Commerce's Position: We agree with the petitioners that the application of AFA pursuant to sections 776(a) and (b) of the Act in finding the provision of HRS for LTAR to be *de facto* specific was appropriate, because the GOC withheld necessary information that was requested of it and failed to act to the best of its ability to provide the requested information. We requested information from the GOC on the provision of HRS to companies by industry, which was necessary for Commerce to conduct its analysis.[307] It is Commerce's established practice to examine the government's provision of an input, such as HRS, to recipients by industry for the

[300] *See, e.g.*, Public Bodies Memorandum at 33-36, 38.
[301] *See* GOC Case Brief at 21-23.
[302] *Id.* at 21-22.
[303] *Id.* at 22-23 (citing GOC IQR at 35).
[304] *See* the Petitioners' Rebuttal Brief at 37 (citing GOC IQR at Exhibit HRS-8; *Tool Chests from China* IDM at 4; and *High Pressure Steel Cylinders* IDM at 17).
[305] *Id.* at 38 (citing *Tool Chests from China* IDM at Comment 4).
[306] *Id.* at 38-39 (citing *RZBC Group* at 1297).
[307] *See* Initial Questionnaire at 9.

year in which the provision of the benefit was approved and the prior two years.[308] In response to Commerce's request for information, the GOC stated the no such list of information exists.[309] The GOC never asked Commerce for clarification of the question and data sought. Rather than provide Commerce with relevant information, the GOC instead asserted that "{it} does not collect official data regarding the industries in China that purchase or consume the hot-rolled steel directly {and that} no hot-rolled steel product compiles its sales volume and value 'by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry.'"[310] The GOC's statement that "the types of consumers that may purchase hot-rolled steel are highly varied within the economy"[311] is simply not sufficient information for Commerce to conduct a thorough and complete specificity analysis.

Commerce finds that no new information has been submitted on the record of this proceeding to give it reason to revisit its preliminary finding regarding the application of AFA to the specificity analysis of the provision of HRS at LTAR. As such, we continue to find, consistent with sections 776(a)(1) and (a)(2)(A) of the Act, that we must rely on facts available because the GOC withheld necessary information that was requested of it. We further find that the GOC failed to act to the best of its ability and, therefore, in selecting from among the facts otherwise available, we have drawn adverse inferences pursuant to section 776(b) of the Act. Specifically, we find that the provision of HRS to producers of steel propane cylinders by GOC authorities is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. Our determination is consistent with *CDMT from China* and *Steel Cylinders from China*, where we found the GOC's provision of HRS for LTAR to be specific, because HRS is only provided to steel consuming industries and, thus, is provided to a limited number of industries.[312] We apply the same logic here. Therefore, we made no changes to our specificity finding for this final determination.

Comment 6: Whether the Chinese Domestic HRS Market is Distorted

The GOC's Case Brief Comments

- Commerce's application of AFA to determine that the GOC's involvement in the HRS market results in significant distortion of HRS prices and requires the use of a tier-two benchmark is unlawful because the GOC specifically reported in its response that it does not maintain statistics on HRS as requested and therefore cooperated to the best of its ability.[313]
- While Commerce noted that the GOC has previously provided information from other GOC-maintained databases concerning the volume and value of inputs produced in China, the GOC argues that what it has been able to provide in other cases about different inputs is

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[308] *See, e.g., Circular Welded Carbon Steel Pipes and Tubes from Turkey: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2015,* 82 FR 16994 (April 7, 2017) and accompanying PDM at 13, unchanged in *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2015,* 82 FR 47479 (October 12, 2017) and accompanying IDM at 6-7.
[309] *See* GOC IQR at 34.
[310] *Id.*
[311] *Id.*
[312] *See CDMT from China* IDM at Comment 3.b.; *see also High Pressure Steel Cylinders from China* IDM at 17.
[313] *See* GOC Case Brief at 23-24.

- irrelevant and does not demonstrate that it failed to cooperate to the best of its ability in this investigation.[314]
- The record demonstrates that there were imports of HRS during the POI and that both government and non-government suppliers produced HRS, which demonstrates that there was no market distortion.[315]

The Petitioners' Rebuttal Comments

- In the *Preliminary Determination*, Commerce found that the GOC failed to provide requested information on the production and consumption of HRS in China despite the fact that it has previously provided such information in other proceedings and, accordingly, Commerce appropriately applied AFA based on a determination that the GOC refused to provide information that was available to the GOC.[316]
- The GOC's contention that the requested information on the HRS industry was not available does not comport with the GOC's ability to provide such information in other proceedings.[317]
- Even absent an adverse inference, record evidence proves that the Chinese HRS market is distorted due to the significant level of government intervention and the low share of imports in the HRS market, and in light of Commerce finding market distortion in previous China CVD proceedings with similar fact patterns.[318]

Commerce's Position: Commerce identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services, in accordance with 19 CFR 351.511(a)(2). This section of Commerce's regulations specifies potential benchmarks in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports, or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier-two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in 19 CFR 351.511(a)(2), the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation. This is because such prices generally reflect most closely the prevailing market conditions of the purchaser under investigation.

Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where Commerce finds that the government owns or controls the majority or, in certain circumstances, a substantial portion of the market for the good or service, Commerce will consider such prices to be significantly distorted and not an appropriate

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[314] *Id.* at 24-25 (citing PDM at 31).
[315] *Id.* at 25 (citing GOC IQR at 27 and Exhibit HRS-2).
[316] *See* the Petitioners' Rebuttal Brief at 39-40 (citing PDM at 31-32).
[317] *Id.* at 40-41.
[318] *Id.* at 41-42 (citing *Countervailing Duties: Final Rule*, 63 FR 65348 (November 25, 1998); *53-Foot Domestic Dry Containers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 21209 (April 17, 2015), and accompanying IDM at Comment 6A; *Certain Tool Chests and Cabinets from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 43331 (September 15, 2017), and accompanying PDM at 18, 30-31, unchanged in *Tool Chests from China* IDM at 7; *Archer Daniels*, 917 F. Supp. 2d at 1343-44; and *Guangdong Wireking Housewares & Hardware Co. v. United States*, 900 F. Supp. 2d 1362, 1380-82 (CIT 2013)).

benchmark for purposes of determining the adequacy of remuneration.[319] As explained in the *Preliminary Determination*, we continue to find, on the basis of AFA, that the GOC's involvement in the HRS market in China results in significant distortion of the prices of HRS such that they cannot be used as a tier-one benchmark and, hence, the use of a tier-two benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the provision of HRS for LTAR.[320] This determination resulted from the GOC's refusal to provide requested information regarding the HRS industry in China.[321] Specifically, we asked the GOC to provide data and information related to HRS suppliers, including the total volume and value of domestic consumption of HRS and the total value of domestic production of HRS.[322] The GOC asserted that it did not maintain such information.[323] However, the GOC provided no explanation as to what steps it took to obtain or compile the information, nor suggested any alternative form of providing the information.[324]

As discussed in the *Preliminary Determination*, in past proceedings, the GOC has demonstrated that it has the ability, through the State Statistics Bureau or other sources (*e.g.*, industry associations), to report data concerning the production of a wide variety of inputs.[325] Specifically, the GOC has previously provided, and Commerce has verified, information from other GOC-maintained databases concerning the value and volume of production by enterprises producing input products.[326] Moreover, in this investigation and in CVD proceedings, Commerce has verified the operation of the GOC's "Enterprise Credit Information Publicity System," which requires that the administrative authorities release detailed information of enterprises and other entities and which is intended to bring clarity to companies registered in China.[327] Based on this experience, we are aware that this system is a national-level internal portal that holds certain information regarding any Chinese-registered company. Among other information, each company must upload its annual report, make public whether it is still operating, and update any changes in ownership.

The GOC asserts that it is not reasonable to conclude that less than full cooperation was provided by the GOC because it reported that it did not maintain certain statistics on the HRS industry.[328]

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[319] *See Countervailing Duties: Final Rule*, 63 FR 65348, 65277 (November 25, 1998).
[320] *See* PDM at 31-32.
[321] *Id.*
[322] *Id.* at 31; *see also* Initial Questionnaire at 8.
[323] *See* GOC IQR at 25-26.
[324] *Id.*
[325] *See, e.g.*, *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 79 FR 33174 (June 10, 2014), and accompanying PDM at 14-15, unchanged in *Crystalline Silicon Photovoltaic Products from China*.
[326] *See* PDM at 32 (citing *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013*, 80 FR 77318 (December 14, 2015), and accompanying IDM at Comment 2).
[327] *See* GOC Verification Report at 2-3; *see also Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016) and accompanying PDM at 21-22, unchanged in *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part,* 82 FR 9714 (February 8, 2017).
[328] *See* GOC Case Brief at 23-25; *see also* GOC IQR at 22-36.

However, as discussed in the *Preliminary Determination*, and for the reasons above, we disagree. We continue to find that the GOC did not make the maximum effort to provide information responsive to our requests.

Additionally, we agree with the petitioners that record evidence submitted by the GOC indicates that the Chinese HRS market is distorted due to the high level of government intervention and, in contrast, the low share of imports in the HRS market. The GOC reported the total volume of domestic production of HRS accounted for by companies in which the GOC maintains a majority ownership or management interest.[329] On this basis, we find that the government's involvement in the HRS sheet and strip market is predominant and distortive. Consequently, the use of domestic producer prices in China is inappropriate for deriving a benchmark because such a benchmark would reflect the distortions from the government's involvement. As we explained in *Softwood Lumber from Canada*:

> Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.[330]

For these reasons, consistent with the *Preliminary Determination*, we determine that the GOC's involvement in the HRS market is distortive. Moreover, we determine that the GOC, having failed to provide the data we requested, has withheld information that was requested of it, and that the use of facts available is warranted, pursuant to section 776(a)(2)(A) of the Act, and we continue to find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information, and thus, the application of AFA pursuant to section 776(b) of the Act is warranted. For these reasons and based on the record evidence discussed above, we determine, as AFA, that the domestic market for HRS is distorted through the intervention of the GOC and that prices stemming from private transactions within China, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration. Given that we have determined that no tier-one benchmark prices are available, we evaluated information on the record to determine whether there is a tier-two world market price available to producers of steel propane cylinders in China. The petitioners and Huanri both submitted prices that we found to be appropriate and applied as a tier-two benchmark, in accordance with 19 CFR 351.511(a)(2)(ii).[331]

Comment 7: Whether to Fill in Certain Months with Missing Data in the Ocean Freight Benchmark

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[329] *See* GOC IQR at 29.
[330] *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002), and accompanying IDM at "There Are No First Tier Benchmarks Available."
[331] *See* PDM at 14-16.

Huanri's Case Brief Comments

- The Cape Town, South Africa, to Qingdao and Constanta, Romania, to Qingdao ocean freight routes in the benchmark only contained data for certain months of the POI, and Commerce only included these routes in the monthly average ocean freight rate where the record contained data for that month.[332]
- Commerce is applying the ocean freight benchmark to a world benchmark for HRS coil, and thus it averages the cost for a variety of ocean freight routes from different cities to China.[333]
- In the months where Cape Town and Constanta contain no data, Commerce's average ocean freight rate is significantly less representative of world prices.[334]
- Rather than limit the representativeness in the ocean freight rate data, Commerce should apply the average rate of each route to the months where data is missing for that route.[335]
- There is little month-to-month variation in the rate of each route, so it is reasonable to apply the average rate of each route to the months where data is missing from that route.[336]

The Petitioners' Rebuttal Comments

- Commerce should reject Huanri's attempt to cherry-pick the ocean freight data for the final determination. Huanri argues that the Tokyo to Qingdao rates from Maersk are "aberrant and unreliable," and at the same time Huanri argues that the Maersk rates for the Cape Town and Constanta to Qingdao routes are reliable and must be averaged and added to the months were data for those routes are missing.[337]

Commerce's Position: We disagree with Huanri. When constructing a benchmark in which benchmark price data are not available for all or a portion of the POI, Commerce's practice is to utilize available monthly data, adjusted for inflation, as a proxy for the missing data.[338] That is not the case with the ocean freight benchmark at issue here. For each month of the POI, we have ocean freight prices for at least five of the seven routes reflected in the ocean freight benchmark, thus filling in average prices for missing months would be unnecessary. We note that while three ocean freight routes in the benchmark do not have prices for every month of the POI, Huanri argues to use the annual average price for two of those three routes (*i.e.* Cape Town to Qingdao and Constanta to Qingdao) to fill in months that are missing price data, but does not propose using the annual average of the third route (*i.e.*, Hamburg to Qingdao) to fill in months

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[332] *See* Huanri's Case Brief at 15.
[333] *Id.*
[334] *Id.*
[335] *Id.* at 16.
[336] *Id.*
[337] *See* the Petitioners' Rebuttal Brief at 53-54.
[338] *See, e.g., Certain New Pneumatic Off-the-Road Tires from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Determination*, 81 FR 39903 (June 20, 2016), and accompanying PDM at 32-33 (Commerce adjusted 2011 and 2012 land prices by India's Consumer Price Index to construct a land price benchmark for the months of the POI, January through December, 2015); *see also Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017) at and accompanying IDM at 124 (Commerce adjusted a tier-one softwood standing timber benchmark using a commodity index inflator to fill in certain months of the POI that were missing price data in the benchmark).

that are missing price data for that route. Applying the approach that Huanri proposes by filling in average prices for the months missing price data for certain routes but not others would be arbitrary and distortive.

Comment 8: Whether to Exclude Routes to Xiamen from the Ocean Freight Benchmark

Huanri's Case Brief Comments

- Commerce should exclude the ocean freight data for routes from various world cities to Xiamen and use only the routes to Qingdao.[339]
- The port of Xiamen is not remotely close to Huanri, and the company would never elect to import raw materials through Xiamen.[340]
- The freight rates that are most reliable and specific to Huanri's purchasing situation are those based on routes to the port of Qingdao.[341]

The Petitioners' Rebuttal Comments

- Huanri itself placed the ocean freight data for two routes to Xiamen on the record of this investigation and noted that Commerce had relied on it in a recent preliminary determination with the same POI.[342]
- Huanri's position on whether to include this data seems contingent on the underlying prices rather than whether it is "representative" of commercial reality.[343]

Commerce's Position: When Commerce resorts to using a "tier-two" world market price to construct a benchmark to measure the adequacy of remuneration and there are multiple commercially available market prices, 19 CFR 351.511(a)(2)(ii) directs Commerce to "average such prices to the extent practicable." Additionally, pursuant to 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration using a tier-one or tier-two benchmark, Commerce will adjust the benchmark price for ocean freight costs "to reflect the price that a firm actually paid or would pay if it imported the product." As discussed in the *Preliminary Determination*, we have ocean freight rates from Maersk for seven routes from various world ports to ports in China; thus, we continue to find it appropriate to average the various ocean freight rates to determine a market price ocean freight to China.[344]

With respect to Huanri's contention that we should exclude the Maersk ocean freight rates for the two routes to Xiamen because the port of Xiamen is located far from Huanri's factory, we find Huanri's arguments unpersuasive. When applying a "tier-two" benchmark price, 19 CFR 351.511(a)(2)(iv) instructs Commerce to adjust the benchmark price for delivery costs, including ocean freight costs, "to reflect the price that a firm actually paid or would pay if it imported the

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[339] *See* Huanri's Case Brief at 15.
[340] *Id.*
[341] *Id.*
[342] *See* the Petitioners' Rebuttal Brief at 53 (citing letter from Huanri, "Steel Propane Cylinders from the People's Republic of China – Benchmark Submission," dated September 19, 2018 at 1 and Attachment 2 (Huanri's Benchmark Comments)).
[343] *Id.*
[344] *See* PDM at 15-16.

product." Therefore, as long as the ocean freight costs are reflective of market rates for ocean freight and representative of the rates an importer – and not necessarily the respondent specifically – would have paid, then the prices are appropriate to include in our benchmark.[345] We find that the Maersk ocean freight rates to the port of Xiamen and to port of Qingdao are both reflective and representative of the ocean freight rates that a purchaser in China would pay to import HRS.

Comment 9: Whether to Exclude the Tokyo to Qingdao Route from the Ocean Freight Benchmark

Huanri's Case Brief Comments

- Commerce should find that the ocean freight rate from Tokyo to Qingdao, which is almost seven times higher than the average rate of the other four routes in the ocean freight rates submitted by the petitioners, is aberrant and unreliable.[346]
- Tokyo is the closest of the five ports of departure in the ocean freight benchmark submitted by the petitioners, and it defies commercial reality that shipping a container a shorter distance would cost substantially more money.[347]
- The cost of the steel coil itself, with a benchmark price of around 4 RMB/kg, is roughly double the 1.92 RMB/kg ocean freight costs from Tokyo to Qingdao, China, and such a high ratio between the cost of transportation and the cost of the raw material means it is unreasonable for Commerce to presume that a Chinese exporter would pay such aberrant costs.
- The Tokyo to Qingdao ocean freight rates appear even more unreasonable in light of the fact that Huanri did not import HRS coil but instead purchased it domestically.[348]
- When selecting a two-tier benchmark, 19 CFR 351.511(a)(2)(iv) directs Commerce to "compar{e} the government price to a 'world market' price where it is reasonable to conclude such a price would be available to producers in the country in question" and to adjust the comparison price "to reflect the price that a firm actually paid or would pay if it imported the product."
- Therefore, Commerce should find the Tokyo to Qingdao ocean freight rate aberrant and one that a Chinese importer would not pay if it imported HRS.[349]

The Petitioners' Rebuttal Comments

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[345] *See, e.g.*, *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey*), and accompanying IDM at Comment 3.
[346] *See* Huanri's Case Brief at 14 (citing Memorandum, "Preliminary Determination Calculations for Shandong Huanri Group Co. Ltd.," dated concurrently with this preliminary determination at Attachment 1 (Preliminary Calculation Memorandum), "HRS Ocean Freight" and "HRS OceanFrtSources" sheets).
[347] *Id.*
[348] *Id.* at 15.
[349] *Id.* at 13-15 (citing 19 CFR 351.511(a)(2)(iv)).

- The ocean freight rates for Tokyo to Qingdao were collected from Maersk in the same manner and with the same supporting documentation as the other Maersk rates submitted by the petitioners.[350]
- Huanri's rationale for excluding the Tokyo to Qingdao ocean freight rates as "aberrant and unreliable" is self-servingly selective.

Commerce's Position: We disagree with Huanri. Under 19 CFR 351.511(a)(2)(iv), Commerce will adjust a tier-two benchmark price to include delivery charges to reflect the price that a company would pay if it imported the product. Moreover, Commerce will include all relevant data on the record when constructing a benchmark.[351]

As discussed in Comment 8 above, for the purposes of final determination, we are including the ocean freight prices for the two routes to Xiamen in the ocean freight benchmark. We disagree that the Tokyo to Qingdao ocean freight rates are aberrational simply because the rates are higher relative to the other rates on the record.[352] Moreover, the Tokyo to Qingdao ocean freight prices were based on quotes from Maersk, which is the same source as the ocean freight prices for the other four routes submitted by the petitioners and the two routes submitted by Huanri. Thus, the Tokyo to Qingdao ocean freight prices are not "unreliable" as Huanri claims. Absent additional information that calls into question the reliability of the Tokyo to Qingdao rate, we do not find it appropriate to exclude the Tokyo to Qingdao ocean freight prices from the benchmark.

Comment 10: Which Ports to Use for the Calculation of Inland Freight

Huanri's Case Brief Comments
- Commerce added movement expenses to the HRS benchmark by averaging distances from two different ports, the nearby port of Laizhou and an outbound port for finished goods that is farther away.[353]
- Huanri provided the distance to the nearest port only in its initial questionnaire response (*i.e.*, the port of Laizhou located 57 km from Huanri).[354]
- Commerce's practice is to use the closest port of inbound inland freight and the CAFC in *Sigma* found that a producer in a surrogate country would choose to purchase an equivalently

[350] *See* the Petitioners Rebuttal Brief at 54 (citing letter from the petitioners, "Steel Propane Cylinders from the People's Republic of China – Petitioners' Submission of Factual Information to Measure the Adequacy of Remuneration," dated September 19, 2018 at Attachment 3).
[351] *See, e.g., Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015), and accompanying IDM at Comment 7 ("{T}he best methodology is to calculate a simple average of these {benchmark} prices. To derive the most robust … benchmark possible, we have sought to include as many data points as possible.").
[352] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People's Republic of China*, 69 FR 34125 (June 18, 2004), and accompanying IDM at Comment 6 (stating generally, in the context of a less-than-fair-value investigation, that "we do not find prices to be aberrationally high or low simply because the price is very low or very high").
[353] *See* Huanri's Case Brief at 16 (citing Preliminary Calculation Memorandum at 2, 12, and Tab "HRS Purchases.ATT2.BPI" of Attachment 1).
[354] *Id.* (citing Huanri IQR at 18 and Exhibit 14).

priced input from a domestic source rather than from a foreign source if the distance from the domestic supplier to its factory was less than the distance from the port to its factory.[355]

- Huanri argues that based on the CAFC's ruling in *Sigma*, Commerce is required to calculate inbound freight distances based on distances no greater than the reported distances from the nearest port (*i.e.*, Laizhou) to the factory.[356]

The Petitioners' Rebuttal Comments

- Commerce appropriately applied the average of inland freight rates available on the record (*i.e.*, the nearby port of Laizhou and the outbound port that is farther away) as these inland freight expenses are representative of the costs that an importer would incur to import HRS.[357]
- Huanri's reliance on *Sigma* is misplaced since it relates to Commerce's methodology in antidumping proceedings only.[358]

Commerce's Position: As an initial matter, we find that the CAFC's ruling in *Sigma* applies only to our antidumping non-market economy methodology and not to our countervailing duty methodology. Further, as discussed in the *Preliminary Determination* and in Comment 6 above, we find, based on AFA, that the GOC's involvement in the HRS market in China results in significant distortion of HRS prices such that we are unable to use tier-one prices as benchmark prices and have therefore applied a tier-two benchmark of world HRS prices to measure the adequacy of remuneration of Huanri's HRS purchases.[359] We disagree with Huanri's argument that Commerce must add the cost of inland freight based on the distance from Huanri's factory to the nearest port and to ignore the other inland freight cost data point that is on the record of this investigation. When Commerce resorts to using a "tier-two" world market price to construct a benchmark to measure the adequacy of remuneration, and there are multiple commercially available market prices, 19 CFR 351.511(a)(2)(ii) directs Commerce to "average such prices to the extent practicable." Additionally, pursuant to 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration using a tier-one or tier-two benchmark, Commerce will adjust the benchmark price for delivery costs "to reflect the price that a firm actually paid or would pay if it imported the product." The only inland freight data on the record of this investigation were submitted by Huanri, which includes two rates: (1) the domestic inland freight charges that Huanri incurred to export finished goods through an outbound port, and (2) a calculated freight rate based on Huanri's outbound domestic freight rate adjusted for the distance to the port of Laizhou, the closest seaport to Huanri's factory.[360] These two rates are both reflective and representative of the delivery charges that a purchaser in China would pay. Thus, in accordance with 19 CFR 351.511(a)(2)(iv), we find it appropriate to adjust the tier-two world market price

[355] *Id.* at 17 (citing *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997) (*Sigma*)).
[356] *Id.*
[357] *See* the Petitioners' Rebuttal Brief at 54-55.
[358] *Id.* at 55.
[359] *See* PDM at 31-32.
[360] *See* Huanri IQR at 18; *see also* Huanri SQR2 at Exhibit SQ2-9.

for inland freight based on an average of the two inland freight rates on the record.[361] In this way, we have calculated the most robust inland freight benchmark.

Comment 11: Whether to Include VAT in Huanri's Inland Freight Costs

Huanri's Case Brief Comments

- In the HRS purchase chart submitted in response to the Initial Questionnaire, Huanri reported "total delivery charges" for the HRS it purchased during the POI exclusive of the 11 percent VAT that applies to freight.[362]
- Commerce added a 17 percent VAT to inland freight on the benchmark side of the benefit calculation, but did not add any VAT to the inland freight included in Huanri's HRS purchases.[363] Further, Commerce added an incorrect VAT rate of 17 percent to inland freight on the benchmark side, instead of the 11 percent VAT rate that applies to inland freight.[364]
- If Commerce decides to include VAT for inland freight in the HRS benefit calculation, then to ensure that the calculation of any LTAR benefit is an apples-to-apples comparison,[365] Commerce add the correct VAT rate (*i.e.*, 11 percent) to both the purchase side and the benchmark side of the comparison.[366]

No other parties submitted comments on this issue

Commerce's Position: We agree with Huanri. Under 19 CRF 351.511(a)(2)(iv), Commerce adjusts a tier-two benchmark price to "reflect the price that a firm actually paid or would pay if it imported the product {to include} delivery charges and import duties." As discussed in Comment 10 above, we have added inland freight to the tier-two benchmark price by averaging the two inland freight rates on the record. We have reviewed the calculation worksheet that Huanri submitted in its questionnaire responses, which indicates that the company calculated inland freight rates based on the company's actual inland freight charges incurred for transporting finished goods to a port of exportation, exclusive of VAT, and that a VAT of 11 percent applies to inland freight services.[367] We also reviewed Huanri's calculation of the delivery charges for its HRS purchases during the POI, Huanri's HRS purchase exhibit, and Huanri's HRS purchases and delivery charges as recorded in the company's accounting system, and confirmed that the company recorded HRS purchases and delivery charges in its raw materials ledger exclusive of VAT, and reported those prices in its HRS purchase exhibit.[368] Accordingly, for the purposes of the final determination, we are adjusting the HRS benefit

[361] *See Beijing Tianhai Industry Co., Ltd. v. United States,* Slip Op. 15-14 (CIT 2015) (the CIT sustained Commerce's determination to average inland freight prices based on the respondent companies' own inland freight rates as they were the only inland freight prices on the record).
[362] *See* Huanri's Case Brief at 18 (citing Huanri IQR at Exhibit 14).
[363] *Id.*
[364] *Id.*
[365] *Id.* at 17-18 (citing *High Pressure Steel Cylinders* IDM at Comment 9).
[366] *Id.* at 18.
[367] *See* Huanri IQR at Exhibit 14; *see also* Huanri SQR2 at Exhibits SQ2-6, SQ2-7, and SQ2-9.
[368] *See* Huanri SQR2 at Exhibit SQ2-7; *see also* Huanri Verification Report at 11-12; and letter from Huanri, "Steel Propane Cylinders from the People's Republic of China - Verification Exhibits," dated March 8, 2019 at Exhibit CVE-5A.

calculation by applying an 11 percent VAT charge to the inland freight rates that are added to Huanri's reported delivery charges for its HRS purchases and to the inland freight in the tier-two benchmark.

Comment 12: Which HRS Import Tariff Rates to Select

Huanri's Case Brief Comments

- Huanri reported that it consumed two types of HRS classified under two separate HTS subcategories, 7208.38 and 7208.39, which were subject to import tariff rates of 5 percent and 3 percent, respectively, during the POI.[369]
- Commerce chose to use the highest import tariff for all sub-headings under 7208, which is the 6 percent tariff rate applicable to 7208.36, but did not explain why this rate is accurate or reasonable.[370] Huanri did not purchase any HRS classified under 7208.36; therefore, instead of applying the 6 percent tariff rate applicable to 7208.36, Commerce should use the average of the two tariff rates (*i.e.*, 5 percent and 3 percent) that applied to Huanri's actual HRS purchases during the POI.[371]

The Petitioners' Rebuttal Comments

- As Commerce noted in the *Preliminary Determination*, one component of the HRS benchmark is MEPS (International) Ltd (MEPS) data submitted by Huanri, which is composed of prices of HRS under HTS category 7208 and is not delineated by subheadings. Therefore, to be consistent with the benchmark, Commerce should use the average of all three import tariffs (*i.e.*, 3 percent, 5 percent, and 6 percent) that applied to imports into China during the POI of HRS products under HTS category 7208.[372]

Commerce's Position: We agree with the petitioners. Pursuant to 19 CFR 351.511(a)(2)(iv), when using a tier-two benchmark price, Commerce is required to use a delivered price by adjusting the benchmark to include import duties to reflect the price that an importer would pay if it imported the product. As explained in the *Preliminary Determination*, we are utilizing a tier-two benchmark composed of the average of world HRS prices from two sources. Specifically, the HRS benchmark includes HRS price data from MEPS, which are based on HRS products under HTS category 7208 with no delineation by subcategory, and HRS price data from Trade Data Monitor, which are based on HTS subcategories 7208.25, 7208.26, and 7208.27.[373] We disagree with Huanri's proposed method of applying an average of the two tariff rates that applied to the HRS that Huanri consumed during the POI because 19 CFR 351.511(a)(2)(iv) requires adjusting the benchmark for import duties that an importer – and not necessarily the respondent specifically – would have paid.[374] Given that the tier-two HRS benchmark covers HRS products that fall under all subheadings HTS category 7208, and that the GOC submitted

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[369] *See* Huanri's Case Brief at 18 (citing letter from Huanri, "Steel Propane Cylinders from the People's Republic of China – Rebuttal Benchmark Submission," dated October 1, 2018 at 1; and GOC IQR at 31-33).
[370] *Id.* at 18-19.
[371] *Id.*
[372] *See* the Petitioners' Rebuttal Brief at 55 (citing PDM at 15).
[373] *See* PDM at 14-15.
[374] *See, e.g.*, *OCTG from Turkey* IDM at Comment 3.

the import tariffs that apply to each subcategory under HTS 7208, for the purposes of the final determination, we are applying the average import tariff of 4.67 percent that applied to HRS imports under HTS category 7208. We derived this average import tariff from the three import tariffs (*i.e.*, 3 percent, 5 percent, and 6 percent) that applied to imports of HRS in 2017 across all HTS 7208 subheadings under the Most Favored Nation (MFN) column in the table of HRS import tariffs reported by the GOC,[375] because the MFN rates reflect the general tariff rate applicable to world trade.[376] We find that the application of an average rate, rather than the highest available rate is the most appropriate method here and results in the most robust benchmark.

Comment 13: Whether to Use the GOC's Coaster Freight Rates in the Ocean Freight Benchmark

The GOC's Case Brief Comments

- The GOC argues that Commerce should use the coaster freight rates it submitted to the record as the benchmark for ocean freight used in the HRS for LTAR benefit calculation.[377]
- HRS coil is a heavy commodity that can damage shipping containers; therefore, it is industry practice to ship HRS coil in bulk or in special containers for steel rather than by standard shipping container.[378]
- Commerce rejected the coaster freight rates because the data were based on routes to Hong Kong, whereas data on ocean freight to China were available on the record.[379]
- The GOC argues that Hong Kong is a special administrative region that is located in China, and the coaster freight rates are the most accurate rates since the record demonstrates that container freight is not used to transport HRS coil; therefore, Commerce should use the coaster freight rates or, at a minimum, average them with the container freight rates.[380]

The Petitioners' Rebuttal Comments

- In the *Preliminary Determination*, Commerce averaged the Maersk ocean freight rates submitted by the petitioners and Huanri.[381]
- While the information submitted by the GOC in Attachment 1 of its benchmark rebuttal demonstrating why it is not commercially practical to ship HRS coil in containers did rebut the petitioners' benchmark submission, the coaster freight data that the GOC provided in Attachment 2 did not "rebut, clarify, or correct" factual information that had already been submitted.[382]

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[375] *See* GOC IQR at 33 and Exhibit HRS-6.
[376] *See Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and accompanying IDM at Comment 20.
[377] *See* GOC's Case Brief at 33-34.
[378] *Id.* at 33 (citing letter from the GOC, "Steel Propane Cylinders from China, Case No. C-570-087: GOC's Rebuttal Factual Information to Petitioners' Submission of Factual Information to Measure the Adequacy of Remuneration," dated September 26, 2018 (GOC's Benchmark Rebuttal Comments) at 2-3; and Huanri's Benchmark Comments at 1 and Attachment 2).
[379] *Id.*
[380] *Id.* at 33-34.
[381] *See* the Petitioners' Rebuttal Brief at 50 (citing PDM at 16).
[382] *Id.* at 50-51 (citing GOC's Benchmark Rebuttal Comments at 3).

- The GOC submitted standalone data on coaster freight rates that the GOC wanted Commerce to use to measure the adequacy of remuneration. This information was untimely submitted after the initial September 19, 2018, deadline for new factual information and should not be used in the final determination.[383]
- Commerce was correct to reject the coaster freight data because the rates: (1) only represent a single route from Vladivostok, Russia to Hong Kong; (2) were for shipments to Hong Kong and not mainland China; and (3) were inferior to the ocean freight rates on the record.[384]
- The GOC asserts that "it is industry practice to ship hot-rolled steel coil in bulk or in special containers for steel," but fails to cite to any instances where Commerce has used "coaster freight" rather than ocean freight rates.[385] In fact, Commerce has consistently used ocean freight rates for the delivery charges of HRS in numerous other investigations.[386]
- The GOC's argument that Hong Kong is a special administrative region that is located in China is unpersuasive since it would require extensive inland travel to transport an HRS input from Hong Kong to Huanri's location in Shandong, China.[387]
- Commerce has stated that it will select data based on the most appropriate data on the record and because the GOC's proposed coaster freight data is not representative of ocean freight charges, the petitioners argue that it should not be used in the final determination, alone or averaged with other rates on the record.[388]

Commerce's Position: As discussed in the *Preliminary Determination*, we reviewed the information in the GOC's Benchmark Rebuttal Comments, in which the GOC argues that it is industry practice to ship hot-rolled coiled steel in bulk on coaster freight ships.[389] We also reviewed the petitioners' sur-rebuttal comments in which they argued that the industry sources cited by the GOC note that hot-rolled steel is also shipped in closed equipment to protect the commodity from rust and physical damage.[390] We find that the record evidence indicates that hot-rolled coiled steel is shipped through a variety of methods, including in bulk and in containers. While the GOC asserts that it is "{s}tandard industry practice" to ship HRS coil in bulk and not in containers, the industry publications it provided in support of this claim indicate that HRS is shipped in a variety of methods, including in bulk, in special containers, in closed equipment, and on platforms.[391]

We continue to find that the Maersk ocean freight rates submitted by Huanri and the petitioners are based on routes to mainland China, whereas the coaster freight rates proposed by the GOC

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[383] *Id.* at 51.
[384] *Id.* (citing PDM at 16).
[385] *Id.* at 52 (citing GOC's Case Brief at 33-34).
[386] *Id.*(citing *CDMT from China* IDM at 15 and Comment 5; *see also Tool Chests from China* IDM at 9 and Comment 7; and *Containers from China* IDM at 8 and 21-23).
[387] *Id.* (citing GOC's Case Brief at 33).
[388] *Id.* (citing PDM at 16).
[389] *See* PDM at 16 (citing GOC's Benchmark Rebuttal Comments at 3-5).
[390] *Id.* (citing letter from the petitioners, "Steel Propane Cylinders from the People's Republic of China – Petitioners' Response to the Government of China's Rebuttal Information to Measure the Adequacy of Remuneration," dated September 27, 2018 at 2-3).
[391] *See* GOC's Benchmark Rebuttal Comments at 3-4, Attachment 1 at 113 and ASTM A-700-5 at 3, 23, 28, and figures 67, 69, and 70.

are for routes to Hong Kong, which is a separate customs territory from the rest of China. Thus, the coaster freight rates to Hong Kong are not prices that reflect the price that an importer in China would pay if it imported HRS, per 19 CFR 351.511(a)(2)(iv). Therefore, for the purposes of the final determination, we are not including the GOC's coaster freight rates in our ocean freight benchmark.

Comment 14: Whether to Apply AFA to Find the Provision of Electricity for LTAR to be Specific

The GOC's Case Brief Comments

- Commerce did not provide factual support for its conclusion that electricity provided by the GOC was specific, nor did it properly consider record information contradicting this conclusion.[392]
- There are no "facts otherwise available" on the record that Commerce can rely on that suggest that the GOC's provision of electricity is specific; rather, the record demonstrates that retail prices for electricity are set according to purchase cost, transmission prices, transmission losses, and government surcharges, regardless of the electricity customer's industry or location.[393]
- Commerce has no lawful basis to apply AFA regarding whether the electricity for LTAR program is specific based on the GOC's purported failure to cooperate and fully explain the role of the National Development and Reform Commission (NDRC) and the derivation of electricity prices; rather, the GOC fully answered every question in the initial questionnaire regarding this program and acted to the best of its ability with respect to providing information on its provision of electricity to Huanri.[394]
- The GOC explained that electricity prices are classified by end user categories such as residential, agricultural, large industry, and/or industrial and commercial and that electricity prices "are equally applied to all end users" regardless of specific industry or province.[395]
- The GOC also explained in its questionnaire responses that electricity prices are determined by the provincial governments within their jurisdictions and that the role of the NDRC is to review the pricing schedule provided by the provincial governments.[396] The GOC further explained that provincial authorities submit pricing to the NDRC merely to ensure that certain pricing standards are followed.[397]

The Petitioners' Rebuttal Comments

- Commerce has found in this investigation, as it has in other recent CVD investigations, that the GOC is unable to substantiate its claim that electricity prices are determined

[392] *See* GOC Case Brief at 26-29 (citing PDM at 33 and 40-43; GOC IQR at 42-43 and Exhibit ELEC-1 through Exhibit ELEC-13).
[393] *Id.* at 29.
[394] *Id.* at 25-26 (citing GOC IQR at 42 and ELEC-1; and GOC SQR1 at 9).
[395] *Id.* at 28 (citing GOC IQR at 43 and Exhibit ELEC-1).
[396] *Id.* at 27-29 (citing GOC IQR at 42-43 and ELEC-1; and GOC SQR1 at 9).
[397] *Id.* at 29 (citing GOC IQR at ELEC-1).

independently by the provincial governments and that the NDRC role is solely "to review the electricity pricing schedules submitted by the provincial governments."[398]

- The GOC's general and unfounded answers[399] to Commerce's questions on how electricity prices are set and the government's role in setting prices lacked specific evidence and support such that Commerce was justified in finding that the GOC did not "cooperate to the best of its ability" in providing complete and accurate responses and applying adverse inferences.[400]
- The GOC's assertion that electricity prices are classified by end user categories and are equally applied to all end users, and that end user classifications are based on market principles rather than the GOC's policy goals, is not supported by any evidence.[401] Similarly, the GOC's assertion that the record demonstrates "that retail prices for electricity are set according to purchasing cost, transmission prices, transmission losses, and governmental surcharges, regardless" of a firm's industry or location is also baseless and unsupported by record evidence; therefore, Commerce did not "ignore" the evidence but instead properly concluded that the evidence did not support the GOC's claims.[402]

Commerce's Position: We disagree with the GOC that it acted to the best of its ability to provide requested information. As we explained in the *Preliminary Determination*, the GOC did not provide complete responses to Commerce's questions regarding the alleged provision of electricity for LTAR.[403] Furthermore, we explained in the *Preliminary Determination* that the various questions posed to the GOC throughout the course of this investigation requested information needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act and whether such a provision was specific within the meaning of section 771(5A) of the Act.[404] Consequently, in the *Preliminary Determination*, we relied on facts available pursuant to section 776(a)(2)(A) of the Act because the GOC withheld information that was requested of it for our analysis and applied AFA pursuant to section 776(b) of the Act because the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information.[405] Consistent with the Act and our practice, Commerce is continuing to apply AFA with respect to the provision of electricity for this final determination.[406]

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[398] *See* the Petitioners' Rebuttal Brief at 43 (citing GOC Case Brief at 26; *Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination With Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 83 FR 17651 (April 23, 2018), and accompanying PDM at 32-35 (affirmed in *CAAS from China* IDM at 17); *CDMT from China* IDM at Comment 2; and *Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 37844 (August 14, 2017), and accompanying PDM at 37-41, unchanged in *Aluminum Foil from China* IDM at Comment 23).
[399] *Id.* at 44-45 (citing GOC IQR at Exhibit ELEC-1 at 2-5, 6-7, and Exhibit ELEC-9; and GOC SQR at 9).
[400] *Id.* (citing *PDM* at 32-35; and *Nippon Steel*, 337 F.3d at 1382).
[401] *Id.* at 45.
[402] *Id.* at 46 (citing PDM at 32-35; and GOC Case Brief at 29).
[403] *See* PDM at 32-34.
[404] *Id.* at 32-35.
[405] *Id.* at 35.
[406] *See, e.g., CDMT from China* IDM at Comment 2; and *Cast Iron Soil Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 6770 (February 28, 2019), and accompanying IDM at Comment 4.

As detailed in the *Preliminary Determination*, Commerce requested information regarding the derivation of electricity prices at the provincial level, the procedure for adjusting retail electricity tariffs, and the role of the NDRC and the provincial governments in this process.[407] Specifically, Commerce asked how increases in cost elements led to retail price increases, the derivations of those cost increases, how cost increases are calculated, and how cost increases impacted the final electricity prices.[408] The GOC provided electricity tariff schedules; however, the GOC failed to explain, in detail, how the prices in the electricity tariff schedules were derived, including the specific factors or information relied upon by the NDRC.[409]

Commerce additionally requested that the GOC explain, for each province in which a respondent or cross-owned company is located, how increases in labor costs, capital expenses, and transmission and distribution costs are factored into Price Proposals, and how cost element increases and final price increases were allocated across the province and across tariff end-user categories.[410] The GOC failed to provide a complete response to this request; instead, the GOC reiterated that "{w}ith regard to adjustments that took place in 2016 and 2017, no Price Proposals were involved {and therefore} the question relating to the proposal is not applicable."[411] Further, despite the GOC's claim that the responsibility for setting prices within each province has moved from the NDRC to the provincial governments, record evidence indicates that the NDRC continues to play a major role in setting and adjusting prices, and the GOC failed to fully explain the roles and nature of the cooperation between the NDRC and provinces in deriving electricity price adjustments.[412] Furthermore, the GOC failed to explain both the derivation of price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves.[413]

As a result of the GOC's refusal to provide the requested information and unwillingness to cooperate, Commerce was unable to determine whether the electricity rates included in the electricity schedules submitted by the GOC were calculated based on market principles. Accordingly, Commerce applied facts available with an adverse inference to the determination of the appropriate benchmark. Specifically, because the GOC provided the provincial electrical tariff schedules, Commerce relied on this information for the application of facts available and, in making an adverse inference, Commerce identified the highest rates amongst these schedules for each reported electrical category and used those rates as the benchmarks in the benefits calculations.[414]

While the GOC argues that its electricity tariffs are not specific because the same price is charged to each type of end-user within a province, Commerce's analysis and its specificity determination are not based on a conclusion that different users within a province are treated differently or that preferential rates otherwise exist within the province. Rather, the GOC's

[407] *Id.* at 32-35.
[408] *See* Initial Questionnaire at Section II: Electricity Appendix.
[409] *See* GOC IQR at Exhibit ELEC-1 at 3-4.
[410] *See* Initial Questionnaire at Section II: Electricity Appendix.
[411] *See* GOC IQR at Exhibit ELEC-1 at 7.
[412] *See* PDM at 33-34; *see also* GOC IQR at Exhibits ELEC-1, ELEC-4, and ELEC-13.
[413] *See* GOC IQR at 41-43 and Exhibit ELEC-1 at 1-10; *see also* GOC SQR1 at 8-9.
[414] *See* PDM at 35.

failure to cooperate means that both our specificity determination and our benchmark determination must rely on the facts available on the record, with appropriate adverse inferences. As we explained in the *Preliminary Determination*, we attempted to obtain information on how Chinese provincial schedules are calculated and why they differ, which could have contributed to Commerce's analysis of an appropriate benchmark for the benefit calculation in this program.[415] The GOC's failure to provide complete responses to our questions regarding this program is the reason Commerce is applying AFA in this case with respect to the selection of an electricity benchmark. The fact that the GOC refused to answer Commerce's questions completely with respect to the roles and nature of cooperation between the NDRC and provinces in deriving electricity price adjustments, and 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, means that Commerce is unable to carry out a specificity analysis. The GOC has failed to explain the reason for these differences in this and previous cases, claiming without support that the provincial governments set the rates for each province in accordance with market principles.[416]

For the reasons stated above, we continue to find this program countervailable and rely on our findings in the *Preliminary Determination* that the GOC's provision of electricity confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively.[417] 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, for the final determination, we continue to apply facts available with an adverse inference with regard to this program, including in our selection of the benchmark for determining the existence and amount of the benefit.[418]

Comment 15: Whether to Remove SC Factory's Loans from Huanri's Reported Loans

Huanri's Case Brief Comments

- While preparing for verification, Huanri became aware of a minor error in its loan tables, specifically, the loans under loan control numbers 26 to 29 that were originally reported as Huanri's loans were in fact loans taken out by SC Factory, not Huanri.[419]
- Huanri presented this to Commerce as a minor correction at verification and Commerce accepted it.[420] Accordingly, Commerce should use the revised exhibit of outstanding loans for Huanri which excludes the four loans that were misidentified as Huanri's loans.[421]

No other parties commented on this issue.

[415] *Id.* at 33-35.
[416] *See Tool Chests from China* IDM at Comment 9.
[417] *See* PDM at 32-35.
[418] *See* section 776(b)(4) of the Act.
[419] *See* Huanri Case Brief at 19 (citing Huanri IQR at Exhibit 9).
[420] *Id.* (citing letter from Huanri, "Steel Propane Cylinders from the People's Republic of China - Minor Corrections," dated March 1, 2019).
[421] *Id.*

Commerce's Position: As discussed in the Huanri Verification Report, we reviewed the documentation for certain loans that Huanri inadvertently reported as its own loans and confirmed that these loans were in fact taken out by its affiliate, SC Factory.[422] Thus, for the final determination, we have used Huanri's revised loan database which excludes these loans.[423]

Comment 16: Which Benchmark Interest Rates to Apply in the Export Seller's Credit and Policy Loan Benefit Calculations

The Petitioners' Case Comments

- In the *Preliminary Determination*, Commerce found the government loans provided to Huanri under the Export Seller's Credit program and the Policy Loans to the Steel Propane Cylinder Industry program to be countervailable and appropriately applied an external interest rate benchmark to measure the benefit.[424]
- Under 19 CFR 351.505(a)(2)(i), Commerce will select benchmark interest rates based upon similarities in the underlying loan structure, *e.g.*, loan term and currency, and under 19 CFR 351.505(a)(2)(iii) and (iv), Commerce will typically use a benchmark loan with terms that were established during the same year as the government-provided loan.[425]
- In the *Preliminary Determination*, Commerce stated its intention to calculate Huanri's benefit from the Export Seller's Credit program by comparing "the amount of interest Huanri paid on the outstanding loans to the amount of interest the company would have paid on comparable commercial loans;" however, Commerce failed to consistently apply this methodology by not using the benchmark interest rate for the year in which Huanri took out certain loans under the Export Seller's Credit program.[426]
- Commerce also applied its stated intention for selecting a benchmark interest rate based on the year in which Huanri took out a government loan under the Policy Loans to the Steel Propane Cylinder Industry program.[427]

No other parties commented on this issue.

Commerce's Position: We reviewed our calculations for the Policy Loans to the Steel Propane Cylinder Industry program and the Export Seller's Credit program and noted that we compared the interest rate Huanri paid on its loans under these programs to a benchmark interest rate of the same loan term and currency based on the year Huanri made an interest payment. Under 19 CFR 351.505(a)(2)(iv), Commerce applies a benchmark interest rate to short-term loans based on "the year in which the government-provided loan was taken out." and Commerce applies a benchmark interest rate to long-term loans based on "the year in which the terms of the government-provided loan were established." Accordingly, for the purposes of the final determination, we are adjusting our calculation for the Policy Loans and Export Seller's Credit

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[422] *See* Huanri Case Brief at 2-3 and Exhibit CVE-1.
[423] *See* Final Calculation Memorandum at 2 and Attachment 2.
[424] *See* the Petitioners' Case Brief at 17-18 (citing PDM at 11-14).
[425] *Id.* at 17.
[426] *Id.* at 17-18 (citing PDM at 39; and Preliminary Calculation Memorandum at Attachment 1: Interest Rates and Attachment 2: Export Seller's Credit).
[427] *Id.* (citing PDM at 18-19; and Preliminary Calculation Memorandum at Attachment 1: Interest Rates and Attachment 2: Policy Loans to the Steel Propane Cylinders Industry).

programs to measure the benefit Huanri received on short-term loans under these programs by selecting a benchmark interest rate based on the year that Huanri reported as the date it received the loan.[428] In addition, we are adjusting the final calculations for the Policy Loans to the Steel Propane Cylinder Industry and Export Seller's Credit programs to measure the benefit Huanri received on its long-term loans under these programs by selecting a benchmark interest rate based on the year Huanri reported as the date of the loan agreement.[429]

Comment 17: Whether to Adjust Huanri's Sales Denominator

Huanri's Case Brief Comments

- In the *Preliminary Determination*, Commerce found Huanri I&E did not meet any of the attribution requirements determined to attribute subsides and found no ownership or control indicia to indicate that SC Factory was cross-owned with Huanri; thus, Commerce did not include any subsidies to SC Factory or Huanri I&E in its calculations.[430]
- Commerce also made clear in its *Preliminary Determination* that it was attributing all subsidies on the basis of Huanri's own denominator, without attributing any subsidies from Huanri I&E or SC Factory; however, Commerce then incorrectly excluded the intra-company sales between un-collapsed companies.[431]
- Commerce's practice is to only exclude intra-company sales when it is adding numerators and denominators among cross-owned companies to avoid double counting of sales between them in the sales denominator.[432]
- Huanri raised this as a ministerial error and Commerce agreed that it inadvertently removed sales to SC Factory and Huanri I&E from Huanri's total product sales but did not correct this error in an amended preliminary determination because the impact on the margin did not meet the "significant" definition.[433]
- Accordingly, Commerce must correct this acknowledged error in the final determination.[434]

No other parties commented on this issue.

Commerce's Position: We agree with Huanri. As discussed in the Ministerial Error Memorandum, we find that we made an inadvertent error in the calculation of Huanri's total sales figure for the POI by removing sales to SC Factory and Huanri I&E. For the final determination, we have included Huanri's sales to SC Factory and Huanri I&E in the calculation of Huanri's total product sales figure for the POI.[435]

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[428] *See* Final Calculation Memorandum at 2 and Attachment 2.
[429] *Id.*
[430] *See* Huanri Case Brief at 21 (citing PDM at 9).
[431] *Id.* (citing PDM at 9-10).
[432] *Id.* (citing *Fine Denier Polyester Staple Fiber from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 51396 (November 6, 2017), and accompanying PDM at 7, unchanged in *Polyester Staple Fiber from China*).
[433] *Id.* at 22 (citing Ministerial Error Memorandum at 3).
[434] *Id.*
[435] *See* Ministerial Error Memorandum at 2-3.

Comment 18: Whether to Correct a Translation Error in the Electricity for LTAR Benefit Calculation

Huanri's Case Brief Comments

- The English version of the Zhejiang provincial electricity tariff schedule, which is a component of the electricity benchmark used in the electricity for LTAR benefit calculation in the *Preliminary Determination*, contains a translation error such that the headings for "maximum demand" and "transformer capacity" are switched.[436] The exact same error in the English translation of the Zhejiang provincial electricity tariff schedule has appeared in at least one previous investigation, and the error was recognized and corrected.[437]
- Commerce has a mandate to calculate accurate margins and must provide sufficient reasons any time it treats similar situations differently.[438]

No other parties commented on this issue.

Commerce Position: We examined the record of this investigation, as we did in the *Hardwood Plywood from China 2017 Investigation*, and we agree with Huanri that the English translations for the two column headings should be corrected. We have corrected the electricity calculations and adjusted the rate for Huanri accordingly.[439]

Comment 19: Which AFA Program Rates to Apply to the Non-Cooperating Companies

The Petitioners' Case Brief Comments

- Commerce did not consistently follow its stated intention in the *Preliminary Determination* to calculate the total AFA rate for the six non-cooperating companies[440] based on the assumption that each producer received benefits under every investigated subsidy program during the POI.[441]
- According to Commerce's CVD AFA hierarchy, "if there is no identical program match within the investigation, or if the rate is zero," then Commerce will select either the highest non-*de minimis* rate calculated for the identical program in another CVD proceeding involving the same country, or the highest non-*de minimis* rate calculated for a similar program when the identical program has not been countervailed.[442]
- Commerce erroneously applied Huanri's calculated subsidy rate of 0.00 percent *ad valorem* rate for three programs in its AFA rates for the six non-cooperating companies: (1) GOC and Sub-Central Government Subsidies for Development of Famous Brands and China World

[436] *See* Huanri's Case Brief at 20 (citing letter from Huanri, "Steel Propane Cylinders from the People's Republic of China - Ministerial Error Allegations," dated October 29, 2018 at Exhibit 2).
[437] *Id.* (citing *Hardwood Plywood from China 2017* IDM at Comment 9).
[438] *Id.* (citing *SKF USA, Inc. v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2001)).
[439] *See* Final Calculation Memorandum at 4 and Attachment 2.
[440] The six non-cooperating companies are TPA Metals and the five Non-Responsive Companies. *See* PDM at 18-26.
[441] *See* the Petitioners' Case Brief at 14 (citing PDM at 19).
[442] *Id.* at 5-6, 15 (citing PDM at 20-23).

Top Brands; (2) SME International Market Exploration/Development Fund; and (3) Export Assistance Grants.[443]

- In accordance with its AFA hierarchy under section 776(d) of the Act, Commerce should apply the highest calculated rate for the same or similar subsidy program countervailed in prior CVD proceedings involving China, specifically the 0.62 percent *ad valorem* AFA program rate that Commerce applied to other grant programs in the *Preliminary Determination*.[444]

The GOC's Rebuttal Comments

- Commerce's AFA rate of 145.37 percent for the non-cooperating companies is sufficiently adverse to serve as a deterrent and induce parties to comply with Commerce's requests and thus satisfies the purpose of an AFA rate.[445] As such, the GOC argues that there is no need for Commerce to increase the AFA rate for the final determination.[446]

Commerce's Position: Under the first step of Commerce's CVD AFA hierarchy for investigations, Commerce applies the highest non-zero rate calculated for a cooperating company for the identical program in the investigation. In the *Preliminary Determination*, we selected the subsidy rate calculated for Huanri as the AFA rate applied to the six non-cooperating companies for the following programs: (1) GOC and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands; (2) SME International Market Exploration/Development Fund; and (3) Export Assistance Grants.[447] We have reviewed our analysis regarding Huanri's use of these three programs in the *Preliminary Determination*. We find that Huanri used these programs during the AUL, not during the POI, and that we calculated a subsidy benefit for Huanri that was less than 0.005 percent *ad valorem* for each of these programs; thus, these three programs were fully expensed prior to the POI.[448] Under the next step of our CVD AFA hierarchy, "if there is no identical program match within the investigation, or if the rate is zero," then Commerce will select either the highest non-*de minimis* rate calculated for the identical program in another CVD proceeding involving the same country, or the highest non-*de minimis* rate calculated for a similar program when the identical program has not been countervailed.[449] Given that Huanri's subsidy rate for each of these three programs is zero (*i.e.*, they were fully expensed prior to the POI), for the AFA rates for these three programs for the six non-cooperating companies in the final determination, we are applying the highest non-*de minimis* rate for a similar program in another CVD proceeding involving China, which is the 0.62 percent *ad valorem* rate for the Special Fund for Energy Saving Technology program calculated in the *Isos from China 2014 AR*.[450]

VIII. RECOMMENDATION

[443] *Id.* at 15 (citing PDM at Appendix).
[444] *Id.* at 15-16 (citing PDM at Appendix; and *Tool Chests from China* PDM at 11).
[445] *Id.* at 6-7 (citing *Drill Pipe from China* IDM at 7; and SAA at 870).
[446] *Id.* at 7.
[447] *See* PDM at 24.
[448] *Id.* at 43.
[449] *See, e.g.*, *Steel Wire Strand from China* 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."
[450] *See Isos from China 2014 AR* IDM at 7.

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these positions are accepted, we will publish the final determination of this investigation in the *Federal Register* and will notify the International Trade Commission of our determination.

☒ ☐

Agree	Disagree

6/17/2019

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Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
  for Enforcement and Compliance

APPENDIX

AFA Rate Calculation

Program	AFA Rate	Source of AFA Rate	Hierarchy Basis for AFA Rate
Export Loans from Chinese State-Owned Banks	10.54%	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201, 70202 (November 17, 2010) (*Coated Paper from China*)	Highest Calculated Rate for a Similar Lending Program (based on the treatment of the benefit): Preferential Lending to the Coated Paper Industry.
Export Seller's Credit	1.37%	Huanri's Calculated Rate (*see* Final Calculation Memorandum)	Highest Calculated Program-Specific Rate Determined for the Cooperating Respondent in the Instant Investigation
Export Credit Guarantees	10.54%	*Coated Paper from China*	Highest Calculated Rate for a Similar Lending Program (based on the treatment of the benefit): Preferential Lending to the Coated Paper Industry.
Export Buyer's Credit	10.54%	*Coated Paper from China*	Highest Calculated Rate for a Similar Lending Program (based on the treatment of the benefit): Preferential Lending to the Coated Paper Industry.
Provision of Land for LTAR	5.24%	*Countervailing DutyInvestigation of CertainHardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical CircumstancesDetermination, in Part*, 82FR 53473 (November 16,2017)	Highest Calculated Rate for a Similar Land Program (based on the treatment of the benefit): Provision of Land-Use Rights by the GOC for LTAR)
Provision of Electricity for LTAR	1.31%	Huanri's Calculated Rate (*see* Final Calculation Memorandum)	Highest Calculated Program-Specific Rate Determined for the Cooperating Respondent in the Instant Investigation

Income Tax Reductions for Research and Development Expenses Under the Enterprise Income Tax Law	25.00%	Petition, Volume V at 34 and Exhibit CVD-PRC-35 at Article 4	Corporate Income Tax Rate
Import Tariff and VAT Exemptions for Foreign-Invested Enterprises and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries	9.71%	*New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010), unchanged *New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011)	Highest Calculated Rate for a Similar Program (based on treatment of the benefit): VAT and Import Duty Exemptions on Imported Materials.
GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands	0.62%	*Chlorinated Isocyanuratesfrom the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing DutyAdministrative Review; 2014*, 82 FR 27466 (June 15, 2017) (*Isos from China-2014*).	Highest Calculated Rate for a Similar Program (based ontreatment of the benefit): Special Fund for Energy Saving Technology
Special Fund for Energy Savings Technology Reform	0.62%	*Isos from China-2014*	Highest Calculated Rate for the Identical Program: Special Fund for Energy Saving Technology
Small- and Medium-sized Enterprise International Market Exploration/Development Fund	0.62%	*Isos from China-2014*	Highest Calculated Rate for a Similar Program (based on treatment of the benefit): Special Fund for Energy Saving Technology
Small- and Medium-sized Enterprise Technology Innovation Fund	0.62%	*Isos from China-2014*	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology

Export Assistance Grants	0.62%	*Isos from China-2014*	Highest Calculated Rate for a Similar Program (based on treatment of the benefit): Special Fund for Energy Saving Technology
Policy Loans to the Steel Propane Cylinder Industry	2.04%	Huanri's Calculated Rate (*see* Final Calculation Memorandum)	Highest Calculated Program-Specific Rate Determined for the Cooperating Respondent in the Instant Investigation
Income Tax Reduction for High or New Technology Enterprises	25.00%	Petition, Volume V at 33-34 and Exhibit CVD-PRC-35 at Article 4	Corporate Income Tax Rate
Provincial Government of Guangdong Tax Offset for R&D	0.04%	*Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011)	Highest Calculated Rate forthe Identical Program: Provincial Government of Guangdong Tax Offset for R&D
VAT Refunds for Foreign Invested Enterprises Purchasing Domestically-Produced Equipment	9.71%	*New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010), unchanged in *New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Revie*, 76 FR 23286 (April 26, 2011)	Highest Calculated Rate for a Similar Program (based on treatment of the benefit): VAT and Import Duty Exemptions on Imported Materials.
Provision of Hot-Rolled Steel for Less Than Adequate Remuneration	22.65%	Huanri's Calculated Rate (*see* Final Calculation Memorandum)	Highest Calculated Program-Specific Rate Determined for the Cooperating Respondent in the Instant Investigation
Special Fund for Enterprise R&D of Application Technologies	0.62%	*Isos from China-2014*	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology
Labor Position Subsidy for Burden Alleviating Enterprises in Laizhou	0.62%	*Isos from China-2014*	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology

Provincial Patent of Invention Subsidy	0.62%	*Isos from China-2014*	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology
"8515 Program" Enterprise Technology Reform Subsidy in 2011	0.62%	*Isos from China-2014*	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology
"8515 Program" Enterprise Technology Reform Subsidy in 2012	0.62%	*Isos from China-2014*	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology
"8515 Program" Enterprise Technology Reform Subsidy in 2013	0.62%	*Isos from China-2014*	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology
"8515 Program" Enterprise Technology Reform Subsidy in 2015	0.62%	*Isos from China-2014*	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology
VAT Benefit on Deposit of Partial Fixed Assets	0.62%	*Isos from China-2014*	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology
VAT Benefit on Deposit of Used Fixed Assets	0.62%	*Isos from China-2014*	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology
Total Final AFA Subsidy Rate:	**142.37%**		