C-570-105
Investigation
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February 7, 2020

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

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Carbon and Alloy Steel Threaded Rod 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 of carbon and alloy steel threaded rod (steel threaded rod) from the People's Republic of China (China), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). The mandatory respondents subject to this investigation are Ningbo Zhongjiang High Strength Bolts Co., Ltd. (Zhongjiang Bolts) and Zhejiang Junyue Standard Part Co., Ltd. (Junyue). The period of investigation (POI) is January 1, 2018 through December 31, 2018.

After analyzing the comments submitted by interested parties, and based on our verification findings, we have made changes to the *Preliminary Determination*.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues in this investigation for which we received comments from interested parties:

Program-Specific Issues

Comment 1: Whether the Provision of Steel Bar and Wire Rod at Less Than Adequate Remuneration (LTAR) is Specific
Comment 2: Whether the Chinese Market for Steel Bar and Wire Rod Is Distorted

[1] *See Carbon and Alloy Steel Threaded Rod from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 36578 (July 29, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

Comment 3: Whether Certain Chinese Producers of Steel Bar and Wire Rod Are Authorities
Comment 4: Whether to Revise the Steel Bar and Wire Rod Benchmarks
Comment 5: Whether to Revise the Ocean Freight Benchmark
Comment 6: Whether to Countervail Export Buyer's Credit

Company-Specific Issues

Comment 7: Whether to Apply Adverse Facts Available (AFA) to Junyue
Comment 8: Whether to Countervail Electricity Junyue Purchased from a Private Supplier
Comment 9: Whether to Treat One of Zhongjiang Bolt's Self-Reported Subsidies as an Export Subsidy.

II. BACKGROUND

On July 29, 2019, Commerce published the *Preliminary Determination* in this proceeding. We conducted verification of the questionnaire responses submitted by Junyue and Zhongjiang Bolts in November 2019.[2] On October 2, 2019, Commerce released the Post-Preliminary Analysis regarding the programs alleged in the petitioner's[3] new subsidy allegations.[4] Interested parties submitted case briefs[5] on December 9, 2019, and rebuttal briefs[6] on December 16, 2019.

III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are steel threaded rod from China. For a complete description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

[2] *See* Memoranda, "Verification of the Questionnaire Responses of Ningbo Zhongjiang High Strength Bolts Co., Ltd.," dated December 2, 2019, and "Verification of the Questionnaire Responses of Zhejiang Junyue Standard Part Co., Ltd.," dated December 2, 2019.
[3] Vulcan Threaded Product Inc. (the petitioner).
[4] *See* Memorandum, "Decision Memorandum for the Post-Preliminary Analysis in the Countervailing Duty Investigation of Carbon and Alloy Steel Threaded Rod from the People's Republic of China," dated October 2, 2019 (Post-Preliminary Analysis) (finding that of the six programs analyzed, four were not used by the respondents and the remaining two did not confer a measurable benefit).
[5] *See* Petitioner's Letter, "Carbon and Alloy Steel Threaded Rod from the People's Republic of China: Case Brief," dated December 10, 2019 (Petitioner's Case Brief); the Government of China's (the GOC's) Letter, "GOC Administrative Case Brief -- Countervailing Duty Investigation of Carbon and Alloy Steel Threaded Rod from the People's Republic of China (C-570-105)," dated December 10, 2019 (GOC's Case Brief); Junyue's Letter, "Carbon and Alloy Steel Threaded Rod from the People's Republic of China: Case Brief," dated December 10, 2019 (Junyue's Case Brief); and Zhongjiang Bolts' Letter, "Administrative Case Brief: Countervailing Duty Investigation of Carbon and Alloy Steel Threaded Rod from the People's Republic of China – C-570-105," dated December 10, 2019 (Zhongjiang Bolts' Case Brief).
[6] *See* Petitioner's Letter, "Carbon and Alloy Steel Threaded Rod from the People's Republic of China: Rebuttal Brief," dated December 16, 2019 (Petitioner's Rebuttal Brief); and Junyue's Letter, "Carbon and Alloy Steel Threaded Rod from the People's Republic of China: Rebuttal Case Brief," dated December 16, 2019 (Junyue's Rebuttal Brief).

IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

In the *Preliminary Determination*, we applied partial AFA with respect to the GOC to find specificity and financial contribution for several programs.[7] We made no changes to the underlying decision to apply AFA with respect to the GOC for this *Final Determination.* As discussed in Comment 7, we applied partial AFA with respect to Junyue for this final determination.

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

We made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation methodology used in the *Preliminary Determination*. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination*.[8]

B. Attribution of Subsidies

As discussed in Comment 7, we determine that two of Junyue's affiliates are cross-owned as AFA and we have calculated the benefit received by these affiliates which is attributable to Junyue on the basis of AFA. Aside from this, we have made no other changes to the methodology underlying our attribution of subsidies in the *Preliminary Determination.* For a description of the methodology used for this final determination, *see* the *Preliminary Determination*.[9]

C. Denominators

Interested parties raised no issues in their case briefs regarding the denominators used in the *Preliminary Determination*.[10] However, as a result of verification, we have revised the sales values for Junyue[11] and Zhongjiang Bolts[12] to calculate the subsidy rates in this final determination.

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[7] *See Preliminary Determination* PDM at 6-25.
[8] *Id* at 25-26.
[9] *Id.* at 26-29.
[10] *Id.* at 29.
[11] *See* Memorandum, "Countervailing Duty Investigation of Carbon and Alloy Steel Threaded Rod from the People's Republic of China: Zhejiang Junyue Standard Part Co., Ltd.; Calculations for the Final Determination," dated concurrently with this memorandum (Junyue Final Analysis Memorandum).
[12] *See* Memorandum, "Countervailing Duty Investigation of Carbon and Alloy Steel Threaded Rod from the People's Republic of China: Ningbo Zhongjiang High Strength Bolts Co., Ltd.; Calculations for the Final Determination," dated concurrently with this memorandum (Zhongjiang Bolts Final Analysis Memorandum).

D. Benchmarks and Interest Rates

Interested parties raised issues in their case briefs regarding the benchmarks we used in the *Preliminary Determination*,[13] which are addressed in Comments 5 and 6. Commerce has modified the calculation of the benchmark for steel bar, wire rod, and ocean freight as described in Comments 4 and 5.

VI. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Policy Loans to the Steel Threaded Rod Industry

As discussed in Comment 7, as AFA, we are finding the subsidy rate for two of Junyue's cross-owned affiliates with respect to this program to be the same as the rate we calculated for Junyue and attributable to Junyue. We made no changes to the program rate for Zhongjiang Bolts. The final subsidy rates are 2.52 percent *ad valorem* for Junyue[14] and 0.01 percent *ad valorem* for Zhongjiang Bolts.[15]

2. Export Buyer's Credit

As discussed in Comment 7, as AFA, we are finding the subsidy rate for two of Junyue's cross-owned affiliates with respect to this program to be the same as the rate we calculated for Junyue and attributable to Junyue. As discussed in Comment 6, we made no changes to the program rate for Zhongjiang Bolts. The final subsidy rate is 31.62 percent *ad valorem* for Junyue and 10.54 percent *ad valorem* for Zhongjiang Bolts.

3. Provision of Wire Rod for LTAR
4. Provision of Steel Bar for LTAR

As discussed in Comment 4, we are now treating the provision of steel bar for LTAR and the provision of wire rod for LTAR as separate programs. In addition, as discussed in Comments 4 and 5, we made changes to the steel bar, wire rod, and ocean-freight benchmarks. Further, as discussed in Comment 7, as AFA, we are finding the subsidy rate for two of Junyue's cross-owned affiliates with respect to this program to be the same as the rate we calculated for Junyue and attributable to Junyue. Finally, as a result of verification, we have revised the input purchases table Zhongjiang Bolts reported.[16] As a result, the final subsidy rates are 2.28 percent *ad valorem* for steel bar and 27.51 percent *ad valorem* for wire rod for Junyue,[17] and 16.89 percent *ad valorem* for steel bar and 2.72 percent *ad valorem* for wire rod for Zhongjiang Bolts.[18]

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[13] *See Preliminary Determination* PDM at 10-14.
[14] *See* Junyue Final Analysis Memorandum.
[15] *See* Zhongjiang Bolts Final Analysis Memorandum.
[16] *Id.*
[17] *See* Junyue Final Analysis Memorandum.
[18] *See* Zhongjiang Bolts Final Analysis Memorandum.

5. Provision of Electricity for LTAR

As discussed in Comment 8, we are not including the solar electricity Junyue purchased during the POI; in addition, as a result of verification, we have revised the electricity Junyue reported.[19] In addition, as discussed in Comment 7, as AFA, we are finding the subsidy rate for two of Junyue's cross-owned affiliates with respect to this program to be the same as the rate we calculated for Junyue and attributable to Junyue. We made no changes with respect to Zhongjiang Bolts. As a result, the final subsidy rates are 1.50 percent *ad valorem* for Junyue[20] and 0.50 percent *ad valorem* for Zhongjiang Bolts.[21]

6. Income Tax Benefits for Domestically Owned Enterprises Engaging in Research and Development

As discussed in Comment 7, as AFA, we are finding the subsidy rate for two of Junyue's cross-owned affiliates with respect to this program to be the same as the rate we calculated for Junyue and attributable to Junyue. Zhongjiang Bolts did not use this program.[22] The final subsidy rate is 0.78 percent *ad valorem* for Junyue.[23]

7. Other Subsidies

Both Junyue and Zhongjiang Bolts self-reported various non-recurring subsidies from the GOC during the POI.[24] As discussed in Comment 7, as AFA, we are finding the subsidy rate for two of Junyue's cross-owned affiliates with respect to these programs to be the same as the rate we calculated for Junyue and attributable to Junyue. We made no changes to our methodology for calculating the subsidy rates for these programs with respect to Zhongjiang Bolts.

The subsidies self-reported by Junyue, which conferred a measurable benefit, are as follows (rates included in parentheses)[25]:

(1) Subsidy A (0.03 percent);
(2) Subsidy B (0.03 percent);
(3) Subsidy C (0.03 percent);
(4) Subsidy D (0.03 percent);
(5) Subsidy E (0.27 percent);
(6) Subsidy F (0.18 percent); and
(7) Subsidy G (0.03 percent).

[19] *See* Junyue Final Analysis Memorandum.
[20] *Id.*
[21] *See* Zhongjiang Bolts Final Analysis Memorandum.
[22] *Id.*; *see also Preliminary Determination* PDM at 39-40.
[23] *See* Junyue Final Analysis Memorandum.
[24] *See Preliminary Determination* PDM at 40.
[25] Junyue requested proprietary treatment of these subsidy names. *See* Memorandum, "Zhejiang Junyue Standard Part Co., Ltd.; Calculations for the Preliminary Determination," dated July 22, 2019 (Junyue Preliminary Calculation Memorandum) (listing the actual subsidy names).

The subsidies self-reported by Zhongjiang Bolts, which conferred a measurable benefit, are as follows:

(1) Grant on land development (0.20 percent);
(2) Subsidy on tech development (0.03 percent);
(3) Subsidy on exports (0.02 percent);
(4) Subsidy from finance department (0.02 percent);
(5) Grant on project of diversion of rain and sewage water (0.04 percent);
(6) Subsidy from Bureau of Commerce (0.02 percent); and
(7) Subsidy from Economic & Info Bureau (0.03 percent).

Accordingly, the final subsidy rates are 0.60 percent *ad valorem* for Junyue[26] and 0.36 percent *ad valorem* for Zhongjiang Bolts.[27]

B. Programs Determined Not to Confer a Measurable Benefit

Junyue and Zhongjiang Bolts reported receiving benefits under various self-reported programs which, based on the record evidence, we determine did not confer a measurable benefit because they are less than 0.005 percent *ad valorem* when attributed to the respondents' applicable sales, as discussed in the "Attribution of Subsidies" section above. We made no changes to our methodology for calculating the subsidy rates for these programs. Full lists of these programs are contained in the respondents' preliminary calculation memoranda.[28]

C. Programs Determined to Be Not Used During the POI

1. *Export Seller's Credit*
2. *Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Plan*
3. *Preferential Income Tax Program for High and New Technology Enterprises (HNTEs)*
4. *Preferential Deduction of R&D Expenses for HNTEs*
5. *Preferential Income Tax Policy for Enterprises in the Northeast Region*
6. *Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax*
7. *Value-Added Tax (VAT) and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund*
8. *Import Tariff and VAT Exemptions for Foreign-invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported equipment in Encouraged Industries*
9. *Foreign Trade Development Fund Grants*
10. *Export Assistance Grants*
11. *Subsidies for Development of Famous Export Brands and China World Top Brands*
12. *Export Interest Subsidies*
13. *Grants for Energy Conservation and Emission Reduction*
14. *Grants for Retirement of Capacity*

[26] *See* Junyue Final Analysis Memorandum.
[27] *See* Zhongjiang Bolts Final Analysis Memorandum.
[28] *See* Junyue Preliminary Calculation Memorandum; and Memorandum, "Ningbo Zhongjiang High Strength Bolts Co., Ltd.; Calculations for the Preliminary Determination," dated July 22, 2019 (Zhongjiang Bolts Preliminary Calculation Memorandum).

In addition, Junyue and Zhongjiang Bolts reported receiving benefits under various self-reported programs which, based on the record evidence, we determine that the benefits from certain programs were fully expensed prior to the POI. We made no changes to our methodology for calculating the subsidy rates for these programs. Full lists of these programs are contained in the respondents' preliminary calculation memoranda.[29]

VII. ANALYSIS OF COMMENTS

Program-Specific Issues

Comment 1: Whether the Provision of Steel Bar and Wire Rod at LTAR is Specific

GOC's Case Brief:

- Commerce should reverse its adverse inference finding that the provision of steel bar or wire rod for LTAR is specific.[30]
- Commerce's finding that the GOC did not cooperate to the best of its ability is a conclusory statement without any basis in fact.[31]
  - The courts have held that Commerce cannot penalize a party for not being able to provide information that it does not have.[32]
  - The GOC does not maintain usage information for these products and clearly stated so in its response.[33]

Petitioner's Rebuttal Brief:

- In the absence of full cooperation and a complete record, Commerce should continue to countervail the GOC's provision of steel bar and wire rod for LTAR.[34]
- Commerce has ruled repeatedly that it will apply AFA when confronted with the GOC's unwillingness to provide requested information for programs involving the provision of steel inputs.[35]
- Commerce should continue to reject the GOC's arguments regarding specificity.[36]

Commerce's Position: We continue to find, relying on AFA, the provision of steel bar and wire rod to be specific. As explained in the *Preliminary Determination*, we sought information from the GOC that would allow us to determine whether the provision of inputs for LTAR is specific

[29] *See* Junyue Preliminary Calculation Memorandum; and Zhongjiang Bolts Preliminary Calculation Memorandum.
[30] *See* GOC's Case Brief at 7-9.
[31] *Id*.
[32] *Id*. at 8 (citing *Olympic Adhesives, Inc. v. United States*, 899 F. 2d 1565, 1572 (CAFC 1990), A*K Steel Corp. v. United States*, 21 CIT 1204, 1223 (1997), and *NSK Ltd. v. United States*, 416 F. Supp. 2d 1334, 1341 (CIT 2006)).
[33] *Id*. at 8.
[34] *See* Petitioner's Rebuttal Brief at 7.
[35] *Id*. (citing *Certain Steel Racks and Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 35592 (July 24, 2019) (*China Steel Racks*); and *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) (*China Cylinders 2016*), and accompanying IDM).
[36] *Id*.

within the meaning of section 771(5A)(D)(iii)(I) of the Act, but the GOC did not adequately provide the information requested by Commerce.[37] Specifically, Commerce asked the GOC to provide a list of industries in China that purchase steel bar and wire rod directly, and to provide the amounts (volume and value) purchased by each of the industries.[38]

As discussed in the *Preliminary Determination*, the GOC did not provide this information, nor did it explain the efforts it made to compile this information or an alternative method to provide the required information.[39] Instead, the GOC provided an excerpt of the national standard on "Industries Classification in National Economy," which reflect all the economic activities in China and includes steel producer sectors, an excerpt of the general categorization of all economic activities under the United Nations' "International Standard Industrial Classification for All Economic Activities (ISIC)," and Section C on the manufacturing sectors under the ISIC (Rev.4), under which the Chinese manufacturing categorization is developed, including those of wire rod user industrial sectors, and a comparison chart of the National Economy Industry Classification and the ISIC.[40] We found this information to be insufficient because it did not include relevant data regarding the industries in China that purchased steel bar and wire rod, nor did it include the volume or value of purchases by industry during the POI and the prior two years, as we requested.[41] Accordingly, we reiterated our requests for this information in a supplemental questionnaire, but the GOC did not provide the requested information.[42]

As such, we determine that necessary information is not available on the record within the meaning of section 776(a)(1) of the Act. Moreover, although the GOC claimed that it does not collect official data regarding the industries in China that purchase wire rod or steel bar directly, this claim is contradicted by the GOC's submission of a list of industries that used ferroalloy metal in prior proceedings.[43] Therefore, we determine that the GOC has withheld information that was requested of it within the meaning of section 776(a)(2)(A) of the Act. As a result, we must rely on the facts available in making our determination regarding whether this program is specific. Moreover, we find that the fact that this information is missing from our record is exacerbated by the GOC's failure to cooperate to the best of its ability. In particular, we find that

[37] *See Preliminary Determination* PDM at 21-22.
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *See Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*China Wind Towers*), and accompanying IDM at Comment 13 (where Commerce found that the GOC's list of industries that used ferroalloy metal in 2002 supported a conclusion that the GOC tracks industry consumption information and failed to comply with our request for information); *see also Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013), and accompanying IDM at Comment 8 (where the GOC provided a list of industries that purchased the input); *Certain Steel Wheels from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 44573 (August 31, 2018) (*China Steel Wheels Prelim*), and accompanying PDM at 25 ("The GOC provided a list of industries that used ferroalloy metal in 2012"), unchanged in *Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 11744 (March 28, 2019) (*China Steel Wheels Final*).

the GOC did not do the maximum it was able to do in responding to our inquiries,[44] given that it has been able to submit industry lists in prior proceedings.[45] As a result, we find that an adverse inference is warranted in the application of facts available in accordance with section 776(b)(1) of the Act. In drawing an adverse inference from among the facts available, we find that the purchasers of steel bar and wire rod provided for LTAR are limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act. Accordingly, and as AFA, we find the provision of steel bar and wire rod for LTAR to be *de facto* specific. Therefore, we made no changes to our specificity finding for this final determination.

Comment 2: Whether the Chinese Market for Steel Bar and Wire Rod Is Distorted

GOC's Case Brief:

- The GOC cooperated to the best of its ability and provided sufficient information to determine whether the steel bar and wire rod markets were distorted.[46]
- The GOC explained, and Commerce has verified in other proceedings, that it does not maintain production and consumption data on the basis of value; there is no evidence on the record that contradicts this.[47]
- Commerce's claim that the GOC could have obtained this information through the Enterprise Credit Information Publicity System (ECIPS) is flawed.[48]
    - There is no evidence on the record that the ECIPS system contains annual reports for every company in China.[49]
    - Even if the appropriate annual reports were on the record, the record does not show that the GOC could obtain the names of each and every state-owned supplier, nor does it show that the GOC could obtain the annual sales values of specific types of products from the financial statements.[50]
    - To the extent that Commerce believes that the GOC could obtain value information for steel bar and wire rod through the ECIPS system, Commerce should have asked for this information in this manner; because it did not do so, Commerce failed to provide the GOC with sufficient notice that it expected the GOC to obtain this information through ECIPS.[51]
- The volume data which the GOC provided is sufficient for a market-distortion analysis.
    - The volume data show that the GOC's presence in the steel bar and wire rod markets is minimal and cannot possibly be distortive.[52]

[44] *See Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).
[45] *See China Wind Towers* IDM at Comment 13; and *China Steel Wheels Prelim* PDM at 25, unchanged in *China Steel Wheels Final*.
[46] *See* GOC's Case Brief at 9-19.
[47] *Id*. at 11.
[48] *Id*. at 11-13.
[49] *Id*. at 11-12.
[50] *Id*. at 12-13.
[51] *Id*. at 13.
[52] *Id*. at 17-19.

- Commerce based its market distortion analysis in Chinese CVD cases solely on volume data in other proceedings.[53]
- Volume data are generally what Commerce relies upon when analyzing the relative size of companies in an industry (*e.g.*, for selecting mandatory respondents).[54]

Petitioner's Rebuttal Brief:

- In the absence of full cooperation and a complete record, Commerce should continue to countervail the GOC's provision of steel bar and wire rod for LTAR.[55]
- Commerce has ruled repeatedly for AFA when confronted with the GOC's unwillingness to provide requested information for programs involving the provision of steel inputs.[56]
- Commerce should continue to reject the GOC's arguments regarding market distortion.[57]

Commerce's Position: For purposes of the final determination, we continue to find, based on AFA, that the Chinese domestic prices of the inputs in the steel beam and wire rod markets are significantly distorted by the involvement of the GOC in the market. Thus, we cannot calculate a benefit for the provision of steel bar and wire rod at LTAR by using a tier-one, in country benchmark. As a result, 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 these inputs at LTAR.

As we stated in the *Preliminary Determination*,[58] the GOC failed to provide necessary information, including the value of domestic production and the total volume and value of Chinese domestic consumption of wire rod and steel bar, 2) a discussion of any laws, plans, or policies addressing the pricing of wire rod and steel bar, their levels of production, importation, exportation, or capacity development, and 3) a list of industries in China that directly purchase wire rod or steel bar or the amounts pertaining to this.[59] Further, the GOC did not indicate that it made any efforts to coordinate with others to obtain this information.[60]

Because the GOC refused to provide the requested information regarding the wire rod or steel bar industries in China, *i.e.*, information regarding the total volume and value of domestic production that is accounted for by companies in which the government maintains an ownership or management interest either directly or through other government entities, we determine that necessary information is missing from the record, that the GOC withheld necessary information with regard to the Chinese wire rod and steel bar industries and markets for the POI, and significantly impeded the investigation within the meaning of section 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, respectively. Therefore, we are relying on facts otherwise available.

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[53] *Id*. at 18 (citing, *e.g.*, *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2014*, 81 FR 24798 (October 14, 2016), and accompanying IDM at "Provision of Inputs for LTAR").
[54] *Id*. at 18.
[55] *See* Petitioner's Rebuttal Brief at 7.
[56] *Id*. (citing *China Steel Racks*; and *China Cylinders 2016*).
[57] *Id*.
[58] *See Preliminary Determination* PDM at 22-25.
[59] *Id*.
[60] *Id*.

With respect to the GOC's arguments about ECIPS, as we stated in the *Preliminary Determination*:

> 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. Based on this experience, we are aware that this system is a national-level internal portal that holds certain information regarding any China-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 has stated that *all companies operating within China maintain a profile in the system, regardless of whether they are private or a state-owned enterprise*. Therefore, we determine that information related to the operation and ownership of companies within the wire rod and steel bar industries, and thus information regarding the domestic production and consumption levels of wire rod and steel bar, are in fact available to the GOC.[61]

Thus, contrary to the GOC's assertions, we have previously verified that ECIPS contains annual reports for every company in China.[62]

Irrespective of the GOC's claims regarding volume and value, we continue to find that the information the GOC provided indicating the market share of state-owned enterprises (SOEs) in the Chinese input producer markets is insufficient. As explained above, the GOC did not provide full information regarding entities in which it maintains an ownership interest, and therefore we find the volume data it provided to be unreliable for this proceeding. Furthermore, there is substantial record evidence demonstrating the Chinese steel industry – which includes the steel bar and steel wire rod markets – is characterized by significant government intervention, including through influence by the Chinese Communist Party (CCP), and thus the GOC, on Chinese firms.[63] As discussed in the Market Distortion Memo, which analyzes the Chinese steel industry, Commerce has found that:

> …the record information indicates that China's steel industry is characterized by significant government ownership, control and intervention. This broad government intervention across the entire market, extending to all enterprises, coupled with {Commerce's} findings regarding the leading role for SIEs in the

[61] *See Preliminary Determination* PDM at 23-24 (emphasis added, citations omitted).

[62] *See Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016), and accompanying PDM at 21-22, unchanged in *Countervailing Duty Investigation of Stainless Steel 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), and accompanying IDM.

[63] *See Preliminary Determination* PDM at 20; *see also* Memorandum, "Market Distortion – Inputs for LTAR," dated July 22, 2019 (Market Distortion Memorandum).

steel sector as envisioned and implemented by the GOC, distorts and diminishes the signals faced by all enterprises.[64]

Accordingly, even if the GOC's volume data were otherwise sufficient or if the GOC was able to obtain value information, we cannot consider such data dispositive because record information demonstrates the extensive GOC intervention in the steel bar and steel wire rod markets resulting in the significant distortion of these markets.

Thus, Commerce continues to rely on facts available in this final determination.[65] Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information.[66] Consequently, an adverse inference is warranted in the application of facts available. In particular, we look to the available information regarding the GOC's involvement in the steel beam and wire rod industries during the POI.[67] Applying an adverse inference in selecting from the facts available, we conclude that the extent to which the GOC is involved in the steel bar and wire rod industries is such that Chinese prices from domestic transactions involving these inputs are distorted[68] and therefore not usable as a tier one benchmark.[69] As a result of this analysis, we continue to find that the use of an external benchmark (*i.e.*, "tier two" (world market) prices as described under 19 CFR 351.511(a)(2)(ii)) is warranted for calculating the benefit for the provision of steel beam and wire rod for LTAR.

Comment 3: Whether Certain Chinese Producers of Steel Bar and Wire Rod Are Authorities

GOC's Case Brief:

- Commerce should reverse its determination that producers of steel bar and wire rod that are wholly owned by individuals are government authorities.[70]
- Although Commerce found that the GOC did not sufficiently answer questions regarding the CCP and the "nine entities," record evidence demonstrates that, even if one of the owners or managers of these producers were part of the nine entities or if they had primary party organizations, this would not convert the companies into government authorities.[71]
- The GOC rejects Commerce's logic, analysis, and ultimate conclusion in the CCP Memorandum, which forms the basis of the *Preliminary Determination*.[72]

[64] *See* Market Distortion Memorandum, Attachment 1 at 4.
[65] *See* section 776(a)(2)(A) of the Act.
[66] *See* section 776(b) of the Act.
[67] *See* GOC's Letter, "GOC Initial CVD Questionnaire Response: Countervailing Duty Investigation on Alloy Steel Threaded Rod from the People's Republic of China (C-570-105)," dated May 29, 2019 (GOC IQR) at 33-52.
[68] *See* Market Distortion Memorandum.
[69] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (*CVD Preamble*).
[70] *See* GOC's Case Brief at 19-27.
[71] *Id*. at 19-20 (citing *Preliminary Determination* PDM at 20-21).
[72] *Id*. at 20 (citing Memorandum, "Placement of Additional Information on the Record," dated July 22, 2019 (CCP Memorandum), at Attachment 2).

- The CCP is a political party, not a government authority, and is an independent entity unrelated to any government functions.[73]
- The GOC disputes Commerce's characterization of the role that CCP party groups and committees, or primary party organizations, play in the management and operations of private companies as outlined in the Public Bodies Memorandum.[74]

- While *The Economist* article quoted in the Public Bodies Memorandum references primary party organizations in private companies and in state-owned enterprises (SOEs), it is unlikely that the statements made in the article were intended to apply equally to primary party organizations in both types of entities.[75]
  - The vast majority of this article is focused on the presence of primary party organizations in SOEs and their effect on such entities, not private companies.[76]
  - No other statements within the Public Bodies Memorandum indicate that CCP primary party organizations exert control over private businesses or would otherwise support the leap Commerce has made that the presence of CCP officials vests an otherwise private company with government authority.[77]
- The GOC has explained in its response that the CCP cannot direct the business operations of private companies in China; while it may be possible for the primary party organization to make suggestions related to certain laws or certain state interests, it has no capacity to compel the company to conduct any business activities.[78]
  - CCP officials are not eligible to be owners, members of the board of directors or managers of input producers.[79]
  - The *Company Law* and the *Civil Servant Law* explicitly prohibit government officials from concurrently holding a position in an enterprise or any other profit-making organization.[80]
  - Although Commerce has dismissed this in the past, the finding in *PC Strand China* does not address the issue of whether Chinese law permits owners, members of the board of directors and managers of companies to be CCP officials.[81]
  - Instead, the finding in that case addressed CCP membership generally and being a representative of the National Party Conference. The Department's CVD questionnaire, in contrast, asks only about officials in the nine entities, not general CCP membership.[82]

[73] *Id*.
[74] *Id*. at 20 (citing Memorandum, "Placement of Additional Information on the Record," dated July 22, 2019, at Attachment 1 (Public Bodies Memorandum)).
[75] *Id*. at 21.
[76] *Id*.
[77] *Id*.
[78] *Id*. at 22.
[79] *Id*. at 23.
[80] *Id*.
[81] *Id*. at 23-24 (citing *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) (*PC Strand China*), and accompanying IDM at Comment 8).
[82] *Id*. at 24.

- Commerce has not presented any evidence to demonstrate that the provisions of the Company Law in China are superseded or invalidated by primary party organization obligations.[83]
- Several provisions in the *Company Law* dictate that a company's shareholders, directors and managers are solely responsible for the company's internal operations, and that it is unlawful for external organizations and authorities to interfere.[84]
- As a result, even if an owner, a director, or a manager of a supplier is a member or representative of any of these organizations, this circumstance would not render the management and business operations of the company in which he/she serves subject to any intervention by the GOC.[85]

- The GOC acted to the best of its ability in responding to Commerce's questions and, thus, no adverse inference is warranted.[86]

Petitioner's Rebuttal Brief:

- In the absence of full cooperation and a complete record, Commerce should continue to countervail the GOC's provision of steel bar and wire rod for LTAR.[87]
- Commerce has repeatedly applied AFA when confronted with the GOC's unwillingness to provide requested information for programs involving the provision of steel inputs.[88]
- Commerce should continue to reject the GOC's arguments regarding authorities.[89]

Commerce's Position: For purposes of the final determination, we continue to find, based on AFA, that the domestic input producers that supplied steel bar and wire rod to Junyue and Zhongjiang Bolts are "authorities" within the meaning of section 771(5)(B) of the Act and, thus, that such producers provided a financial contribution in supplying steel bar and wire rod to Junyue and Zhongjiang Bolts.

As discussed in the *Preliminary Determination*, in order for Commerce to analyze whether the domestic producers that supplied steel bar and wire rod to Junyue and Zhongjiang Bolts 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.[90] Specifically, to the extent that the owners, managers, or directors of a producer are CCP officials or otherwise influenced by certain CCP-related entities, we requested information regarding the means by which the GOC may exercise control over company operations and other CCP-related information.[91] Commerce explained its understanding of the CCP's involvement in China's economic and political structure in current and past China CVD proceedings, including

[83] *Id*.
[84] *Id*. at 24-25.
[85] *Id*. at 25.
[86] *Id*. at 25-27.
[87] *See* Petitioner's Rebuttal Brief at 7.
[88] *Id*. (citing *China Steel Racks*; and *China Cylinders 2016*).
[89] *Id*.
[90] *See Preliminary Determination* PDM at 20.
[91] *Id*.

why it considers the information regarding the CCP's involvement in China's economic and political structure to be relevant.[92]

With respect to the producers in question (*i.e.*, those entities producing wire rod and steel bar that the GOC reported as being non-majority government-owned enterprises that produce wire rod and steel bar purchased by Junyue and Zhongjiang Bolts during the POI), while the GOC provided ownership structure and basic registration information, the GOC did not provide other relevant documentation requested by Commerce, including company by-laws, annual reports, and articles of association.[93]

Additionally, while Commerce made attempts to obtain ownership and management information for all the respondents' wire rod and steel bar producers, the GOC did not provide the requested information. For instance, the GOC responded to Commerce's request for CCP information of the wire rod and steel bar producers by stating that it could not obtain the requested information, instead asserting that the CCP, the People's Congress, and the Chinese People's Political Consultative Conference (CPPCC) do not constitute governmental agencies and "there is no governmental data system that compiles or retains information on the political attitude and/or party or organization affiliations of an individual" and that "it is beyond the capacity of the GOC to access the information requested by the Department in this question."[94] In response to Commerce's supplemental questionnaire, in which Commerce reiterated the same requests for information, the GOC again refused to provide a complete response with regard to all requested documentation.[95]

The GOC has objected to Commerce's questions regarding the role of CCP officials and organizations in the management and operations of input suppliers. However, we have explained our understanding of the CCP's involvement in China's economic and political structure.[96] Commerce has determined that "available information and record evidence indicates that the CCP meets the definition of the term 'government' ... for the limited purpose of applying the U.S. CVD law to China."[97] Additionally, publicly available information indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a controlling influence in the company's affairs.[98]

With regard to the GOC's claim that the *Company Law* and the *Civil Servant Law* prohibits GOC officials from taking positions in private companies, we have previously found that CCP officials "can, in fact, serve as owners, members of the board of directors, or senior managers of

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[92] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*China Citric Acid 2012*), and accompanying IDM at Comment 5.b; *see also* Public Bodies Memorandum; and CCP Memorandum.
[93] *See Preliminary Determination* PDM at 20.
[94] *Id*.
[95] *Id*.
[96] *See* CCP Memorandum.
[97] *See Preliminary Determination* PDM at 33.
[98] *Id*. at 35.

companies."[99] In a prior proceeding, Commerce found that the GOC's basis for this assertion rests on the Executive Opinion of the Central Organization Department of Central Committee of CPC on Modeling and Trial Implementation of the Provisional Regulations of State Civil Servants in CCP Organs (ZHONG FA (1993) No. 8), which reflects the CCP's intent to model its personnel management system after the Civil Servant Law, including restrictions on enterprise employment.[100] However, it has been explained that this rule only applies to "staff of the administrative organs of the CCP and specified officials."[101] Thus, the rule only applies to a subset of party and government officials. The GOC has not defined the "specified officials" that this rule applies to, nor the officials to which it does not apply.[102]

This finding illustrates that CCP officials are able to serve as owners, members of the board of directors, or managers of input producers. With respect to this finding, we also note that the Public Bodies Memorandum plainly states that the CCP "may exert varying degrees of control {in private companies} in different circumstances.[103] Additionally, in *PC Strand from China*, Commerce determined that, "{i}n the instant investigation, the information on the record indicates that certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies."[104] We understand "National Party Conference" to be a reference to the "National Party Congress," which is described in the Public Bodies Memorandum as "the highest leading body of the Party."[105] Commerce considers representatives of the National Party Congress to be relevant government officials for purposes of the CVD law and an "authorities" analysis.

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.[106] 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.[107] Further, the GOC has been able to provide this information in prior CVD investigations.[108]

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 Junyue's and Zhongjiang

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[99] *See, e.g.*, *Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018), and accompanying IDM at 53.
[100] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) (*OCTG from China*), and accompanying IDM at Comment 7.
[101] *Id*.
[102] *Id*.
[103] *See* Public Bodies Memorandum.
[104] *See PC Strand China* IDM at Comment 8
[105] *See OCTG from China* IDM at Comment 7.
[106] *See, e.g.*, *China Citric Acid 2012* IDM at 4-6.
[107] *See China Citric Acid 2012* IDM at Comment 5.
[108] *See High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying IDM at 13.

Bolts' input suppliers.[109] As a result of incomplete responses to Commerce's questionnaires, we also 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.[110] As AFA, we find that CCP officials are present in each of Junyue's and Zhongjiang Bolts' 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 possesses, exercises or is vested with governmental authority.[111] Thus, for the final determination, we continue to find that the steel bar and wire rod input suppliers which supplied Junyue and Zhongjiang Bolts are "authorities" within the meaning of section 771(5)(B) of the Act.

Comment 4: Whether to Revise the Steel Bar and Wire Rod Benchmarks

Junyue's Case Brief:

- Commerce should calculate separate benchmarks for steel bar and wire rod rather than calculating a single average benchmark for these inputs.[112]
- 19 CFR 351.511(a)(2)(ii) directs Commerce to make "due allowance for factors affecting comparability" when calculating benchmarks.[113]
- Applying a single benchmark to both steel bar and wire rod does not provide due allowance for factors affecting comparability.[114]
- Commerce treated steel bar and wire rod differently in the corresponding antidumping duty investigation and has a long history of treating these two products differently in other proceedings.[115]

Petitioner's Rebuttal Brief:

- Commerce should continue to use the same benchmark for steel inputs as in the *Preliminary Determination*.[116]
- Commerce intended to use a single benchmark for steel bar and wire rod.[117]
- Commerce's use of a single benchmark is consistent with similar cases.[118]

[109] *See* section 776(a)(2)(A) of the Act.
[110] *See* section 776(b) of the Act.
[111] *See* Public Bodies Memorandum at 33-36, and 38.
[112] *See* Junyue's Case Brief at 3-4.
[113] *Id*. at 3.
[114] *Id*. at 4.
[115] *Id*. (citing, *e.g.*, *Certain Steel Grating from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 32366 (June 8, 2010), and accompanying IDM).
[116] *See* Petitioner's Rebuttal Brief at 8.
[117] *Id*.
[118] *Id*. (citing *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010), and accompanying IDM at Comment 9).

Commerce's Position: We agree with Junyue. We determine that calculating separate benchmarks for steel bar and wire rod enhances the accuracy of our subsidy-rate calculation because the separate benchmarks are each more specific to the individual purchases of each input reported by the respondents. In fact, in considering this issue, although we treated the provision of these inputs as a single program for the *Preliminary Determination*, we find that it is more appropriate to treat them as two separate programs for this final determination. As Junyue observes, we normally treat these inputs as separate products covered by separate analyses.[119] Accordingly, for this final determination, we have calculated separate program-specific subsidy rates for steel bar and wire rod using benchmarks specific to each input.[120]

Comment 5: Whether to Revise the Ocean Freight Benchmark

Zhongjiang Bolts' Case Brief:

- Commerce used the benchmarks submitted by the petitioner, which were based on actual New York to Shanghai rates and then extrapolated to other ports using the average cost per nautical mile.[121]
- Commerce should revise its calculation of the extrapolated ocean freight rates to use both of the New York to Shanghai rates on the record, *i.e.*, the rates submitted by Zhongjiang Bolts and the rates submitted by the petitioner.[122]
- Using only the petitioner's data in the extrapolation distorts the ocean freight rate and ignores record evidence.[123]
- Commerce should also correct a ministerial error contained in its calculation of the freight rate for August 2018.[124]

Junyue's Case Brief:

- Commerce should not rely on the petitioner's Descartes data to calculate the ocean freight benchmark.[125]
- If Commerce does rely on the petitioner's data, it should only use the base ocean freight cost excluding various surcharges and fees from the data, such as labor negotiation surcharge, bunker adjustment factor, emergency bunker adjustment factor, and intermodal delivery/pickup charge.[126]

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[119] For example, imports of stainless steel wire rod from India are covered by a different and separate order than imports of stainless steel bar from India. *See Antidumping Duty Order: Certain Stainless Steel Wire Rods from India*, 58 FR 63335 (December 1, 1993); and *Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan*, 60 FR 9661 (February 21, 1995).

[120] Our preliminary findings regarding financial contribution, specificity, and market distortion for steel bar and wire rod were based on AFA. *See Preliminary Determination* PDM at 37-38. As discussed in comments 1 through 3, we have not modified our findings for this final determination. Because these findings were based on AFA, our separating the provision of steel bar and wire rod into separate programs does not affect our findings for these inputs.

[121] *See* Zhongjiang Bolts' Case Brief at 2-4.

[122] *Id*. at 3.

[123] *Id*.

[124] *Id*. at 3-4.

[125] *See* Junyue's Case Brief at 5-8.

[126] *Id*. at 6-7.

- These are unusual charges that are not indicative of prevailing market conditions.[127]
- 19 CFR 351.511(a)(2)(iv) provides that Commerce must calculate the "price a firm actually paid or would pay if it imported" steel bar or wire rod.[128]
- Moreover, while a Panama Canal surcharge is logical for a shipment from New York to Shanghai, Petitioner's data also includes a Gulf of Aden surcharge; it is completely illogical for a route to include a surcharge for both of these opposite routes.[129]

- In addition, Commerce should not use the petitioner's extrapolated rates because it is based on assumptions that are not grounded in commercial reality.[130]
  - The extrapolation presumes that ocean freight costs are based on distance; while this is a factor, numerous other factors are considered in setting ocean freight prices.[131]
  - The 2017 data Junyue submitted supports the fact that distances alone do not determine ocean freight prices.[132]
  - To the extent that Commerce uses the petitioner's data, it should either not use the extrapolated data or else extrapolate the Descartes data submitted by Zhongjiang Bolts in a similar manner.[133]
- Commerce should also use the 2017 Maersk data submitted by Junyue in its calculation.
  - The ocean freight benchmark is intended to be indicative of prices from all over the world to China because the input benchmarks are based on prices from all over the world.[134]
  - The Descartes data on the record provided by the petitioner and Zhongjiang Bolts only includes rates on routes from the United States to China.[135]
  - Using the Maersk data Junyue submitted, even though it is from 2017, would result in a more accurate benchmark that is indicative of prevailing world prices.[136]
  - Commerce has relied on ocean freight data that was not contemporaneous in numerous cases.[137]
  - Commerce has relied upon the precise same Maersk data in other proceedings.[138]

[127] *Id*. at 6.
[128] *Id*.
[129] *Id*.
[130] *Id*. at 5-6.
[131] *Id*.
[132] *Id*.
[133] *Id*. at 6.
[134] *Id*. at 7.
[135] *Id*.
[136] *Id*.
[137] *Id*. (citing, *e.g.*, *Cast Iron Soil Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 6770 (February 28, 2019)).
[138] *Id*. at 7-8 (citing *Refillable Stainless Steel Kegs from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, in Part*, 84 FR 57005 (October 24, 2019) (*China Kegs*); *China Steel Racks*, 84 FR at 35592; and *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission, in Part*, *2017*, 84 FR 55913 (October 18, 2019) (*China Passenger Tires 2017*)).

Petitioner's Rebuttal Brief:

- Commerce should continue to use the ocean-freight benchmarks that it used for the *Preliminary Determination*.[139]
- Junyue cites no evidence for its assertion that numerous factors other than distance are considered in setting ocean freight prices.[140]
- Junyue cites no evidence for its assertion that the surcharges and fees included in the Descartes estimate are unusual.[141]
  - Junyue's argument neglects that such surcharges actually exist and that shipping companies charge for them.[142]
  - Junyue's argument neglects that the Panama Canal surcharge is zero in every monthly ocean-freight quote, indicating that the line item is just a place holder.[143]
- Including the ocean-freight quotes submitted by Zhongjiang Bolts would not increase accuracy.[144]
  - The ocean-freight quotes submitted by Zhongjiang Bolts is from the same source, Descartes, but is for "plastic resin of steel molds" rather than steel.[145]
  - The ocean-freight quotes submitted by Zhongjiang Bolts reflect none of the ancillary fees and surcharges that a shipper would need to pay in addition to the cost of a ship moving from one port to the other.[146]

Commerce's Position: We agree with the respondents that we should not use the rates extrapolated by the petitioner based on differences in distances. Our practice is to use only the actual quotes and not extrapolations calculated using data from those quotes.[147] Accordingly, for this final determination, we have recalculated the ocean-freight benchmark to be based only on the actual price quotes submitted by the petitioner and Zhongjiang Bolts.

However, we disagree with Junyue that we should remove several charges from the petitioner's ocean freight costs. In other cases, Commerce included the specific charges that Junyue argues should be excluded here (*e.g.*, "Labor Negotiation Surcharge," "Gulf of Aden Surcharge," and "Bunker Adjustment Factor"), as part of the ocean freight benchmark.[148] Moreover, there is no evidence on the record of this investigation to demonstrate that these charges would not be paid. To the contrary, the quotes submitted by the petitioner demonstrate that such surcharges actually exist and that shipping companies charge for them.[149] Moreover, as the petitioner observes, the record demonstrates that the Panama Canal surcharge is zero in every monthly ocean-freight

[139] *See* Petitioner's Rebuttal Brief at 1-3.
[140] *Id*. at 2.
[141] *Id*.
[142] *Id*.
[143] *Id*.
[144] *Id*. at 3.
[145] *Id*.
[146] *Id*.
[147] *See*, *e.g.*, *China Cylinders 2016* IDM at Comment 5.
[148] *See Certain Fabricated Structural Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 5384 (January 30, 2020), and accompanying IDM at Comment 6.
[149] *See* Petitioner's Letter, "Carbon and Alloy Steel Threaded Rod from China: Submission of Data for LTAR Benchmarks," dated June 21, 2019, at Exhibit 2.

quote;[150] thus, contrary to Junyue's assertion, the ocean-freight quotes which the petitioner submitted do not include both a Panama Canal surcharge and a Gulf of Aden surcharge. As a result, we continued to include the additional charges included in the petitioner's ocean freight costs in our calculation of the benchmark for the final determination.

We disagree with the petitioner that including the ocean-freight quotes submitted by Zhongjiang Bolts does not increase accuracy. Although the ocean-freight quotes submitted by the petitioner demonstrate that the surcharges actually exist, they do not demonstrate that such surcharges are *always* charged by the shipping company. The fact that the ocean-freight quotes submitted by Zhongjiang Bolts do not include such surcharges suggests that the surcharges may or may not be charged by the shipping company depending on the circumstances of the shipment.[151] Because we cannot discount the probity of any of the ocean-freight quotes submitted by the petitioner or Zhongjiang Bolts, we averaged the ocean-freight rates indicated in all such quotes in accordance with 19 CFR 351.511(a)(2)(iv) of Commerce's regulations.

We disagree with Junyue that we should use the 2017 Maersk data in our calculation of the ocean-freight benchmarks. It is our practice not to use non-contemporaneous data when calculating benchmarks unless we have no contemporaneous data available to calculate the benchmark.[152] Although Junyue claims that Commerce has relied on ocean freight data that was not contemporaneous, in the case it cites in support of its claim, we had no contemporaneous data so, unlike here, we had no contemporaneous data available to calculate the benchmark. Further, although Junyue claims we used the identical 2017 Maersk data in other cases, all of the cases Junyue cites had POIs or PORs of 2017 and, therefore, the data in question was contemporaneous in those investigations.[153]

Finally, we agree we made the minor error identified by Zhongjiang Bolts with respect to the ocean-freight benchmark calculation for August 2018 and have corrected that error for this final determination.

Comment 6: Whether to Countervail Export Buyer's Credit

GOC's Case Brief:

- The CIT has now found on at least eight occasions under similar circumstances that Commerce's application of AFA to the export buyers credit program (EBC program) is not supported by record evidence and in violation of section 776 of the Act.[154]

[150] *Id*.
[151] *See* Zhongjiang Bolts' Letter, "Zhongjiang's Benchmark Submission: Countervailing Duty Investigation of Alloy Steel Threaded Rod from the People's Republic of China – C-570-105," dated June 24, 2019, at Exhibit 5b.
[152] *See 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 19.
[153] *See China Kegs*, 84 FR at 57006; *China Steel Racks*, 84 FR at 35592; and *China Passenger Tires 2017*, 84 FR 55913.
[154] *See* GOC's Case Brief at 28.

- As in *New Pneumatic Off-the-Road Tires from the People's Republic of China*, Commerce should reverse its AFA finding based on non-use declarations submitted by respondent's customers.[155]
- Commerce's decision fails to satisfy the three criteria for an AFA finding, namely, (1) a gap in the record, (2) the offending party must have failed to cooperate to the best of its ability, and (3) the overall AFA decision must be supported by substantial evidence on the record.[156]
- The involvement of a government as a third party in proceedings has resulted in a modified application of AFA, wherein Commerce will find that the program was not used if information on the record indicates the respondent did not use the program, regardless of whether the foreign government participated to the best of its ability.[157]
- In *Iranian Pistachios* Commerce held that this practice is applicable in instances where the government has not responded or responded incompletely and the respondent has provided information that establishes non-use.[158] Commerce reiterated this in *Hot-rolled Carbon Steel Flat Products from India*, and rejected the argument that Commerce's decision is distinct in situation in which a respondent is claiming the use of a program.[159]
- The CIT has also supported this principle, noting that it would be "inappropriate for Commerce to apply AFA for no reason other than to deter the {government's} non-cooperation in future proceedings when relevant evidence existed elsewhere on the record."[160]
- The CIT has rejected Commerce's freedom to apply AFA to respondents that have fully cooperated and, in conjunction with relevant information provided by the GOC, provided certifications of non-application for the EBC program. These circumstances eliminate Commerce's perceived lack of necessary information regarding program usage and require that Commerce not use AFA in the final determination.[161]
    - In *Changzhou III*, the CIT found that Commerce did not explain why the government's failure to explain the program was necessary to assess claims of non-use, nor did they explain how an adverse inference with reference to the EBC program logically leads to a finding that respondents used the program.[162]
    - In *Guizhou Tyre II* after remand of EBC program usage determination the CIT found that Commerce incorrectly found failure to cooperate on the part of

[155] *Id.* (citing *Guizhou Tyre Co. Ltd., et al. v. United States*, Consol. Ct. No. 17-00101, Slip Op. 19-114 (CIT August 21, 2019), Final Results of Redetermination Pursuant to Court Remand (November 18, 2019) (*Guizhou Tyre II* Remand)).
[156] *See* GOC's Case Brief at 29.
[157] *Id.* at 30.
[158] *Id.* (citing *Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty New Shipper Review*, 73 FR 9993 (February 25, 2008) (*Iranian Pistachios*), and accompanying IDM at Comment 2).
[159] *See* GOC's Case Brief at 31.
[160] *See* GOC's Case Brief at 31-32 (citing *Changzhou Trina Solar Energy Co. v. United States*, 255 F. Supp. 3d 1312, 1313 (Ct. Int'l Trade 2017) (*Changzhou II*)).
[161] *See* GOC's Case Brief at 32-33.
[162] *See* GOC's Case Brief at 32 (citing *Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp. 3d 1316, 1326 (CIT 2018) (*Changzhou III*)); and *Clearon Corp. v. United States*, 359 F. Supp. 3d 1344, 1359-60 (CIT 2019) (*Clearon Corp.*)).

respondents, when the failure was by Commerce for not requesting the proper information to create an adequate record.[163]

- In order to apply AFA to the government respondent, Commerce must identify a gap in the record created by lack of full cooperation, as well as determine whether other information on the record might fill that gap. In this case, both the government and respondent placed information on the record to establish non-use of the EBC program.[164]
- The information deemed by Commerce as "missing" does not create a material gap in the record concerning usage. The missing information identified was only critical to understanding the functioning of the program, with no bearing on the establishment of usage.[165]
- Commerce explained in its reasoning to apply AFA that it requested and was not provided with the 2013 Administrative Measures Revisions to the EBC program but failed to investigate whether the absence of this information had a real impact on the usage determination and created a gap in the record.[166]
    - The GOC explained in its questionnaire responses how the EX-IM Bank determined usage in this case and provided screen shots of searches from the Bank's database. This methodology used to determine usage is unchanged from prior to the effective date of the 2013 revisions.[167]
    - Commerce has never inquired whether the 2013 revisions impacted how the EX-IM Bank can determine usage; the GOC has said that it does not.[168]
- The GOC explained that information on the names of partner and intermediary banks through which the program could be indirectly disbursed by EX-IM Bank is not necessary because the respondents' customers did not use this program; thus, the information was not relevant to the usage determination.[169] Additionally, the GOC explained that usage could be determined through EX-IM Banks' system regardless of whether the EX-IM Bank directly disbursed the program.[170] Commerce in its preliminary determination failed to make a rational connection between the information requested (a list of third party banks) and the conclusion made (that without this information, Commerce cannot determine or verify use). The information that was not provided goes to countervailability of this program only, not to the evaluation of the program or determination of usage of the program. This is consistent with what the CIT in *Guizhou Tyre I* and *Guizhou Tyre II* found.
- Usage could be determined in this case by the GOC's statement of non-use and verified by the provided screen shots of the database search, or by the respondent statements of non-use and customer declarations.[171]

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[163] *See* GOC Case Brief at 33 (citing *Guizhou Tyre Co. v. United States*, Slip Op. 19-114, (CIT August 21, 2019) (*Guizhou Tyre II*) at 9-10).
[164] *See* GOC's Case Brief at 34.
[165] *See* GOC's Case Brief at 34 (citing *Guizhou Tyre II* at 6-7; *Guizhou Tyre Co. v. United States*, 348 F. Supp. 3d 1261, 1271 (CIT 2018) (*Guizhou Tyre I*); and *Clearon Corp.*, 359 F. Supp. 3d at 1360).
[166] *See* GOC's Case Brief at 35.
[167] *Id.*
[168] *Id.*
[169] *Id.* at 35-36.
[170] *Id.* at 36.
[171] *Id.* at 37-38.

- Commerce could have verified with EX-IM Bank that the information regarding non-use is valid or attempted to verify claims of non-use at the respondent's U.S. customers' offices but chose not to.[172]

Zhongjiang Bolt's Case Brief:

- Commerce's decision to apply AFA for the EBC program is unlawful because they did not satisfy the three criteria: (1) there must be a gap in the record; (2) the offending party must have failed to cooperate to the best of its ability; and (3) the overall AFA decision must be supported by substantial evidence on the record.[173] The GOC conclusively established that the respondents did not use the EBC program, and the respondents placed verifiable evidence on the record establishing non-use; thus, there is no gap in the record, rendering AFA inappropriate.[174]
- Commerce's investigation of countervailability of an alleged subsidy essentially has two distinct prongs; one to determine countervailability by way of program operation and whether it could provide a subsidy, and one to determine usage. Failure to obtain information relating to the first cannot be bootstrapped into a determination with respect to the second.[175]
- The Courts have found in the context of AFA that failure by the GOC to respond regarding certain aspects of subsidy analysis does not necessarily render responses to other portions unusable.[176]
- The involvement of a government as a third party has resulted in a modified application of AFA; in *Iranian Pistachios* Commerce explained that if information on the record indicates respondent's non-use, Commerce will find non-use regardless of whether the foreign government participated to the best of its ability.[177]
- Court cases have also indicated that it is inappropriate for Commerce to apply AFA when facts not collaterally adverse to a cooperative party are available and Commerce should seek to avoid adversely impacting a respondent when an inference adverse to a non-cooperating government may affect them.[178]
- In *Guizhou Tyre II* where Commerce based its application of AFA to the EBC program on the same alleged failure of the GOC, the CIT found that if Commerce was missing necessary information, it is due to its own failure to request the proper information and focus on the operation of the program rather than use.[179]

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[172] *Id.* at 40.
[173] *See* Zhongjiang Bolts' Case Brief at 6.
[174] *Id.* at 14-15.
[175] *Id.* at 9 (citing, *e.g.*, *Stainless Steel Sheet and Strip in Coils from France: Final Results of Countervailing, Duty Administrative Review*, 67 FR 62098 (October 3, 2002), and accompanying IDM at Comment 1 (finding that because no financial contribution was made, *i.e.*, no revenue forgone, "there is nothing to countervail," even if a benefit could be calculated)).
[176] *Id.* at 9.
[177] *Id.* at 10 (citing *Iranian Pistachios* IDM at Comment 2).
[178] *Id.* at 12 (citing *Midland Co. v. United States*, 917 F. Supp. 2d 1331 (Ct. Int'l Trade 2013); *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254 (Ct. Int'l Trade 2012); and *Changzhou Trina Solar Energy Co. v. United States*, 255 F. Supp. 3d 1312, 1313 (Ct. Int'l Trade 2017)).
[179] *Id.* at 14 (citing *Guizhou Tyre II*, Slip Op. 19-114 at 9-10).

- Information deemed missing by Commerce does not create a material gap in the record; the information identified is critical to understanding the operation or function of the program, not establishing usage.[180]
- The presence of the 2013 Administrative Measures Revisions to the EBC program are not relevant to whether Commerce could have established usage. Moreover, Commerce never inquired whether the Revisions impacted how the EX-IM Banks can determine usage.[181] Per the GOC, they do not.[182]
- The GOC explained that usage could be determined through the screenshots of the EX-IM Bank system regardless of the disbursing bank.[183]
- Commerce did not rationally connect the unfulfilled request for a list of third party banks to the conclusion that they cannot determine or verify usage.[184] In *Guizhou Tyre II*, the CIT found that Commerce's application of AFA was unsupported by law because they did not demonstrate why the 2013 Revisions are relevant to verifying non-use.[185]
- Record evidence demonstrate that the EBC program was not used; if there was a failure due to a gap in the record it is Commerce's failure to review and ask questions of the non-use statements provided by the GOC and respondents.[186]
- Per *Roasted Pistachios,* and other case and judicial precedent addressed, Commerce must consider and accept the non-use statements placed on the record.[187]

Junyue's Case Brief:

- Junyue provided record evidence demonstrating that it did not use or benefit from the EBC program, providing customer declarations of non-use. The GOC corroborated Junyue's claim of non-use by the submission of EX-IM Bank database screenshots of Junyue's customer names.[188] Commerce did not issue supplemental questions to Junyue regarding the EBC program.[189]
- Commerce's finding as an adverse inference that Junyue used EBC is in violation of the statute and precedent that prohibits the application of adverse inferences against cooperating respondents when no necessary information is missing from the record.[190]
- The only missing information identified by Commerce is the identify of foreign banks used by the EX-IM Bank, which the CIT has repeatedly found to be irrelevant.[191]
    - In *Guizhou Tyre I*, the CIT found that despite the gap in certain information related to the operation of the program, there was complete information concerning use.[192]

[180] *Id.* at 15.
[181] *Id.*
[182] *Id.*
[183] *Id.* at 15.
[184] *Id.* at 16.
[185] *Id.* at 17-18 (citing *Guizhou Tyre II*, Slip Op. 19-114 at 11).
[186] *Id.* at 20.
[187] *Id.*
[188] *See* Junyue's Case Brief at 8.
[189] *Id.*
[190] *Id.* at 9.
[191] *Id.* at 9-10.
[192] *Id.* at 10 (citing *Guizhou Tyre I* at 1270).

    - Junyue cites ten opinions in which the CIT finds that Commerce failed to explain the need to understand every detail of the EBC program's operations nor does Commerce thoroughly explain why such understanding is necessary.[193]
- Commerce did not notify Junyue per section 782(d) of the Act that it found any of Junyue's responses deficient or unsatisfactory; accordingly, the record provides no basis upon which to use adverse inference to find that it benefitted from the EBC program.[194]
- Junyue's statements must be accepted as accurate because Commerce chose not to attempt verification regarding the assertion of non-use.[195]

Petitioner's Rebuttal Brief:

- The respondents argue that Commerce should ignore the fact that the GOC declined to cooperate;[196] Commerce has repeatedly ruled against this argument and explained that it cannot verify non-usage without names of intermediary banks.[197]
- Thus, Commerce must use facts available with an adverse inference to provide the trade remedy intended by Congress.[198]

Commerce's Position: We continue to find that the information provided to us by the GOC, or lack thereof, prevented Commerce from fully examining the EBC Program with respect to usage, and as a result, we are continuing to apply AFA to the EBC Program.

Solar Cells Initial Investigation of EBC Program

Commerce first investigated and countervailed the EBC Program in the 2012 investigation of solar cells.[199] Our initiation 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."[200] 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.[201]

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[193] *Id.*
[194] *Id.* at 11.
[195] *Id.*
[196] *See* Petitioner's Rebuttal Brief at 6.
[197] *Id.* at 7.
[198] *Id.*
[199] *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 Investigation*), and accompanying IDM at 9 and Comment 18 (discussing Commerce's determination with respect to the Export Buyer's Credit Program was initially challenged but the case was later dismissed).
[200] *Id.* at 59.
[201] *Id*.

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."[202] 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 added: "{t}he 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."[203] Although asked, the GOC provided no additional information concerning exactly how an exporter's financial and foreign exchange matters would be affected. Commerce then gave the GOC another opportunity to provide the information requested.[204] The GOC again refused to provide sample application documents, regulations, or manuals governing the approval process, and instead provided only a short description of the application process which gave no indication of how an exporter might be involved in the provision of export buyer's credits, how it might have knowledge of such credits, or how such credits might be reflected in a company's books and records.[205]

Based on the GOC's responses, Commerce's understanding was that, under this program, loans were provided directly from the China Ex-Im Bank to the borrowers (*i.e.*, a respondent's customers), with no involvement of third parties, such as exporters, or third-party banks. Accordingly, Commerce made clear its understanding that the only way to establish non-use of the program was through the GOC and not the respondent companies.[206] Additionally, Commerce concluded that even if the respondent company might have some knowledge of loans provided to its customers through its involvement in the application process, such information is not of the type Commerce would examine to verify that the claim of non-use at issue was complete and accurate:

> {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 the Department needs to examine in order to verify that the information is complete and accurate. For verification purposes, the Department 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 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

[202] *Id*.
[203] *Id*. at 60.
[204] *Id.* at 60-61.
[205] *Id.* at 61.
[206] *Id.*

> 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.[207]

Commerce concluded that, without GOC cooperation, usage of the program could not be confirmed at the respondent exporters in a manner consistent with its long-standing verification methods.[208] These methods are comparable to those of an auditor, attempting to confirm usage or claimed non-usage by examining books and records which can be traced to audited financial statements, or other credible official company documents, such as tax returns, that provide a credible and complete picture of a company's financial activity for the period under examination. A review of ancillary documents, such as applications, correspondence, emails, *etc.*, provides no assurance to Commerce that it has seen all relevant information.[209]

This "completeness" test is an essential element of Commerce's verification methodology. If Commerce were attempting to confirm whether and to what extent a respondent exporter had received 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 examine subledgers or bank statements containing the details of all individual loans. Because Commerce could tie or trace the subledgers or bank statements to the total amount of outstanding lending derived from the balance sheets, 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 (for example, "Account 201-02: Short-term lending, Industrial and Commercial Bank of China"), Commerce's third step would be to select specific entries from the subledger and request to see underlying documentation, such as

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[207] *Id.* at 61-62.

[208] Commerce provided a similar explanation in the 2014 investigation of solar products from China. *See Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products*), and accompanying IDM at 93. This was affirmed by the Court in *Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334 (CIT 2016) (*Changzhou I*). In *Changzhou II*, the Court noted that the explanation from *Solar Products* constituted "detailed reasoning for why documentation from the GOC was necessary" to verify non-use. However, the Court found that the 2014 review of solar cells from China at issue in *Changzhou III* was distinguishable because the respondents submitted customer certifications of non-use, and Commerce had "failed to show why a full understanding" of the program was necessary to verify non-use. *Id.* at 10 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017), amended by *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 46760 (October 6, 2017), and accompanying IDM). The Court in *Guizhou Tyre I* reached a similar conclusion concerning the 2014 review of tires from China. *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 18285 (April 18, 2017), and accompanying IDM.

[209] The Court agreed with Commerce in *RZBC Group*, following a remand, finding 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. v. United States*, 222 F. Supp. 3d 1196, 1201-02 (CIT 2017) (concerning *China Citric Acid 2012* IDM at Comment 6).

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 the investigation of solar cells, 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, or other relevant company documents. Therefore, Commerce concluded in that investigation that it could not verify usage of the 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 EBC 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."[210] However, the GOC refused to allow Commerce to query the databases and records of the China Ex-Im Bank.[211] Furthermore, there was no information on the record of the solar cells investigation from the respondent exporters' customers.

Chlorinated Isos Investigation of EBC Program

Two years later, in the investigation of chlorinated isos,[212] the respondents submitted certified statements from all customers claiming that they had not used the EBC Program. 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 respondent exporters' customers) *only*. Because the respondents' customers were participating in the proceeding, verification of non-use appeared to be possible through 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. customers pursuant to verification steps similar to the ones described above. Based on the GOC's explanation of the program, we had expected to be able to verify non-use of this program through review of the participating U.S. customers' subledgers themselves. Therefore, despite being "unable to conduct a complete verification of non-use of this program at China Ex-Im, … {w}e conducted verification . . . in the United States of the customers of {the respondents} and confirmed through an examination of each selected customer's accounting and financial records that no loans were received under this program."[213]

[210] *See Solar Cells from China Investigation* IDM at 62.
[211] *Id.*
[212] *See Chlorinated Isocyanurates From the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos Investigation*), and accompanying IDM.
[213] *Id.* at 15.

2013 Amendments to the EBC Program

Our understanding of the operation of the EBC Program began to change after the chlorinated isos investigation had been completed in September 2014. In *China Citric Acid 2012*, Commerce began to gain a better understanding of how the Ex-Im Bank issued disbursement of funds and the corresponding timeline; however, Commerce's attempts to verify the program's details and statements from the GOC concerning the operation and use of the program were thwarted by the GOC.[214] In subsequent proceedings, Commerce continued to investigate and evaluate this program.

For example, in the *Silica Fabric Investigation*[215] conducted in 2016-2017, based on what we had learned in *China Citric Acid 2012*, we asked the GOC about certain changes to the EBC Program, including changes in 2013 that eliminated the USD 2 million minimum business contract requirement.[216] In response, the GOC stated that there were three 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 Export-Import Bank of China 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 Export-Import Bank of China on November 20, 2000 (referred to as "*2000 Rules Governing Export Buyer's Credit*" or "*Administrative Measures*"); and (3) 2013 internal guidelines of the Export-Import Bank of China.[217] 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."[218] The GOC further stated that "those internal guidelines do not formally repeal or replace the provisions of the {*Administrative Measures*} which remain in effect."[219]

However, 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

[214] *See China Citric Acid 2012* IDM at Comment 6 ("{N}otwithstanding the non-use claims of the RZBC Companies and the GOC, we find that the GOC's refusal to allow the verifiers to examine the EXIM Bank database containing the list of foreign buyers that were provided assistance under the program during the POR precluded the Department from verifying the non-use claims made by the RZBC Companies and the GOC.").
[215] *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 Investigation*), and accompanying IDM.
[216] *See* GOC's IQR at Exhibit 48 (citing GOC's Letter, "Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC 7th Supplemental Response," dated September 6, 2016 (Export Buyer's Credit Supplemental Questionnaire Response)).
[217] *Id*.
[218] *Id.*
[219] *Id.*

> may have eliminated the USD 2 million contract minimum associated with this lending program. By refusing to provide the requested information, and instead asking the Department to rely upon unverifiable assurances that the 2000 Rules Governing Export Buyer's Credit remained in effect, the GOC impeded the Department'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 how this program is administrated by the EXIM Bank, impeded {Commerce's} ability to conduct its investigation of this program.[220]

Further, we determined 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."[221]

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 ACIT's declarations as submitted."[222]

The Instant Investigation

In this investigation, we initiated an investigation of the EBC Program based on information in the petition and supplemental response 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.[223] 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 EXIM {Bank} under the Buyer Credit Facility."[224] The Standard Questions Appendix requested various information that Commerce requires in order to

[220] *See Silica Fabric Investigation* IDM at 12 (internal citations omitted).
[221] *Id.* at 62.
[222] *Id.*
[223] *See* Memorandum, "Enforcement and Compliance Office of AD/CVD Operations Countervailing Duty Initiation Checklist: Carbon and Alloy Steel Threaded Rod from the People's Republic of China," dated March 13, 2019. (Initiation Checklist), at 10.
[224] *See* Commerce's Letter, "Countervailing Duty Investigation of Carbon and Alloy Steel Threaded Rod from the People's Republic of China: Countervailing Duty Questionnaire," dated April 10, 2019 (Initial Questionnaire), at 4.

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 "none of the respondents or their U.S. customers applied for, used, or benefitted from, this alleged program during the POI. Therefore, this question is not applicable, and as a consequence, the corresponding appendix is not applicable."[225] Further, in the Initial Questionnaire, we asked the GOC to "{p}rovide original and translated copies of any laws, regulations or other governing documents cited by the GOC in the Export Buyer's Credit Supplemental Questionnaire Response."[226] While the GOC provided two of the requested documents, the GOC did not provide the 2013 Revisions which were requested in the Export Buyer's Credit Supplemental Questionnaire Response.[227] In our supplemental questionnaire to the GOC, we again asked the GOC to respond to all items in the Standard Questions Appendix.[228] Instead of providing the requested information, the GOC stated that our Standard Questions Appendix was "unnecessary" because the mandatory respondents did not use this program, which the GOC asserted it had already demonstrated.[229] In response to the specific request for the guidelines adopted in by the Export-Import Bank in 2013 the GOC responded that "This document is not necessary to establish non-use of this program, which the GOC has demonstrated conclusively. The Department has been provided with sufficient and verifiable information to reach a finding that the program was not used during the POI, making this question immaterial."[230]

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.[231] 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.[232] 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. By failing to comply with Commerce's requests to provide this information, the GOC has deprived Commerce of the information necessary to fully 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.

[225] *See* GOC's IQR at 7.
[226] *See* Initial Questionnaire at 5 (referring to Export Buyer's Credit Supplemental Questionnaire Response).
[227] *See* GOC's IQR at 8-9 and Exhibits II.A.EBC.1 and II.A.EBC.4.
[228] *See* Commerce's Letter, "Investigation of Countervailing Duty on Carbon and Alloy Steel Threaded Rod from the People's Republic of China: GOC Supplemental Questionnaire," dated June 7, 2019 (GOC's SQR), at 3.
[229] *See* GOC's SQR at 2.
[230] *Id.*
[231] *See* GOC's IQR at Exhibit II.A.EBC.4.
[232] *Id.* at Exhibit II.A.EBC.I.

The 2013 Revisions were especially significant because record evidence indicates the credits may not be *direct* transactions from the China Ex-Im Bank to U.S. customers of the respondent exporters, but rather, that there can be intermediary banks involved, the identities of which were unknown to Commerce.[233] 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 Commerce's ability to verify non-use of the program.[234] Performing the verification steps outlined above to verify claims of non-use would require knowing the names of the intermediary banks. The names of these banks, not the name "China Ex-Im Bank," 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 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.[235]

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 Commerce cannot verify claims of non-use at the GOC,[236] having a list of the correspondent banks is critical to conducting a verification of non-use at the U.S. customers.

Furthermore, although respondents Junyue and Zhongjiang Bolts reported that their U.S. customers did not use the program, when asked to explain in detail the steps taken to confirm that no customer used the EBC program, Junyue responded that they simply contacted the customers involved in the sale of subject merchandise to the U.S. during the POI and provided customer declarations or an email response for all five identified customers.[237] Zhongjiang Bolts

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[233] *Id.*

[234] *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 Isos from China 2014* 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").

[235] *See Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018), and accompanying IDM at 30 (internal citations omitted).

[236] 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.

[237] *See* Junyue's Letter, "Alloy Steel Threaded Rod from the People's Republic of China: Junyue Section III Questionnaire Response," dated May 29, 2019 (Junyue IQR), at 13 and Exhibit 10.

responded that they contacted all U.S. customers of both Zhongjiang Bolts and Zhongjiang Machinery via telephone, email, or meeting, and provided affidavits for most of the listed customers.[238]

Despite the respondents' assertions that their U.S. customers did not use the EBC Program, the customer email statements are, alone, insufficient to establish non-use. Rather, additional information is necessary for Commerce to make such a determination. Specifically, Commerce requires information necessary to fully understand the details and operation 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, 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 necessary information regarding the EBC program.[239] The GOC asserts that the screenshots it provided from the China Ex-Im Bank covering all of respondents' U.S. customers indicate that none of respondents' U.S. customers are the clients of any of China Ex-Im Bank's accounts.[240] However, Commerce cannot verify claims of non-usage, whether originating with the respondents or their U.S. customers, if it does not know the names of the intermediary banks that might appear in the books and records of the recipient of the credit (*i.e.*, loan) or the cash disbursement made pursuant to the credit. As explained above, there will not necessarily be an account in the name "China Ex-Im Bank" or "Ex-Im Bank" in the books and records (*e.g.*, subledger, tax return, bank statements) of either the exporter or the U.S. customer.

Without such necessary information, Commerce would have to engage in an unreasonably onerous examination of the business activities and records of respondents' 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 respondents' non-use of this program without understanding the identity of these correspondent banks would be unreasonably onerous, if not impossible. 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.

[238] *See* Zhongjiang Bolts' Letter, "Zhongjiang Bolts Initial CVD Questionnaire Response in the Countervailing Duty Investigation on Alloy Steel Threaded Rod from the People's Republic of China (C-570-105)," dated May 29, 2019 (Zhongjiang Bolts IQR), at 11 and Exhibits III.A.3a and III.A.3b.
[239] *See* GOC's IQR at 7-11.
[240] *See* GOC's Case Brief at 36 (citing GOC's IQR at 9 and Exhibit II.A.EBC.2).

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.[241] Commerce would simply not know what to look 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.

For all the reasons describe above, Commerce requires the 2013 EBC Program Revisions, as well as other necessary 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 necessary "roadmap" for the verifiers by which they can conduct an effective verification, perform a "completeness test" and confirm whether the programs was not used as claimed by the respondent.

Thus, Commerce finds it could not *accurately and effectively* verify usage at respondents' customers, even were it to have attempted the unreasonably onerous examination of each of their customers' loans. To conduct verification at respondents' customers without the information

[241] 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 that establish the terms of the assistance provided under the facility." *See* Initial Questionnaire at 4. The GOC responded "Since no buyer credits were provided to the respondents' customers this question is not applicable." *See* GOC's IQR at 8.

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 respondents' use of the EBC Program.

As explained in the *Preliminary Determination*, necessary information from the GOC is missing from the record, and the GOC withheld the requested information described above, which is necessary to determine whether respondents' U.S. customers actually used the EBC Program during the POI.[242] The GOC's withholding of this necessary information prevents us from fully understanding and analyzing the operation of this program, 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), and (a)(2)(C) of the Act, to determine whether this program was used by Junyue and Zhongjiang Bolts and conferred a benefit.

Furthermore, pursuant to section 776(b) of the Act, we continue to 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.[243] 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 respondents' 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 respondents' 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.[244] 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.[245] 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 respondents' customers obtained loans under the program.

Thus, as discussed above, the GOC's refusal to provide the 2013 Revisions, which set 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 a failure to cooperate to the best of the GOC's ability. Therefore, as AFA, we find that respondents Junyue and Zhongjiang Bolts used and benefited from this program, despite their

[242] *See Preliminary Determination* PDM at 8-11.
[243] *Id.* at 10.
[244] *See* GOC's IQR at Exhibit II.A.EBC.I.
[245] *Id.*

claims that their U.S. customers had not obtained export buyer's credits from the China Ex-Im Bank during the POI.[246]

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.[247] 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 preferential rates for the purchase of exported goods from China.[248] Moreover, the program was alleged by the petitioner as an example of a possible export subsidy.[249] Furthermore, Commerce has found this program to be an export subsidy in the past.[250] Thus, taking all such information into consideration indicates the provision of the export buyer's credits is contingent on exports, and therefore specific, within the meaning of section 771(5A)(B) of the Act. Moreover, we find that under EBC Program, the GOC bestowed a financial contribution pursuant to section 771(5)(D) of the Act.

Similarly, we disagree with respondents' 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, and as discussed above, we have information on the record indicating the existence of the 2013 Revisions and the involvement of third-party banks. We explained why having these documents and additional information regarding the functioning of the EBC program from the GOC was necessary to have a full understanding of the EBC program in order to *accurately and effectively* verify non-use

Regarding the GOC's reference to the *Guizhou Tyre II* Remand, we initially note that Commerce performed that remand under respectful protest.[251] Moreover, Commerce noted that its "previous findings with respect to the impracticality of verifying these claims of non-use by the respondents or by their customers, and of verifying the GOC's claims that neither of the two mandatory respondents nor any of their U.S. customers used the program, remain unchanged."[252] Commerce additionally concluded in the *Guizhou Tyre II* Remand that there still remained "a 'gap' in the record – *i.e.*, missing necessary information concerning the operation of the EBCP,"

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[246] *See* Junyue IQR at 13 and Exhibit 10; and Zhongjiang Bolts IQR at 11 and Exhibits III.A.3a and III.A.3b.
[247] *See Preliminary Determination* PDM at 11.
[248] *See, e.g.*, GOC's IQR at Exhibit II.A.EBC.1 ("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 technical services."); *see also* GOC's IQR at Exhibit II.A.EBC.4 "According to the Ex-Im Bank, in order to make a disbursement, the Ex-Im lending contract requires the buyer (importer) and seller (exporter) to open accounts with either the Ex-Im Bank or one of its partner banks."; and GOC's IQR at II.A.EBC.5 at 1 ("{The EBC Program provides} support for the export of China's sets of equipment, ships, and other mechanical and electronic products.").
[249] *See* Volume VI of the Petition at 18-20; *see also* Petitioner's Letter, "Carbon and Alloy Steel Threaded Rod from China: Response to Questionnaire on Countervailing Duty Petition," at 1-4.
[250] *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.
[251] *See Guizhou Tyre II* Remand at 1-2, and 8.
[252] *Id.* at 8.

which "prevents an accurate and effective verification of {the respondent's} customers' certifications of non-use and {another respondent's} statements that its customers did not use the program."[253] This critical gap in the record – which is exacerbated by the GOC's failure to cooperate to the best of its ability in providing us with such necessary information – exists in this investigation.

We also disagree with respondents' arguments 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.[254] 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.'"[255] 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.[256] However, as explained above, the claims of non-use on the record cannot be verified.

With regard to the GOC's reliance on *Changzhou II*, 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.[257] In *Changzhou II*, we did not have such information on the record.[258] 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 companies' customers' certifications of non-use.

[253] *Id.*
[254] *See KYD, Inc. v. United States*, 607 F. 3d 760 (CAFC 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 (Shanghai) Ltd. v. United State*s, 748 F. 3d 1365, 1372 (CAFC 2014) (*Fine Furniture*) (affirming Commerce's application of adverse inferences when the GOC did not provide requested information despite the respondents' cooperation).
[255] *See Changzhou III* at 1325 (quoting *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1342 (CIT 2013)).
[256] *Id.*
[257] *See* GOC's IQR at Exhibit II.A.EBC.4.
[258] *See Changzhou II*; *see also Solar Products* IDM at Comment 11.

Company-Specific Issues

Comment 7: Whether to Apply AFA to Junyue

Petitioner's Case Brief:

- Junyue did not provide analysis or explanation for reporting that Affiliates A and B[259] were not cross-owned.[260]
- Junyue precluded meaningful investigation of the affiliates through inaccurate responses to the initial and supplemental questionnaires.[261]
- In *Hardwood Plywood from the People's Republic of China* and *Cold-Rolled Steel from Korea*, respondents did not identify an affiliate until late in the investigation, which Commerce found to have deprived it of the opportunity to examine cross-ownership. Commerce determined in both cases that the application of AFA was justified due to the respondent's failure to reply accurately and completely, and that the companies substituted their judgment for the judgment of Commerce and willfully precluded Commerce from analyzing and determining whether suppliers met the cross-ownership or attribution criteria.[262]
- Similarly, Junyue missed two opportunities in the initial and supplemental questionnaires to provide Commerce with the information necessary for Commerce to determine whether cross-ownership might exist.[263] Thus, the application of AFA is appropriate and the petitioner requests the modification of the preliminary results.[264]

Junyue's Rebuttal Brief:

- Cross-ownership is a necessary predicate for requiring Junyue to report fully Section III responses, including such information as concerning what inputs or services they may provide to Junyue. In other words, the affiliation questionnaire asks the respondent to engage in a step-by-step hierarchy of criteria to determine which companies' data must be supplied in the detailed Section III responses. The hierarchy is not applied backwards.[265]
- Junyue reported all affiliates up front in accordance with Commerce's instructions, and established that the conditions of cross-ownership were not met for Affiliates A and B.[266]
- As a general matter, as is apparent from the affiliation questionnaire, a complete (and burdensome) Section III response is not required for all affiliates. Rather, full Section III responses are required of (1) suppliers of subject merchandise to the respondent/exporter, (2) trading companies that sell the subject merchandise, (3) cross-owned affiliated companies that meet at least one of the four conditions.

[259] Affiliates A and B correspond to the two companies named in Junyue's Rebuttal Brief at 2.
[260] *See* Petitioner's Case Brief at 4.
[261] *Id.*
[262] *Id.* at 5-7.
[263] *Id.* at 7-8.
[264] *Id.* at 8.
[265] *See* Junyue's Rebuttal Brief at 2.
[266] *Id.* at 3.

- Junyue refutes the petitioner's claim that it substituted its judgment for that of Commerce; Junyue was required to report the existence and non-existence of ownership and management relationships with the two affiliates as the basis for Commerce's determination with respect to cross-ownership, as well as to state its beliefs with respect to which companies were cross-owned and must report complete Section III responses.[267]
- As with all other responses, Commerce reviews the response and judges for itself whether they are adequate or whether additional companies must complete the full Section III response; thus, clearly Commerce, not the respondent, decides whether to require the complete Section III response for additional companies.[268]
- The verified facts reported by Junyue regarding Junyue's relationships of control clearly demonstrated the non-existence of cross-ownership with affiliates A and B.[269]
- The fact that affiliates A and B provide some services to Junyue has no bearing on the more fundamental issue and fact that there is no cross-ownership between them and Junyue.[270] The petitioner misrepresented Junyue's questionnaire responses; Junyue reported in its Section III response that affiliates A and B had an affiliation relationship with Junyue due to the family relationship between shareholder of Junyue and shareholders of these two companies who are brother, father, mother, or sister in law of Junyue's owner.[271]
- There is no common shareholder between the companies and Junyue, and Commerce verified the shareholders of the two affiliates and Junyue.[272]
- The petitioner claims that Junyue "provided no explanation of any analysis leading to this conclusion {that affiliates A and B are not cross-owned}." Junyue finds this to be neither a complete nor accurate reflection of the full facts of the response.
    - Junyue did not identify affiliates A and B as "cross-owned" based on its Section III response and made clear the basis for this categorization by stating "Please refer to the responses above" which identifies the lack of legal or operational control over each other's companies.[273]
    - Since Junyue and these two affiliates (a) do not share common shareholder; (b) do not share common management; and (c) do not have officers that are overseeing operations of each other, Junyue and these two affiliates cannot "use or direct the individual assets of another company in essentially the same ways it can use its own assets," and therefore, under no circumstances do they meet the criteria of being "cross-owned."[274]
    - Junyue disclosed all relationships that impacted the companies' ability to control each other and has not withheld indicia of a controlling relationship in its responses.[275]

[267] *Id.* at 3-4.
[268] *Id.*
[269] *Id.*
[270] *Id.*
[271] *Id.* at 5.
[272] *Id.*
[273] *Id.*
[274] *Id.*
[275] *Id.* at 6.

    - Junyue fully provided the facts concerning the relationship between Junyue and the two affiliates, and its conclusion that they are not "cross-owned" is based on such facts.[276]
- The petitioner further claims that Junyue did not report a separate response to these affiliates because they did not produce subject merchandise. Junyue states that while the two affiliates do not produce subject merchandise, the reason Junyue did not believe separate responses were necessary is because there is no cross-ownership.[277]
- Junyue states that, moreover, it has truthfully reported that the two affiliates do not produce subject merchandise, and during verification, Commerce officials found that they just "performed certain services."[278]
- Junyue notes that affiliation through family groups is insufficient to rise to the level of cross-ownership and that the affiliates questionnaire instructions include guidance concerning the statutory definition of affiliation.[279]
- Junyue argues that *Coated Free Sheet Paper from Indonesia* does not find cross ownership between certain entities owned by various members of the same family, as suggested by the petitioner, and addresses an inapposite situation in which a family group acted on behalf of an affiliated company with regard to their debt.[280]
- Contrary to the circumstances in *Hardwood Plywood from China*, Junyue identified the affiliates in the first questionnaire response, not "late in the investigation."[281]
- Contrary to the circumstances in *Cold Rolled Steel from Korea*, where POSCO substituted its own judgment because it did not disclose to Commerce that there were inputs provided by clearly cross owned companies, Junyue responded fully to the first inquiry of cross-ownership and stopped there in accordance with the hierarchy of the questionnaire.[282]
- The petitioner's assertion that Commerce repeatedly found processing and other ancillary activities to constitute production is baseless and the petitioner's unspecified citations without pin citations or factual discussion should be dismissed.[283]
- In each of these cases Commerce found the affiliated providers cross owned before analyzing whether to attribute subsidies.
- The petitioner cited *Silicon Metal from Australia*, *Washers from Korea*, and *Refrigerator-Freezers from Korea*, which address situations involving wholly owned subsidiaries or parent companies.[284] *Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil* addresses majority owned subsidiaries.[285] These are not dispositive in Junyue's case.[286]

Commerce's Position: For the reasons discussed below, Commerce finds that the application of facts available is warranted with respect to Junyue.

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[276] *Id.*
[277] *Id.* at 7.
[278] *Id.*
[279] *Id.* at 8.
[280] *Id.* at 9.
[281] *Id.* at 14-15.
[282] *Id*.
[283] *Id.* at 16.
[284] *Id.* at 16-17.
[285] *Id.* at 17.
[286] *Id.* at 18.

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall rely on "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. The SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[287] In applying an adverse inference in selecting from the facts otherwise available, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[288] Moreover, the statute makes clear that, when selecting from the facts otherwise available with an adverse inference, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[289] 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 countervailing duty investigation, a previous administrative review, or other information placed on the record.[290]

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit held that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."[291] Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best

[287] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 870.
[288] *See* section 776(b)(1)(B) of the Act.
[289] *See* section 776(d)(3) of the Act.
[290] *See also* 19 CFR 351.308(c).
[291] *See Nippon Steel*, 337 F. 3d at 1382-83.

of its ability. While the Federal Circuit noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.[292] The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.[293] Moreover, further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.[294]

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[295] Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[296]

For this final determination, Commerce finds that despite Commerce's specific questionnaires and instructions, which are documented below, Junyue failed to satisfy its duty to reply accurately and completely to requests for information regarding its affiliates. Moreover, Commerce finds that Junyue significantly impeded the proceeding by not providing accurate or complete responses to Commerce's questions about certain affiliates. Therefore, we find it necessary to resort to the facts available for Junyue, pursuant to section 776(a)(1) and (a)(2)(A), (B), and (C) of the Act. Moreover, Junyue's failure to completely respond to our inquiries amounts to a failure to cooperate to the best of its ability in participating in the investigation. Thus, Commerce finds that such circumstances warrant the application of facts available with adverse inferences, pursuant to sections 776(b) of the Act. Our findings and AFA determination are discussed below.

In Commerce's initial questionnaire, we provided instructions for reporting information related to Junyue's affiliated and cross-owned companies. With regard to affiliated companies, the questionnaire instructed:

> Describe in detail the nature of the relationship between your company and those companies listed in response to the prior question. Specify for example, whether the companies share a board of directors, or whether members of each company's board sit on the board(s) of the other company(ies), and how the voting rights are distributed among board members; specify if, and how, officers of one company are directly involved in overseeing the operations of another company. Specify whether an affiliated company supplies inputs into your company's production process.

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[292] *Id*. at 1382.
[293] *Id.*
[294] *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel*, 337 F. 3d at 1382-83.
[295] *See also* 19 CFR 351.308(d).
[296] *See* SAA at 870.

In response to this question, Junyue reported that one affiliate "does not supply inputs to Zhejiang Junyue's production," but did not address the status of the two affiliates in question as suppliers of inputs in Junyue's production process. For Affiliate A and Affiliate B, Junyue simply reported the ownership of each affiliate and stated that the owner of Junyue does not sit on the board or oversee the operations of either affiliate. The questionnaire then instructed:

> You must provide complete responses for certain "cross-owned" affiliated companies.
>
> Cross-ownership exists between two companies where one company can use or direct the individual assets of another company in essentially the same ways it can use its own assets. Normally, such a relationship exists between two companies where one company holds, directly or indirectly, a majority voting interest in the other. In addition, if two companies are both cross- owned by a third party, the two companies themselves would be considered cross-owned (for example, cross-ownership exists between two companies owned by the same parent).
>
> You must provide a complete questionnaire response for those affiliates where "cross-ownership" exists, and one of the following situations exists:
>
> - the cross-owned company produces the subject merchandise; or
> - the cross-owned company is a holding company or a parent company (with its own operations) of your company;1 or
> - the cross-owned company supplies an input product to you for production of the downstream product produced by the respondent; or
> - the cross-owned company has received a subsidy and transferred it to your company.

In response to this question, Junyue stated that only Xinyue is cross-owned. In the first supplemental questionnaire, Commerce asked Junyue again to address the status of affiliates as input suppliers, specifically with respect to the Affiliates A and B:

> With respect to {the two affiliates in question}, please explain whether either of these companies produced subject merchandise or were input suppliers during the AUL. If so, please explain whether either of these companies share any board directors, executives, or production facilities with Junyue.

Junyue responded only that "{n}either {of the two affiliates in question} produced subject merchandise during the AUL." Not until verification did Junyue inform Commerce that the two affiliates provided processing and manufacturing services to Junyue for its production of subject merchandise.[297]

[297] In prior cases, including in the instant investigation with regard to Zhongjiang Bolts, Commerce has included entities participating in the production of subject merchandise by providing processing and manufacturing services in its countervailing duty analyses. *See Certain Steel Wheels from the People's Republic of China: Final*

Junyue's failure to identify these two affiliates as providing inputs into Junyue's production of subject merchandise in the initial affiliation questionnaire and in a supplemental questionnaire meant that we were unaware that we should have examined the nature of the affiliation between Junyue and these two affiliates to ascertain whether or not they were cross-owned. Junyue argues that record evidence demonstrates that these affiliates are not cross-owned, do not have common shareholders, and that mere familial affiliation does not amount to cross-ownership. They additionally argue that the provision of "services" by the affiliates has no bearing on cross-ownership. These arguments are unconvincing for several reasons. While Junyue is partially correct that the standard for cross-ownership, as defined in Section 351.525(b)(6)(vi) of Commerce's regulations, will *normally* be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more corporations), this is not always or the only circumstance in which cross-ownership can be found to exist between two corporations. The *CVD Preamble* makes clear that "the underlying rationale for attributing subsidies between two separate corporations is that the interests of those two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same ways it can use its own assets (or subsidy benefits)."[298] Hence, there may be situations where, due to a combination of factors, the standard is met even where there is no majority voting ownership interest between, or common ownership of, the corporations.

This was clearly demonstrated in the *Preliminary Determination*, where we determined, under similar circumstances, that Zhongjiang Bolts and Zhongmin Metal were cross-owned. While Zhongjiang Bolts and Zhongmin Metal did not share a majority voting ownership interest, they were affiliated by familial relations, Zhongmin Metal provided cold-drawing to Zhongjiang Bolts, and the companies had leasing agreements regarding equipment/facilities. All of these circumstances led us to determine that Zhongjiang Bolts could use or direct the assets of Zhongmin Metal as if it were its own assets.[299] Here, however, by not divulging early on, after multiple opportunities, that Affiliates A and B provided certain processing and manufacturing services to Junyue during the POI, Junyue deprived Commerce of the ability to fully investigate these relationships to determine if a "combination of factors" as noted above existed in these circumstances that would lead us to find these entities cross-owned.

Junyue argues that Commerce has verified the facts regarding the shareholding and relationships of control between Junyue and the affiliate. Junyue concludes that because the two affiliates (a) do not share common shareholders; (b) do not share common management; and (c) do not have officers that are overseeing operations of each other, Junyue and these two affiliates cannot "use or direct the individual assets of another company in essentially the same ways it can use its own assets," and therefore do not meet the criteria of cross-ownership. Commerce agrees that it verified the ownership of Junyue and the two affiliates and there is no common ownership. However, information regarding common management or officers overseeing operations of each

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Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 77 FR 17017 (March 23, 2012), and accompanying IDM at 6-7 (deeming an unaffiliated provider of cutting services to be cross-owned and attributing subsidies as a co-producer of subject merchandise).

[298] *See CVD Preamble*, 63 FR at 65401.

[299] *See Preliminary Determination* PDM at 28.

other is missing from the record. Further, as explained above, a "combination of factors" may exist that would lead Commerce to find entities cross-owned even when there is no common ownership or voting interest between companies. It is precisely because Junyue was not forthcoming regarding the nature of Affiliates A and B as input suppliers in the first place that we did not inquire further to discern if these companies were cross-owned with Junyue pursuant to 19 CFR 351.525(b)(6)(vi).

Further, Junyue argues that "the affiliation questionnaire asks the respondent to engage in a step-by-step hierarchy of criteria to determine which companies' data must be supplied in the detailed Section III responses. The hierarchy is not applied backwards. On this critical issue of *cross-ownership*, Junyue fully disclosed the information up front in its first substantive filing of the case and established that the conditions of cross-ownership were not met with the affiliates at issue…" Once again, Junyue has interpreted certain information on the record as dispositive of its relationship with the affiliates in question, in place of Commerce's judgment. However, as noted in detail above and in the *Preliminary Determination*, the other respondent in this case disclosed certain information about its relationship with an affiliated provider of cold-drawing (a processing step in the manufacture of subject merchandise) and Commerce fully investigated this relationship, ultimately finding them to be cross-owned in this specific set of circumstances.[300] Therefore, Junyue did not fully disclose the information up front, as it claims, nor does any information Junyue provided definitively deem these entities to be *not* cross-owned with Junyue. Rather, as explained in detail above, Junyue did not provide the necessary information for Commerce to thoroughly investigate these relationships and make its own determination.

As a result, information necessary for ascertaining whether the affiliates are cross-owned (*i.e.*, whether Junyue's affiliates provided similar processing to unaffiliated companies, in what proportions, the extent to which the entities in question share facilities and equipment, *etc.*) is missing from the record. Moreover, we find that Junyue withheld necessary information, failed to provide necessary information in the form and manner requested, and significantly impeded the proceeding. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C), the use of facts available is required in order to determine whether these affiliates are cross-owned as well as the magnitude of any subsidies they received that are attributable to Junyue.

Moreover, we find that Junyue failed to cooperate to the best of its ability pursuant to section 776(b) of the Act by failing to respond accurately and completely to our requests for information. In particular, we find that Junyue was inattentive in not fully responding to our inquiry regarding whether Affiliates A and B were input providers in our questionnaires, despite the fact that we gave them ample opportunity to provide this information.[301] Therefore, we also find it appropriate to apply an adverse inference in selecting from among the facts available. As AFA, we find that Affiliates A and B are cross-owned input suppliers of Junyue pursuant to 19 CFR 351.525(b)(6)(vi) and 19 CFR 351.525(b)(6)(iv).

[300] *See* Zhongjiang Bolts' Letter, "Ningbo Zhongjiang Affiliation Response in the Countervailing Duty Investigation on Alloy Steel Threaded Rod from the People's Republic of China (C-570-105)," dated April 29, 2019, at 4.
[301] *See Nippon Steel*, 337 F. 3d at 1382-83 ("While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping").

Commerce, however, clarifies that we are applying partial AFA to Junyue for this final determination. Commerce finds that the circumstances here do not warrant discarding Junyue's entire response (*i.e.*, total AFA). Junyue has otherwise been fully cooperative throughout this proceeding.

Therefore, as partial AFA, Commerce finds that Affiliates A and B also benefitted from all of the same programs Junyue benefitted from and that the subsidies they received that are attributable to Junyue are in the same subsidy rates as we calculate for Junyue. Although Junyue reported that the affiliates do not produce subject merchandise, there is no record evidence that indicates that Affiliates A and B could not have benefitted from the same programs that Junyue benefitted from. Because we are relying on Junyue's own calculated countervailable subsidy rates, which are determined based on its own information on the record of this investigation, the statutory corroboration requirement in section 776(c)(1) of the Act is not applicable.

Comment 8: Whether to Countervail Electricity Junyue Purchased from a Private Supplier

Junyue's Case Brief:

- Junyue explained that the supplier is a private company and provided the solar electricity contract, and Commerce did not conduct further examination to counter this fact. There is no information on the record suggesting the private supplier is an SOE or public body, therefore Commerce has no basis to find these electricity purchases constitute a financial contribution.[302]
- If Commerce does include these purchases in its calculation, Commerce must adjust the benchmark to account for the discount Junyue received for providing its factory rooftop to the company for the installation of a solar power generating station.[303]
- This price difference is not a one-way benefit but a mutual agreement; accordingly, Commerce must increase the price Junyue paid or decrease the benchmark by the percent difference between the normal price and Junyue's discounted price.[304]

Petitioner's Rebuttal Brief:

- Junyue's argument that there is no record information suggesting the provider is an SOE or public body ignores the respondent's responsibility to build the record and misunderstands Commerce's obligation to base determinations on substantial evidence and not the lack thereof.[305]
- Commerce has no evidence of the supplier's ownership structure, and the record does not establish that they are not an authority capable of conferring a countervailable subsidy.[306]
- Junyue did not provide evidence substantiating that the supplier was or was not entrusted or directed to provide electricity for LTAR.[307]

[302] *See* Junyue's Case Brief at 1.
[303] *Id.* at 1-2.
[304] *Id.* at 2.
[305] *See* Petitioner's Rebuttal Brief at 4.
[306] *Id.*
[307] *Id.*

- Due to the GOC's failure to cooperate, Commerce lacks necessary information on how private electricity suppliers fit into China's industrial policies, what the relationship is between private electricity suppliers and the GOC agencies managing China's electrical grid, and how the Communist Party influences such actors.[308]
- Commerce should reject Junyue's argument to adjust the benchmark to account for discounted rate; to the extent the price Junyue pays is below the benchmark, it should be countervailed in full.[309]

Commerce's Position: The record of this investigation does not support finding the supplier of Junyue's solar electricity to be an authority, nor does it support a finding of entrustment or direction. Further, we acknowledge that we did not inquire further about the nature of this arrangement or ownership of the electricity supplier specifically. Thus, we have decided not to include Junyue's purchases of solar electricity from this supplier and have removed them from the calculation. However, in the event that Commerce issues a countervailing duty order on steel threaded rod from China, we intend to examine further all aspects related to the solar electricity supplier's ownership in a potential first administrative review (if one is requested).

Comment 9: Whether to Treat One of Zhongjiang Bolt's Self-Reported Subsidies as an Export Subsidy

Zhongjiang Bolt's Case Brief:

- Commerce should calculate one of Zhongjiang Bolt's self-reported "other subsidies" as an export subsidy.[310]
- This grant is clearly an export subsidy program.[311]
- Commerce should include the revised rate it calculates for this program in the total export subsidy rate that it uses to offset the antidumping cash-deposit rate for the final determination.[312]

Petitioner's Rebuttal Brief:

- Commerce should continue to treat the subsidy in question as a domestic subsidy.[313]
- Zhongjiang Bolts cites to no particular evidence to support its contention that the subsidy in question is an export subsidy.[314]
- A respondent bears the burden of providing Commerce with the substantial evidence it needs to make the ruling the respondent desires.[315]
- Zhongjiang Bolts has not met this burden and the GOC provided no information at all.
- Commerce should continue to find the program to be specific as AFA.[316]

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[308] *Id.*
[309] *Id.* at 5.
[310] *See* Zhongjiang Bolts' Case Brief at 4-5.
[311] *Id*.
[312] *Id*.
[313] *See* Petitioner's Rebuttal Brief at 5-6.
[314] *Id*.
[315] *Id*. at 4 (citing *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992)).
[316] *Id*.

Commerce's Position: We disagree with Zhongjiang Bolts. The GOC did not respond to our request for information regarding this program and, as a result, we determined the program to be specific based on AFA.[317] However, in relying on AFA, we did not preliminarily determine that the subsidy in question was an export subsidy. Although Zhongjiang Bolts avers that this program is an export subsidy solely based on the name of the program, *i.e.*, "subsidy on exports," the GOC provided no information regarding the functioning of this program, such that we are unable to fully analyze this program.[318] Instead, we require information regarding the functioning of the program to determine whether it is contingent upon export performance.[319] Accordingly, we have continued to not treat this program as an export subsidy for the final determination.

VIII. RECOMMENDATION

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

☒ ☐

Agree Disagree

2/7/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[317] *See Preliminary Determination* PDM at 25.

[318] *See, e.g., Circular Welded Carbon-Quality Steel Pipe From Pakistan: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 81 FR 20619 (April 8, 2016), and accompanying PDM at 12, unchanged in *Circular Welded Carbon-Quality Steel Pipe From Pakistan: Final Affirmative Countervailing Duty Determination*, 81 FR 75045 (October 28, 2016), and accompanying IDM at 6; *see also Circular Welded Carbon-Quality Steel Pipe from Pakistan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 36867 (June 8, 2016), and accompanying PDM at 13 ("While we recognize that certain programs in the companion CVD investigation were alleged to be export subsidies, the Government of Pakistan and IIL, the sole mandatory company respondent in the CVD investigation, did not cooperate to the best of their ability, and so {Commerce's} preliminary determination that the alleged programs were countervailable subsidies was based on facts available with adverse inferences. In relying on facts available with adverse inferences, {Commerce} did not preliminarily determine that the subsidies in question were export subsidies . . ."), unchanged in *Circular Welded Carbon-Quality Steel Pipe From Pakistan: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75028 (October 28, 2016), and accompanying IDM at 13.

[319] *Id.*