C-570-017
Administrative Review
Public Document
POR: 01/01/2017-12/31/2017
E&C/OVII: AH

April 15, 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: Decision Memorandum for the Final Results of the Administrative Review of the Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China; 2017

I. SUMMARY

The Department of Commerce (Commerce) has completed this administrative review of the countervailing duty (CVD) order on certain passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China) for the period of review (POR) January 1, 2017 through December 31, 2017. This administrative review was conducted in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). The mandatory respondents are Cooper (Kunshan) Tire Co., Ltd. (Cooper) and Shandong Longyue Rubber Co. Ltd. (Longyue)[1] (collectively, the respondents). We find that the mandatory respondents received countervailable subsidies during the POR. For the companies for which a review was requested, but which were not selected for individual examination, we are using the mandatory respondents' CVD rates to determine the applicable rate. We have analyzed the case briefs submitted by interested parties following the *Preliminary Results*,[2] and address the issues raised in the "Analysis of Comments" section below.

[1] *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China: Selection of Respondents for Individual Examination," dated February 8, 2019.

[2] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Rescission, in Part; 2017*, 84 FR 55913 (October 18, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

II. BACKGROUND

On October 18, 2019, Commerce published the *Preliminary Results* of this administrative review in the *Federal Register*, and invited comments from interested parties. On November 1, 2019, Commerce published a correction of the notification of rescission, in part, in the *Federal Register*.[3] On December 2, 2019, we received case briefs from the following interested parties: Cooper; Longyue, the Government of China (GOC), and Vogue Tyre and Rubber Co., Ltd., Sailun Jinyu Group Co., Ltd. and its affiliates, Sailun Jinyu Group (Hong Kong) Co., Limited, Sailun Tire International Corp., Shandong Jinyu Industrial Co, Ltd., Seatex International Inc., Seatex PTE. Ltd., Dynamic Tire Corp., and Husky Tire Corp., Shandong Wanda Boto Tyre Co., Ltd., and ITG Voma Corporation (collectively, Other Interested Parties).[4] On December 13, 2019, we received a rebuttal brief from United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Service Workers Union, AFL-CIO (the petitioner).[5] On February 5, 2020, in accordance with section 751(a)(3)(A) of the Act, Commerce extended the period for issuing the final results of this review by 60 days, until April 15, 2020.[6] On March 12, 2020, Commerce held a hearing with counsel for the respondents, the petitioner, and the GOC.[7]

III. LIST OF COMMENTS FROM INTERESTED PARTIES

General Issues
Comment 1: Government Policy Lending Calculation
Comment 2: Uncreditworthy Benchmark Interest Rate
Comment 3: Export Buyer's Credit, Usage by Respondents
Comment 4: Export Buyer's Credit, Adverse Facts Available Rate
Comment 5: Carbon Black Market Distortion
Comment 6: Carbon Black Benchmark, Tier 2 Data Issues
Comment 7: Ocean Freight and Import Duties Added to Tier 1 or Tier 2 Benchmarks
Comment 8: Other Subsidies

[3] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Correction of Notification of Rescission, in Part, 2017*, 84 FR 58685 (November 1, 2019).

[4] *See* Cooper's Letter "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Case Brief of Respondent Cooper (Kunshan) Tire Co., Ltd.," dated December 2, 2019 (Cooper's Case Brief); *see also* Longyue's Letter, "Passenger Vehicle and Light Truck Tires from China: Case Brief," dated December 2, 2019 (Longyue's Case Brief), GOC's Letter, "GOC's Affirmative Case Brief, Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China," dated December 2, 2019 (GOC's Case Brief), and Other Interested Parties's Letter, "Passenger Vehicle and Light Truck Tires from the People's Republic of China – 2017 Administrative Review of the Countervailing Duty Order: Case Brief of Vogue, Sailun, Boto, and ITG Voma," dated December 2, 2019 (Other Interested Parties' Brief).

[5] *See* Petitioner's Letter, "Administrative Review of the Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Petitioner's Rebuttal Brief," December 13, 2019 (Petitioner's Rebuttal Brief).

[6] *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China: Extension of Deadline for Final Results," (February 5, 2020).

[7] *See* Memorandum, "Hearing Regarding Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China," dated March 13, 2020.

Company Specific Issues

Comment 9: Inland Freight Expenses for Cooper and Qingdao Ge Rui Da Rubber Co., Ltd.'s (GRT's) Carbon Black Benchmark
Comment 10: Cooper's Loan Benefit Calculation
Comment 11: GRT's Subsidies
Comment 12: GRT Land Benefit Calculation
Comment 13: GRT's Grant Benefit Calculation
Comment 14: Longyue's Loan Benchmarks
Comment 15: Longyue's Land Benefit Calculation

IV. SCOPE OF THE ORDER

The scope of this order is passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by this order may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market.

Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have the following prefixes or suffix in their tire size designation, which also appears on the sidewall of the tire:

Prefix designations:

P - Identifies a tire intended primarily for service on passenger cars

LT- Identifies a tire intended primarily for service on light trucks

Suffix letter designations:

LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service.

All tires with a "P" or "LT" prefix, and all tires with an "LT" suffix in their sidewall markings are covered by this order regardless of their intended use.

In addition, all tires that lack a "P" or "LT" prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the passenger car section or light truck section of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set out below.

Passenger vehicle and light truck tires, whether or not attached to wheels or rims, are included in the scope. However, if a subject tire is imported attached to a wheel or rim, only the tire is covered by the scope.

Specifically excluded from the scope are the following types of tires:

(1) racing car tires; such tires do not bear the symbol "DOT" on the sidewall and may be marked with "ZR" in size designation;

(2) new pneumatic tires, of rubber, of a size that is not listed in the passenger car section or light truck section of the Tire and Rim Association Year Book;

(3) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires;

(4) non-pneumatic tires, such as solid rubber tires;

(5) tires designed and marketed exclusively as temporary use spare tires for passenger vehicles which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire's sidewall are listed in Table PCT-1B ("T" Type Spare Tires for Temporary Use on Passenger Vehicles) of the Tire and Rim Association Year Book,

(b) the designation "T" is molded into the tire's sidewall as part of the size designation, and,

(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed is 81 MPH or a "M" rating;

(6) tires designed and marketed exclusively for specialty tire (ST) use which, in addition, exhibit each of the following conditions:

(a) the size designation molded on the tire's sidewall is listed in the ST sections of the Tire and Rim Association Year Book,

(b) the designation "ST" is molded into the tire's sidewall as part of the size designation,

(c) the tire incorporates a warning, prominently molded on the sidewall, that the tire is "For Trailer Service Only" or "For Trailer Use Only",

(d) the load index molded on the tire's sidewall meets or exceeds those load indexes listed in the Tire and Rim Association Year Book for the relevant ST tire size, and

(e) either

(i) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed does not exceed 81 MPH or an "M" rating; or

(ii) the tire's speed rating molded on the sidewall is 87 MPH or an "N" rating, and in either case the tire's maximum pressure and maximum load limit are molded on the sidewall and either

(1) both exceed the maximum pressure and maximum load limit for any tire of the same size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book; or

(2) if the maximum cold inflation pressure molded on the tire is less than any cold inflation pressure listed for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book, the maximum load limit molded on the tire is higher than the maximum load limit listed at that cold inflation pressure for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book;

(7) tires designed and marketed exclusively for off-road use and which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire's sidewall are listed in the off-the-road, agricultural, industrial or ATV section of the Tire and Rim Association Year Book,

(b) in addition to any size designation markings, the tire incorporates a warning, prominently molded on the sidewall, that the tire is "Not For Highway Service" or "Not for Highway Use",

(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the Tire and Rim Association Year Book, and the rated speed does not exceed 55 MPH or a "G" rating, and

(d) the tire features a recognizable off-road tread design.

The products covered by the order are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.45.10, 4011.99.45.50, 4011.99.85.10, 4011.99.85.50, 8708.70.45.45, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

V. CHANGES SINCE THE PRELIMINARY RESULTS

Based on consideration of the arguments raised in the case briefs, and all supporting documentation, we made certain changes from the *Preliminary Results*, which are discussed in the "Analysis of Comments" section below.

VI. NON-SELECTED COMPANIES UNDER REVIEW

For the companies subject to the review but not selected as mandatory company respondents, for which we did not receive a timely request for withdrawal of review, and which we are not finding to be cross-owned with the mandatory company respondents, we based the subsidy rate on a weighted average of the subsidy rates calculated for Cooper and Longyue, using publicly ranged sales values for the weighted average. For a list of these companies, please see the Appendix to this Decision Memorandum.

VII. SUBSIDIES VALUATION INFORMATION

1. Allocation Period

   Commerce made no changes to the allocation period or the allocation methodology used in the *Preliminary Results*.[8]

2. Attribution of Subsidies

   Commerce has made no changes to the attribution of subsidies methodology applied to Longyue in the *Preliminary Results.*[9] We have revised the attribution of subsidies received by Cooper's affiliate, GRT. *See* Comment 11.

3. Denominators

   In accordance with 19 CFR 351.525(b), Commerce considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Final Analysis Memoranda," prepared for the final results.[10] As a result of comments received from Cooper, we have revised certain sales values to calculate the subsidy rate for Cooper in the final results. *See* Comments 11.

4. Benchmarks and Discount Rates

   The respondents, the GOC, and Other Interested Parties submitted comments regarding the benchmark rate for the input carbon black. Based on our review of these comments, we have revised the benchmark used to calculate the provision of carbon black for less than adequate remuneration. *See* Comment 5.

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[8] *See* PDM at 8.
[9] *See* PDM at 8-10.
[10] *See* Memoranda, "Countervailing Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Cooper (Kunshan) Tire Co., Ltd. Final Results Analysis" (Cooper Final Calculation Memorandum) and "Countervailing Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Shandong Longyue Rubber Co. Ltd. Final Results Analysis," (Longyue Final Calculation Memorandum) dated concurrently with this memorandum.

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Commerce relied on "facts otherwise available," including adverse facts available (AFA), for several findings in the *Preliminary Results*. Commerce has not made any changes to its determination to rely on facts otherwise available and AFA, as applied in the *Preliminary Results*.[11]

IX. PROGRAMS DETERMINED TO BE COUNTERVAILABLE

Except where noted, Commerce has made no changes to the methodology used to calculate the subsidy rates for the following programs in its *Preliminary Results*. Additionally, except as discussed under the Analysis of Comments section below, no issues were raised by interested parties in case briefs regarding these programs. The final program rates calculated for Cooper and Longyue are as follows:

1. Government Policy Lending

   As discussed in Comments 1 and 10, we made changes to the program rate for Cooper. The final subsidy rate for Cooper is 0.51percent *ad valorem.* As discussed in Comments 1 and 14, we made changes to the program rate for Longyue. The final subsidy rate for Longyue is 4.99 percent *ad valorem.*

2. Export Buyer's Credits

   Based on changes made to the government policy lending program for Longyue (*see* Comments 1 and 14), we made changes to the program rate for both Cooper and Longyue. The rate for both Cooper and Longyue is 4.99 percent *ad valorem.* We did not change the AFA methodology for this program. *See* Comment 4.

3. Provision of Inputs for Less than Adequate Remuneration (LTAR)

   a. Provision of Carbon Black

   As discussed in Comment 5, we made changes to the program benchmark used to calculate the subsidy rate for carbon black for both Cooper and Longyue. As discussed in Comment 11, we made changes to the denominator used for Cooper's affiliate GRT. The final subsidy rate for Cooper is 5.36 percent *ad valorem.* The final subsidy rate for Longyue is 6.08 percent *ad valorem.*

   b. Nylon Cord

   We made no changes to the program rates for Cooper or Longyue. The final subsidy rate for Cooper is 0.01 percent *ad valorem.* The final subsidy rate for Longyue is 0.00 percent *ad valorem.*

[11] *See* PDM at 16-24.

c. Synthetic Rubber and Butadiene

The final subsidy rate for Cooper has changed due to a ministerial error discovered while preparing these final results.[12] The final subsidy rates for Cooper is 0.16 percent *ad valorem.* The final rate for Longyue is unchanged at 5.80 percent *ad valorem* respectively.

d. Provision of Electricity for LTAR

As discussed above, we made changes to the denominator for Cooper's affiliate GRT. The final subsidy rate for Cooper is 0.74 percent *ad valorem.* The final subsidy rate for Longyue is unchanged at 1.31 percent *ad valorem.*

e. Provision of Land-Use Rights for Foreign Invested Enterprises (FIEs) for LTAR

As discussed above, we made changes to the denominator for Cooper's affiliate GRT. We also corrected a ministerial error regarding allocating land for GRT[13]. The subsidy rate for Cooper under this program is 4.57 percent *ad valorem.* As discussed in Comment 15, we made changes to Longyue's calculation of land-use rights. The subsidy rate for Longyue under this program is 3.84 percent *ad valorem.*

4. Enterprise Income Tax Law, R&D Program

The subsidy rate for Cooper under this program is unchanged at 0.12 percent *ad valorem.* Longyue reported not using this program.

5. Import Tariff and Value-Added Tax (VAT) Exemptions for Use of Imported Equipment

The subsidy rate for Longyue under this program is unchanged at 0.02 percent *ad valorem.* Cooper reported not using this program.

6. Special Fund for Energy Saving Technology Reform

The subsidy rate for Cooper under this program is unchanged at 0.18 percent *ad valorem.* Longyue reported not using this program.

7. Other Subsidy Programs

We made one change to the grant calculation for Cooper (*see* Comment 13); however, the subsidy rates for Cooper is unchanged at 0.51 percent *ad valorem.* Due to a ministerial error

[12] *See* Cooper Final Calculation Memorandum at 2.
[13] *Id.*

discovered while preparing these final results Longyue's rate has changed.[14] The subsidy rate for Longyue under this program is 3.82 percent *ad valorem.*

X. PROGRAMS DETERMINED NOT TO BE USED OR NOT TO CONFER MEASURABLE BENEFITS DURING THE POR

1. Provision of Natural Rubber for LTAR
2. Export Seller's Credits
3. Export Credit Insurance Subsidies
4. Preferential Loans to State-Owned Enterprises (SOEs)
5. Discounted Loans for Export-Oriented Enterprises
6. Export Credit Guarantees
7. Two Free, Three Half Program for FIE's
8. Provision of Land-Use Rights to Passenger Tire Producers for LTAR
9. Provision of Land-Use Rights for SOEs for Less Than Adequate Remuneration
10. Provision of Land-Use Rights in Industrial and Other Special Economic Zones for Less Than Adequate Remuneration
11. Tax Benefit Programs
    a. Income Tax Reduction for High-and-New-Technology Enterprises
    b. Income Tax Reduction for Advanced-Technology FIEs
    c. Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs
    d. Income Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment
12. VAT Refunds for Domestic Firms on Purchases of Chinese-Made Equipment
13. VAT Rebates on FIE Purchases of Chinese-Made Equipment
14. Grant Programs
    a. State Key Technology Renovation Project Fund Program
    b. Famous Brands Program
    c. The Clean Production Technology Fund
    d. Export Interest Subsidy Funds for Enterprises Located in Guangdong and Zhejiang Provinces
    e. Funds for "Outward Expansion" of Industries in Guangdong Province
    f. Provincial International Market Development Fund Grant
    g. Provincial Import Discount Loan Subsidy
15. Subsidies for Companies Located in the Kunshan Economic and Technological Development Zone
16. Weihai Municipality Subsidies for the Automobile and Tire Industries
17. Subsidies for Companies Located in the Rongcheng Economic Development Zone

[14] *See* Longyue's Calculation Memorandum at 2.

XI. ANALYSIS OF COMMENTS

Comment 1: Government Policy Lending Calculation

Longyue and GOC's Comments
Commerce mistakenly used the "initial loan amount" rather than the "principal balance to which each interest payment applies" when calculating the benchmark payments.[15]

We received no other comments on this issue.

Commerce Position: We agree with Longyue and the GOC and have revised the calculation for benchmark payments to use the "principal balance to which interest payment applies" to calculate the benchmark payments for both Cooper and Longyue.

Comment 2: Uncreditworthy Benchmark Interest Rate

Longyue's Comments
- Commerce used a report from Moody's to determine certain variables used in its uncreditworthy interest rate calculation formula. The Moody's data is cumulative average data from 1920 through 2010.
- The Moody's report does not cover the time period of this review and is not an accurate measure of the possibility of default.[16]
- Commerce should use recent year data. Commerce should place more contemporaneous Moody's data on the record and use that data in the final results.[17]

Petitioner's Rebuttal Brief
- Longyue had the opportunity to submit information regarding default rates on the record before the preliminary results but failed to do so.[18]
- Longyue's approach would have Commerce place information on the record after briefing is completed, depriving parties of the opportunity to comment on the new information.
- Commerce has no duty to rectify Longyue's failure to place information on the record. Commerce should continue to use the data on the record in the final results.[19]

Commerce Position: In accordance with 19 CFR 351.301(c)(3)(iv) and (c)(4), Longyue had two opportunities to place rebuttal factual information regarding the adequacy of remuneration on the record. Longyue could have placed rebuttal factual information on the record ten days after the petitioner placed Moody's information on the record and ten days after Commerce

[15] *See* Longyue's Case Brief at 4, *see also* GOC's Case Brief at 3-4.
[16] *See* Longyue's Case Brief at 9-10.
[17] *Id*. at 10.
[18] *See* Petitioner's Rebuttal Brief at 31-32.
[19] *Id*. at 31.

placed the same Moody's information[20] on the record, but failed to do so. We agree with the petitioner that it was Longyue's responsibility to place information regarding interest rates on the record, if Longyue believed it had more accurate information. Therefore, we will continue to use the Moody's data currently on the record for the final results. Commerce notes that the Moody's data is intended to demonstrate historical default rates (it averages several decades of data) and not to provide a snapshot of current economic conditions. Thus, although the data in this report ends in 2010, Commerce believes it still provides an accurate indication of default based on nine decades of experience.

Comment 3: Export Buyer's Credit (EBC), Usage by Respondents

GOC's Comments

- Cooper and Longyue claimed they did not use the Export Buyer's Credit program. Cooper explained it was not contacted by any customers to provide information required to obtain export buyer's credits. Longyue explained it was not contacted by any customers or by the China Export Import Bank.
- Commerce has sufficient information from the GOC and respondents to reach a finding that the EBC program was not used during the POR.[21]
- The Court of International Trade (CIT) has found that AFA cannot be applied in situations where the "requisite gap needed to make an adverse inference was not present."[22]
- Commerce should find that neither Cooper or Longyue used or benefited from the EBC program in the final results.

Cooper's Comments

- In its initial questionnaire response, Cooper stated that it did not apply for, use or benefit from the EBC program, nor was it aware that any of its customers benefitted from the EBC program.[23]
- The CIT has rejected Commerce's claims that it must have information on the 2013 alleged program revision and a list of third-party partner and/or correspondent banks to confirm non-use of the EBC program.[24]
- Commerce does not explain how the GOC's assertion that it is unable to provide information constitutes a refusal to cooperate.[25]
- Commerce should determine that Cooper did not benefit from any export buyer's credits from state-owned banks.[26]

[20] *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China; Loan Interest Rate Benchmarks," dated October 10, 2019
[21] *See* GOC's Case Brief at 15.
[22] *Id.*
[23] Cooper's Case Brief at 6.
[24] *Id. at 7.*
[25] *Id.* at 8.
[26] *Id.* at 8.

- There is no support for Commerce's claim that the GOC refused to cooperate, and therefore no support for its AFA determination finding that Cooper used the EBC program.[27]

Longyue's Comments

- Record evidence demonstrates that Longyue did not use or benefit from the EBC program.[28]
- To apply AFA, Commerce must find a gap in the record caused by a respondent's failure to cooperate. Commerce has not identified any gap in the record.[29]
- The only possible "missing information" Commerce can identify is the identity of foreign banks to whom the China Ex-Im bank could disburse loans. The CIT has repeatedly found this to be irrelevant information.[30]
- The CIT has found that Commerce has failed to explain "the need for thoroughly understanding every detail of the EBC program's operations."[31]
- Commerce did not notify Longyue that it found its responses deficient, nor did Commerce attempt verification of Longyue's responses. Therefore, Longyue's assertions of non-use of the EBC program must be accepted as accurate.

Other Interested Parties' Comments

- Several recent CIT cases, under virtually identical circumstances, have ruled against applying AFA to the EBC program, and Commerce found the program not used in a recent remand of *New Pneumatic Off-the-Road Tires from the Peoples Republic of China*.[32]

Petitioner's Rebuttal Comments

- Commerce's preliminary determination that the GOC's refusal to cooperate by providing information on the 2013 revisions to the EBC program and disbursement of funds through third-party banks significantly impeded the proceeding. Therefore, AFA is appropriate, consistent with past practice, and should be maintained in the final results.[33]
- Arguments that there is no "gap" in the record and, as a result, Commerce cannot apply AFA are meritless. Commerce requested the 2013 revisions to the EBC program and list of intermediary banks, and this information is not on the record.[34]
- Commerce is not limited to applying AFA when a party withholds information but can also apply AFA when information is unverifiable. Commerce has explained that without the information requested of the GOC, Commerce could not verify this information.[35]

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[27] *Id.*
[28] Longyue's Case brief at 6.
[29] *Id.* at 7.
[30] *Id.*
[31] *Id.* at 8.
[32] *See* Other Interested Parties' Case Brief at 5 citing *Guizhou Tyre Co. Ltd. v. United States*, Court No. 17-00101, Slip Op 19-114 (CIT August 21, 2019).
[33] *See* Petitioner's Rebuttal Brief at 18-19.
[34] *Id.* at 19.
[35] *Id.* at 20-22.

- Another prerequisite for facts available has been met as the GOC's failure to provide information has impeded the investigation.[36]
- The respondents' arguments that any failure is that of the GOC and should not result in an adverse outcome for the respondents is without merit. The U.S. Court of Appeals for the Federal Circuit (CAFC) has found that an inference adverse to a non-cooperating government may collaterally affect a cooperative respondent in "the context of a CVD investigation."[37]

Commerce Position: Consistent with the *Preliminary Determination* and Commerce's practice, we continue to find that the record of the instant investigation does not support a finding of non-use of the EBC program for Cooper and Longyue.[38] We next describe the evolution of Commerce's treatment of this program.

Solar Cells from China Initial Investigation of the EBC Program

Commerce first investigated and countervailed the EBC program in the 2012 investigation of *Solar Cells from China*.[39] 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."[40] 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.[41]

The GOC provided none of the information requested by Commerce in the ensuing investigation, despite being given multiple opportunities to do so, and instead simply stated that "{n}one of the respondents or their reported cross-owned companies applied for, used, or benefited from the

[36] *Id.* at 24.
[37] *Id.* at 24.
[38] *See Preliminary Determination* PDM at 16-23; *see also, e.g.*, *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) (*Certain Solar Products from China*), and accompanying IDM at Comment 16; and *Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018) (*Aluminum Foil from China*), and accompanying IDM at Comment 6.
[39] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules; from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China*) and accompanying IDM at 9 and Comment 18. While Commerce's determination with respect to the EBC program was initially challenged, the case was dismissed.
[40] *Solar Cells from China* IDM at 59.
[41] *Id*.

alleged programs during the POI."[42] 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."[43] 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.[44] 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.[45]

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.[46] 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 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 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.[47]

[42] *Id*.

[43] *Id*. at 60.

[44] *Id.* at 60-61.

[45] *Id.* at 61.

[46] *Id.*

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

On this basis, Commerce concluded that usage of the program could not be confirmed at the respondent exporters in a manner consistent with its long-standing verification methods.[48] 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.[49]

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 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

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[48] Commerce provided a similar explanation in the 2014 investigation of solar products from China. *See Certain Solar Products from China* IDM at 93. This was affirmed by the Court in *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 195 F. Supp. 3d 1334, 1350 (CIT 2016) (*Changzhou Trina 2016*). In *Changzhou Trina 2017*, the Court noted that the explanation from *Solar Products* constituted "detailed reasoning for why documentation from the GOC was necessary" to verify non-use. *See Changzhou Trina Solar Energy Co. v. United States*, 255 F. Supp. 3d 1312, 1318 (CIT 2017) (*Changzhou Trina 2017*). However, the Court found that the 2014 review of solar cells from China at issue in *Changzhou Trina 2018* 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. *See Changzhou Trina 2018*; *Certain Solar Products from China* IDM 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 2018* reached a similar conclusion concerning the 2014 review of tires from China. *See Guizhou Tyre 2018*, 348 F. Supp. 3d at 1261; *see also 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.

[49] The Court agreed with Commerce in *RZBC 2017*, 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) (*RZBC 2017*); *see also Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid 2012*), and accompanying IDM at Comment 6).

team, by tying relevant books and records to audited financial statements or tax returns, is critical.

In the *Solar Cells from China* investigation, 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 the 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."[50] 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."[51] However, the GOC refused to allow Commerce to query the databases and records of the China Ex-Im Bank.[52] Furthermore, there was no information on the record of *Solar Cells from China* from the respondent exporters' customers.

Chlorinated Isos Investigation of the EBC Program

Two years later, in the investigation of *Chlorinated Isos*,[53] the respondents submitted certified statements from all customers claiming that they had not used the EBC program. This was the first instance of respondents submitting such customer certifications. At that point in time, as explained in detail above, based on the limited information provided by the GOC in earlier investigations, it was Commerce's understanding 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."[54]

2013 Amendments to the EBC Program

[50] *See Solar Cells from China* IDM at 62.

[51] *Id.*

[52] *Id.*

[53] *See Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos*) and accompanying IDM at 15.

[54] *Id.*

Our understanding of the operation of the EBC program began to change after *Chlorinated Isos* was completed in September 2014. In *Citric Acid 2012*, Commerce began to gain a better understanding of how the Ex-Im Bank disbursed funds under the program and the corresponding timeline; however, Commerce's attempts to verify the program's details, and to obtain accurate statements concerning the operation and use of the program, were thwarted by the GOC.[55] In subsequent proceedings, Commerce continued to investigate and evaluate this program.

For example, in the *Silica Fabric Investigation* conducted in 2016-2017, based on what we had learned in *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.[56] 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 {China Ex-Im Bank}" which were issued by the China Ex-Im Bank on September 11, 1995 (referred to as "*1995 Implementation Rules*"); (2) "Rules Governing Export Buyer's Credit of the {China Ex-Im Bank}" which were issued by the China Ex-Im Bank on November 20, 2000 (referred to as "*2000 Rules Governing Export Buyer's Credit*" or "*Administrative Measures*"); and (3) 2013 internal guidelines of the China Ex-Im Bank.[57] According to the GOC, "{t}he {China Ex-Im Bank} has confirmed to the GOC that . . . its 2013 guidelines are internal to the bank, non-public, and not available for release."[58] The GOC further stated that "those internal guidelines do not formally repeal or replace the provisions of the {*Administrative Measures*} which remain in effect."[59]

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 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

[55] *See 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.").
[56] *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*) IDM at Comment 17.
[57] *Id*.
[58] *See Silica Fabric Investigation* IDM at Comment 17.
[59] *Id.*

> 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 EX-IM Bank, impeded {Commerce's} ability to conduct its investigation of this program.[60]

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."[61]

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."[62]

The Instant Administrative Review

As explained in the *Preliminary Results*, information on the record indicates that the GOC issued revised administrative measures in 2013 for the Export Buyer's Credit program.[63] In response to our request that it provide the documents pertaining to the 2013 program revisions (2013 Revisions), the GOC refused to provide them, stating that "{t}he Ex-Im Bank has confirmed to the GOC that its 2013 guidelines are internal to the bank, not public, and not available for release" and that "{t}he GOC has no authority or right to force the Ex-Im Bank to provide a copy of the 2013 guidelines, and is therefore unable to provide a copy to the Department."[64] Thus, the GOC refused to provide the requested information, which is necessary for Commerce to analyze how the program functions.

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[60] *Id.* at 12.

[61] *Id.* at 62.

[62] *Id.*

[63] *See* Memorandum, "Placing Documents on the Record," dated September 10, 2019 (Additional Document Memorandum).

[64] *See* GOC July 8, 2019 Supplemental Questionnaire Response (GOC July 8, 2019 SQR) at 12.

Moreover, record information also indicates that the credits and funds associated with the program are not limited to direct disbursements from the Ex-Im Bank.[65] Specifically, the record information indicates that customers can open loan accounts for disbursements through other banks.[66] The funds are first sent from the Ex-Im Bank to the importer's account, which could be at the Ex-Im Bank or a partner bank and then sent to the exporter's bank account.[67] Given this complicated structure of loan disbursements under the program, a complete understanding of how it operates is necessary. Thus, the GOC's refusal to provide the 2013 Revisions, which provide internal guidelines for how the program is administered, impeded Commerce's ability to conduct its investigation of the program.

Importantly, the GOC also refused to provide a list of all partner/correspondent banks involved in the disbursement of credits and funds under the program, informing Commerce that it had "no authority or right" to force the Ex-Im Bank to provide this information.[68] Commerce cannot verify claims of non-usage, in terms of any lending to either 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.*, the loan) or the cash disbursement made pursuant to the credit. Given the participation of partner/correspondent banks, for which the GOC refused identifying information, even where there is no account in the name "Ex-Im Bank" in the books and records (*e.g.*, subledger, tax return, bank statements) of either the exporter or the U.S. customer, Commerce could not confirm that no loans were provided under the program.

Pursuant to sections 776(a)(2)(A) and (2)(C) of the Act, when an interested party withholds information requested by Commerce or significantly impedes a proceeding, Commerce uses facts otherwise available. We find that the use of facts otherwise available is appropriate in light of the GOC's refusal to provide the 2013 Revisions. Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding of information and significantly impeding this proceeding, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted.

Specifically, the GOC has not provided complete information concerning the administration and operation of the program, such as how exactly loans are disbursed under the program (*e.g.*, the 2013 Revisions), possibly through intermediate or correspondent banks, the identities of which the GOC has withheld from Commerce, or whether the Ex-Im Bank employs threshold criteria, such as a minimum USD 2 million contract value.[69] Such information is critical to understanding how the Export Buyer's Credits program operates, and thereby is also critical to Commerce's ability to verify and determine usage of this program.

We disagree with the GOC and Longyue that Commerce has not identified any gap in the record resulting from missing information.[70] As an initial matter, we cannot simply rely on the GOC's

[65] *See* Additional Documents Memorandum.
[66] *Id*.
[67] *Id*.
[68] *See* GOC July 8, 2019 SQR at 9.
[69] The record indicates that the elimination of the USD 2 million threshold is one of the changes effected by the 2013 Revisions. *See* GOC July 8, 2019 SQR at 7-8.
[70] *See* GOC's Case Brief at 15; *see also* Longyue's Case Brief at 7.

assurances that it has checked its records. We have no way of verifying such statements without the GOC providing us with the requested documents which would allow us to then properly examine its claims of non-use. Further, given the constraints on Commerce resulting from the GOC's failure to provide all of the necessary information to fully understand the program's operation, Commerce reasonably determined that it would be unable to examine each and every loan obligation of each of the company respondents' customers and that, even if such an undertaking were possible, it would be meaningless, as Commerce would have no idea as to what documents it should look for, or what other indicia there might be within a company's loan documentation, regarding the involvement of the China Ex-Im Bank.

The GOC is the only party that can answer questions about the internal administration of this program, and, thus, its failure to provide the requested information further undermines Commerce's ability to verify claims of non-use. Commerce cannot verify non-use at the Ex-Im Bank without a complete set of administrative measures on the record that would provide guidance to Commerce in querying the records and electronic databases of the Ex-Im Bank.[71] Similar to the obstacles we would face in attempting to verify usage at the exporter or U.S. customer, Commerce would not know what indicia to look for in searching for usage or even what records or databases we need to examine in conducting the verification (*i.e.*, without a complete set of laws, regulations, administrative measures, Commerce would not even know what books and records the Ex-Im Bank maintains in the ordinary course of its operations). Essentially, Commerce is unable to verify in a meaningful manner the little information on the record indicating non-usage (*e.g.*, the claims of the GOC and emails and certifications from U.S. customers), with the exporters, U.S. customers, or at the Ex-Im Bank itself given the refusal of the GOC to provide the 2013 Revisions and a complete list of correspondent/partner/intermediate banks.

For all the reasons explained above, we continue to find that necessary information is missing from the record, the GOC withheld information that was requested, and significantly impeded this proceeding, pursuant to sections 776(a)(1) and (2) of the Act, and that the GOC has failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act. Thus, Commerce's use of an adverse inference when selecting from among the facts otherwise available is reasonable and supported by substantial evidence on the record.

[71] Commerce also notes the GOC has a history of refusing to provide Commerce with adequate access to its books and records relevant to understanding this program. *See, e.g.*, *Certain Solar Products from China* IDM at 92 ("At verification, the GOC repeatedly denied Department officials the opportunity to examine the basis for the GOC's contention that none of the company respondents in this investigation, or their customers, used this program during the POI. . . . Despite repeated requests to verify the basis of statements made on the record of this investigation, the GOC refused to allow the Department to query the databases and records of the Ex-Im Bank to establish the accuracy of its non-use claim.").

Comment 4: Export Buyer's Credit, AFA Rate

Cooper's Comments

- Should Commerce determine that Cooper benefitted from the EBC program, it should not use the AFA rate selected in the *Preliminary Results* for Cooper as the rate is based on an uncreditworthy finding for preferential government lending.
- Commerce should use the AFA rate for the EBC program in the prior review.
- Commerce should not select an AFA rate based on uncreditworthy borrowing for Cooper, since Cooper is not uncreditworthy.
- The courts have held that the purpose of AFA is to provide an incentive to cooperate. Applying an excessively high rate on Cooper does not provide an incentive for the GOC to cooperate, because it is Cooper, not the GOC, that is punished by the higher duties.[72]

GOC's Comments

- Using an AFA rate for the EBC program based on a subsidy rate for loans to a respondent found to be uncreditworthy presumes all the respondent company's customers are uncreditworthy. There is no support for this presumption.[73]

Petitioner's Rebuttal Comments

- Commerce's practice for selecting an AFA rate is to select the highest calculated rate from an identical program in a prior segment, similar or comparable program from another CVD proceeding for the country in question, or highest calculated rate for any non-company specific program from any CVD proceeding for the country in question. How the prior rate is set, including if it was set for an uncreditworthy respondent, is not relevant, only that the rate is calculated and the highest.[74]
- Multiple determinations applying AFA to the EBC program have chosen a rate of 10.54 percent as the highest rate from a similar program found in a CVD China proceeding. If Commerce should modify the preferential lending rate for Longyue so that it is no longer the highest rate from a similar/comparable program, it should select the higher rate from another China proceeding, such as the 10.54 percent rate.[75]

Commerce Position: Commerce's long-standing AFA methodology for reviews relies on the highest calculated rates for similar programs from the segment at issue when a rate determined under the identical program is unavailable. It does not take into consideration the individual circumstances of the company for which the rate is calculated and whether those circumstances also exist for the company to which the rate is being applied on the basis of AFA (with one exception, which is that where the subsidy itself is company-specific, *e.g.*, a government equity infusion or debt forgiveness under a company-specific bailout, Commerce will not use the rates from such subsidies as AFA plug rates). Based on an actual measurement of the subsidization being examined, an AFA plug rate indicates the possible extent to which producers/exporters have benefitted from government subsidies determined to be available to such producers/exporters. Commerce has created a hierarchy in order to determine the most relevant

[72] *See* Cooper's Case Brief at 10-11.
[73] *See* GOC's Case Brief at 16-17
[74] *See* Petitioner's Rebuttal Brief at 25-26.
[75] *Id*. at 26-27.

plug rate for a particular review or investigation. Pursuant to that hierarchy, the rate calculated for Longyue's government policy lending is the best indicator on the record of the extent to which producers of passenger tires have benefitted from GOC subsidized financing under the EBC program. Therefore, we are applying Longyue's government policy lending rate as the AFA rate for the EBC program for both Cooper and Longyue.

The CIT has previously upheld Commerce's determination to first look within the boundaries of the review in question for an AFA plug rate from a similar program before looking to other segments under the order or to other orders involving China.[76] In fact, Commerce has previously addressed the same argument made here by the petitioner that we should rely on the 10.54 percent rate used in investigations as the plug rate for the EBC program.[77] In considering Commerce's explanation of its separate hierarchies for reviews and investigations, leading to the use of different AFA plug rates, the Court found the rationale reasonable and, thus, upheld our decision to rely on a rate calculated for policy lending in that review as the plug rate for the EBC program.[78]

Comment 5: Carbon Black Market Distortion

Cooper's Comments

- Commerce should find that the Chinese market for carbon black is distorted and use the Tier 2 benchmark of export prices.
- The difference of GOC controlled domestic carbon black consumption and domestic production between the 2016 administrative review and the present review is miniscule (2.18 percent and 1.60 percent, respectively). There is no reasonable justification for finding carbon black prices not distorted in the current review after finding them distorted in the prior reviews and the investigation.[79]
- There was little import penetration during the POR. *OTR Tires* stressed that low import volumes alone warranted finding that Tier 1 import prices be used as a benchmark. The difference between the import percentages found in the current review are too small to justify a different conclusion regarding the use of Tier 1 import data.[80]
- In *Truck and Bus Tires*,[81] Commerce found additional reasons to find the Chinese carbon black market to be distorted (*e.g.* "various policy plans . . . to support the tire industry including the development of carbon black."). There is no justification for Commerce,

[76] *SolarWorld Americas, Inc. v. United States*, 229 F. Supp. 3d 1362 (CIT 2017).
[77] *Id.* at 1363-1370.
[78] *Id.*
[79] *See* Cooper's Case Brief at 14-15.
[80] *Id.* at 15-16 citing *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015 (OTR Tires)* and accompanying preliminary decision memorandum at 24.
[81] *Id.* at 17 citing *Truck and Bus Tires From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Determination* (*Truck and Bus Tires*), 81 FR.43577 (July 5, 2016), and accompanying preliminary decision memorandum at 23.

for the first time, to reverse its "well-established and consistent finding" regarding the distorted Chinese carbon black market.[82]

- Commerce underestimates the distortion caused by GOC involvement in the domestic carbon black market. Given the finding that domestic carbon black producers are "authorities" within the meaning of section 771(5)(B) of the Act, they must be included in the calculation of domestic carbon black consumption and production during the POR.[83]

Longyue's Comments

- Finding that domestic input supplier are authorities, while relying on imports into China as a Tier 1 benchmark is contradictory.[84]
- The reliance on a Tier 1 benchmark stands in contrast to the history of this Order as well as the history of other orders (*e.g. Truck and Bus Tires, OTR Tires*).[85]
- The AFA presumption that Longyue's domestic suppliers are authorities undermines Commerce's decision to rely on Tier 1 benchmarks.[86]
- Commerce relied on a Tier 1 benchmark from the Trade Data Monitor, which has been found to be an "unusable source."[87]
- If Commerce continues to use a Tier 1 benchmark for carbon black it should not include ocean freight in its calculation as the data is reported on a CIF basis and, therefore, already includes freight and marine insurance.[88]

GOC's Comments

- In previous reviews of passenger tires and other proceedings Commerce has found carbon black imports to be insignificant base on "nearly indistinguishable ratios of carbon black imports to domestic production and domestic consumption," and therefore not a valid Tier 1 benchmark.[89]
- Finding import AUVs can serve as a Tier 1 benchmark in the instant review is arbitrary.
- The CIT has held "similar contradictory findings across proceedings involving inputs of synthetic rubber" to be arbitrary.[90]
- If Commerce continues to use China import AUVs as a Tier 1 Benchmark, it should not add ocean freight to those values because these are reported on a CIF basis, and therefore, inclusive of freight.[91]

[82] *See* Cooper's Case Brief at 15-18.
[83] *Id.* at 18-19.
[84] *See* Longyue's Case Brief at 10-11.
[85] *Id.* at 11-13.
[86] *Id.* at 13.
[87] *Id.* at 14.
[88] *Id.* at 14-15.
[89] *See* GOC's Case Brief at 8.
[90] *Id.* at 8.
[91] *Id.* at 9.

Other Interested Parties' Comments

- Finding a "low level of government involvement in the market for carbon black in 2017" is not consistent with the record before Commerce as the level of government involvement is indistinguishable from previous reviews of the order.[92]
- Commerce cannot depart from established precedent without reasoned explanation.

Petitioner's Rebuttal Comments

- Commerce's stated preference is to use Tier 1 benchmarks, unless the record provides evidence that the market is distorted.
- The record of this review shows that Chinese import prices provide a valid Tier 1 source. Respondents do not address the fact that the Tier 1 prices in China were higher than the Tier 2 prices outside of China during the POR. Higher Tier 1 prices in China demonstrates that that GOC policies to support tire manufacturers with lower carbon black prices were ineffective.[93]
- Commerce should not assume that conditions in a prior POR continue in this POR.[94]
- Commerce has stated that product similarity, quantities and other factors may bear on which data provides the best benchmark. Cooper has argued that the type of carbon black used in China is produced from a different input which affects pricing. If the carbon black used in China is different than that used in the rest of the world, reliance on a tier 1 benchmark is even more imperative.[95]
- Respondents' assertions that Commerce underestimates GOC control of the carbon black market are not supported by the record.[96]
- Commerce should reject Longyue's argument that commerce will not rely on data from the Trade Data Monitor. Commerce has stated that it will use Trade Data Monitor data when it is the best available data on the record. No party submitted other Chinese import data on the record of this review.[97]

Commerce Position: We have revised the benchmark for carbon black to use an external benchmark. We agree with the respondents, the GOC, and Other Interested Parties that the use of a Tier 1 benchmark in the preliminary results differs from the prior reviews under this order, and decisions made under *OTR Tires*[98] and *Truck and Bus Tires*[99] with very similar facts. In particular, the GOC owned/controlled production for this review period, at 24.94 and 28.13 percent of domestic production and consumption, respectively, does not differ significantly from previous reviews of this order, reviews of OTR tires, or the truck and bus tires investigation, in which the percentages variously ranged from 26.54 to 32.18 percent of production and from 30.31 to 31.61 percent of consumption.

Commerce has not relied solely on the substantial government share of the carbon black market in finding distortion. In the 2017 investigation of truck and bus tires, Commerce referenced the

[92] *See* Other Interested Parties' Case Brief at
[93] *See* Petitioner's Rebuttal Brief at 9.
[94] *Id.* at 11.
[95] *Id.* at 13.
[96] *Id.* at 14.
[97] *Id.*
[98] *See OTR Tires* PDM at 24.
[99] *See Truck and Bus Tires* PDM at 23.

2010 Tire Industry Policy, which specifically refers to carbon black subsidization as a means of subsidizing tire production.

Commerce disagrees with the petitioner's assertion that we should compare internal and external benchmark values as an initial step in determining whether the internal market is distorted. Rather, Commerce examines various evidence of distortive government involvement in the market, including the level of government ownership of domestic production and government policies such as the Tire Industry Policy, as noted above. Thus, we do not agree with the petitioner's suggestion that the GOC's role in the market is somehow moot because prices of imports into China appear higher than global prices.

Therefore, given the evidence of substantial and distortive GOC intervention in the carbon black market, and consistent with prior determinations, Commerce determines to apply a Tier 2 benchmark for these final results.

Comment 6: Carbon Black Benchmark Data, Tier 2 Data Issues

Cooper's Comments
Commerce should rely on world market prices provided by Cooper as a Tier 2 benchmark for carbon black rather than those provided by the petitioner. The petitioners' data, unlike Cooper's, do not exclude exports to China and double counts certain countries in the European Union.[100]

No other party commented on this issue.

Commerce Position: We have reviewed the Tier 2 data submitted by the petitioner, and agree with Cooper that these data double count exports to certain European Union countries, and does not properly excluded all imports from China. Therefore, we will use Tier 2 data submitted by Cooper for these final results.

Comment 7: Ocean Freight and Import Duties Added to Tier 1 or Tier 2 Benchmarks

GOC's Comments
- Adjustments to a benchmark to account for things like ocean freight and import duties should not be made where such adjustments are contrary to "prevailing market conditions."
- The statute explicitly directs Commerce to consider such in-country conditions as availability and transportation, both of which are relevant to whether ocean freight or import duty adjustments are appropriate.[101]
- The prominence of domestic supply in the market relative to import supply is an important consideration when determining the generally applicable delivery charges for the good in question in the country of provision.

[100] *See Cooper's Case Brief.* at 21-22.
[101] *See* GOC's Case Brief at 10-11.

- The fact that some import purchases happen, or that imports occur in a market, does not justify the wholesale application of ocean freight and import duty adjustments to the benchmark because that does not reflect the market generally.
- For its construction of benchmarks, Commerce must take into account prevailing transportation costs that are generally applicable to all purchasers in China.[102]
- Ocean freight and import duties must be limited to reflect the prevailing market conditions in China for the specific good in question.

We received no other comments on this issue.

Commerce Position: For the final results, we are continuing to incorporate international freight values in our external benchmark prices. According to 19 CFR 351.511(a)(2)(iv), world market prices must be adjusted to include delivery charges and import duties in order to arrive at a delivered price "to reflect the price that a firm actually paid or would pay if it imported the product."[103] The CIT has upheld our application of these adjustments as lawful and in compliance with our regulations.[104] Commerce has determined that it was appropriate to use world market prices as the benchmarks for the company respondents' purchases of these inputs and, therefore, we must adjust such prices as required by our regulations. We are calculating a delivered price that includes freight and import duties, which would be the price that companies would pay if they imported the inputs in question. Whether the company respondents actually imported the inputs and paid international freight is not relevant for purposes of determining an appropriate benchmark.[105] However, consistent with section 771(5)(E) of the Act, Commerce does consider the prevailing conditions of the country in question in this analysis. Accordingly, we have used Maersk ocean freight charges, and Chinese import duties and VAT rates for the specific inputs we are examining to compute benchmark prices. Thus, these charges reflect prices and rates in, or applicable to, the Chinese market, and thus relate directly to prevailing market conditions in China.[106]

Comment 8: Other Subsidies

GOC's Comments

- Action to countervail "other" subsidies outside the scope of Commerce's proper investigation is contrary to law and the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement).[107]
- Valid CVD investigations and subsequent findings must be grounded in: (1) specific allegations supported by reasonable evidence indicating the existence of a countervailable

[102] *Id*. at 10.

[103] *See* 19 CFR 351.511(a)(2)(iv).

[104] *See Beijing Tianhai Indus. Co. v. United States*, 52 F. Supp. 3d 1351, 1372-75 (CIT 2015); *see also Zhaoqing New Zhongya Aluminum Co., Ltd. v. United States*, 929 F. Supp. 2d 1324, 1327 (CIT 2013).

[105] *See, e.g., Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015) (*Passenger Vehicle and Light Truck Tires from China*) and accompanying IDM at Comment 3.

[106] *Id*.

[107] *See* GOC's Case Brief at 20-21.

subsidy; (2) consultations with the government concerned; and (3) notice of initiation of an investigation. Subsidy findings in this proceeding that do not adhere to these requirements are contrary to U.S. WTO obligations and U.S. law.

- These provisions and practices do not preclude Commerce from engaging in additional investigations during the course of a proceeding and incorporating additional subsidy findings into final determinations.[108]
- Given the above requirements, there is no legal basis for Commerce to investigate "other" subsidies, and, thereby, no basis to apply AFA and to countervail such "other" subsidies discovered during a proceeding.[109]
- "Subsidy" is an inherently subjective term of art and unanswered requests for information pertaining to "other" subsidies cannot be the basis for AFA, merely because Commerce discovers practices that appear in "its mind to constitute subsidies." Commerce is already in violation of the SCM Agreement and U.S. law simply by including such a request in an initial questionnaire.[110]

Petitioner's Rebuttal Comments

Commerce and the CIT have rejected the GOC's arguments that Commerce can only countervail subsidy programs it "discovers indirectly." Commerce should again reject the GOC's arguments in this review.[111]

Commerce Position: We disagree with the GOC that Commerce unlawfully examined "other subsidies" without first finding that the initiation standard had been satisfied. Commerce has addressed these and similar arguments many times in the past.[112] Investigations into potentially countervailable subsidies are initiated in one of two ways. First, an investigation can be self-initiated by Commerce.[113] Second, when a domestic interested party files a petition for the imposition of countervailing duties on behalf of an industry, and the petition: (1) alleges the elements necessary for the imposition of a countervailing duty pursuant to section 701(a) of the Act; and (2) "is accompanied by information reasonably available to the petitioner supporting those allegations {,}" Commerce will initiate an investigation into whether countervailing duties should be imposed.[114]

After an investigation has been initiated through one of the above mechanisms, section 775 of the Act and 19 CFR 351.311(b) mandate that Commerce examine practices or programs discovered during the course of that investigation, and any subsequent review, if they appear to provide a countervailable subsidy. Indeed, if, after the commencement of an investigation, Commerce "discovers a practice which appears to be a countervailable subsidy"[115] that was not

[108] *Id.* at 18.
[109] *Id.* at 19-20.
[110] *Id.* at 20.
[111] *See* Petitioner's Rebuttal Brief at 22-23.
[112] *See, e.g., Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part,* 82 FR 9714 (February 8, 2017) and accompanying IDM at 16-21.
[113] *See* section 702(a) of the Act.
[114] *See* section 702(b) of the Act.
[115] *See* section 775 of the Act.

included in the petition, Commerce "shall include the practice, subsidy, or subsidy program in the proceeding{.}"[116] Pursuant to section 775 of the Act, Commerce has an affirmative obligation to seek information on, and include in a proceeding, all subsidy practices that might benefit the subject merchandise.[117]

Commerce disagrees with the suggestion by the GOC that our procedures do not conform to section 775 of the Act and 19 CFR 351.311. Contrary to the GOC's argument, the so-called "other subsidies" question in the questionnaire is Commerce's means of effectuating the provisions of section 775 of the Act. Commerce need not passively wait to stumble upon other potential subsidies.[118] Instead, seeking out such information more effectively fulfills Congress's intent to include all potential subsidies within a proceeding. Regarding the notice requirement in 19 CFR 351.311(d), the record contains ample notification of our intent to investigate "other subsidies." Our initial questionnaire requested details concerning "any other non-recurring benefits to the producer or exporters of the subject merchandise during the 14-year AUL . . ., or recurring benefits during the POR."[119]

Moreover, Commerce's question regarding "all other assistance" is not vague and does not exceed Commerce's information-collecting authority.[120] Commerce has broad discretion to determine which information is relevant to its determination and to request that information.[121] Commerce pursues information regarding "other assistance" expressly to satisfy the intent of the CVD law, to investigate and catalogue all potentially countervailable subsidies, to consolidate all relevant subsidies into a single investigation.[122] Consistent with U.S. law, Commerce is not precluded from inquiring about other assistance to make determinations.[123] Commerce "has independent investigative authority" to ask questions about other governmental assistance, beyond the subsidies alleged by the petitioner.[124]

Further, Commerce may determine to use AFA in deciding whether the elements of a countervailable subsidy are met for both subsidies alleged in a petition and those "discovered"

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[116] *See* section 775 of the Act.

[117] *See Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334, 1341 (CIT 2016) (*Changzhou Trina Solar Energy*) (holding that Commerce has "independent authority, pursuant to {section 775 of the Act}, to examine additional subsidization in the production of subject merchandise," and this "broad investigative discretion" permits Commerce to require respondents to report additional forms of governmental assistance)*;see also Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d 1141, 1150, n. 12 (CIT 2000) (*Allegheny I*) and section 775 of the Act.

[118] *See Changzhou Trina Solar Energy*, 195 F. Supp. 3d at 1346.

[119] *See* GOC April 18, 2019 IQR at 140.

[120] *See Changzhou Trina Solar Energy*, 195 F. Supp. 3d at 1346 ("Commerce's inquiry concerning the full scope of governmental assistance provided by the {Government of China} and received by the Respondents in the production of subject merchandise was within the agency's independent investigative authority pursuant to {sections 702}(a) and {775 of the Act}, this inquiry was not contrary to law").

[121] *See, e.g.*, *Acciai Speciali Termi S.p.A. v. United States*, 26 CIT 148, 167 (February 1, 2002) (sustaining Commerce's application of adverse inferences when respondent engaged in "willful non-compliance" with requests for information); *see also PAM, S.p.A. v. United States*, 495 F. Supp. 2d 1360, 1369 (CIT 2007) (sustaining Commerce's application of adverse inferences when respondent's judgement that the information requested was irrelevant).

[122] *See Changzhou Trina Solar Energy*, 195 F. Supp. 3d at 1342-43.

[123] *Id.* at 1345-46.

[124] *Id.* at 1346.

during an investigation if Commerce determines that the respondents are being uncooperative. In this case, the GOC hindered Commerce's efforts to examine the "full scope of governmental assistance," and to consolidate all relevant subsidies into this review when it withheld information responsive to Commerce's requests for information. To avoid the application of facts available or AFA, the GOC was required by law to respond to Commerce's requests for information by conducting a thorough review of its records, regardless of whether it believed that the discovered subsidies fell outside the purview of Commerce's review. Thus, its failure to report the discovered assistance to Commerce in a timely manner reflects a deliberate and unilateral decision that the discovered subsidies were not relevant to Commerce's review. A deliberate decision not to cooperate warrants the application of adverse facts available.

The GOC argues that the term "subsidy" is an inherently subjective term and Commerce cannot countervail as AFA "discovered" subsidies merely because it uncovers practices that appear in "its mind to constitute subsidies." As explained above, however, Commerce has a responsibility to consolidate all practices that appear to be subsidies into a proceeding, and to avoid the deferral of the examination of countervailable subsidies to future administrative reviews to the extent possible. Deferring action against discovered subsidies until a subsequent review results in delayed relief to the injured domestic industry. Further, it is not necessary for Commerce to determine that a practice that appears to be a subsidy is actually a subsidy before including it in the proceeding, and the GOC's suggestion to the contrary contradicts the plain language of section 775 of the Act.

For these reasons, we have continued to countervail the other subsidies reported in this review.

Comment 9: Inland Freight Expenses for Cooper and GRT's Carbon Black Benchmark

Cooper's Comments

- Commerce used information submitted by the petitioner to derive a hypothetical amount for inland freight. [125]
- Cooper submitted actual inland freight information for both Cooper and GRT. There is no reason to use hypothetical information for Cooper and GRT when actual information is available. Commerce should use the actual inland freight information in the final results.[126]
- Commerce has used actual respondent-specific freight amounts to construct benchmarks in previous segments of this proceeding.[127]
- The hypothetical rates provided by the petitioner are distortive because they include brokerage and handling expenses, which have already been included as part of ocean freight.

We received no other comments on this issue.

[125] *See* Cooper's Case Brief at 23.
[126] *Id.*
[127] *Id.* at 23-24.

Commerce Positions: We agree with Cooper's arguments and have revised Cooper's calculation to use Cooper and GRT's reported inland freight to calculate the carbon black benchmark.

Comment 10: Cooper's Loan Benefit Calculation

Cooper's Comments
Commerce erred by including interest payments made after the POR by both Cooper and GRT in its calculation of Government Policy Lending.

We received no other comments on this issue.

Commerce Position: We agree with Cooper that Commerce erred by including interest payments made after the POR in its calculation of Government Policy Lending. We have removed these interest payments from our calculation in the final results.

Comment 11: GRT Subsidies

Cooper's Comments:

- During the POR, due to a shortage of capacity, Cooper arranged for GRT to toll-process a limited volume of mixed rubber that Cooper used to produce passenger tires.[128]
- The value of inputs sold by GRT to Cooper was minimal.[129]
- Commerce correctly determined that Cooper and GRT and Cooper are crossed-owned and attributed subsidies received by GRT to the input sales of GRT and Cooper's total sales pursuant to 19 CFR 351.525(b)(6)(iv).[130]
- Section 351.525(b)(6)(iv) of Commerce's regulations is not applicable because GRT is not an input producer. Rather GRT purchased the inputs from unaffiliated suppliers and resold them to Cooper. Toll-processing and production are distinct activities, and they do not make GRT an input producer under 19 CFR 351.525(b)(6)(iv).[131]
- Even if toll-processing was production, 19 CFR 351.525(b)(6)(iv) would not apply as GRT's production is not primarily dedicated to downstream product. Rather GRT is a producer of truck and bus tires.[132]
- Commerce mistakenly utilized GRT's sales between affiliated parties as the input sales of GRT. These sales are primarily composed of truck and bus tires to Cooper.[133]
- Cooper only purchased a small amount of inputs and toll-processing services from GRT. Commerce's calculations saddle Cooper with far too large a portion of subsidies alleged to be received by GRT. Nonsensically, Commerce's approach does not factor in the value of sales from GRT to Cooper. The subsidies attributed more subsidies to GRT than GRT's actual sales to Cooper.

[128] *Id.* at 27-28.
[129] *Id* at 28-29.
[130] *Id.* at 29-30.
[131] *Id.* at 30-31
[132] *Id. at 31-32.*
[133] *Id.* at 33-34.

- Commerce should apply 19 CFR 351.525(b)(6)(v), which applies to cross owned companies producing different products. Subsides received by GRT should be applied to GRT's sales first, before determining how much of those subsidies can be transferred to Cooper.
- Commerce should either include purchases from GRT in its calculation of carbon black and synthetic rubber or determine a subsidy rate for GRT's purchases of carbon black and synthetic rubber as a percent of GRT's total sales, and then proportion that rate to Cooper.[134]

Petitioner's Rebuttal Brief

- Section 351.525(b)(6)(iv) of Commerce's regulations should not be read overly narrowly. Cooper's reading of "product" as the same as the scope of the order, is an overly narrow reading of the regulation, and one that Commerce has rejected in the past.[135]
- For the purposes of 19 CFR 351.525(b)(6)(iv) the passenger tires produced by Cooper and the truck and bus tires produced by GRT are produced from the same input, and therefore should be considered the same product.[136]
- Commerce has found processing and other ancillary activities to constitute production for the purpose of cross-ownership.[137]

Commerce Position: We disagree with Cooper's argument that GRT is not an input producer, and therefore not subject to the attribution rule under 19 CFR 351.525(b)(6)(iv). During the POR, GRT used synthetic rubber and carbon black to produce mixed rubber for Cooper.[138] Because GRT produced an input primarily dedicated to tire production by Cooper, it functioned as an input producer within the meaning of the attribution rule. The fact that GRT did this on a tolling basis is irrelevant. Therefore, we are continuing to apply 19 CFR 351.525(b)(6)(iv) in these final results with regard to subsidies received by GRT. In accordance with 19 CFR 351.525(b)(6)(iv), however, we have revised the denominator for measuring the attributable benefit. The revised denominator is the sum of *all* downstream products (*i.e.*, all tires, rather than passenger tires exclusively) of both Cooper and GRT, plus sales of the "input," minus intercompany sales.[139]

Comment 12: GRT's Land Benefit Calculation

Cooper's Comments

- Commerce erred by overstating the area for one parcel of land in its calculation of the benefit derived from land-use rights.
- Commerce incorrectly subtracted the per-unit benchmark, rather than the acquisition value, from the total benchmark value for several of its land-use rights calculations.

[134] *Id.* at 36-38.
[135] *See* Petitioner's Rebuttal Brief at 28.
[136] *Id.* at 29.
[137] *Id.* at 30.
[138] *See* Cooper's April 18, 2019 IQR at III-5.
[139] *See* Cooper Final Calculation Memorandum at 2.

We received no other comments on this issue.

Commerce Position: We agree with Cooper that the preliminary land-use calculation contained these two errors. We have revised the area for one parcel of land, and revised the formula to subtract the acquisition value from the benchmark value to calculate the benefit in the final results.[140]

Comment 13: GRT's Grant Benefit Calculation

Cooper's Comments

- Commerce entered an incorrect value for one grant received by GRT.[141]
- Commerce should only include the amount retained by GRT for one subsidy program, not the amount received.[142]

We received no other comments on this issue.

Commerce Position: Commerce agrees with Cooper that it entered an incorrect value for one grant received by GRT and has corrected this in the final results. Commerce finds that there is insufficient documentation on the record regarding the amount of the subsidy retained, rather than the amount received, and therefore, we will continue to use the amount received for these final results.[143]

Comment 14: Longyue's Loan Benchmarks

Longyue, GOC and Other Interested Parties' Comments
Commerce erred by applying uncreditworthy benchmarks to Longyue's short-term loans.[144]

We received no other comments on this issue.

Commerce Position: Commerce agrees with Longyue, the GOC and Other Interested Parties and we have revised the benchmarks used for Longyue's short term loans for the final results.[145]

Comment 15: Longyue's Land Benefit Calculation

Longyue and GOC's Comments
For two parcels of land, Commerce entered an incorrect formula when calculating the benefit in the 50-year allocation table. Commerce inadvertently added the remaining benefit and discount rate, instead of multiplying them, when calculating the benefit for these two parcels of land.[146]

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[140] *See* Cooper Final Calculation Memorandum at 2.
[141] *See* Cooper's Case Brief at 40.
[142] *Id.*
[143] *See* Cooper Final Calculation Memorandum at 2.
[144] *See* Longyue's Case Brief at 1-3, *see also* GOC's Case Brief at 5, and Other Interested Parties' Case Brief at 19-20.
[145] *See* Longyue Final Calculation Memorandum at 2.
[146] *See* Longyue's Case Brief at 5, *see also* GOC's Case Brief at 4

We received no other comments on this issue.

Commerce Position: We agree with Longyue and the GOC and have revised the benefit calculation for two land parcels.[147]

RECOMMENDATION

We recommend approving all the above positions and adjusting all related countervailable subsidy rates accordingly. If these Commerce positions are accepted, we will publish the final results in the *Federal Register*.

☒	☐
Agree	Disagree

4/15/2020

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[147] *See* Longyue Final Calculation Memorandum at 2.

Appendix

Non-Selected Companies Under Review

1. Anhui Jichi Tire Co., Ltd.
2. Bridgestone (Tianjin) Tire Co., Ltd.
3. Bridgestone Corporation
4. Dynamic Tire Corp.
5. Hankook Tire China Co., Ltd.
6. Husky Tire Corp.
7. Jiangsu Hankook Tire Co., Ltd.
8. Mayrun Tyre (Hong Kong) Limited
9. Qingdao Fullrun Tyre Corp., Ltd.
10. Qingdao Sunfulcess Tyre Co., Ltd.[148]
11. Sailun Jinyu Group Co., Ltd.
12. Sailun Jinyu Group (Hong Kong) Co., Limited
13. Sailun Tire International Corp.
14. Seatex International Inc.
15. Seatex PTE. Ltd.
16. Shandong Achi Tyres Co., Ltd.
17. Shandong Anchi Tyres Co., Ltd.
18. Shandong Duratti Rubber Corporation Co., Ltd.
19. Shandong Haohua Tire Co., Ltd.
20. Shandong Hengyu Science & Technology Co., Ltd.
21. Shandong Jinyu Industrial Co., Ltd.
22. Shandong Province Sanli Tire Manufactured Co., Ltd.
23. Shandong Wanda Boto Tyre Co., Ltd.
24. Triangle Tyre Co., Ltd.
25. Winrun Tyre Co., Ltd.

[148] This company was mistakenly listed in the *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 50077 (October 4, 2018) and *Preliminary Results* as Qingdao Sunfulcess Trye Co., Ltd.