C-570-118
Investigation
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December 28, 2020

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

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Wood Mouldings and Millwork Products from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of wood mouldings and millwork products (millwork products) from the People's Republic of China (China), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). Below is the complete list of issues in this investigation for which we received comments from interested parties.

Comment 1: Calculation of the All-Others Rate
Comment 2: Whether to Continue to Apply Adverse Facts Available (AFA) to the Export Buyer's Credit (EBC) Program
Comment 3: Whether the Provision of Electricity for Less Than Adequate Remuneration (LTAR) Is Countervailable
Comment 4: Calculation of the Electricity for LTAR Benefit
Comment 5: Whether Individual-Owned Sawn Wood and Plywood Input Suppliers Are Government Authorities
Comment 6: Whether Commerce Should Countervail Imported Sawn Wood Purchased from Domestic Trading Companies
Comment 7: Whether the Provision of Primer, Including Gesso, for LTAR Program Was Unlawfully Expanded
Comment 8: Whether Zeroing of Negative LTAR Benefits Must Be Eliminated
Comment 9: Whether to Include Land Purchased from an Individual in the Benefits Calculation
Comment 10: Provision of Land-Use Rights for LTAR Benchmarks
Comment 11: Adjustment to Ocean Freight Data
Comment 12: Calculation of Mangrove's Creditworthiness
Comment 13: Benchmark Data

II. BACKGROUND

A. Case History

On January 8, 2020, Commerce received a countervailing duty (CVD) petition concerning imports of millwork products from China, and antidumping duty (AD) petitions concerning imports of millwork products from China and Brazil, filed in proper form on behalf of the Coalition of American Millwork Producers (the petitioner).[1] On January 28, 2020, Commerce initiated a countervailing duty investigation on millwork products from China.[2] On June 4, 2020, Commerce initiated investigations of the petitioner's[3] new subsidy allegations (NSAs) and creditworthiness allegation.[4] On June 12, 2020, Commerce published its *Preliminary Determination*.[5] On August 20, 2020, Commerce published its *Amended Preliminary Determination*[6] wherein it revised the scope of the investigation to be consistent, where appropriate, with the scope revised in the August 12, 2020, preliminary determinations of the companion antidumping duty (AD) investigations.[7]

This investigation covers two mandatory respondents: Fujian Yinfeng Imp & Exp Trading Co., Ltd. (Yinfeng) and Fujian Nanping Yuanqiao Wood-Industry Co., Ltd. (Yuanqiao). As discussed in the *Preliminary Determination* and in the Post-Prelim Decision Memorandum, Yuanqiao did not participate in this investigation.

In the *Preliminary Determination*, Commerce aligned the final determination of this investigation with the final determination of the companion AD investigation of millwork products from China,[8] which was fully extended from October 19, 2020, to December 28, 2020.[9]

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[1] *See* Petitioner's Letter, "Wood Mouldings and Millwork Products from Brazil and the People's Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties," dated January 8, 2020 (Petition).
[2] *See Wood Mouldings and Millwork Products from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 85 FR 6513 (February 5, 2020) (*Initiation Notice*).
[3] Coalition of American Millwork Producers (the petitioner).
[4] *See* Memorandum, "Countervailing Duty Investigation on Wood Mouldings and Millwork Products from the People's Republic of China: Decision Memorandum on New Subsidy Allegations and Creditworthiness Allegation," dated June 4, 2020 (NSA Memorandum); *see also* Petitioner's Letter, "Creditworthiness Allegation," dated May 4, 2020 (Creditworthiness Allegation); and Petitioner's Letter, " New Subsidy Allegations," dated May 6, 2020 (NSA Submission).
[5] *See Wood Mouldings and Millwork Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 35900 (June 12, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).
[6] *See Wood Mouldings and Millwork Products from the People's Republic of China: Amended Preliminary Countervailing Duty Determination*, 85 FR 51410 (August 20, 2020) (*Amended Preliminary Determination*).
[7] *See Wood Mouldings and Millwork Products from Brazil: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 85 FR 48667 (August 12, 2020); *see also Wood Mouldings and Millwork Products from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 48669 (August 12, 2020) (*China AD Prelim*); and Memorandum, "Wood Mouldings and Millwork Products from Brazil and the People's Republic of China: Preliminary Scope Decision Memorandum," dated August 5, 2020.
[8] *See Preliminary Determination*, 85 FR at 35900 at "Alignment."
[9] Pursuant to section 735(a)(2)(A) of the Act, where a deadline falls on a weekend or Federal holiday (in this instance, Friday, December 25, 2020), the appropriate deadline is the next business day. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

On October 19, 2020, Commerce released its Post-Prelim Decision Memorandum regarding: 1) the programs upon which we initiated investigations in the NSA Memorandum; and 2) a preliminary decision of Yinfeng's cross-owned producer Fujian Province Youxi City Mangrove Wood Machining Co., Ltd.'s (Mangrove) creditworthiness in the years 2017 and 2019.[10] Interested parties timely submitted case briefs concerning case-specific issues on October 30, 2020.[11] On November 4, 2020, Yinfeng submitted a redacted case brief.[12] On November 6, 2020, the petitioner and Yinfeng timely submitted rebuttal briefs.[13] On November 13, 2020, Yinfeng withdrew its hearing request.[14]

B. Period of Investigation

The period of investigation (POI) is January 1, 2019 through December 31, 2019.

III. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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

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

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[10] *See* Memorandum, "Post-Preliminary Analysis of the Countervailing Duty Investigation of Wood Mouldings and Millwork Products from the People's Republic of China," dated October 19, 2020 (Post-Prelim Decision Memorandum); see also Memorandum, "Countervailing Duty Investigation of Wood Mouldings and Millwork Products from the People's Republic of China: Preliminary Creditworthiness Determination for Fujian Province Youxi City Mangrove Wood Machining Co., Ltd.," dated October 19, 2020 (Creditworthiness Memorandum); and Memorandum, "Countervailing Duty Investigation of Wood Mouldings and Millwork Products from the People's Republic of China: Post-Prelim Calculations for Fujian Yinfeng Imp & Exp Trading Co., Ltd.," dated October 19, 2020.

[11] *See* Government of China's (GOC) Letter, "GOC Case Brief" (GOC Case Brief); Yinfeng's Letter, "Yinfeng Case Brief"; Petitioners' Letter, "Case Brief" (Petitioner's Case Brief), all dated October 30, 2020. Further, one additional interested party filed a letter-in-lieu of case brief. *See* Bel Trade Wood Industrial Co., Ltd. Youxi Fujian's Letter, "Bel Trade's Letter in Lieu of Case Brief" (Bel Trade Letter), also dated October 30, 2020.

[12] Commerce instructed Yinfeng to refile its October 30, 2020, case brief, as it contained new factual information. *See* Commerce's Letter, "Rejection of New Information in Case Brief," dated November 3, 2020; *see also* Yinfeng's Letter, "Yinfeng Case Brief-Redacted," dated November 4, 2020 (Yinfeng's Redacted Case Brief).

[13] *See* Petitioner's Letter, "Petitioners' Rebuttal Brief," dated November 6, 2020 (Petitioner's Rebuttal Brief); *see also* Yinfeng's Letter, "Yinfeng Rebuttal Brief," dated November 6, 2020 (Yinfeng's Rebuttal Brief).

[14] *See* Yinfeng's Letter, "Withdrawal of Hearing Request," dated November 13, 2020 (citing to GOC's and Yinfeng's Letter, collectively, "Hearing Request," dated July 13, 2020).

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[15] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.[16]

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[17] Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[18]

Finally, under section 776(d) of the Act, when using an adverse inference when selecting from the facts otherwise available, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use.[19] The statute also makes clear that, when selecting from the facts otherwise available with an adverse inference, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[20]

Commerce relied on facts available (FA), including adverse facts available (AFA) to Yuanqiao and the Government of China (GOC), for several findings in the *Preliminary Determination* and the Post-Prelim Decision Memorandum. For a description of these decisions, *see* the *Preliminary Determination* and the Post-Prelim Decision Memorandum.[21] For the final determination, Commerce has not made any changes to its preliminary decisions regarding the use of facts otherwise available and AFA. For a description of these decisions, *see* the *Preliminary Determination* and the Post-Prelim Decision Memorandum. However, Commerce has made certain changes to the calculated total AFA rate, as a result of changes made to the subsidy rates calculated for the cooperative mandatory respondent Yinfeng, as discussed below in Comments 4, 11, 12, and 13.[22]

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[15] *See* section 776(b)(1)(B) of the Act.
[16] *See also* 19 CFR 351.308(c).
[17] *See also* 19 CFR 351.308(d).
[18] *See* Statement of Administrative Action, H.R. Doc. No. 316, 103rd Congress, 2d Session (1994) (SAA) at 870.
[19] *See* section 776(d)(1) of the Act.
[20] *See* section 776(d)(3) of the Act.
[21] *See* PDM at 4-26; *see also* Post-Prelim Decision Memorandum at 3-13.
[22] *See* Memorandum, "AFA Calculation Memorandum for the Final Determination in the Countervailing Duty Investigation of Wood Mouldings and Millwork Products from the People's Republic of China," dated concurrently with this memorandum (Final AFA Memorandum).

IV. SUBSIDIES VALUATION

A. Allocation Period

Commerce made no changes to the allocation period, eight years, and the allocation methodology used in the *Preliminary Determination* and Post-Prelim Decision Memorandum.[23] No issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology.

B. Attribution of Subsidies

Commerce made no changes to the methodology used in the *Preliminary Determination* and Post-Prelim Decision Memorandum for attributing subsidies.[24]

C. Denominators

Commerce made no changes to the denominators used in the *Preliminary Determination* and Post-Prelim Decision Memorandum.[25]

D. Loan Interest Rate Benchmarks and Discount Rates

As a result of our post-preliminary determination that Mangrove was uncreditworthy in the years 2017 and 2019, we made changes from the *Preliminary Determination* to certain interest rate benchmarks and discount rates.[26] Specifically, we applied a premium to the loan interest rate benchmarks and discount rates in the years 2017 and 2019.[27] *See* Yinfeng Final Calculation Memorandum for a discussion of the calculation of the creditworthiness premium.[28]

V. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

We made no changes to our *Preliminary Determination* or our post-preliminary analysis with respect to the methodology used to calculate the subsidy rates for the following programs, except where noted below. For descriptions, analyses, and calculation methodologies for these programs, *see* the *Preliminary Determination*, the Post-Prelim Decision Memorandum and the Yinfeng Final Calculation Memorandum. Except where noted below, no issues were raised regarding these programs in the parties' case briefs. The final program rates are as follows:

[23] *See Preliminary Determination* PDM at 27*; see also* Post-Prelim Decision Memorandum at 9.
[24] *See* PDM at 27-29; *see also* Post-Prelim Decision Memorandum at 9.
[25] *See* PDM at 28; *see also* Post-Prelim Decision Memorandum at 10.
[26] *See* PDM at 28-31; *see also* Post-Prelim Decision Memorandum at 14-15.
[27] *See* Post-Prelim Decision Memorandum at 14-15; *see also* Creditworthiness Memorandum.
[28] *See* Memorandum, "Yinfeng Calculations for Final Determination," dated concurrently with this memorandum (Yinfeng Final Calculation Memorandum).

1. *Policy Loans to the Wood Mouldings and Millwork Products Industry*

Consistent with the Post-Prelim Decision Memorandum and Comment 12, we applied a creditworthiness premium to the interest rate of any long-term loans Mangrove acquired in 2017 or 2019. We made no further changes to our methodology for calculating a subsidy rate for Yinfeng under this program.[29] The final subsidy rate for this program is 0.46 percent *ad valorem*.

2. *Export Buyer's Credit Program*

We have made no changes to our methodology for determining the AFA rate for this program.[30] For further discussion, *see* Comment 2 below. The final subsidy rate for this program is 10.54 percent *ad valorem*.

3. *Provision of Sawn Wood and Continuously Shaped Wood for LTAR*

As discussed in Comments 11 and 13, respectively, we made changes to our selected sawn wood benchmarks and methodology for calculating ocean freight benchmark rates and our selected benchmarks for sawn wood used to calculate a subsidy rate for Yinfeng under this program.[31] The final subsidy rate for this program is 3.26 percent *ad valorem*.

4. *Provision of Plywood for LTAR*

As discussed in Comment 11 and 13, respectively, we made changes to our selected plywood benchmarks and methodology for calculating ocean freight benchmark rates and our selected benchmarks for plywood used to calculate a subsidy rate for Yinfeng under this program.[32] The final subsidy rate for this program is 0.29 percent *ad valorem*.

5. *Provision of Electricity for LTAR*

As discussed in Comment 4, we made changes to correct the basic fee transmission capacity benchmark price and total payments when calculating a subsidy rate for Yinfeng under this program.[33] The final subsidy rate for this program is 0.83 percent *ad valorem*.

6. *Provision of Land-Use Rights by the GOC to Encouraged Industries for LTAR*

Consistent with the Post-Prelim Decision Memorandum and Comment 12, we applied a creditworthiness premium to the discount rate when calculating the benefit of any land purchases Mangrove made in 2017 or 2019. We made no further changes to our methodology for calculating a subsidy rate for Yinfeng under this program.[34] The final subsidy rate for this program is 1.17 percent *ad valorem*.

[29] *See* PDM at 34-35; *see also* Yinfeng Final Calculation Memorandum.
[30] *See* PDM at 35.
[31] *Id.* at 36; *see also* Yinfeng Final Calculation Memorandum.
[32] *See* PDM at 37; *see also* Yinfeng Final Calculation Memorandum.
[33] *See* PDM at 37-38; *see also* Yinfeng Final Calculation Memorandum.
[34] *See* PDM at 38-40; *see also* Yinfeng Final Calculation Memorandum.

7. *Provision of Wood Glues and Adhesives for LTAR*

As discussed in Comment 11, we made changes to the benchmark freight rates used to calculate the subsidy rate for Yinfeng for this program. We made no further changes to our methodology for calculating a subsidy rate.[35] The final subsidy rate for this program is 0.60 percent *ad valorem*.

8. *Provision of Primer, Including Gesso, for LTAR*

As discussed in Comment 11, we made changes to the benchmark freight rates used to calculate the subsidy rate for Yinfeng for this program. We made no further changes to our methodology for calculating a subsidy rate.[36] The final subsidy rate for this program is 3.07 percent *ad valorem.*

9. *"Other" Subsidies*

We made no changes to our methodology for calculating a subsidy rate for Yinfeng under various self-reported programs.[37] The final cumulative subsidy rate for these programs is 0.34 percent *ad valorem*.

10. Creditworthiness Determination

We made no changes to our methodology applied in the Post-Prelim Decision Memorandum and Creditworthiness Memorandum regarding the preliminary creditworthiness determination.[38] For discussion of the final determination creditworthiness calculation, *see* Comment 12 below.

B. <u>Programs Determined Not to Confer a Countervailable Benefit</u>

Commerce made no changes to its *Preliminary Determination* with regard to programs determined not to confer a countervailable benefit.[39]

1. Provision of Water for LTAR

C. <u>Programs Determined Not to Have Conferred a Measurable Benefit to Yinfeng During the POI</u>

Commerce made no changes to its *Preliminary Determination* with regard to the 92 of 100 self-reported programs determined not to confer a measurable benefit to Yinfeng during the POI.[40]

[35] *See* Post-Prelim Decision Memorandum at 11-12; *see also* Yinfeng Final Calculation Memorandum.
[36] *See* Post-Prelim Decision Memorandum at 12-13; *see also* Yinfeng Final Calculation Memorandum.
[37] *See* PDM at 40-41; *see also* Yinfeng Final Calculation Memorandum
[38] *See* Post-Prelim Decision Memorandum at 14-15; *see also* Creditworthiness Memorandum.
[39] *See* PDM at 40-41.
[40] *Id.* at 42-43; *See also* Yinfeng Preliminary Calculation Memorandum.

D. Programs Determined Not to Be Used by Yinfeng

Commerce made no changes to its *Preliminary Determination* with regard to programs determined not to be used by Yinfeng during the POI.[41]

1. Preferential Loans for State-Owned Enterprises (SOEs)
2. Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
3. Export Seller's Credit
4. Income Tax Reductions under Article 28 of the Enterprise Income Tax
5. Tax Offsets for Research and Development (R&D) Expenses Under the Enterprise Income Tax Law
6. Preferential Income Tax Policy for Enterprises in the Northeast Region
7. Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
8. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
9. Import Duty Exemptions for Use of Imported Equipment
10. Foreign Trade Development Fund Grants
11. Export Assistance Grants
12. Export Interest Subsidies
13. Loan Interest Subsidies for the Forestry Industry
14. Subsidies for the Development of Famous Brands and China World Top Brands
15. Funds for Outward Expansion of Industries in Guangdong Province
16. Provincial Fund for Fiscal and Technological Innovation
17. The State Key Technology Project Fund
18. Shandong Province's Special Fund for the Establishment of Key Enterprise Technology Centers
19. Shandong Province's Environmental Protection Industry Research and Development Funds
20. Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
21. Waste Water Treatment Subsidies
22. Technology to Improve Trade Research and Development Fund
23. Provision of Standing Timber for LTAR
24. Provision of Cut Timber for LTAR
25. Provision of Veneers for LTAR
26. Provision of Formaldehyde for LTAR
27. Provision of Urea for LTAR
28. Provision of {Urea-Formaldehyde} UF Resin for LATR
29. Provision of Land-Use Rights by the GOC for LTAR in Industrial and Other Special Economic Zones
30. Provision of Land to SOEs by the GOC for LTAR

[41] *Id.* at 42-43.

VI. ANALYSIS OF COMMENTS

Comment 1: Calculation of the All-Others Rate

Bel Trade Letter:[42]

- Bel Trade requests that Commerce revise the subsidy rate calculated for Yinfeng, and, by extension, for Bel Trade, as an "all other" exporter that was not individually investigated, on the basis of the arguments made in case briefs by mandatory respondents Yinfeng and the GOC, which Bel Trade incorporated in its letter by reference.

No other interested party commented on this issue.

Commerce's Position:

As we stated in the preliminary determination, sections 703(d) and 705(c)(5)(A) of the Act provide that Commerce shall determine an estimated all-others rate for companies not individually examined.[43] Further, this rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. Commerce preliminarily assigned a rate based entirely on adverse facts available to Yuanqiao, and Yuanqiao's subsidy rate continues to be based on adverse facts available, pursuant to section 776 of the Act, in the final determination. As the facts underlying the *Preliminary Determination* with regard to the all-others rate remain unchanged, we continue to determine for the final determination that the only rate that is not zero, *de minimis* or based entirely on section 776 of the Act (determinations on the basis of facts available) is the rate calculated for Yinfeng. Consequently, based on the determinations made below and any resulting changes to the calculations for Yinfeng in the final determination, we have assigned the final subsidy rate calculated for Yinfeng as the final subidy rate for all other producers and exporters.

Comment 2: Whether to Continue to Apply Adverse Facts Available (AFA) to the Export Buyer's Credit (EBC) Program

GOC's Case Brief:

- Commerce's determination to countervail the EBC Program based on AFA is not based on substantial evidence and is otherwise not in accordance with the law, because the GOC and the China Ex-Im Bank confirmed that the respondent's customers did not apply for that program, which is corroborated by the respondent's customers' declarations.[44] Commerce does not need to understand all the operational details of this program to draw such conclusion.
- Not only is the preliminary finding that Yinfeng benefitted and used EBC unsupported by record evidence, it is also in violation of the statute and case law precedents that prohibit the application of adverse inferences against cooperating respondents when no necessary information is missing from the record. Commerce can only select from facts otherwise available when a party to a proceeding withholds or fails to provide "necessary information" requested. The U.S. Court of International Trade (CIT) held repeatedly that the 2013 internal

[42] *See* Bel Trade Letter.
[43] *See Preliminary Determination*, 85 FR at 35900.
[44] *See* GOC Case Brief at 2 (citing GOC and Yinfeng Questionnaire Responses, generally).

revisions and identities of partner/correspondent banks do not consist of "necessary information."[45]

- For any use of facts otherwise available with adverse inferences, Commerce must find that the gap in the record was caused by a respondent's failure to cooperate to the best of its ability.[46]
- In *Trina 2018*, the CIT held that although Commerce can choose among FA or AFA to fill the record, the "choice must fill in the information that is actually missing."[47] If Commerce were to claim that record evidence – such as an importer's certification of non-use of the EBC Program– is unverifiable, it must "first reasonably show that such information is, in fact, unverifiable."[48] In *Trina II*, the CIT rejected Commerce's explanation, on remand, that without the 2013 internal guidelines, verification would be impossible or unduly onerous.[49]
- In *Guizhou Tyre I*, the CIT found that although certain information regarding the operations of the EBC Program was missing from the case record, there was no gap in information concerning whether the respondent used the program.[50]
- Commerce's statement that it must completely understand how this program is administered is directly contradicted by the case law.[51]
- Commerce has not identified any "gap" in the record which would then trigger the lawful use of facts available or facts available with adverse inferences taking into account the information Yinfeng and the GOC has supplied. Commerce could have verified Yinfeng's U.S. customers' non-use declarations pursuant to its normal verification method. As Commerce itself chose not to attempt verification of Yinfeng's U.S. customers' non-use declarations, Yinfeng's and the GOC's responses and Yinfeng's customers declarations must be accepted as accurate.
- Because the record contains not one shred of evidence to the contrary, Commerce must find non-use of the EBC Program by Yinfeng for the final determination.

[45] *Id.* (citing *Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp. 3d 1316 (CIT 2018) (*Trina 2018*); *Changzhou Trina Solar Energy Co. v. United States* (CIT 2019) (*Trina II*); *Canadian Solar, Inc. v. United States,* (CIT 2020); *Guizhou Tyre Co. v. United States*, 348 F. Supp. 3d 1261, 1270-71 (CIT 2018) (*Guizhou Tyre I*); *Guizhou Tyre Co. v. United States*, 399 F. Supp. 3d 1346 (CIT 2019); *Guizhou Tyre Co. v. United States*, 415 F. Supp. 3d 1402 (CIT 2019); *Guizhou Tyre Co. v. United States*, 389 F. Supp. 3d 1315 (CIT 2019); Guizhou Tyre Co. v. United States, 415 F. Supp. 3d 1335 (CIT 2019); *Guizhou Tyre Co. v. United States*, Slip Op. 2020-81 (CIT 2020); *Changzhou Trina Solar Energy Co. v. United States*, SLIP OP. 2018-167 (CIT 2018); *Changzhou Trina Solar Energy Co. v. United States*, SLIP OP. 2019-143 (CIT 2019); *Clearon Corp. v. United States*, 359 F. Supp. 3d 1344 (CIT 2019); *Clearon Corp. v. United States*, 2020 Ct. Intl. Trade LEXIS 149 (2019); *Yama Ribbons & Bows Co. v. United States*, 419 F. Supp. 3d 1341 (CIT 2019); *Jiangsu Zhongji Lamination Materials Co. v. United States*, 405 F. Supp. 3d 1317 (CIT 2019); and *Jiangsu Zhongji Lamination Materials Co. v. United States*, SLIP OP. 2020-39 at 5 (CIT 2020)).

[46] *Id.* at 3 (citing 9 U.S.C. 1677e(b) and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*)).

[47] *Id.* at 4 (citing *Trina 2018*, 352 F. Supp. 3d at 1327).

[48] *Id.*

[49] *Id.* at 5 (citing *Trina II*, SLIP OP. 2019-137 at 6).

[50] *Id*. at 5 (citing *Guizhou Tyre I*, 348 F. Supp. 3d at 1270-71).

[51] *Id.* at 6 (citing to *Clearon Corp. v. United States*, 2020 Ct. Intl. Trade LEXIS 149, SLIP OP. 2020-141 at 32-33).

Yinfeng's Case Brief:[52]

- Commerce should reverse its preliminary decision to apply AFA to the GOC with regard to the EBC Program. Yinfeng responded that it has never applied for any EBC loans for itself or its customers, and Yinfeng also provided customer declarations of non-use from every customer Yinfeng sold to during the POI. Yinfeng's U.S. customers also submitted declarations of non-use of this loan program. Yinfeng has never been involved in any loan applications under the EBC Program. All parties involved, namely the GOC, Yinfeng, and Yinfeng's customers, have responded as to the non-use of this program. Yet, despite all the record evidence, Commerce still applied AFA to Yinfeng on EBC.
- Commerce summarily dismissed the record evidence and found the application of AFA warranted because the information concerning the 2013 program revision and the partner/correspondent banks is necessary for Commerce to analyze how the program functions. Yet, Commerce did not issue any supplemental questions regarding this to Yinfeng directly.
- Commerce is in violation of the statute and case law precedents that prohibit the application of adverse inferences against cooperating respondents when no necessary information is missing from the record. Commerce can only select from facts otherwise available when a party to a proceeding withholds or fails to provide "necessary information" that Commerce requested.[53] For any use of facts otherwise available or facts otherwise available with adverse inferences, Commerce must find that the gap in the record was caused by a respondent's failure to cooperate to the best of its ability.[54]
- The CIT held repeatedly that the 2013 internal revisions and identities of partner/correspondent banks do not consist of "necessary information."[55]
- Commerce cannot disregard both the GOC's response and Yinfeng's response, and impermissibly focus solely on the information that the GOC did not supply, which is not "necessary information" to begin with. Commerce has not identified any "gap" in the record which would then trigger the lawful use of facts available or facts available with adverse inferences taking into account the information Yinfeng and the GOC has supplied.
- As Commerce itself chose not to attempt verification of Yinfeng's U.S. customers' non-use declarations, Yinfeng's and the GOC's responses and Yinfeng's customers' declarations must be accepted as accurate. The record contains not one shred of evidence to the contrary. Therefore, Commerce must find non-use of the EBC Program by Yinfeng in the final determination.
- Because the rate of 10.54 percent assigned as AFA for the EBC Program was obtained from a different industry, this rate cannot be used for the millwork products industry.[56]

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[52] *See* Yinfeng's Redacted Case Brief at 20-27. Because the same law firm represents both the GOC and Yinfeng, the arguments regarding this issue were virtually identical between the GOC Case Brief and Yinfeng's Redacted Case Brief, relying on the same case law and citations. As a result, for brevity, Commerce did not repeat identical argument summaries.

[53] *Id*. at 21 (citing 19 U.S.C. § 1677e(a)).

[54] *Id.* (citing *Nippon Steel*).

[55] *Id*. at 21-22 (citing to the identical case law that was cited by GOC above, including but not limited to *Trina 2018*, *Trina II*, and *Guizhou Tyre I*).

[56] *Id*. at 25-26 (citing *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comments 17-18, as amended in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Notice of Correction for Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 75663 (December 6, 2010) (*Coated Paper Amended Final*).

- The most "similar/comparable program" would be preferential loans to the wood mouldings and millwork industry and Yinfeng's preferential loan rate applies to the exact same industry in the exact same investigation for the exact same company. Policy loans to the coated paper industry and policy loans to the wood mouldings industry are both policy loans, but in comparison, the policy loan to the would mouldings industry is significantly more similar to the EBC loan, if any, for application to a wood mouldings producer. If Commerce continues to find that the GOC failed to respond adequately to Commerce's questions concerning the EBC Program and that Commerce can apply an adverse inference against Yinfeng, Commerce should select the 0.19 percent rate calculated by Commerce in the *Preliminary Determination* for Yinfeng's Policy Lending program, and not the preferential loan rate calculated for a different product from an investigation ten years prior.

Petitioners' Rebuttal Brief:[57]

- Commerce should continue to apply AFA regarding Yinfeng's use of the EBC Program. Commerce should reject arguments that Yinfeng did not use the EBC Program and that the agency was incorrect to use AFA in determining the use of this program.
- The GOC has repeatedly and consistently failed to provide complete and accurate information regarding the EBC Program, and this proceeding is no exception. Further, the record of this investigation does not establish that respondents did not use the EBC Program. Rather, it demonstrates that the GOC possesses and refuses to provide critical information regarding the administration and usage of the program, which renders any statement or certification from Yinfeng to the contrary unverifiable.
- The record of this investigation lacks critical information regarding the EBC Program and Commerce should disregard respondents' attempts to reframe the agency's analysis. Yinfeng and the GOC do not contest that the GOC failed to provide information that Commerce has repeatedly found to be necessary to determine the extent to which the EBC Program was used by Yinfeng. Contrary to Yinfeng's and GOC's assertions, it is Commerce's role to decide what information is necessary to assess the extent to which a subsidy program is used. Chinese respondents should not be permitted to proclaim that the record is complete merely based on their own interpretation of what information is required.
- Yinfeng and the GOC point to the submission of declarations of non-use as evidence that the program was definitively not used by Yinfeng. However, even with these declarations, critical evidence remains missing from the record. As in numerous other proceedings,

[57] *See* Petitioner's Rebuttal at 11-27.

Commerce has found that it is not possible to determine the full extent to which the EBC Program was used by Chinese respondents without additional information from the GOC.[58]

- The GOC's refusal to cooperate in this case is consistent, as the GOC has refused to provide the information regarding the EBC Program, despite Commerce's repeated requests, in other proceedings.[59]
- In prior cases, Commerce had not countervailed the EBC Program in its preliminary decisions because respondents and the GOC routinely claimed that the program was not used, as respondents claim here. Instead, Commerce had waited until after the GOC's refusal of verification of the program and applied AFA in its final determination. As Commerce explained in *Solar Cells from China*, it is "futile" to continue these information requests, so Commerce applied AFA-including with respect to benefit-—despite the existence of customer certifications claiming non-use of the program, which, as done in *Solar Cells from China*, is also something Yinfeng has reported here..[60] Thus, Commerce's determination here is consistent with *Solar Cells from China*.
- Notwithstanding non-use certifications, Commerce found in *Solar Cells from China* that the GOC's failure to provide the requested information rendered such certifications unverifiable as it deprived Commerce of an understanding of how the program operated and, thus, the application of AFA was appropriate.[61] In *MLWF from China*, Commerce stated that it "cannot rely on non-use statements from respondents without the corroboration of the GOC," and that "the GOC is the only party that can answer questions about the internal administration of this program."[62] The same is true here.
- It is Commerce's well-established practice to apply AFA with respect to the EBC Program, as recently as in *MLWF-2016* and in *Wooden Cabinets*.[63] In this case, the GOC failed to provide the same information that was lacking in those proceedings and, thus, the GOC

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[58] *Id*. at 13 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent To Rescind, in Part; 2014*, 82 FR 2317 (January 9, 2017) (*Solar Cells 2014 Prelim*); *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 Final Determination*), and accompanying IDM at Comment 18; *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 42-44; *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products Final Determination*), and accompanying IDM at 91-94; *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 26954 (June 11, 2018) (*Chlorinated Isos 2015*) and accompanying IDM at Comment 1; and *High Pressure Steel Cylinders from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2016*, 83 FR 31951 (July 10, 2018) (*Cylinders 2016*) at Section VII-B).

[59] *Id*. at 14 (citing *Solar Cells Final Determination* at Comment 18; *Chlorinated Isos 2015* at Comment 1; and *Cylinders 2016* at section VII-B).

[60] *Id*. at 15 (citing *Solar Cells 2014 Prelim* PDM at 31).

[61] *Id*. at 16 (citing *Solar Cells 2014 Prelim* at 31).

[62] *Id*. at 18-19 (citing *Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, in Part, and Intent to Rescind Review, in Part; 2016*, 83 FR 67229 (December 28, 2018), and accompanying PDM at 17).

[63] *Id*. at 16 (citing *Multilayered Wood Flooring from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2016*, 84 FR 38221 (August 6, 2019) (*MLWF 2016 Final*), and accompanying IDM at 25; and *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 11962 (February 28, 2020) (*Wooden Cabinets Final*), and accompanying IDM at 20-36).

merits the application of AFA in this investigation for the same reasons applied in those proceedings.

- When specifically asked to submit the Administrative Measures relating to the EBC Program, revised in 2013, the GOC instead referred the agency to the 2000 version of the regulations that it had already submitted in its initial questionnaire response. The GOC's failure to provide the 2013 Administrative Measures on the record makes its explanation of how the EBC Program operates insufficient.
- The GOC refuses to provide information regarding the partner and correspondent banks involved in the disbursement of funds under the EBC Program. As Commerce preliminarily determined, this is essential information about the internal administration of the program, yet the GOC claims repeatedly that it "is unable to compel the Ex-Im Bank to disclose, or provide the GOC with, a list of all partner or correspondent banks which may have been involved in disbursement of funds under the Export Buyer's Credit Program."[64]
- Yinfeng's and GOC's reference to *Guizhou Tyre* is unavailing. In *Guizhou Tyre*, the CIT ordered Commerce to reconsider its decision to apply AFA as to the EBC Program and to consider the evidence of non-use that was on the record of that proceeding.[65]
  - The CIT has not found that Commerce cannot apply AFA to the EBC Program under circumstances such as those present in this investigation.
  - The CIT held in *Guizhou Tyre*, as well as in *Trina*, that Commerce needed only to explain in sufficient detail its reasoning behind its application of AFA.[66] The CIT, in *Trina*, found that Commerce simply "did not explain how an adverse inference regarding the operation of the {Export Buyer's Credit program} logically leads to a finding that respondents used the program." Therefore, the court remanded the matter to Commerce so that the agency could further explain its reasoning.
  - In contrast, here, Commerce thoroughly explained its rationale for applying AFA to the GOC, explaining in greater detail than it did in the administrative proceeding underlying *Guizhou Tyre* why the agency cannot verify the respondents' use of the EBC Program and why it required information and documentation regarding the internal administration of the program in order to understand the extent to which the program was used.
- While the CIT eventually ruled against Commerce, and as Yinfeng and the GOC fail to discuss in detail those remand proceedings in their case briefs, these proceedings are not determinative for Commerce in this investigation as the agency must simply thoroughly explain its rationale for continuing to apply AFA as a result of the GOC's failure to provide the information necessary to determine the extent to which Yinfeng used the EBC Program during the POI.[67]
- The case law cited by the Yinfeng and the GOC is not persuasive and is distinguishable from this proceeding because the record contains ample evidence fully supporting Commerce's application of AFA.
- The GOC failed to provide enough information to verify non-usage, as banks other than China Ex-Im Bank distribute EBC funds for which the China Ex-Im Bank conducts transactions and the GOC did not provide a necessary list of partner or correspondent banks that disbursed funds. Without this information, the flow of funding—and, thus, the ultimate

[64] *Id*. at 18 (citing GOC Letter, "GOC First Supplemental Questionnaire Response," dated May 15, 2020 at 6 (GOC SQR)).
[65] *Id*. at 19 (citing *Guizhou Tyre I*, 348 F. Supp 3d at 1281).
[66] *Id*. at 20 (citing *Guizhou Tyre I*, 348 F. Supp 3d at 1281 and *Trina 2018*, 352 F. Supp. 3d at 1327-28).
[67] *Id*. at 20 (citing *Guizhou Tyre II*, 415 F. Supp. 3d at 1404-05; *Changzhou Trina Solar Energy Co. v. United States*, No. 17-00198, 2020 WL 4464258, at *2 (CIT 2020)).

users of the program—remains unknown. As such, without the information requested from, and not provided by, the GOC, Commerce cannot determine whether the respondents did in fact use this program.

- The GOC's failure to provide to the best of its ability the full and complete information requested by Commerce justifies the application of AFA, as it is the purview of Commerce to determine the information needed to conduct its investigation regardless of the GOC's opinion of its necessity. By its failure to provide accurate and complete information despite repeated requests, the GOC failed to meet its obligation to provide information and act to the best of its ability.[68] and impeded Commerce's understanding of the EBC Program.
- Yinfeng notes that the "…current 10.54 percent rate applied from *Coated Paper from China* was for 'Preferential Lending to the Coated Paper Industry,'" and then contends that "{i}t is obvious that the wood mouldings and millwork industry cannot use the preferential loans for the coated paper industry," and that the "most 'similar/comparable program' would be preferential loans to the wood mouldings and millwork industry." As such, Yinfeng insists that the "Department should follow its AFA selection methodology and find that the preferential loan rate calculated in this investigation is the most similar rate to the {Export Buyer's Credit} program."[69] Yinfeng argues that if Commerce continues to apply AFA that it should select the 0.19 percent rate calculated by the agency for Yinfeng's use of the Policy Loans program. In arguing such, Yinfeng ignores Commerce's established AFA rate selection hierarchy and provides no justification for the agency to deviate from its recognized methodology by selecting a rate contrary to the purpose of applying AFA.
- Given Chinese respondents' continued refusals to provide complete information regarding this program, it is critical that Commerce continue to apply an AFA rate that is sufficiently adverse to effectuate the statutory purpose of applying facts available with an adverse inference.

Commerce's 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.[70] 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 Final Determination*.[71] 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."[72] 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

[68] *Id.* at 10 (citing *Nippon Steel*).
[69] *Id*. at 23 (citing Yinfeng's Redacted Case Brief at 25-26).
[70] *See Preliminary Determination* PDM at 14-17; *see also Solar Products Final Determination* 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), and accompanying IDM at Comment 6.
[71] *See Solar Cells Final Determination* IDM at 9 and Comment 18. While Commerce's determination with respect to the EBC Program was initially challenged, the case was dismissed.
[72] *See Solar Cells Final Determination* IDM at 59.

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.[73]

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 alleged programs during the POI."[74] 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."[75] 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.[76] 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.[77]

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.[78] 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

[73] *Id*.
[74] *Id*.
[75] *Id*. at 60.
[76] *Id*. at 60-61
[77] *Id*. at 61.
[78] *Id*.

> 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.[79]

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.[80]

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.[81]

This "completeness" test is an essential element of Commerce's verification methodology. If Commerce were attempting to confirm whether and to what extent a respondent exporter had received loans from a state-owned bank, for example, its first step would be to examine the company's balance sheets to derive the exact amount of lending outstanding during the period of examination. Second, once that figure was confirmed, Commerce would examine subledgers or bank statements containing the details of all individual loans. Because Commerce could tie or trace the subledgers or bank statements to the total amount of outstanding lending derived from the balance sheets, it could be assured that the subledgers were complete and that it therefore had the entire universe of loan information available for further scrutiny. After examining the subledgers for references to the state-owned banks (for example, "Account 201-02: Short-term lending, Industrial and Commercial Bank of China"), Commerce's third step would be to select specific entries from the subledger and request to see underlying documentation, such as

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

[80] Commerce provided a similar explanation in the 2014 investigation of solar products from China. *See Solar Products Final Determination* IDM at 93. This was affirmed by the Court *Changzhou Trina Solar Energy Co. v. United States,* 195 F. Supp. 3d 1334, 1350 (CIT 2016) (*Trina Solar 2016*). In *Trina Solar 2017*, the Court noted that the explanation from *Solar Products Final Determination* 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) (*Trina Solar 2017*). However, the Court found that the 2014 review of solar cells from China at issue in *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 Trina Solar 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) (as amended in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 46760 (October 6, 2017), and accompanying IDM)). The Court in *Guizhou Tyre I* reached a similar conclusion concerning the 2014 review of tires from China. *See Guizhou Tyre I* 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.

[81] 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), and accompanying IDM at Comment 6 (*Citric Acid 2012*).

applications and loan agreements, in order to confirm the accuracy of the subledger details. Thus, confirmation that a complete picture of relevant information is in front of the verification team, by tying relevant books and records to audited financial statements or tax returns, is critical.

In the *Solar Cells Final Determination*, 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."[82] 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."[83] However, the GOC refused to allow Commerce to query the databases and records of the China Ex-Im Bank.[84] Furthermore, there was no information on the record of *Solar Cells Final Determination* from the respondent exporters' customers.

Chlorinated Isos Investigation of the EBC Program

Two years later, in the investigation of *Chlorinated Isos*,[85] 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."[86]

[82] *See Solar Cells Final Determination* IDM at 62.
[83] *Id*.
[84] *Id*.
[85] *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.
[86] *Id*.

2013 Amendments to the EBC Program

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.[87] 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.[88] 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.[89] 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."[90] The GOC further stated that "those internal guidelines do not formally repeal or replace the provisions of the {*Administrative Measures*} which remain in effect."[91]

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.
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> 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

[87] *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.")
[88] *See Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017) (*Silica Fabric Investigation*), and accompanying IDM at Comment 17.
[89] *Id*.
[90] *Id*.
[91] *Id*.

> Department's understanding of how this program operates and how it can be verified.
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> 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.[92]

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."[93]

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."[94]

The Instant Investigation

As stated in the *Preliminary Determination*, we requested a list of all partner/correspondent banks involved in the disbursement of funds under the EBC Program.[95] Instead of providing the requested information, the GOC stated that our question was not applicable.[96] We also asked the GOC to submit the *Administrative Measures* that were revised in 2013, but the GOC refused.[97] Though the GOC provided some information, it was unresponsive to a majority of our requests, preventing Commerce from analyzing the function of the program, as discussed below.

In our Initial Questionnaire, we requested that the GOC provide the information requested in the Standard Questions Appendix "with regard to all types of financing provided by the China Ex-Im under the Buyer Credit Facility."[98] The Standard Questions Appendix requested various information that Commerce requires in order to analyze the specificity and financial contribution of this program, including the following: translated copies of the laws and regulations pertaining to the program; a description of the agencies and types of records maintained for administration

[92] *Id*. at 12.
[93] *Id*. at 62.
[94] *Id*.
[95] *See* PDM at 14.
[96] *Id.*
[97] *Id*.
[98] *See* Commerce's Letter, "Countervailing Duty Questionnaire," dated February 21, 2020 (Commerce CVD Questionnaire), Section II at 38.

of the program; a description of the program and the application process; program eligibility criteria; and program usage data. Rather than respond to the questions in the Standard Questions Appendix, the GOC stated it had confirmed that "none of the U.S. customers of the respondents used the alleged program during the POI. Therefore, this question is not applicable."[99]

In its initial CVD questionnaire response, the GOC provided the *2000 Administrative Measures*, which confirmed that the Ex-Im Bank strictly limits the provision of export buyer's credits to business contracts exceeding USD 2 million.[100] Also, in its initial CVD questionnaire response, the GOC provided a copy of its *7th Supplemental Response in the Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China*.[101] Information in that document indicates that the GOC revised this program in 2013 to eliminate this minimum requirement.[102] Thus, we requested in our Initial CVD Questionnaire that the GOC also provide original and translated copies of any laws, regulations or other governing documents cited by the GOC in the Export Buyer's Credit Supplemental Questionnaire Response.[103] This request included the 2013 *Administrative Measures* revisions to the EBC Program. In its response, the GOC failed to provide the 2013 Revisions.[104] We, therefore, again specifically requested that the GOC provide the 2013 Revisions.[105] In response, the GOC, referencing Exhibit EXPORT-2 of its IQR, stated it "has provided the *Rules Governing Export Buyers' Credit of the Export-Import Bank of China*," which is still in effect.[106] Through its response to Commerce's initial and supplemental questionnaires, the GOC twice refused to provide the requested information concerning the 2013 program revisions, which is necessary for Commerce to analyze how the program functions.

We continue to find that the GOC's responses with respect to the EBC Program are deficient in two key respects. First, as we found in the *Silica Fabric Investigation*,[107] where we asked the GOC about the amendments to the EBC Program,[108] we continue to find that the GOC has refused to provide the requested information concerning the 2013 program revisions, which is necessary for Commerce to analyze how the program functions. We requested information regarding the 2013 revisions to the *Administrative Measures*, and information on the partner/correspondent banks that are involved in the disbursement of funds under this program, because our prior knowledge of this program demonstrates that the 2013 revisions effected important program changes. Specifically, the 2013 revisions (which the GOC refers to as "internal guidelines") appear to be significant and have impacted a major condition in the provision of loans under the program, *i.e.*, by eliminating the $2 million minimum business contract requirement identified in the 2000 *Administrative Measures*.[109]

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[99] *See* GOC's Letter, "GOC Questionnaire Response," dated April 13, 2020 (GOC IQR) at 60.
[100] *Id*. at Exhibit EXPORT-2.
[101] *See* GOC IQR at Exhibit EXPORT-1; *see also Silica Fabric Investigation* and accompanying IDM at Comment 17.
[102] *Id*.
[103] *See* Commerce CVD Questionnaire, Section II at 39.
[104] *See* GOC IQR at 61-62.
[105] *See* Commerce's Letter, "Supplemental Questionnaire to the Government of China's Questionnaire Response," dated May 1, 2020 (GOC Supplemental) at 4.
[106] *See* GOC SQR at 5-6.
[107] *See Silica Fabric Investigation* IDM at Comment 17.
[108] *See* GOC SQR at Exhibit EXPORT-1 (containing the GOC's September 6, 2016 7th SQR in the *Silica Fabric Investigation*).
[109] *See Silica Fabric Investigation* IDM at 12 and 61.

This information is necessary and critical to our understanding of the program and for any determination of whether the "manufacture, production, or export" of a respondent's merchandise has been subsidized. For instance, if the program continues to be limited to $2 million contracts between a mandatory respondent and its customer, this is an important limitation to the universe of potential loans under the program and can assist us in targeting our verification of non-use. However, if the program is no longer limited to $2 million contracts, this increases the difficulty of verifying loans without any such parameters, as discussed further below.[110] Therefore, by refusing to provide the requested information, and instead providing unverifiable assurances that other rules regarding the program remained in effect, the GOC impeded Commerce's ability to understand how this program operates and how it can be verified. Further, as to the GOC's concerns regarding the non-public nature of the 2013 revisions, Commerce has well-established rules governing the handling of business proprietary information in its proceedings.

Second, Commerce's understanding of the EBC Program changed after Commerce began questioning the GOC's earlier indication that loans provided pursuant to the EBC Program were between the GOC and the borrower *only*, essentially a *direct* deposit from the China Ex-Im Bank to the foreign buyer. In particular, in the *Silica Fabric Investigation*, Commerce identified that the rules implementing the EBC Program appeared to indicate that the China Ex-Im Bank's payment was instead disbursed to U.S. customers via an intermediary Chinese bank, thereby contradicting the GOC's response to the contrary.[111] Thus, Commerce asked the GOC to provide the same information it provided in the *Silica Fabric Investigation* regarding the rules implementing the EBC Program, as well as any other governing documents (discussed above). Commerce also asked a series of questions regarding the method of transferring funds from the China Ex-Im Bank to Chinese exporters on behalf of U.S. customers via the credits at issue:

- Respond to these questions regardless of whether the respondent companies have reported usage of this program or not.[112]

- Provide a list of all partner/correspondent banks involved in disbursement of funds under the Export Buyer's Credit program.[113]

In its supplemental response, the GOC did not provide any additional documents, and simply referred back to its IQR, wherein the GOC was non-responsive to Commerce's specific questions, with regard to our request for the 2013 revised *Administrative Measures*, stating instead that the 2000 *Rules Governing Export Buyers' Credit of the Export-Import Bank of China* are still in effect.[114] The GOC did not even acknowledge the request for the 2013 revised Administrative Measures in response to our direct request: "Please submit the "Administrative Measures" relating to the Export Buyer's Credit program, which were revised in 2013."[115]

[110] The GOC is the only party which could provide the identities of the correspondent banks that the China Ex-Im Bank utilizes to disburse funds under the EBC Program. There is no indication on the record that other parties had access to information regarding the correspondent banks utilized by the China Ex-Im Bank.
[111] *See Silica Fabric Investigation* IDM at 12.
[112] *See* GOC Supplemental at 4.
[113] *Id*.
[114] *See* GOC SQR at 5.
[115] *See* GOC Supplemental at 4.

With regard to our request for a list of partner/correspondent banks that are involved in the disbursement of funds through the program, the GOC stated that it:

> again asserts that to the best of the GOC's knowledge, neither the respondents nor their U.S. customers applied for, used, or benefited from this program during the POI. *Therefore, the GOC understands that this question is not applicable*. Nevertheless, the GOC has used its best efforts in attempting to obtain this information *but the GOC is unable to compel the Ex-Im Bank* to disclose, or provide the GOC with, a list of all partner or correspondent banks which may have been involved in disbursement of funds under the Export Buyer's Credit Program.[116]

We note that in the instant investigation, the GOC provided related information for other programs even though it considered this information to be not applicable to the issue under examination. For example, regarding the Provision of Electricity for LTAR program, we requested that the GOC provide original Provincial Price Proposals:

> Provide the original Provincial Price Proposals with English translation for each province in which a mandatory respondent or any reported "cross-owned" company is located for applicable tariff schedules that were in effect during the POI.[117]

The GOC stated that the requested information was "no longer applicable," but nonetheless provided relevant information with regard to the notice in effect during the POI, and the discussion of the 2016 changes in policy pursuant to the National Development and Reform Commission (NDRC) notice.[118]

No such information was provided with respect to this EBC Program. Thus, the GOC failed to provide the requested information and instead concluded that such information was not applicable to our examination of this program. However, it is for Commerce, not the GOC, to determine whether the information provided is sufficient for Commerce to make its determinations.[119]

Accordingly, we continue to find the GOC's responses deficient and unresponsive to our request for necessary information with respect to the operation of the EBC Program. This information is necessary to our understanding of the program and for any determination of whether the "manufacture, production, or export" of the respondent's merchandise has been subsidized. As noted above, based on the information obtained in the *Silica Fabric Investigation*, Commerce's understanding of how the EBC Program operated (*i.e.*, how funds were disbursed under the program) has changed.[120] Specifically, the record indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank.[121]

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[116] *See* GOC SQR at 6 (emphasis added).
[117] *See* Commerce CVD Questionnaire at Electricity Appendix.
[118] *See* GOC IQR at Exhibit ELEC-1, at 1-11.
[119] *See ABB Inc. v. United States*, 355 F. Supp. 3d 1206, 1222 (CIT 2018) (*ABB*) ("Commerce prepares its questionnaires to elicit information that it deems necessary to conduct a review, and the respondent bears the burden to respond with all of the requested information and create an adequate record.")
[120] *See* GOC IQR at Exhibit EXPORT-1 (containing the GOC's September 6, 2016 7th SQR in the *Silica Fabric Investigation*).
[121] *Id*.

For instance, it appears that: (1) customers can open loan accounts for disbursements through this program with other banks; (2) the funds are first sent from the China Ex-Im Bank to the importer's account, which could be at the China Ex-Im Bank or other banks; and (3) these funds are then sent to the exporter's bank account.[122] Given the complicated structure of loan disbursements which can involve various banks for this program, Commerce's complete understanding of how this program is administrated is necessary to verify claims of non-use.[123] Thus, the GOC's refusal to provide the 2013 revisions, which provide internal guidelines for how this program is administrated by the China Ex-Im Bank, as well as other requested information, such as key information and documentation pertaining to the application and approval process, and partner/correspondent banks, impeded Commerce's ability to conduct its investigation of this program and to verify the claims of non-use by the company respondents' customers.[124]

This missing information was especially significant because the available record evidence indicates that, under the EBC Program, credits are not direct transactions from the China Ex-Im Bank to the U.S. customers of respondent exporters; rather, there can be intermediary banks involved,[125] the identities of which the GOC has refused to provide to Commerce. In *Chlorinated Isos*, based on our understanding of the program at that time, verification of non-use appeared to be possible through examining the financial statements and books and records of U.S. customers for evidence of loans provided directly from the China Ex-Im Bank to the U.S. customer.[126] However, based on our more recent understanding of the program in the *Silica Fabric Investigation* discussed above, performing the verification steps to make a determination of whether the "manufacture, production, or export" of a respondent's merchandise has been subsidized would therefore require knowing the names of the intermediary banks; it would be their names, not the name "China Ex-Im Bank," that would appear in the subledgers of the U.S. customers if they received the credits. Commerce recently addressed this issue in *Aluminum Sheet from China*,[127] stating:

> Record evidence indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank. Specifically, the record information indicates that customers can open loan accounts for disbursements through this program with other banks, whereby the funds are first sent to…the importer's account, which could be at the China Ex-Im Bank or other banks, and that these funds are then sent to the exporter's bank account.[128]

In other words, there will not necessarily be an account in the name "China Ex-Im Bank" in the books and records (*e.g.*, subledger, tax return, bank statements) of the U.S. customer. Thus, if

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[122] *Id*.
[123] *Id*.
[124] We note that Commerce cannot verify non-use of the EBC Program without a complete set of administrative measures on the record that would provide necessary guidance to Commerce in querying the records and electronic databases of the China Ex-Im Bank.
[125] *See* GOC SQR at Exhibit EXPORT-1 (containing the GOC's September 6, 2016 7th SQR in the *Silica Fabric Investigation*).
[126] *See Chlorinated Isos* IDM at 15.
[127] *See Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018) (*Aluminum Sheet from China*), and accompanying IDM at Comment 4.
[128] *Id*.

we cannot verify claims of non-use at the GOC,[129] having a list of the correspondent banks is critical for us to perform verification at the U.S. customers.

Without such information, it would be unreasonably onerous for Commerce to comb through the business activities of a respondent's customers without any guidance as to how to simplify the process or any guidance as to which loans or banks should be subject to scrutiny as part of a verification for each company. A careful verification of a respondent's customers' non-use of this program without understanding the identity of these correspondent banks would be extremely difficult, if not impossible. Because Commerce does not know the identities of these banks, Commerce's second step of its typical non-use verification procedures (*i.e.*, examining the company's subledgers for references to the party making the financial contribution) could not by itself demonstrate that the U.S. customers did not use the program (*i.e.*, by examining whether there were any correspondent banks in the subledger). Nor could the second step be used to narrow down the company's lending to a subset of loans likely to be the export buyer's credits (*i.e.*, loans from the correspondent banks). Thus, verifying non-use of the program without knowledge of the correspondent banks would require Commerce to view the underlying documentation for *all* entries from the subledger *to attempt* to confirm the origin of each loan—*i.e.*, whether the loan was provided from the China Ex-Im Bank via an intermediary bank. This would be an extremely onerous undertaking for any company that received more than a small number of loans.

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

This same sample "paper trail" would be necessary even if the GOC provided the list of correspondent banks. For instance, assuming that one of the correspondent banks is HSBC, Commerce would need to know how to differentiate ordinary HSBC loans from loans originating from, facilitated by, or guaranteed by the China Ex-Im Bank. In order to do this, Commerce would need to know what underlying documentation to look for in order to determine whether particular subledger entries for HSBC might actually be China Ex-Im Bank financing: specific applications; correspondence; abbreviations; account numbers; or other indicia of China Ex-Im Bank involvement. As explained above, the GOC failed to provide Commerce with any of this information. Thus, even were Commerce to attempt to verify a respondent's non-use of the EBC Program, notwithstanding its lack of knowledge of which banks are intermediary/correspondent banks, by examining *each* loan received by the respondent's U.S. customers, Commerce still would not be able to verify which loans were normal loans versus EBC Program loans due to its lack of understanding of what underlying documentation to expect to review, and whether/how

[129] *Id.* at Comment 2 (noting that Commerce no longer attempts to verify usage with the GOC given the inadequate information provided in its questionnaire responses such as, in particular, the GOC's refusal to provide the 2013 revisions to the administrative rules).

that documentation would indicate China Ex-Im Bank involvement. In effect, companies could provide Commerce with incomplete loan documentation without Commerce understanding that the loan documentation was incomplete.

Even if such documentation were complete, and identified China Ex-Im Bank involvement, without a thorough understanding of the program, Commerce might not recognize indicia of such involvement. That is why Commerce requires disclosure of the 2013 *Administrative Measures*, as well as other information concerning the operation of the EBC Program, in order to verify usage. Understanding the operation of the program is not, therefore, solely a matter of determining whether there is a financial contribution or whether a subsidy is specific. A complete understanding of the program provides a "roadmap" for the verifiers by which they can conduct an effective verification of usage.[130] Thus, Commerce could not *accurately and effectively* verify usage at a respondent's customers, even were it to attempt the unreasonably onerous examination of each of the customers' loans. To conduct verification of the customers without the information requested from the GOC would amount to looking for a needle in a haystack with the added uncertainty that Commerce might not even be able to identify the needle when it was found.

Based on the GOC's responses, Commerce understood that under this program loans were provided either directly from the China Ex-Im Bank to the borrowers (*i.e.*, a respondent's customers), or through an intermediary third-party bank, and that a respondent might have knowledge of loans provided to its customers through its involvement in the application process. Commerce gave the GOC an opportunity to provide the 2013 revisions regarding the *Administrative Measures*, which the GOC refused to provide.[131]

According to the GOC, none of Yinfeng's U.S. customers used the export buyer's credits from the China Ex-Im Bank during the POI.[132] The GOC explained that to make this determination, it: (1) obtained the list of U.S. customers from the respondents; and (2) the China Ex-Im Bank searched its records and confirmed that none of the respondents used the export buyer's credits during the POI.[133] The GOC's response indicated that exporters would know whether there was an interaction between the China Ex-Im Bank and the borrowers (*i.e.*, a respondent's U.S. customers, who are not participating in this proceeding), but neither the GOC, nor Yinfeng, specifically, provided enough information for Commerce to understand this interaction or how this information would be reflected in the respondent companies' (or their U.S. customers') books and records. As a result, the GOC failed to respond to Commerce's request, and instead claimed that Yinfeng's U.S. customers did not use this program based on selectively provided, incomplete information. As determined in the *Preliminary Determination*, we continue to find that Commerce could not verify non-use of export buyer's credits by Yinfeng's customers. Furthermore, the lack of information concerning the operation of the EBC Program prevents an accurate assessment of usage at verification:

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[130] By analogy, consider attempting to verify whether a company has received a tax exemption without having an adequate understanding of how the underlying tax returns should be completed or where use of the tax exemption might be recorded.

[131] *See* GOC IQR at Exhibit EXPORT-2; *see also* GOC SQR at 5.

[132] *See* GOC SQR at 3.

[133] *Id.* at 3-4. While the GOC referred to respondents in its SQR, presumably on behalf of both Yinfeng and Yuanqiao, our discussion focuses on Yinfeng; Yuanqiao was uncooperative and provided no responses at all.

> In prior proceedings in which we have examined this program, before the 2013 amendments, we have found that the China Ex-Im, as the lender, is the primary entity that possesses the supporting information and documentation that are necessary for Commerce to fully understand the operation of the program which is prerequisite to Commerce's ability to verify the accuracy of the {respondents' claimed non-use of the} program. Because the program changed in 2013 and the GOC has not provided details about these changes, Commerce has outstanding questions about how this program currently functions, *e.g.*, whether the EX-IM Bank limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million, and whether it uses third-party banks to disburse/settle Export Buyer's Credits. Such information is critical to understanding how Export Buyer's Credits flow to and from foreign buyers and the EX-IM Bank and forms the basis of determining countervailability. Absent the requested information, the GOC's claims that the respondent companies did not use this program are not verifiable. Moreover, without a full understanding of the involvement of third-party banks, the respondent companies' (and their customers') claims are also not verifiable.[134]

We continue to find that usage of the EBC Program could not be verified at Yinfeng in a manner consistent with Commerce's verification methods because Commerce could not confirm usage or claimed non-use by examining books and records which can be reconciled to audited financial statements[135] or other documents, such as tax returns. Without the GOC providing bank disbursement information, Commerce could not tie any loan amounts to banks participating in this program in the Yinfeng's U.S. customers' books and records, and therefore could not verify the claims of non-use. A review of ancillary documents, such as applications, correspondence, emails, *etc.*, is insufficient for Commerce to verify any bank disbursement or loan amount pertaining to Yinfeng, its customers, and/or the GOC's participation in the program.[136] Thus, regardless of whether or not Commerce conducted on-site verification of the GOC in this investigation,[137] Commerce would have been required to have a better understanding of the program *before* it could verify it because it did not know what documents to request to review at verification or what information in the books and records to tie to Yinfeng's reported information from its questionnaire responses. Therefore, we found it necessary to have had this information prior to a verification in order to ensure the information we would have received was complete and accurate to fully analyze and calculate the benefits Yinfeng received under this program during the course of the POI. The lack of verification in this investigation is not the cause of the missing information on the record, whereas the GOC's failure to provide that missing information is. In any case, the verification would not have been the time for the GOC to remedy any information missing from the record, which it had previously refused to provide.[138] It is a well-established principle that verification is not an opportunity to submit new factual

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[134] *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*; *2016*, 83 FR 62841 (December 7, 2018), and accompanying PDM at 16-17, unchanged in *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 37627 (August 1, 2019).
[135] *Id*.
[136] *Id.*
[137] Commerce notified parties that it would not be conducting on-site verification due to current travel restrictions. *See* Memorandum, "Cancellation of Verification and Establishment of the Briefing Schedule," dated October 23, 2020.
[138] *See* 19 CFR 351.307(a).

information.[139] Although additional information is often collected to support information already on the record, the collection of new and *previously absent* information from the record at verification would deprive interested parties of the opportunity to provide factual information to rebut that information. Thus, Yinfeng's and GOC's arguments that Commerce could have conducted verification, but did not, are unavailing.

In short, because the GOC failed to provide Commerce with information necessary to identify a paper trail of direct or indirect export credits from the China Ex-Im Bank, we would not know what to look for behind each loan in attempting to identify which loan was provided by the China Ex-Im Bank via a correspondent bank under the EBC Program. This necessary information is missing from the record because such disbursement information is only known by the originating bank, the China Ex-Im Bank, which is a government-controlled bank.[140] Without cooperation from the China Ex-Im Bank and/or the GOC, we cannot know the banks that could have disbursed export buyer's credits to a company respondents' customers. Therefore, there are gaps in the record because the GOC refused to provide the requisite disbursement information.

Additionally, despite company certifications of non-use, Commerce finds that it is not possible to determine whether export buyer's credits were received with respect to the export of wood mouldings and millwork products because the potential recipients of export buyer's credits are not limited to the customers of the company respondents, as they may be received by third-party banks and institutions, as noted above. Again, Commerce would not know what indicia to look for in searching for usage or even what records, databases, or supporting documentation we would need to examine to effectively conduct the verifications (*i.e.*, without a complete set of laws, regulations, application and approval documents, and administrative measures, Commerce would not even know what books and records the China Ex-Im Bank maintains in the ordinary course of its operations). Essentially, Commerce is unable to verify in a meaningful manner what little information there is on the record indicating non-use, pursuant to section 776(a)(2)(D) of the Act, with the exporters, U.S. customers, or at the China Ex-Im Bank itself, given the refusal of the GOC to provide the 2013 revisions and a complete list of correspondent/partner/intermediate banks.

Commerce finds that the missing information concerning the operation and administration of the EBC Program is necessary because its absence from the record demonstrates why usage information provided by the GOC and the respondents cannot be verified and, thus, why there is a gap in the record concerning usage. Commerce has explained how the gap in the record (*i.e.*, missing information concerning the operation and administration of the EBC Program) prevents complete and effective verification of the customers' certifications of non-use. A very similar rationale has been accepted by the CIT in its review of *Solar Products Final Determination*. Specifically, in *Changzhou Trina 2016*,[141] given similar facts, the CIT found Commerce reasonably concluded it could not verify usage of the EBC Program at the exporter's facilities absent an adequate explanation from the GOC of the program's operation (*i.e.*, "absent a well-

[139] *See, e.g.*, *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014), and accompanying IDM at Comment 9.
[140] *See Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014), and accompanying IDM at 31 (confirming that the GOC solely owns the China Ex-Im Bank).
[141] *See Changzhou Trina 2016*, 195 F. Supp. 3d at 1350 (citing *Solar Products Final Determination* and accompanying IDM at 91-94).

documented understanding of how an exporter would be involved in the application of its customer for an export buyer credit and what records the exporter might retain, we would have no way of knowing whether the records we review at a company verification necessarily include any applications or compliance records that an exporter might have….").[142]

Moreover, we disagree with the GOC that Commerce has not identified any gap in the record resulting from missing information.[143] As an initial matter, we cannot simply rely on the GOC's 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 Yinfeng's 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.

At the very least, even when Commerce has no means of limiting the universe of transactions before it begins verification, Commerce knows what it is looking for when it begins selecting documents or transactions for review. When, because of the GOC's failure to provide complete information, there are no such parameters, or there is no guidance as to what indicia Commerce should look for, it is unreasonable to expect Commerce to hunt for a needle in a haystack – a very large haystack in some instances. As an illustrative example, in the context of a value added tax (VAT) and import duty exemption, Commerce has met with the GOC to discuss how that program works, and in such instances the GOC has been fully cooperative.[144] Therefore, Commerce knows what documents it should see when VAT and import duties are paid and when they are exempted. It knows, in other words, when it has a complete document trace. The GOC, in fact, provides sample documents to help Commerce understand the paper flow pursuant to the program. Commerce can also simply ask to see a VAT invoice or a payment to the Chinese customs service to verify whether VAT and duties were charged and paid. By contrast, we simply do not know what to look for when we examine a loan to determine whether the China Ex-Im Bank was involved, or whether the given loan was provided under the EBC Program, for the reasons explained above.

Finally, Commerce disagrees with Yinfeng that the applied AFA rate of 10.54 percente is not appropriate. We disagree with Yinfeng's suggestion that we should apply as AFA, instead, the 0.19 percent rate calculated in the *Preliminary Determination* for Yinfeng's Policy Lending program, rather than a "preferential loan rate calculated for a different product from an investigation ten years prior."[145] Our practice in investigations is to rely on, as an AFA rate, the

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[142] *Id*.
[143] *See* GOC Case Brief at 3.
[144] *See, e.g.*, *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008), unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM at 10 ("At the verification of Princeway's questionnaire responses …the GOC presented corrections regarding the reported exempted import duties for imported equipment.")
[145] *See* Yinfeng's Redacted Case Brief at 25-26.

highest non-zero rate calculated for the identical program in the investigation. If no such program exists, we then use the rate from an identical program in another CVD proceeding involving the same country. If no such rate exists, the next option is to use the highest, above *de minimis* rate calculated in a "similar/comparable program (based on treatment of the benefit)" in another CVD proceeding involving the same country.[146] Finally, if that rate is not available, Commerce will use the highest calculated rate "from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use."[147] In this investigation, based on the above-listed hierarchy, Commerce determined that the AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program (in the *Coated Paper Amended Final* proceeding), as the AFA rate for the EBC Program.[148] The preliminary rate of 0.19 percent from Yinfeng's Loan program is not the highest rate calculated for a lending program and it was only a preliminary rate. Our AFA hierarchy groups subsidies by the type of benefit involved. Commerce has never been able to analyze fully the existence, amount or type of benefit from the EBC Program, because of the GOC's perpetual non-cooperation. All we know is that the program is a lending program. Therefore, it is appropriate to use another lending program as the basis for the AFA rate. Yinfeng's suggestion that Commerce should apply its own calculated subsidy rate for a lending program ignores the "benefit" aspect of the hierarchy, and instead replaces it with a specificity comparison that is not called for in the statute and has not been utilized by Commerce in applying its AFA hierarchy in the past.[149] Yinfeng's suggestion also diminishes the deterrent aspect inherent in the AFA methodology, which has been upheld in the past.[150] Indeed, Commerce relied on the 10.54 percent AFA rate from *Coated Sheet Amended Final* in both the *Plywood 2017* investigation[151] and in the *Wooden Cabinets*[152] investigation (*i.e.*, wood products) and we remain consistent with those proceedings here. Thus, we continue to find that the 10.54 percent AFA rate for the EBC Program continues to be appropriate pursuant to our AFA hierarchy.

We continue to find that the GOC withheld necessary information that was requested of it and significantly impeded this proceeding. Accordingly, Commerce must rely on facts otherwise available in issuing this final determination with respect to the EBC Program, pursuant to sections 776(a)(1), (2)(A) and (C) of the Act. Specifically, necessary information is not on the record because the GOC withheld information that we requested that was reasonably available to it, which significantly impeded the proceeding. In addition, we find that an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act, because the GOC did not act to the best of its ability in providing the necessary information to Commerce. Additionally, we continue to find that under this program the GOC bestowed a financial contribution and provided a benefit to Yinfeng within the meaning of sections 771(5)(D) and 771(5)(E) of the Act, respectively. Regarding specificity, although the record regarding this program suffers from significant deficiencies, we note that the GOC's description of the program

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[146] *See, e.g.*, *Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 58175 (December 11, 2017), and accompanying IDM at Comment 9.
[147] *Id*.
[148] *See Coated Paper Amended Final*.
[149] *See Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 53473 (November 16, 2017), and accompanying IDM at Comment 24 (*Plywood 2017*).
[150] *See Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").
[151] *See Plywood 2017* IDM at Comment 24.
[152] *See Wooden Cabinets Final* IDM at 7 and Comment 3.

and supporting materials (albeit found to be deficient) demonstrates that through this program, state-owned banks, such as the China Ex-Im Bank, provide loans at preferential rates for the purchase of exported goods from China.[153] Finally, Commerce has found this program to be an export subsidy in past CVD proceedings involving China.[154] Thus, we continue to find that, taking all such information into consideration, the provision of export buyer's credits is contingent on exports within the meaning of sections 771(5A)(A) and (B) of the Act.

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.

Comment 3: Whether the Provision of Electricity for LTAR Is Countervailable

GOC's Case Brief:

- Commerce found that the GOC failed to provide a full explanation regarding the roles and nature of cooperation between the NDRC and provinces in setting electricity prices or that the information on the record only shows that the NDRC continues to play a major role in setting and adjusting prices.[155] Record evidence demonstrates that the provisional government was in charge of setting the electricity price during the POI, not the NDRC. The GOC has fully cooperated and did not withhold any necessary information. As such, Commerce cannot rely on AFA in finding specificity within the meaning of 19 U.S.C. § 1677(5A).
- The GOC has been promoting an electricity market reform since 2015 and, therefore, the NDRC only had an extremely diminished role in setting electricity prices during the POI.[156] As a result of this reform, the local provincial government determines the electricity price based on market principles, *i.e.*, "purchasing cost, transmission prices, transmission losses, and governmental surcharges."[157]
- The NDRC does not determine specific prices for specific provinces and municipalities; rather, it merely collects and reviews the electricity pricing schedules submitted by the provincial governments. The NDRC's role is to review the electricity pricing schedules set by the provincial governments as a check-and-balance system to ensure that the price adjustments follow the macro-economic principles laid out by the NDRC.[158] "The NDRC is not entitled to determine specific prices, even if it disagrees with the prices determined by the provinces and municipalities."[159]

[153] *See* GOC IQR at Exhibit EXPORT-2 and EXPORT-3.
[154] *See, e.g.*, *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 17382 (April 25, 2019), and accompanying IDM at Comment 16.
[155] *See* GOC Case Brief at 7 (citing PDM at 24-25).
[156] *Id.* (citing GOC IQR at 54-55 and Exhibit ELEC-8).
[157] *Id.* (citing GOC IQR at 54).
[158] *Id.*
[159] *Id.*

- The retail electricity rate available to producers like Yinfeng is not set by the central government. Rather, provincial governments formulate the electricity tariff rates of their own provincial areas under the multiple notices issued since the 2015 electricity reform.[160]
- Commerce acknowledged that GOC proffered evidence in showing that the provincial price proposals are no longer applicable, and that the different provincial governments now have the authority to set their own prices pursuant to Notice of NDRC on Lowering Coal-Fired Electricity On-Grid Price and General Industrial and Commercial Electricity Price (Notice 3105 and Notice of National Development and Reform Commission on Adjusting Schedule of Coal-fired Power Generation Grid Purchase Price and Sale Price of Industrial and Commercial Electricity of Each Province (Notice 748).[161]
- Commerce erroneously found that "neither Notice 748 nor Notice 3105 explicitly stipulates that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions." Article 6 of Notice 748 states "{t}he provinces (autonomous regions and municipalities) price department develop and issue specific adjustment plan of electricity price and sales price in accordance with the average price adjustment standards of Annex 1, and report {sic} to our Commission for the record."[162]
- The provincial government only reports the electricity sales price to NDRC for "record", not for "approval." Further, Annex 1 of Notice 748 stipulates certain price adjustments based on policy goals such as to "promot{e} energy conservation and emission reduction." *See* Notice 748, Art. 2. Even with the price adjustment published in Annex 1 of Notice 748, the provincial government is nonetheless in charge of setting the base price and, therefore, the ultimate price, based on market principles.
- Commerce erred in characterizing Notice 3105 as a notice to "direct additional price reductions, and stipulates at Articles II and X, that local price authorities shall implement in time the price reductions included in the Annex, and must report resulting prices to the NDRC" and therefore "indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices."[163] Article II of Notice 3105 states that "large-scale industrial electricity price is not regulated" and that the provincial government "shall formulate and release specific regulation plan of on-grid price and sales price in the province" and report to NDRC for filing.[164] Commerce's claim that these articles show that the NDRC continues to play a seminal role in setting electricity prices is totally unsubstantiated.
- Contrary to Commerce's finding, the only remaining role for the NDRC is to provide, at a macro level, principles to guide each province to establish the electricity sales price and "based on its own coal market and in combination with {sic} other situations."[165]
- Commerce faulted the GOC for not explaining "what actions the NDRC would take in the event of non-compliance with a directed price change," yet the GOC responded both in the initial questionnaire response and supplemental questionnaire response that "the NDRC is not entitled to determine specific prices, even if it disagrees with the prices determined by the provinces and municipalities."[166] The GOC has fully responded to all the questions regarding electricity and demonstrated that the electricity sales price is set by provincial government based on market principles.

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[160] *Id*. at 7-8 (citing GOC IQR at Exhibit ELEC-1 at 1-4).
[161] *Id*. at 8 (citing PDM at 24 and GOC IQR at Exhibit ELEC-4 and ELEC-10; GOC SQR at S-7).
[162] *Id*. (citing GOC SQR at Exhibit S-7).
[163] *Id*. at 9 (citing PDM at 24).
[164] *Id*. (citing GOC IQR at Exhibit ELEC-4).
[165] *Id*. (citing GOC SQR at 14).
[166] *Id*. at 10 (citing PDM at 25 and GOC SQR at 14).

- Before applying AFA, Commerce must find that necessary information is missing on the record as the result of a party's noncooperation.[167] In identifying the alleged "missing information," Commerce claimed that "the GOC failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial government."[168] This is not true.
- With respect to the relationship between provincial tariff schedules and costs, the GOC provided all requested information, and none was discussed or cited in the PDM. In the initial questionnaire response, the GOC explained how the provincial selling price is determined based on the cost of coal.[169] In the supplemental questionnaire, Commerce even stated that the GOC "identified a coal-electricity price linkage mechanism" and requested further documents, which the GOC provided.[170]
- At no point did Commerce call into question the GOC's explanation or ask for further clarification pursuant to 19 U.S.C. §1677m(d). By failing to identify any deficiencies in the GOC's supplemental questionnaire response on the relationship between the provincial electricity price and cost, Commerce accepts the GOC's response as the accurate and complete information, and therefore cannot use it as the basis to apply AFA to the GOC upon closure of the record, *i.e.* in the preliminary or final determination.
- With respect to the missing information of cooperation (if any) in price setting practices between the NDRC and provincial government, the provincial government sets the electricity price taking into account the price adjustment guidance published by the NDRC and reports the price to NDRC for its records. The NDRC has no authority to direct the provisional government to change the reported price. That is the extent of the provincial government's "cooperation" with the NDRC in price setting practices. Commerce has failed to credibly identify any missing information in GOC's responses.

Petitioners' Rebuttal Brief:[171]

- Due to the GOC's failure to provide requested information and cooperate to the best of its ability, Commerce relied on facts otherwise available, with an adverse inference, to find that the GOC's provision of electricity constitutes a financial contribution and is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act, respectively. The GOC failed to demonstrate any reason for Commerce to depart from its preliminary findings and Commerce should continue to find this program to be specific and countervailable in the final determination.
- The GOC is incorrect in its contention that record evidence demonstrates that the provisional government was in charge of setting the electricity price during the POI, not the NDRC, and that the GOC did not withhold any necessary information from Commerce, such that the agency cannot rely on AFA in finding specificity.
- Commerce requested information regarding the roles of provinces, the NDRC, and cooperation between the provinces and the NDRC in electricity price adjustments in order to determine the process by which electricity prices and price adjustments are derived, identify entities that manage and impact price adjustment processes, and examine cost elements included in the derivation of electricity prices in effect during the POI.

[167] *Id*. at 11 (citing U.S.C. §§ 1677e(a) and (b)(1)).
[168] *Id.* (citing PDM at 25).
[169] *Id*. (citing GOC IQR at 3 and Exhibit ELEC-8).
[170] *Id*. (citing GOC SQR at 16-17 & Exhibit S-9).
[171] *See* Petitioner's Rebuttal Brief at 36-40.

- While the GOC claimed that the responsibility for setting prices within each province has moved from the NDRC to provincial governments, the GOC's responses do not fully explain the roles and nature of cooperation between the NDRC and provinces in deriving electricity price adjustments.
- The information the GOC did provide indicates, contrary to the GOC's claim, that the NDRC continues to play a major role in setting and adjusting prices. Both Notice 3105 and Notice 748, which the GOC relies on, direct provinces to reduce prices and also to report the enactment of such changes to the NDRC. The GOC's selective quotations from these documents in an attempt to argue otherwise is unavailing,[172] and the available information indicates that the NRDC continues to play a major role in setting and adjusting prices, as Commerce has repeatedly confirmed in numerous proceedings.[173]
- Commerce found that "both notices indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices, by mandating average price adjustment targets with which the provinces are obligated to comply in setting their own specific prices."[174]
- The GOC claims that the provincial governments report the price to the NDRC for filing or records purposes and that they do not need the NDRC's approval in setting the price. However, the GOC failed to fully respond to requests for information in this regard as well. Specifically, Commerce requested that "the GOC explain how the NDRC monitors compliance with the price changes directed in Notice 748 and what action the NDRC would take were any province not to comply with the directed price changes," but the GOC "failed to explain what actions the NDRC would take in the event of non-compliance with a directed price change."[175]

Commerce's Position:

We continue to find that the GOC did not act to the best of its ability in providing requested information with respect to the Provision of Electricity for LTAR program. Specifically, as explained in the *Preliminary Determination*, the GOC did not provide complete responses to Commerce's questions regarding the alleged provision of electricity for LTAR.[176] In the original questionnaire, Commerce requested information from the GOC that was needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act and whether such a provision was specific within the meaning of section 771(5A) of the Act. The GOC did not provide this necessary information. Consequently, in the *Preliminary Determination*, we relied on facts available pursuant to sections 776(a)(1) and (2)(A) and (C) of the Act because necessary information was missing from the record and because the GOC withheld information that was requested of it for our analysis and significantly impeded the proceeding. Furthermore, we applied AFA pursuant to

[172] *Id*. (citing GOC's Case Brief at 8-10).
[173] *Id*. (citing *Steel Propane Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 29159 (June 21, 2019), and accompanying IDM at 68; *Certain Non-Refillable Steel Cylinders from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 53323 (August 28, 2020), and accompanying PDM at 23-25; and *Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 68848 (October 30, 2020), and accompanying PDM at 17-24).
[174] *Id*. at 38 (citing PDM at 24).
[175] *Id*. at 39 (citing to PDM at 24).
[176] *See Preliminary Determination* PDM at 23-25.

section 776(b) of the Act because the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information.[177] Consistent with the Act and our practice, Commerce is continuing to apply AFA with respect to the provision of electricity for LTAR for this final determination.

Commerce requested information regarding the derivation of electricity prices at the provincial level, the procedure for adjusting retail electricity tariffs, and the role of the NDRC and the provincial governments in this process.[178] Specifically, we asked how increases in cost elements led to retail price increases, the derivations of those cost increases, how cost increases were calculated, and how cost increases impacted final prices.[179] Additionally, we requested that the GOC explain, for each province in which a respondent or cross-owned company is located, how increases in labor costs, capital expenses, and transmission and distribution costs are factored into Provincial Price Proposals, and how cost element increases and final price increases were allocated across the province and across tariff end-user categories.[180]

As explained in detail in the *Preliminary Determination*, the GOC failed to fully explain the roles and nature of the cooperation between the NDRC and the provincial governments in deriving electricity price adjustments. It therefore impeded the proceeding, pursuant to section 776(a) of the Act. As a result of the GOC's refusal to provide the requested information and unwillingness to cooperate, Commerce was unable to evaluate whether the electricity rates included in the electricity schedules submitted by the GOC were calculated based on market principles.[181] Accordingly, Commerce applied facts available with an adverse inference to the determination of the appropriate benchmark.[182] Specifically, because the GOC provided the provincial electrical tariff schedules, Commerce relied on this information for the application of facts available. Furthermore, it is significant that the GOC could have provided the requested information, but elected not to do so. Therefore, we have also determined that the GOC failed to act to the best of its ability, pursuant to sections 776(b) of the Act. Accordingly, as adverse facts available, Commerce identified the highest rates amongst the provincial electrical tariff schedules for each reported electrical category and used those rates as the benchmarks in the benefit calculations.[183]

The GOC argues that its electricity tariffs are not specific because the same price is charged to each type of end-user within a province, but Commerce's analysis and its specificity determination are not based on the conclusion that different end-users receive different rates within the province. Rather, given the GOC's withholding of requested information and failure to cooperate by not acting to the best of its ability to comply with Commerce's information request, Commerce must rely on the facts available on the record, with appropriate adverse inferences, in making both its specificity and benchmark determinations. As we explained in the *Preliminary Determination*, we requested information on how Chinese provincial electricity rate schedules are calculated and why they differ, and this information could have contributed to Commerce's analysis of an appropriate benchmark for the benefit calculation for this program.[184]

[177] *Id.*
[178] *Id.*
[179] *Id.*
[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] *Id.*
[184] *Id.*

The GOC's failure to provide complete responses to our questions regarding this program is the reason Commerce is applying AFA in this case with respect to the selection of an electricity benchmark. The GOC's refusal to answer Commerce's questions completely with respect to the roles and nature of cooperation between the NDRC and the provinces in deriving electricity price adjustments and failure to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves, leaves Commerce unable to carry out a specificity analysis. The GOC has failed to explain, in this and previous cases, the reason for how Chinese provincial electricity rate schedules are calculated and why they differ, claiming without support that the provincial governments set the rates for each province in accordance with market principles.[185]

For the reasons stated above, we continue to find this program countervailable and to rely on our findings in the *Preliminary Determination* that the GOC's provision of electricity confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. The GOC failed to provide certain information regarding the relationship (if any) between provincial tariff schedules and cost, as well as information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments, as requested by Commerce. Therefore, for the final determination, we continue to apply facts available with an adverse inference with regard to this program, including with respect to our selection of the benchmark for determining the existence and amount of the benefit.[186]

Comment 4: Calculation of the Electricity for LTAR Benefit

A. Whether Commerce Must Correct Alleged Ministerial Errors in the Preliminary Determination

*Yinfeng's Case Brief***:**

- Commerce should correct the error in the benefit calculation for "Provision of Electricity for LTAR" in the *Preliminary Determination*. When calculating the total payment in the electricity benefit for the maximum demand,[187] Commerce made an error in the values it used for July 2019 through December 2019. Commerce should correct the formula in the appropriate cells in the spreadsheet to properly account for the correct payment.[188]

No other interested party commented on this issue.

[185] *See, e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34828 (July 23, 2018) (*Solar Cells from China 2018*), and accompanying IDM at Comment 1; *see also Cast Iron Soil Pipe Fittings from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 60178 (December 19, 2017), unchanged in *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 32075 (July 11, 2018) (*Soil Pipe Fittings*).

[186] *See* Section 776(a)-(b) of the Act.

[187] We note that the basic fee - maximum demand was revised to the basic fee - transmission capacity (refer to Comment 4b for discussion).

[188] *See* Yinfeng's Redacted Case Brief at 17-18.

Commerce's Position:

The regulations define a ministerial error as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial."[189] In reviewing the record, we re-examined our calculation of Yinfeng's electricity benefit by reviewing the 'total payment' column of the 'basic fee – maximum demand' benefit chart.[190] Based on the information on the record and Yinfeng's allegation,[191] we find that we unintentionally duplicated Yinfeng's reported payment data.[192] Thus, we agree that Commerce made an unintentional clerical error in the preliminary calculation of Yinfeng's electricity benefit and that the total payment values used in the basic fee calculation for July 2019 through December 2019 were incorrect in the *Preliminary Determination*. For the final determination, we have adjusted the benefit calculation so that the total payment values accurately reflect Yinfeng's submission of monthly electricity payments.[193]

B. Whether Commerce Should Revise the Basic Fee Benefit Calculation Using Yinfeng's Post-Preliminary Revision of its Data

Yinfeng's Case Brief:[194]

- Mangrove incorrectly reported the "basic fee-transformation capacity" electricity payments as "basic fee-max demand." These payments were benchmarked for the *Preliminary Determination* as "basic fee-max demand" payments.
- Yinfeng corrected the error in a post-preliminary supplemental questionnaire response; Mangrove was charged on a 'transformer capacity' basis, as is evident by examining the basic fee charged in Mangrove's monthly electricity bills and the electricity rates provided.[195]
- Commerce should use the 'transformer capacity' as a benchmark price rather than the 'max demand' for the final determination.

No other interested party commented on this issue.

Commerce's Position:

We agree with Yinfeng that the electricity benefit calculation benchmark for maximum demand basic fees should be changed to the transformer capacity fees, as reported in Mangrove's revised electricity purchase chart that Yinfeng submitted in its NSA questionnaire response.[196] Yinfeng noted in its case brief that Mangrove discovered it had inadvertently translated the "basic fee-transformation capacity" as "basic fee-max demand," and Mangrove actually paid fees for the "transformer capacity." Yinfeng argues that this incorrect translation is demonstrated by

[189] *See* 19 CFR 351.224(f).
[190] *See* Memorandum, "Preliminary Calculations for Fujian Yinfeng Imp & Exp Trading Co., Ltd.," dated June 8, 2020 (Yinfeng Preliminary Calculation Memorandum) at Attachment II. We note that the basic fee-maximum demand was revised to the basic fee-transmission capacity. *See also* Comment 4b for discussion.
[191] *See* Yinfeng's Redacted Case Brief at 17-18.
[192] *Id*.
[193] *See* Yinfeng Final Calculation Memorandum.
[194] *See* Yinfeng's Redacted Case Brief at 18.
[195] *Id.* at 18 (citing Yinfeng NSA Response at 11 and Exhibit SQ4-6).
[196] *See* Yinfeng's Letter, "Yinfeng's New Subsidy Allegations Questionnaire, Creditworthiness Questionnaire, and the Fourth Supplemental Questionnaire," dated June 25, 2020 (Yinfeng NSA Response) at Exhibit SQ4-6.

examining the basic fee charged in the monthly electricity bills and the electricity rate schedule submitted in Mangrove's IQR.[197] We agree. In comparing the fees Mangrove paid to the electricity tariffs for Fujian Province submitted by the GOC, we find that the record demonstrates that the fees Mangrove paid were equivalent to the transmission capacity basic fees, rather than the maximum demand fees.[198] Accordingly, we have adjusted the electricity for LTAR benefit calculation so that the fees in question are benchmarked against the transmission capacity fees in accordance with Commerce practice.[199]

Comment 5: Whether Individual-Owned Sawn wood and Plywood Suppliers Are Government Authorities

GOC's Case Brief:

- Commerce applied AFA to the GOC and found that all of Yinfeng's sawn wood and plywood producers, including those producers that are owned by individuals, are government authorities within the meaning of 19 U.S.C. § 1677(5)(B). However, record evidence shows that individually and privately-owned input suppliers are not "government authorities" within the meaning of the law.[200]
- In circumstances where, as here, there is no record evidence that prices are controlled by the government and that the respondent's input suppliers are privately owned, Commerce cannot make an adverse finding of government authorities because there is no missing information.[201] Nonetheless, Commerce found that Yinfeng received a financial contribution from government authorities even though Yinfeng purchased inputs from private companies or minority government-owned companies. This determination is unsupported by substantial evidence and should be reversed in the final determination.
- Commerce's reasoning that information regarding the structure and role of the Chinese Communist Party (CCP) in managing the business affairs of companies that are not majority-owned by the government is necessary information because the CCP exerts significant control over economic activities in China is without merit. As the GOC has emphasized before, the CCP is a political party, not a government authority.[202] Political parties in China are independent entities unrelated to governmental functions.
- Commerce relied on incorrect assertions and arbitrary conclusions in the {Placing Documents on the Record Memorandum (aka Public Bodies Memo)} , which is Commerce's own memorandum and was issued in 2012 and without any concrete evidence.[203] The GOC explained in its responses that "it does not agree with the analysis and conclusions in the Public Bodies Memo, and notes that the Public Bodies Memo does not state that the CCP exerts control over private companies through primary party organizations and cannot be the sole basis for Commerce's position on this issue. At most, the Public Bodies Memo expresses uncertainty over the role of primary party organizations in private companies..."[204]

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[197] *See* Mangrove's Letter, "Mangrove Section III Questionnaire Response," dated April 13, 2020 (Mangrove IQR) at Exhibits 10.2 and 10.3.
[198] *See* Mangrove IQR at Exhibit 10.2; *see also* GOC's Letter, "Wood Mouldings and Millwork Products from the People's Republic of China: GOC Section II Questionnaire Response," dated April 13, 2020 at Exhibit ELEC-11.
[199] *See* Yinfeng Final Calculation Memorandum.
[200] *See* GOC Case Brief at 12 (citing GOC IQR at Exhibits Wood-1, Wood-2, Wood-3, PLY-1, PLY-2, PLY-3).
[201] *See* 19 U.S.C. § 1677e(a).
[202] *See* GOC's Case Brief at 12 (citing GOC IQR Exhibit Wood-1 at 8, Exhibit PLY-1 at 8).
[203] *Id.* (citing Memorandum, "Placing Documents on the Record," dated June 8, 2020 (Public Bodies Memorandum)).
[204] *Id*. at 13 (citing GOC IQR at Exhibit WOOD-1 at 10-11).

- The GOC disputes the characterization of the role that CCP party groups and committees, or primary party organizations, play in the management and operation of private companies as outlined in the Public Bodies Memo. Further, there is no basis to claim missing information here because the GOC was responsive regarding the role of the CCP in managing the business affairs of companies that are not majority-owned by the government, which is none.[205] Commerce cannot claim that the record is missing information merely because the GOC's response suggests no control over individual private companies.
- Commerce also faulted the GOC for not providing input suppliers' "articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, articles of association, business group registrations, business licenses, and tax registration documents."[206] Yet, Commerce failed to explain the basis for requesting such voluminous documents for all of the respondent's sawn wood and plywood input suppliers. As the GOC explained, the Enterprise Credit Information Publicity System (ECIPS) was established pursuant to the *Circular of the State Council on Printing and Issuing the Reform Proposals for the Registered Capital Registration System (Guo Fa (2014) No. 7)* for the government to maintain basic information of enterprises and business entities in China.[207]
- The ECIPS is the authoritative evidence of the ownership structure of enterprises in China. As such, the information provided in Exhibits WOOD-2, Exhibit WOOD-3, PLY-2, and PLY-3 is sufficient to demonstrate the ownership status of Yinfeng's sawn wood and plywood input suppliers during the POI. Record evidence sufficiently refutes that individually-owned input suppliers are "government authorities."
- Where the ownership structure evidence clearly shows that a company is owned by private individuals, no room is left for Commerce to speculate, even as AFA, that the company is government-owned. Commerce's request for a massive amount of corporate documents was unreasonable because these documents are not necessary information to make the key determination of GOC ownership.
- As the GOC explained in its responses, the *Company Law of the People's Republic of China* (*Company Law*) regulates the corporate governance of companies in China.[208] The *Company Law* stipulates the position and duty of the shareholder meeting, board of directors, managers and supervisors, but does not confer upon CCP officials any position or power to take part in the management and operation of companies.[209] In other words, record evidence demonstrates that CCP officials have no legal authorization to intervene in or determine the outcome of any of the operations of the input producers when they are individually owned.
- The GOC not only submitted the *Company Law* but also directed Commerce to the specific provisions, namely, Articles 36, 37, 46, 48 and 147 of the *Company Law*.[210] These provisions dictate that a company's shareholders, directors and managers are *solely* responsible for the company's internal operations, and that it is unlawful for external organizations and authorities to interfere. Thus, even if an owner, a director, or a manager of a supplier is a member or representative of any of these organizations, it would not render the management and business operations of the company in which they serve subject to any intervention by the GOC.

[205] *Id*. (citing GOC IQR at Exhibit Wood-1 at 8).
[206] *Id*. at 14 (citing PDM at 18).
[207] *Id*. at 14 (citing GOC IQR at 1, Exhibit GEN-14).
[208] *Id*. at 15 (citing GOC IQR at Exhibit WOOD-1 at 4-5).
[209] *Id*. (citing GOC IQR at Exhibit WOOD-1 at 6-8).
[210] *Id*. (citing GOC IQR at Exhibit WOOD-1 at 12-13).

- There is no record evidence in this investigation indicating that the CCP participates in any way in the private input suppliers' business operations that could support a conclusion that these input suppliers are "authorities." Commerce's alleged "missing information" such as the articles of incorporation, capital verification reports and annual reports is not "necessary information" in determining whether the input suppliers are government authorities. The GOC submitted information on the record that directly establishes the input suppliers' private-ownership structure.

Petitioner's Rebuttal Brief:

- The GOC argues that this government authorities determination is unsupported by substantial evidence and asks Commerce to reverse its preliminary determination in this regard, claiming that record evidence exists to find any input suppliers that are wholly privately-owned by individuals not to be "government authorities" within the meaning of the law.[211] The GOC's arguments are incorrect and Commerce should continue to find Yinfeng's suppliers of sawn wood and plywood to be authorities within the meaning of the statute.
- The GOC failed to fully respond to Commerce's requests for information that would allow the agency to analyze whether the domestic producers providing these inputs to the company respondents are authorities within the meaning of section 771(5)(B) of the Act.[212]
- The GOC failed to provide the requested articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, articles of association, business group registrations, business licenses, and tax registration documents, despite multiple opportunities to provide this requested information.
- The GOC did not provide other requested documentation, including company by-laws, annual reports, and articles of association, even after Commerce notified the GOC that its initial response with respect to ownership information was deficient with respect to plywood and sawn wood suppliers. Similarly, the GOC did not provide a full response to Commerce's request for information regarding the structure and role of the CCP in managing the business affairs of companies that are not majority-owned by the government, and the membership status of persons identified as owners of enterprises supplying Mangrove with sawn wood and plywood, again despite multiple requests from Commerce for the relevant information.[213]
- Commerce explained in the *Preliminary Determination*, and has reiterated in numerous recent proceedings,[214] that the available information indicates that the CCP exerts significant control over economic activities in China, and "an entity with significant CCP presence on its board or in management or in party committees may be controlled such that it possesses, exercises or is vested with governmental authority."[215]
- The information requested regarding the role of CCP officials and CCP committees in the management and operations of Mangrove's input suppliers not majority-owned by the

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[211] *See* Petitioner's Rebuttal Brief at 40-41 (citing GOC's Case Brief at 12).
[212] *Id.* at 41 (citing PDM at 17).
[213] *Id.* at 42 (citing PDM at 19).
[214] *Id.* at 42 (citing *Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23760 (May 23, 2019) (*Quartz Surface Products from China*), and accompanying IDM at Comment 4; *Certain Fabricated Structural Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 5384 (January 30, 2020) (*Structural Steel Final Determination*), and accompanying IDM at Comment 5; *Polyester Textured Yarn from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 84 FR 63845 (November 19, 2019) (*China Yarn*), and accompanying IDM at Comment 5.a).
[215] *Id*. at 42 (citing *China Yarn* at Comment 5.a.).

government was necessary for Commerce's analysis of whether the input producers are authorities within the meaning of section 771(5)(B) of the Act. Because the GOC refused to provide this information, despite multiple requests, Commerce appropriately relied on AFA and should continue to do so for the final determination.

- It is not the GOC's role to determine what information is relevant to the agency's determination; it is the GOC's role to provide the information requested, such as input suppliers' articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, articles of association, business group registrations, business licenses, and tax registration documents.[216]
  - The GOC's assertion that it responded to Commerce's inquiry on the role of the CCP in managing the business affairs of companies that are not majority-owned by the government, and that there is no missing information, is inaccurate.[217] The GOC appears to equate providing any response with providing the information actually requested. As Commerce explained in the *Preliminary Determination*, the GOC did not fully respond to the agency's requests for information in this regard.[218]
  - The GOC continues to assert that the ECIPS is the authoritative evidence of the ownership structure of enterprises in China, and thus that the information it provided is sufficient to demonstrate the ownership status of Yinfeng's sawn wood and plywood input suppliers and the substantial amount of information requested – and the GOC repeatedly refused to provide – is not necessary information.[219]
  - As another example, the GOC claimed that it could not obtain certain information requested because there is no central government database to search for the requested information on whether any individual owner, member of the board of directors, or senior manager is a government or CCP official and the industry and commerce administration does not require companies to provide such information.[220] As Commerce has confirmed in other cases, "when examining whether CCP officials are among a company's owners, senior managers, or directors, or if a CCP primary organization such as a party committee is embedded in the company's structure, the entity possessing direct knowledge of these facts is the CCP (or the GOC) itself."[221]
- Because the GOC refused to provide substantial information regarding the producers of sawn wood and plywood, necessary information for Commerce to analyze whether the producers providing these inputs to the company respondents are authorities within the meaning of section 771(5)(B) of the Act is not available on the record. The GOC admits that it did not provide requested information, and in doing so it impeded this investigation and did not put forth the maximum effort to comply.[222] As such, Commerce should continue to rely on AFA to find that the non-majority, government-owned domestic producers of the sawn wood and plywood purchased by Mangrove are authorities and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

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[216] *Id*. (citing *ABB*, 355 F. Supp. 3d at 222 (CIT 2018) ("Commerce prepares its questionnaires to elicit information that it deems necessary to conduct a review, and the respondent bears the burden to respond with all of the requested information and create an adequate record."))
[217] *Id.* at 43 (citing GOC's Case Brief at 14).
[218] *Id.* (citing PDM at 19).
[219] *Id.* at 44 (citing GOC Case Brief at 14).
[220] *Id*. at 44 (citing GOC SQR at Exhibit S-3 at 18).
[221] *Id.* (citing *China Yarn* at Comment 5.a).
[222] *Id.* at 45 (citing *Nippon Steel*, 337 F.3d at 1382 (Fed. Cir. 2003)).

Commerce's Position:

For the reasons detailed below, for this final determination, we continue to find, based on AFA, that the producers which supplied plywood and sawn wood to Mangrove are "authorities" within the meaning of section 771(5)(B) of the Act and, thus, that such producers provided a financial contribution in supplying these inputs to the respondent within the meaning of section 771(5)(D)(iii) of the Act.

As discussed in the *Preliminary Determination* under "GOC – Whether Sawn Wood and Plywood Producers Are "Authorities,'" in order to analyze whether the domestic producers that supplied plywood and sawn wood to the respondent are "authorities" within the meaning of sections 771(5)(B) of the Act, we sought information regarding the ownership of the input producers identified by the respondent. Such information included articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, articles of association, business group registrations, business licenses, and tax registration documents. Moreover, we requested information concerning whether any individual owners, board members, or senior managers involved with these producers were government or CCP officials and the role of any CCP primary organization within the producers.[223] Specifically, to the extent that the owners, managers, or directors of a producer are CCP officials or are otherwise influenced by certain CCP-related entities, Commerce requested information regarding the means by which the GOC may exercise control over company operations and other CCP-related information.[224] Commerce explained its understanding of the CCP's involvement in China's economic and political structure in current and past China CVD proceedings,[225] including why it considers the requested information regarding the CCP's involvement in China's economic and political structure to be relevant.

In its initial response, the GOC merely confirmed the identity of companies that produced and supplied sawn wood and plywood to Mangrove,[226] as reported by Mangrove.[227] In sum, while the GOC confirmed the identities of the producers/suppliers of sawn wood and plywood inputs, it did not provide all the information requested of it in the Initial Questionnaire. The GOC's response to our requests for information, or lack thereof, is fully described in the *Preliminary Determination*. Regarding the input producers identified by Mangrove, we asked the GOC to provide information about the involvement of the CCP in each of these companies, including whether individuals in management positions are CCP members, in order to evaluate whether the privately-owned input producers are "authorities" within the meaning of section 771(5)(B) of the Act. While the GOC provided a long narrative explanation of the role of the CCP, when asked to identify any owners, members of the boards of directors, or managers of the input producers who were government or CCP officials during the POI, the GOC explained that

[223] *See* PDM at 19 (citing GOC SQR at 11 and Exhibits S-3 and S-4).
[224] *See* Commerce CVD Questionnaire at Input Producer Appendix.
[225] *See Citric Acid 2012* IDM at Comment 5; *see also* Additional Documents Memorandum at Attachment I.
[226] *See* GOC IQR at 22-30, 33-43, and Exhibits WOOD-1, WOOD-2, WOOD-3, WOOD-4, PLY-1, PLY-2, PLY-3, and PLY-4.
[227] *See* Mangrove IQR at 18-19 and Exhibits 9.1 and 9.2. Yinfeng reported it did not make domestic purchases of inputs. *See also* Yinfeng IQR at 17.

there is "no central governmental database to search for the requested information."[228] However, in prior CVD proceedings, we found that the GOC was able to obtain the information requested independently from the companies involved, and that statements from company respondents, rather than from the GOC, were not sufficient.[229] Commerce has already addressed the fact that the GOC merely resubmitted the input producer appendix for sawn wood and the input producer appendix for plywood revised only for electronic formatting and legibility, but did not cure the defects of the original appendices which were lacking articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, articles of association, business group registrations, business licenses, and tax registration documents.[230]

As explained in the *Preliminary Determination*, we understand that the CCP exerts significant control over economic activities in China.[231] Thus, Commerce continues to find, as it has in prior CVD proceedings,[232] that the information requested regarding the role of CCP officials and CCP committees in the management and operations of the respondents' privately-owned input producers is necessary to its determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. As explained above, however, the GOC failed to respond to Commerce's questions requesting information regarding the CCP's role in the ownership and management of Mangrove's input producers. Therefore, Commerce continues to determine, in accordance with sections 776(a)(1), 776(a)(2)(A), and 776(a)(2)(C) of the Act, that necessary information is not available on the record, that the GOC has withheld information that was requested of it, and that the GOC significantly impeded this proceeding. Thus, we are continuing to rely on "facts available" in making our final determination. Moreover, we continue to determine, in accordance with section 776(b) of the Act, that the GOC failed to cooperate to the best of its ability to provide us with requested information regarding the CCP's role in the ownership and management of Mangrove's input producers. Consequently, an adverse inference in selecting from among the facts otherwise available is warranted.

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[228] *See, e.g.*, GOC IQR at Exhibits WOOD-1 and PLY-1 as revised in GOC SQR at Exhibit S-3 (resubmission of IQR Exhibit WOOD-1) and Exhibit S-4 (resubmission of IQR Exhibit PLY-1), containing the Input Producer Appendices for sawn wood and plywood revised for formatting and legibility reasons. However, in its SQR, the GOC provided the following single sentence in response to a six-part question regarding the sawn wood industry: "As stated in the IQR, there has been no such data collected or compiled by the authorities in general or on an industry-specific basis for sawn wood and continuously shaped wood." The six-part question requested information regarding the sawn wood and continuously shaped wood industry including: (a) the total number of producers; (b) the total volume and value of Chinese domestic consumption of sawn and continuously shaped wood; (c) the total volume and value of Chinese domestic production of sawn and continuously shaped wood; (d) the percentage of domestic consumption accounted for by domestic production; (e) the percentage of total volume and (separately) value of domestic production that is accounted for by companies in which the GOC maintains a majority ownership or a controlling management interest, either directly or through other Government entities; (f) provide a list of companies that meet the criteria outlined in (e). If the share of total volume or value of production that is accounted for by the companies is less than 50 percent, provide the following additional information, (f)(i) The percentage of total volume and value of domestic production that is accounted for by companies in which the GOC maintains some, but not a majority, ownership interest or some, but not a controlling, management interest, either directly or through other Government entities, (f)(ii) list of the companies that meet the criteria under (i) above, and (f)(iii) A detailed explanation of how it was determined that the GOC has less than a majority ownership or less than a controlling interest, including identification of the information sources relied upon to make this assessment.

[229] *See Citric Acid 2012* IDM at Comment 5.

[230] *See* PDM at 18 (citing GOC SQR at Exhibits S-3 and S-4.).

[231] *Id.* at 19.

[232] *See, e.g.*, *Wooden Cabinets Final* at Comment 6; *see also Citric Acid 2012* IDM at Comment 5.

In addition, we disagree with the GOC that it provided Commerce with sufficient information to determine whether any of Mangrove's input producers are privately-owned entities. We explained in the *Preliminary Determination* that the GOC's responses to the Input Producer Appendix for the inputs being investigated were deficient, and that the information supplied from its ECIPS was not sufficient for our analysis of whether the input producers identified by the company respondents are authorities under the Act.[233] While the GOC asserted that the information provided from ECIPS was sufficient for our analysis, it is for Commerce, not the GOC, to determine what information is necessary in order for Commerce to complete its analysis.[234] For the reasons described above, we find that the GOC failed to provide information necessary for us to analyze whether Mangrove's input producers are authorities.

Therefore, we find that the GOC withheld necessary information that was requested of it and that we must rely on facts available in conducting our analysis of Mangrove's input producers.[235] As a result of incomplete responses to Commerce's questionnaires, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, we determine that the GOC withheld information, and that an adverse inference is warranted in selecting from the facts available.[236] As AFA, we find that CCP officials are present in each of Mangrove's privately-owned input producers as individual owners, managers and members of the boards of directors, and that this gives the CCP, as the government, meaningful control over the companies and their resources. As explained in the Public Bodies Memorandum, an entity with significant CCP presence on its board, or in management, or in party committees, may be controlled such that it possesses, exercises, or is vested with governmental authority.[237] Thus, for the final determination, we continue to find that the input producers of plywood and sawn wood which supplied Mangrove are "authorities" within the meaning of section 771(5)(B) of the Act.

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[233] *See* PDM at 17-19 ("In its initial and supplemental questionnaire to the GOC, Commerce requested certain information be provided with respect to the producers of sawn wood and plywood, including percentages of government ownership, articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, articles of association, business group registrations, business licenses, and tax registration documents…the GOC simply resubmitted the input producer appendix for sawn wood/continuously shaped wood and the input producer appendix for plywood revised only for electronic formatting and legibility, but did not cure the defects of the original appendices…We noted in our supplemental questionnaire that the GOC's response with respect to ownership information, as requested in the input producer appendix, was deficient with respect to plywood and sawn wood, and again asked for the information requested in the initial questionnaire; in response, the GOC again claimed that the information previously provided by the ECIPS was a sufficient demonstration of the ownership status of the domestic companies that supplied sawn wood and plywood to Mangrove during the POI").

[234] *See ABB*, 355 F. Supp. 3d at 1222 ("Commerce prepares its questionnaires to elicit information that it deems necessary to conduct a review, and the respondent bears the burden to respond with all of the requested information and create an adequate record.")

[235] *See* section 776(a)(2)(A) of the Act.

[236] *See* section 776(b) of the Act.

[237] *See, e.g.*, Public Bodies Memorandum at 33-36, and 38.

Comment 6: Whether Commerce Should Countervail Imported Sawn Wood Purchased from Domestic Trading Companies

Yinfeng's Case Brief:

- Commerce should not include Yinfeng's import purchases of sawn wood from market economy (ME) suppliers. Yinfeng did not purchase any inputs domestically and imported some sawn wood from ME countries during the POI.[238]
- Yinfeng reported these purchases in full compliance with the questionnaire response but stated its understanding that these purchases should not be included in the calculation.[239] Yinfeng purchased sawn wood directly from ME foreign producers and suppliers that cannot be considered a GOC authority. Yinfeng provided information on both the ME supplier and ME producer. These purchases cannot be considered to be under any GOC program for purchasing sawn wood at LTAR.
- It is Commerce's practice that inputs sourced from ME suppliers are not countervailable.[240]

Petitioners' Rebuttal Brief:[241]

- Yinfeng contends that Commerce should not include its reported purchases of sawn wood that were purchased directly from ME suppliers. To the extent that Commerce agrees with Yinfeng, the agency should continue to calculate a subsidy rate for all sawn wood purchases made by Yinfeng's cross-owned affiliate, Mangrove, based on information reported in Mangrove's initial questionnaire response.

Commerce's Position:

Contrary to Yinfeng's argument, Commerce did not include Yinfeng's direct imports of sawn wood in its subsidy calculation, because Yinfeng directly imported sawn wood and "resold them to Mangrove, and Mangrove excluded those purchases" from its response.[242] Mangrove, however, did report sawn wood purchases from domestic suppliers, and provided the names and addresses of those suppliers of sawn wood.[243] Mangrove even argued the issue in the context of in its questionnaire response, stating that:

> there are no radiata pine species in China, therefore suppliers would have imported the radiata pine before processing or trading them to Mangrove. Therefore, we submit that Mangrove could not have received benefits under this program for such purchases of radiate pine sawn wood, and, therefore, the Department should exclude those purchases of radiata pine sawn wood purchase in the subsidy calculation.[244]

However, Mangrove did not provide any evidence that it directly imported sawn wood from a ME supplier.[245] Further, based on Mangrove's own response, stating that "suppliers would have

[238] *See* Yinfeng's Redacted Case Brief at 18-19 (citing Yinfeng IQR at 17).
[239] *Id.* at 19 (citing Yinfeng IQR at Exhibit 7).
[240] *Id*. (citing *Structural Steel Final Determination* IDM at Comment 13).
[241] *See* Petitioner's Rebuttal Brief at 34 (citing Yinfeng's Letter, "Mangrove Section III Questionnaire Response," dated April 13, 2020 at Exhibit 9.1 (Mangrove IQR)).
[242] *See* Mangrove IQR at 18.
[243] *Id.* at 18 and Exhibit 9.1.
[244] *Id*. at 19.
[245] *Id.* at Exhibit 9.1 (containing a list of all POI purchases of sawn wood, the supplier names and addresses).

imported the radiate pine before processing or trading them to Mangrove,"[246] the record demonstrates that Mangrove did not directly import any sawn wood from ME producers or suppliers. Thus, Commerce's understanding of Yinfeng's argument is that Yinfeng believes Commerce should exclude Mangrove's sawn wood purchases obtained from a domestic reseller that imported sawn wood from a ME supplier of sawn wood. However, Commerce disagrees with this argument. In the *Preliminary Determination*, Commerce determined that the GOC:

> did not provide complete responses to our requests for information with respect to sawn wood and plywood producers… including requests for information pertaining to ownership or management by CCP officials. Such information is necessary to our determination of whether the input producers are authorities within the meaning of section 771(5)(B) of the Act. Therefore, we determine that necessary information is not available on the record, and that the GOC withheld information that was requested of it with regard to the input purchases by Mangrove, and impeded this investigation.[247]

Further, Commerce found "the information requested regarding the role of CCP officials and CCP committees in the management and operations of *Mangrove's input suppliers not majority-owned by the government is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act*."[248] The GOC did not provide that information.[249] As a result, we found that necessary information is not available on the record, and that the GOC withheld information that was requested of it with regard to the input purchases by Mangrove, and impeded this investigation.[250] Therefore, as AFA, we preliminarily determined that the non-majority government-owned domestic producers of the sawn wood and plywood purchased by Mangrove are "authorities" within the meaning of section 771(5)(B) of the Act, and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.[251] Furthermore, we re-affirmed that determination *supra* in Comment 5.

With regard to whether trading companies are "authorities," we determined in *Citric Acid 2011* and other CVD proceedings, that when a government's financial contribution, *e.g.*, the provision of a good, is made through non-respondent trading company suppliers that purchase the input at issue, we attribute all of the benefit to the respondents who purchase the input from the trading company suppliers, in order to capture the full subsidy.[252] Commerce's practice in this regard

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[246] *Id.* at 19.
[247] *See* PDM at 19.
[248] *Id.* (emphasis added).
[249] *Id.*
[250] *Id.*
[251] *Id.* at 20.
[252] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014), and accompanying IDM at Comment 3; *see also Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review: 2011*, 79 FR 108 (January 2, 2014) (*Citric Acid 2011*), and accompanying IDM at Comment 5; *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying IDM at 10 (referencing *Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company - Specific Reviews: Certain Softwood Lumber from Canada*, 69 FR 75917 (December 20, 2004), and accompanying IDM at Comment 47).

has been affirmed by the CIT.[253] In such instances, when the price paid by the producer of subject merchandise is less than the benchmark price, the producer receives a benefit when it purchases these government-provided goods and, accordingly, receives these inputs for LTAR. Accordingly, we adopted this same approach in the instant review with respect to inputs produced by "authorities" that Mangrove acquired through trading companies. As noted above, we find that the certain "authorities" have provided a financial contribution (provision of a good) to the trading companies and, therefore, the existence of a financial contribution is not in doubt. Thus, the issue of whether the trading companies' sales of the inputs at issue constitute a countervailable subsidy hinges on whether the prices they charged conferred a benefit upon Mangrove. As noted in the "Analysis of Programs" section of the *Preliminary Determination*,[254] we determined, and continue to find, that the prices Mangrove paid to the trading companies for the inputs at issue are less than the benchmark prices and, thus, the transactions conferred a benefit in the form of a provision of a good for LTAR.

Therefore, for the purposes of this final determination, Commerce has decided that any Chinese supplier of sawn wood, whether or not that domestic supplier imported the goods from a ME producer/supplier, is an authority within the meaning of section 771(5)(B) of the Act. Consequently, Mangrove's purchases of sawn wood from domestic suppliers are included in the benefit calculation.

Comment 7: Whether the Provision of Primer, Including Gesso, for LTAR Program Was Unlawfully Expanded

Yinfeng's Case Brief:[255]

- Commerce unlawfully expanded the Provision of Primer, Including Gesso, for LTAR **(**primer for LTAR) program to include the materials used by the respondent to produce acrylic polymer, which Mangrove does not use as a primer but as a raw material to produce gesso.
- Commerce may only calculate a benefit for a program that it has initiated upon based on allegations that meet the requirements to find a countervailable benefit for that program. Commerce did not initiate an investigation on acrylic polymer under section 771(a) of the Act, 19 CFR 351.301(2)(iv), or 19 CFR 351.311, and lacks the authority to determine if a benefit is conferred for purchases of acrylic polymer.
- The petitioner only made subsidy allegations regarding, "Primer, Including Gesso," for LTAR; it made no allegations of financial contribution, specificity, or benefit under sections 771(5)(D)(iii) of the Act or 771(5A)(D) of the Act regarding acrylic polymer.[256]
- The petitioner provided data under Harmonized Schedule (HS) subheadings[257] 3209.10 and 3209.90 to demonstrate that Chinese producers of millwork products were likely receiving "discounted gesso and other primers." These HS subheadings only cover paint and do not cover acrylic polymer.[258]

[253] *See Guangdong Wireking Housewares & Hardware Co. v. United States*, 900 F. Supp. 2d 1362, 1380 (CIT 2013) ("The GOC provided a financial contribution to private trading companies…A benefit was conferred upon {respondent} through the provision of wire rod from said trading companies.")
[254] *See* PDM at 36-37.
[255] *See* Yinfeng's Redacted Case Brief at 2-8.
[256] *Id.* at 3 (citing NSA Submission).
[257] "HS" subheading refers to the global Harmonized Schedule, while "HTS" refers specifically to the schedule used for U.S. imports of goods. Thus, when referring to import data for non-U.S. countries, the correct terminology is HS for the schedule subheadings.
[258] *Id.* at 4.

- For this LTAR program, the petitioner referenced only "gesso and primer," which was repeated throughout the NSA submission .[259]
- Yinfeng provided information in its responses demonstrating that acrylic polymer is not primer and cannot be used as a primer.[260]
- Mangrove's acrylic polymer supplier provided a certification that the product it sold Mangrove is a water-based acrylic polymer that in primary form falls under HS 3906.90, which cannot be used as a primer without further processing and is one of the materials used to produce gesso.[261]
- The record establishes that acrylic polymer on its own is a chemical binder and must be further processed to be used as a primer or gesso. Articles provided by both the petitioner and Yinfeng contain language describing acrylic polymer as a substance used in coatings and paints, but not as a paint or coating by itself. Other articles submitted by the petitioner discuss acrylic paint primer, which is also not the same as straight acrylic polymer.[262]
- Acrylic polymer has a different HS classification than paint, indicating that it is substantially transformed when made into a paint or a primer.[263]
- Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures dictates that investigations may not be initiated based on simple assertions unsubstantiated by relevant evidence with regard to the existence, amount, and nature of a subsidy. There was no new subsidy allegation or initiation on a program specific to acrylic polymer and, therefore, Commerce should not calculate a benefit for the respondent's purchases of acrylic polymer in the final determination.
- In *PSF from China*, Commerce did not investigate or calculate a subsidy rate on the upstream raw materials in a similar situation. Commerce should not expand the investigation to include raw materials used to produce the input for LTAR and should follow the clear language of the program alleged and Commerce's previous practice.[264]

GOC's Case Brief:[265]

- Commerce unlawfully expanded the primer for LTAR program. Commerce may only calculate a benefit for an alleged program that meets the requirements to find a countervailable benefit and never initiated on a program including acrylic polymer. Commerce therefore lacks the authority to determine that purchases of acrylic polymer confer a benefit.
- Throughout the petitioner's NSAs in regard to every evidentiary burden and Commerce's questionnaires to the GOC and the respondent, the alleged program only concerned 'primer, including gesso' for LTAR.[266]

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[259] *Id.* at 5.
[260] *Id.* at 5-6 (citing Yinfeng NSA Response at 2; Yinfeng's Letter, "Yinfeng Rebuttal Comments to Petitioner's Comments on Yinfeng's NSA Questionnaire Response," dated July 10, 2020 at 2-3; Yinfeng's Letter, "Supplemental New Subsidy Allegations Questionnaire," dated August 17, 2020 (Yinfeng NSA Supplemental Response) at 2; Yinfeng's Letter, "NSA Factual Information," dated September 25, 2020.
[261] *Id.* at 5 (citing Yinfeng NFI Submission at Exhibit 8).
[262] *Id.* at 5-6 (citing Yinfeng NFI Submission at Exhibits 4-6).
[263] *Id.* at 6 (citing Yinfeng NFI Submission at Exhibit 7).
[264] *Id*. at 7-8 (citing *Fine Denier Polyester Staple Fiber from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 51396 (November 6, 2017) (*PSF from China*), and accompanying IDM at Comment 4 ("The Hailun companies reported only self-produced or foreign purchases of PTA during the POI, and we did not calculate a subsidy rate for these purchases.")).
[265] *See* GOC Case Brief at 16-20.
[266] *Id.* at 16 (citing NSA Submission at 8-11 and Exhibit 15).

- Commerce did not state it was initiating a LTAR program for acrylic polymers when issuing supplemental questionnaires to the GOC and Yinfeng regarding primer and gesso, or when it issued a supplemental questionnaire to the GOC on the acrylic polymer industry.[267]
- Under section 702(a) of the Act, 19 CFR 351.301(2)(iv), and 19 CFR 351.311, Commerce only investigates and measures benefits for an alleged program. Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures dictates that investigations may not be initiated on simple assertion, unsubstantiated by relevant evidence of the existence, amount, and nature of a subsidy. Commerce failed to initiate on a program specific to acrylic polymers.
- In *PSF from China*, Commerce did not investigate the upstream raw materials of a self-manufactured input alleged to be provided at LTAR for a similar program. Commerce has a precedent of not expanding its investigation to include these raw materials and should follow its previous practice.[268]

Petitioner's Rebuttal Brief:[269]

- The record establishes that acrylic polymers can be used as a primer without further processing. Commerce was correct in including Yinfeng's acrylic polymer purchases in its primer for LTAR benefit calculations and should continue to include those purchases in the final determination.
- Despite being provided multiple opportunities to do so, Yinfeng failed to provide any information regarding the specific acrylic polymer that Mangrove purchased or the production processes used to apply acrylic polymer as a primer. Without sufficient information on the record, Commerce has no basis to exclude Mangrove's purchases.[270]
- Record evidence demonstrates that acrylic polymer can be used as primer in the production of subject merchandise. Yinfeng's claims that acrylic polymer is a chemical binder and must be further processed to use as a primer or gesso are factually incorrect.[271]
- Furthermore, Yinfeng exclusively relied on the description of HS 3906.90.9000 to identify the type of acrylic polymer Mangrove purchased. The U.S. Customs rulings Yinfeng provided show that U.S. Harmonized Tariff Schedule (USHTS) Subheading 3906.90 can include acrylic polymers mixed with other substances. Yinfeng therefore failed to rebut the petitioner's evidence that acrylic polymer can be used as a primer in the production of subject merchandise.[272]
- Even in the circumstance that Commerce determines that Mangrove's purchases of acrylic polymer are not captured in the investigation of the primer for LTAR allegation, Commerce has the authority under 19 CFR 351.311(b) to investigate a subsidy practice discovered

[267] *Id.* at 17-19 (citing GOC's Letter, "Countervailing Duty Investigation, New Subsidy Allegations Questionnaire for the Government of the People's Republic of China," dated June 11, 2020 at 7-11; Yinfeng's Letter, "Countervailing Duty Investigation, New Subsidy Allegations Questionnaire, Creditworthiness Questionnaire, and Third Supplemental Questionnaire for Fujian Yinfeng Imp & Export Co., Ltd.," dated June 11, 2020 at 3; Yinfeng NSA Response at 2 and Exhibit SQ4-1; GOC's Letter, "GOC Supplemental Questionnaire Response," dated July 6, 2020 at 12-21 and Exhibits PRIMER-1 - PRIMER-5; Yinfeng NSA Supplemental Response at 1-2; and GOC's Letter, "GOC Second Supplemental NSA Questionnaire Response," dated September 15, 2020 at 2-4).
[268] *Id.* at 19-20 (citing *PSF from China* and accompanying IDM at Comment 4 ("{c}ompanies reported only self-produced or foreign purchases of PTA during the POI, and we did not calculate a subsidy rate for these purchases.")).
[269] *See* Petitioner's Rebuttal Brief at 4-11.
[270] *Id.* at 5-6 (citing, generally, Yinfeng NSA Supplemental Response; Yinfeng NFI Submission).
[271] *Id.* at 7 (citing Post-Prelim Decision Memorandum at 12 (citing Petitioner's Letter, "Submission of Factual Information Regarding Acrylic Polymer," dated September 24, 2020 (Petitioner NFI Submission) at Exhibits 1-3)).
[272] *Id.* (citing Yinfeng NSA Supplemental Response at 3, Exhibit SQ5-2; and Yinfeng NFI Submission at Exhibit 7).

during an investigation and, therefore, to analyze whether acrylic polymer purchases were made at LTAR.

- Commerce developed a complete record regarding the respondent's acrylic polymer purchases and calculated a subsidy rate. It is clear that Commerce devoted "sufficient time" within the meaning of 19 CFR 351.311(b) to the issue and provided Yinfeng with both notice of its intent to evaluate the countervailability of Mangrove's acrylic polymer purchases under 19 CFR 351.311(d), as well as ample opportunities to provide information and make arguments.[273]

Commerce's Position:

For the final determination, we continue to find that Yinfeng's acrylic polymer purchases should be included in the primer for LTAR program. As we stated in the Post-Prelim Decision Memorandum, evidence on the record indicates that acrylic polymers can be used as primer without further processing. Accordingly, for the final determination, we continue to consider Yinfeng's purchases of acrylic polymers during the POI to be purchases of primer and properly included as part of the input purchases countervailed in the primer for LTAR program.[274]

After initiating our investigation of the provision of primer for LTAR,[275] Commerce requested factual information from parties to determine if acrylic polymer, as a stand-alone product, could be considered to be or used as a primer. In response, the petitioner provided industry definitions and products for sale that generally indicated that single-ingredient acrylic polymers, such as those Mangrove purchased, were considered primers by industry standards and used as a coating for wood products.[276] Yinfeng argued that acrylic polymer could not be used as a primer without further processing; however, Yinfeng only discussed the further processing of Mangrove's acrylic polymer purchases for use in gesso that is undertaken in its own production process, and did not provide factual support for its assertions.[277] While we agree with Yinfeng and the GOC that Commerce's practice, upheld by the CIT, is to not trace how benefits are used by companies and thus the purchases would not be countervailed if they were only used as a raw material for gesso,[278] we find this argument to be moot because the product could be used as an input without further processing. For this reason, we also find *PSF from China* is not analogous to this proceeding. In *PSF from China*, Commerce determined that the respondent only self-produced or imported an input and that it should not be countervailed.[279] In this investigation, record evidence supports a determination that the domestically purchased acrylic polymer could be used as an input, specifically as a primer, in addition to its function as a raw material to produce gesso.

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[273] *Id.* at 9-11.
[274] *See* Post-Prelim Decision Memorandum at 13.
[275] *See* NSA Memorandum.
[276] *See* Post-Prelim Decision Memorandum at 12 (citing Petitioner NFI Submission at Exhibits 1-3).
[277] *See* Yinfeng's Redacted Case Brief at 5 (citing Yinfeng NFI Submission at Exhibits 1-7).
[278] *See, e.g.*, *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1296 (CIT 2010), aff'd 678 F.3d 1268, 1274. (Fed. Cir. 2012); *MTZ Polyfilms, Ltd. v. United States*, 659 F. Supp. 2d 1303, 1314-1315 (CIT 2009) ("{a}s long as the subject merchandise could be produced, it is immaterial whether and how such subject merchandise is actually produced."); *Royal Thai Government v. United States*, 441 F. Supp. 2d 1350, 1363-1364 (CIT 2006); and *Samsung Electronics Co. v. United States*, 973 F. Supp. 2d 1321, 1329-1330 (CIT 2014).
[279] *See PSF from China* at Comment 4.

Yinfeng provided a signed statement from Mangrove's supplier stating that the acrylic polymer Mangrove purchased could not be used as a primer, but did not provide supporting documentation for this assertion; beyond this document, we did not receive any evidence demonstrating that the product Mangrove purchased did not fall within the auspices of the primer input.[280] Yinfeng maintains that the acrylic polymers Mangrove purchased could not be used as a primer without further processing, but there is no information on the record regarding either the specifics of the product purchased or what processing would be required for a non-gesso primer. After multiple requests for information, the only factual information on the record regarding the product Mangrove purchased was its HS subheading and the corresponding description.[281] In the Post-Prelim Decision Memorandum, we found that Yinfeng's arguments regarding the HS subheadings only demonstrate that the acrylic polymer purchased was not classified as paint. The CBP rulings provided by Yinfeng demonstrated that products under USHTS 3906.90 could include both granular inputs and finished products such as resin solutions, gels, or aqueous dispersions that could be used as additives, sealants, or coatings.[282] Accordingly, we continue to find that Yinfeng's reporting of its purchases under this HS subheading was not conclusive of the product's usability as a primer.

We disagree with Yinfeng that the industry definitions on the record provide conclusory evidence that acrylic polymer is not a primer. In its case brief, Yinfeng cites to third-party information regarding the production of gesso, as well as information regarding acrylic polymer's use in engineering thermoplastics, coatings for technical textile yarns, paint formulation, specialty polymers and polymer processing, pyrolysis gas chromatography, chain polymerization of vinyl monomers, flame-retarding thermoplastics, and specialty polymers in biomedical applications.[283] None of these applications demonstrate that acrylic polymer cannot be used without further processing. Likewise, the articles provided by the petitioner that Yinfeng cites in its case brief speak to the multitude of uses for acrylic polymer, but not that the product requires processing.[284] For the final determination, we continue to find that evidence on the record supports that single-ingredient acrylic polymer can be used as a primer, and that it is appropriate to include Mangrove's acrylic polymer purchases within the primer for LTAR program.

Because Commerce demonstrated throughout its investigation of the primer for LTAR program that it was examining Mangrove's acrylic polymer purchases as part of the primer for LTAR program, we disagree with the GOC and Yinfeng that Commerce unlawfully initiated on or expanded on a LTAR program for the provision of acrylic polymer. Section 702(c)(1)(A)(i) of the Act outlines the standards for initiating a countervailing duty investigation on the basis of a petition which "alleges the elements necessary for the imposition of a duty under section 701(a) and contains information reasonably available to the petitioner supporting the allegations." The petitioner met the standard of initiation by alleging and providing support documentation that the GOC made a financial contribution through the chemicals industry, of which 'synthetic chemicals' are clearly listed in supporting documentation.[285] While the petitioner did use paint HS subheadings 3209.10 and 3209.90 to allege a benefit, there is no requirement that the petition include an exhaustive list of every type of input that could conceivably be covered by an LTAR

[280] *See* Yinfeng NFI Submission at Exhibit 8.
[281] *Id.* at Exhibit 3.
[282] *Id.* at Exhibit 7.
[283] *See* Yinfeng's Redacted Case Brief at 5 (citing Yinfeng NFI Submission at Exhibits 1-3).
[284] *Id.* (citing Petitioner NFI Submission at Exhibit 1).
[285] *See* NSA Submission at Exhibit 7.

allegation (for example, in wood products cases, Commerce often accepts allegations such as "sawn wood" or "plywood" for LTAR, and does not require the allegation to list every wood species or provide specific data demonstrating that a benefit is provided on a species-specific basis).[286] In other words, the standard for initiation is based on what is "reasonably available" to the petitioner, and does not preclude Commerce from determining the scope of purchases which may be considered inputs for the purpose of calculating a benefit during the course of an investigation. Commerce simply requires that the petition contain reasonably available evidence that a benefit exists through the provision of an input for LTAR, which may consist of data related to a sample of product types. Furthermore, at no point in the investigation did Yinfeng or the GOC seek any form of clarification from Commerce regarding the scope of the program's inputs.

Commerce provided opportunities for both Yinfeng and the GOC to submit information related to the primer for LTAR program and the inclusion of acrylic polymer as a primer input in supplemental questionnaires, including a supplemental questionnaire to the GOC that asked questions specifically in regard to acrylic polymer within the primer for LTAR program.[287] Moreover, in its request for factual information, Commerce specifically stated it was requesting information, "regarding whether or not acrylic polymer can be considered a primer and should be included in Commerce's calculation of the benefit under the primer, including gesso, for less than adequate remuneration program."[288] The record is clear that Commerce did not attempt to investigate the purchase of acrylic polymer for LTAR as its own subsidy allegation at any point; rather, we examined purchases that we determined to be part of the primer for LTAR program. Neither Yinfeng nor the GOC argue that Commerce improperly initiated upon the primer for LTAR program; therefore, we do not consider Yinfeng and the GOC's arguments that Commerce acted unlawfully under Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures and section 702(a) of the Act to be applicable in this case. Because U.S. law, as implemented through the Uruguary Round Agreements Act, is consistent with the WTO obligations of the United States,[289] Commerce has not acted unlawfully or inconsistently with regard to its investigation of the primer for LTAR program. Commerce only determined if certain purchases were inclusive within the language of a properly initiated program.

Finally, Commerce has a practice of including a range of inputs in its investigations of the provision of goods for LTAR when there are unclear distinctions between substances. In *Quartz Surface Products from China*, for example, we ultimately determined that two different types of powders were included in the quartz for LTAR program because there was no evidence on the record demonstrating that silica powder does not qualify as quartz.[290] As we are uncertain of the specific acrylic polymer product purchased by Mangrove beyond the HS code provided, we find that the fact patterns are similar. Without knowing with clear distinction whether the actual

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[286] *See generally Multilayered Wood Flooring Preliminary Results of Countervailing Duty Administrative Review, and Intent to Rescind Review, in Part; 2017,* 85 FR 6908 (February 6, 2020) (*MLWF 2017 Prelim*), and accompanying PDM; *see also Multilayered Wood Flooring From the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2017*, 85 FR 76011 (November 27, 2020) (*MLWF 2017 Final*), and accompanying IDM.

[287] *See* Yinfeng's Letter, "Supplemental Questionnaire for Fujian Yinfeng Imp & Exp Trading Co., Ltd. and Fujian Province Youxi City Mangrove Wood Machining Co., Ltd.," dated August 10, 2020 at 3; *see also* GOC's Letter, "Second Supplemental Questionnaire to the Government of China," dated September 4, 2020, at 3-4;

[288] *See* Memorandum, "Deadline to Submit Factual Information," dated September 22, 2020.

[289] *See*, generally, SAA at 656.

[290] *See Quartz Surface Products from China* IDM at Comment 9.

acrylic polymer purchased could be used as primer, it is consistent with Commerce practice to include these purchases. For these reasons, we continue to include Mangrove's purchases of acrylic polymer in the primer for LTAR program for the final determination.

Comment 8: Whether Zeroing of Negative LTAR Benefits Must Be Eliminated

GOC's and Yinfeng's Case Briefs:[291]

- Zeroing the transactions that were priced higher than the benchmark prevents an accurate calculation of the overall benefits actually received by the respondent, and therefore is contrary to law. In comparing the respondents' purchases under all of the LTAR programs, Commerce set negative benefits (*i.e.*, where the purchase value exceeded the benchmark) to zero.[292] This calculation error is contrary to the statutory and regulatory requirement to determine the overall benefits from all government sales of the goods in question.
- Commerce improperly zeroed these benefits and must correct this methodology and ensure that the adequacy of remuneration is properly determined by taking into account the gross benefit of all purchases of the raw material under LTAR investigation in aggregate.
- The legal provisions' use of "benefit" in the singular and "goods" in the plural indicates that Commerce must determine the overall benefit derived from all government sales of the goods. This requirement is violated if government sales that generate negative benefits are disregarded through "zeroing."[293]
- This practice is also inconsistent with the U.S. WTO obligations because the practice of zeroing certain purchases inflates the overall margin and thereby creates a benefit where there was none.[294]

Petitioners' Rebuttal Brief:

- Offsetting "negative benefits" against positive benefits is not included in the statutory list of permissible offsets. Accordingly, Commerce should reject Yinfeng's and the GOC's arguments in reaching its final determination.
- Yinfeng and the GOC claim that by failing to offset purchases where the benchmark price exceeded the purchase price by purchases where the purchase price exceeded the benchmark price, Commerce violated its legal obligations. According to Yinfeng and the GOC, the fact that both the statute and its own regulations use the word "benefit" in the singular and "goods" in the plural indicates that Commerce must determine the overall benefit derived from all government sales of the goods.[295] This argument is baseless, as Commerce has

[291] *See* GOC Case Brief at 20 and Yinfeng's Redacted Case Brief at 27-28. Because the same law firm represents both the GOC and Yinfeng, the arguments regarding this issue were virtually identical between the GOC Case Brief and Yinfeng's Redacted Case Brief, relying on virtually identical case law and citations. As a result, in the interest of brevity, Commerce did not repeat identical summaries, as the exercise would be redundant and burdensome.
[292] *See* GOC Case Brief at 20 (citing Yinfeng Preliminary Calculation Memorandum).
[293] *Id.* at 20 (citing 19 U.S.C. § 1677(5)(E) ("A benefit shall normally be treated as conferred where there is a benefit to the recipient, including…in the case where goods…are provided, if such goods…are provided for less than adequate remuneration…" and 19 C.F.R. § 351.511(a)(1) ("In the case where goods…are provided, a benefit exists to the extent that such goods…are provided for less than adequate remuneration.")).
[294] *Id.* at 21 (citing Article 14(d) of the SCM Agreement ("the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration")).
[295] *See* Petitioner's Rebuttal Brief at 35 (citing Yinfeng's Case Brief at 27; and GOC's Case Brief at 20).

repeatedly found that a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be offset by negative benefits from other transactions.[296]
- Further, 19 U.S.C. § 1677(6) states that offsets to benefit calculations may be allowed for application fees and deposits paid in order to qualify for or receive a subsidy; any loss in the value of the subsidy resulting from deferred receipt; or, export taxes, duties, and other charges levied on export of merchandise to the United States, specifically intended to offset the subsidy received.

Commerce's Position:

Commerce has addressed and rejected similar arguments to those made by the GOC and Yinfeng in various other proceedings such as *Solar Cells from China 2018* and *2019*[297] and *Softwood Lumber from Canada*.[298] Consistent with Commerce's determinations in those proceedings, we disagree with the GOC and Yinfeng regarding the offsetting of "negative" benefits. The LTAR benefit methodology applied in the *Preliminary Determination*, which compared the actual input/land purchases made by the respondent to a world market/comparative price, is consistent with the regulations and Commerce's practice.[299] We agree with the petitioner that, in a subsidy analysis, a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked or otherwise offset by "negative benefits" from other transactions.[300] There is no offsetting credit for transactions that did not provide a subsidy benefit. Such an adjustment is not contemplated under the statute and is inconsistent with Commerce's practice.[301]

The Act defines the "net countervailable subsidy" as the gross amount of the subsidy less three statutorily prescribed offsets: (1) the deduction of application fees, deposits or similar payments necessary to qualify for or receive a subsidy; (2) accounting for losses due to deferred receipt of the subsidy; and (3) the subtraction of export taxes, duties or other charges intended to offset the countervailable subsidy.[302] Both Congress and the courts have confirmed that these are the only

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[296] *Id*. (citing *Soil Pipe Fittings* and accompanying IDM at Comment 4; *Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Affirmative Determination and Final Determination of Critical Circumstances, in Part*, 82 FR 3282 (January 11, 2017), and accompanying IDM at Comment 8; and *Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73448 (December 12, 2005), and accompanying IDM at Comment 43.

[297] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2016*, 84 FR 45125 (August 28, 2019); *see also Solar Cells from China 2019* IDM at Comment 8; and *Solar Cells from China 2018* IDM at Comment 10.

[298] *See Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017) (*Softwood Lumber from Canada*), and accompanying IDM at Comments 13 and 15.

[299] *See* 19 CFR 351.511(a)(2)(ii); *see also Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Partial Rescission of Countervailing Duty Administrative Review; 2014-2015*, 82 FR 42792 (September 12, 2017), and accompanying IDM at Comment 9.

[300] *See Solar Products from China* at Comment 9; *see also Softwood Lumber from Canada* at Comment 15.

[301] *See Solar Products from China* at Comment 9; *see also Softwood Lumber from Canada* at Comment 15; *Multilayered Wood Flooring from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2015*, 83 FR 27750 (June 14, 2018), and accompanying IDM at Comment 2.

[302] *See* section 771(6) of the Act.

offsets Commerce is permitted to make under the statute.[303] Offsetting the benefit calculated with a "negative" benefit is not among the enumerated permissible offsets. Therefore, we have made no modifications to the benefit calculations for the final determination regarding alleged "negative" benefits.

Comment 9: Whether to Include Land Purchased from an Individual in the Benefits Calculation

Yinfeng's Case Brief:

- Commerce improperly included land that Mangrove purchased from an individual in the benefit calculation. Mangrove purchased this land from a Chinese individual rather than from any level of the GOC.[304]
- This individual previously obtained the property through a public Court Enforcement Auction, where the creditors sought enforcement on the property with the Court because the previous owner owed substantial liability but could not afford to pay the creditors. The Court publicly held the Auction and all parties interested could attend and bid to buy the land, and the land would go to the party that offered the highest price. This individual attended the public Taobao Public Auction and bid with the highest price to buy this property and obtained the property. He subsequently sold the land to Mangrove.[305]
- As this individual obtained the land through public auction and then sold the land to Mangrove at a higher price than he had obtained it, under no circumstance did Mangrove receive any benefit from the GOC in purchasing the land, nor could this individual be recognized as an authority or acting on behalf of any level of the GOC.

No other interested parties commented on this issue.

Commerce's Position:

Commerce disagrees with Yinfeng that land purchased from an individual should be excluded from the benefit calculation for the Provision of Land-Use Rights by the GOC to Encouraged Industries for LTAR program. As we stated in the *Preliminary Determination*, "the GOC still owns all land in China and exercises direct control over the sale of land-use rights and land pricing in the primary market and indirect control in the secondary market."[306]

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[303] *See* S. Rep. No. 96-249, at 86 (1979), reprinted in 1979 U.S.C.C.A.N. 381, 472 ("{t}he list is narrowly drawn and is all inclusive."); *see also Kajaria Iron Castings Pvt. Ltd. v. United States*, 156 F.3d 1163, 1174 (Fed. Cir. 1998) ("we agree that 19 U.S.C. § 1677(6) provides the exclusive list of permissible offsets ...."); *Geneva Steel v. United States*, 914 F.Supp. 563, 609 (CIT 1996) (explaining that section 771(6) contains "an exclusive list of offsets that may be deducted from the amount of a gross subsidy.").

[304] *See* Yinfeng's Redacted Case Brief at 16-17 ((citing Yinfeng's Letter, "Yinfeng Second Supplemental Questionnaire Response," dated May 15, 2020 (Yinfeng SQR) 7-8)).

[305] *Id*. (citing Yinfeng SQR at Exhibit SQ2-10 &11.2).

[306] *See* PDM at 31 (citing *Laminated Woven Sacks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007), unchanged in *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (collectively, *Laminated Woven Sacks Investigation*)) and 39 (citing GOC IQR at Exhibit GEN-13, Chapter III-Article 12).

Chinese land prices are distorted by the significant government role in the market that prohibits private land ownership in China and results in all land being owned by some level of government.[307] In *Laminated Woven Sacks from China*, Commerce verified "that all urban land (industrial and commercial land) is state-owned, and all rural land is collectively owned (agricultural land, residential land, and land used by township enterprises)."[308] Further, whether or not Yinfeng purchased land use rights from an individual, Commerce has confirmed that "due to the nature of the restrictions, the government controls extend not only to the primary market, but to the secondary market as well."[309] Because the GOC exerts indirect control in the secondary market and "land-use rights in China are not priced in accordance with market principles,"[310] there is no reason to exclude any land purchases from the benefit calculation. Commerce has consistently applied this methodology since first addressing it in *Laminated Woven Sacks from China*.[311] Further, Yinfeng has submitted no information or evidence that controverts this analysis. As noted in the "Analysis of Programs" section of the *Preliminary Determination*,[312] we determined, and continue to find, that the price Yinfeng paid for the land is less than the benchmark price and, thus, a benefit was conferred in the form of a provision of land-use rights for LTAR.

Consequently, we made no changes to the benefit calculation for the Provision of Land-Use Rights by the GOC to Encouraged Industries for LTAR program for the final determination.

Comment 10: Provision of Land-Use Rights for LTAR Benchmarks

Yinfeng's Case Brief:[313]

- Commerce should not rely on the 2010 "Asian Marketview Reports" by CB Richard Ellis (CBRE) for Thailand; the record contains contemporaneous world land values from the same CBRE Research as well as from the Malaysia Investment Development Authority that are more suitable.[314]
- The 2010 Thai benchmark extrapolates the price from a single year to the POI, based solely on land prices in 2010. The alternative information placed on the record is contemporaneous with the POI and provides information from a larger, more representative period of time that does not merely follow the inflation index.
- Thailand is no longer considered economically comparable to China. The *Millwork Products from China Antidumping Investigation* considered Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey to be economically comparable to China based on 2018 gross national income (GNI), and *Solar Cells from China AD 2017-2018 AR* discussed that, based on 2017 GNI, Thailand is not comparable to China. The contemporaneous data are data from

[307] *See Laminated Woven Sacks Investigation* IDM at Comment 10 ("…due to the overwhelming presence of government involvement in the land-use rights market, as well as the widespread and documented deviation from the authorized methods of pricing and allocating land, the purchase of land-use rights in China is not conducted in accordance with market principles under a third-tier analysis.")
[308] *Id.*
[309] *Id.*
[310] *Id*.
[311] *See, e.g.*, *Citric Acid 2011* IDM at 27-29; *see also Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008), and accompanying IDM at V.A.2. "Provision of Land for Less Than Adequate Remuneration."
[312] *See* PDM at 38-40.
[313] *See* Yinfeng's Redacted Case Brief at 15-16.
[314] *Id.* at 23 (citing Yinfeng's Letter, "Yinfeng Benchmark Submission," dated May 11, 2020 (Yinfeng Benchmark Submission) at Exhibits 8-10).

Malaysia, Mexico, and Brazil, which are countries considered by Commerce to be economically comparable to China.[315]

Petitioner's Rebuttal Brief:[316]

- Commerce should reject Yinfeng's suggested land benchmark and continue to rely on its standard land benchmark in the final determination. Commerce has consistently used a land benchmark based on industrial land parks in Thailand since it first countervailed land-use rights for LTAR.[317]
- Citing antidumping duty cases that have no effect on Commerce's findings in this countervailing duty investigation, Yinfeng argues that its information concerning a medley of Malaysian land parcels is more contemporaneous and thus provides a more accurate benchmark.
- The record contains a more comparative benchmark which transcends contemporaneity. Further, as Yinfeng acknowledges, Commerce adjusted the Thai land prices used to account for inflation over time, thus rendering the Thai benchmark data contemporaneous.
- Yinfeng fails to cite any case law where Commerce has been overruled on this matter. Consequently, for the final determination, Commerce should continue to use its standard land-use rights benchmark when measuring the adequacy of remuneration.

Commerce's Position:

In our *Preliminary Determination*, we explained that we cannot rely on the use of tier one or tier two benchmarks to assess the benefits from the provision of land-use rights for LTAR in China.[318] Pursuant to the *Laminated Woven Sacks Investigation*,[319] we determined that "Chinese land prices are distorted by the significant government role in that market," and hence, no usable tier one benchmarks exist.[320] We also explained that tier two benchmarks (*i.e.*, world market prices) are also inappropriate to value land in China.[321] As a result, and consistent with past CVD investigations (*e.g.*, *Solar Cells Final Determination* and *Transfer Drive Components from China*),[322] we relied on 2010 prices for land in Thailand contained in CBRE's "Asian Marketview Reports" for use as a tier-three benchmark after considering a number of factors,

[315] *Id.* at 16 (citing *China AD Prelim* PDM at 5; *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 85 FR 7531 (February 10, 2020) (*Solar Cells from China AD 2017-2018 AR*), and accompanying PDM at 15).
[316] *See* Petitioner's Rebuttal Brief at 33-34.
[317] *Id.* at 3 (citing PDM at 32).
[318] *See* PDM at 31-32.
[319] *See Laminated Woven Sacks Investigation* IDM at 15.
[320] *See* PDM at 31.
[321] *Id.*
[322] *See Solar Cells Final Determination* and accompanying IDM at 6 and Comment 11; *see also Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 21316 (April 11, 2016) (*Transfer Drive Components from China*), and accompanying PDM at 13, unchanged in *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination*, 81 FR 75037 (October 28, 2016) (*Transfer Drive Components from China Final*).

including national income levels, population density, and producers' perceptions that Thailand is a reasonable alternative to China as a location for Asian production.[323]

Yinfeng submitted two alternative benchmarks for land prices. The first was CBRE's Global Prime Logistics Rent Report from May 2016, which Yinfeng argued contained more contemporaneous worldwide land rent prices from the same source Commerce has relied upon in prior CVD proceedings.[324] Yinfeng also submitted data for the cost of purchasing industrial land in Malaysia from 2014-2019 from the Malaysia Investment Development Authority (MIDA).[325] In its case brief, Yinfeng argues that Commerce should use one of these benchmarks because they are more contemporaneous with the POI than the benchmark information placed on the record by Commerce.[326] According to Yinfeng, the CBRE Global Prime Rents data contains land values for 2015-2018 and the MIDA Malaysia data provides land values from 2014-2019, while Commerce's benchmark is based solely on land prices in 2010, for which Commerce used an inflation index to extrapolate the price from a single year.[327] Yinfeng maintains that the contemporaneous data it submitted are more representative of world land prices than the CBRE Research Thailand information relied upon by Commerce in this investigation because the values are from a larger, more representative period of time and closer to the POI; likewise, Yinfeng argues that Malaysia provides a more analogous benchmark due to the difference between China's and Thailand's respective GNIs.[328] After examining Yinfeng's proposed land benchmarks, we disagree with Yinfeng and continue to find that world market prices (*i.e.*, tier two) are not appropriate for valuing land in China with respect to CVD examinations.

We explained in the Land Analysis Memorandum that, in selecting a tier two world market price, "Commerce examines the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in-country purchaser."[329] We concluded that "since land is generally not simultaneously 'available to an in-country purchaser' while located and sold out-of-country on the world market, the facts of a given record generally do not permit Commerce to apply a second-tier benchmark for land-use rights. Thus, Commerce finds that land, as an *in-situ* property, does not normally lend itself to be considered under this tier."[330]

In determining to use an external benchmark for valuing land in China under a tier-three benchmark price, we stated that Commerce relied on two important factors in determining whether a country's land prices were suitable benchmarks: (1) the country's geographic proximity to China; and (2) the level of economic development comparable to China.[331] Yinfeng's arguments focus on contemporaneity and the supposed representativeness of world prices. However, neither contemporaneity nor the existence of world prices speaks to the issue

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[323] *See* PDM at 32. The complete history of our reliance on this benchmark is discussed in the above-referenced *Solar Cells Final Determination* IDM. In that discussion, we reviewed our analysis from the *Sacks from China* investigation and concluded the CBRE data remained a valid land benchmark. *See Solar Cells Final Determination* IDM at 6 and Comment 11.
[324] *See* Yinfeng Benchmark Submission at Exhibit 10.
[325] *Id.* at Exhibit 9.
[326] *See* Memorandum, "Asian Marketview Report," dated June 8, 2020 at Attachment I.
[327] *See* Yinfeng's Redacted Case Brief at 15.
[328] *Id.*
[329] *See* Memorandum, "Land Analysis Memo," dated June 8, 2020 at Attachment 1, page 27 (Land Analysis Memorandum).
[330] *Id*.
[331] *Id*. at 30.

of whether Yinfeng's proposed benchmarks represent prices in a comparable setting. In other words, contemporaneity and world market prices are unrelated to a country's proximity to China and the country's level of economic development. For example, Yinfeng's proposed land benchmark contains world market prices from locations such as, *e.g.*, Munich, Germany, Sydney, Australia, and Stockholm, Sweden. We find that locations such as these are not reasonable alternatives to China as locations for Asian production. Further, its submission does not include data that allows us to evaluate these locations' economic comparability with respect to China.

With respect to the MIDA data submitted by Yinfeng, we find that there is insufficient evidence of Malaysia's economic comparability to China to select the MIDA data rather than the 2010 Thai CBRE data as a benchmark. Yinfeng's rationale for utilizing the Malaysia data over the Thailand data was based on arguments of contemporaneity, economic development based on GNI, and Commerce's use of other countries, including Malaysia, for benchmarking purchases in two antidumping cases.[332] However, Yinfeng did not analyze any factors addressed in the Land Analysis Memorandum other than GNI. These factors are crucial to Commerce's analysis in selecting Thailand as a tier-three benchmark country, including the aforementioned population density and producers' perception of comparability. Furthermore, the process of selection of third-country surrogate value benchmarks in antidumping cases is not analogous to tier-three benchmark selection in countervailing duty cases.[333] Yinfeng's argument rests largely on the contemporaneity of the Malaysia data, which does not supersede the need to select an economically comparable country according to 19 CFR 351.511(a)(2)(iii) for a tier-three benchmark, and which Commerce accounted for by adjusting the 2010 Thai data for inflation. Accordingly, for the final determination, and pursuant to our practice,[334] we will continue to value land using indexed prices from "Asian Marketview Reports" by CBRE for Thailand for 2010 as a tier-three benchmark.[335]

[332] *See* Yinfeng's Redacted Case Brief at 16.
[333] *See, e.g.*, *Laminated Woven Sacks Investigation* and accompanying IDM at Comment 11 ("{Commerce} notes that the use of India as a surrogate country for China in antidumping cases does not mean that {Commerce} considers India to be more economically comparable to China. The selection of a surrogate country requires a different additional step and is not the same as the development of benchmark rates for measuring subsidies. In selecting a surrogate country, {Commerce} looks at the list of economically comparable countries and then determines which of them, if any, is a significant producer of products comparable to the subject merchandise. {Commerce} considers all countries on the list to be equally comparable in terms of economic development.").
[334] *See Solar Cells Final Determination* and accompanying IDM at 6 and Comment 11; *see also Transfer Drive Components from China* PDM at 13, unchanged in *Transfer Drive Components from China Final*.
[335] *See* Land Benchmark Data Memo (containing "Asian Marketview Report" pricing data).

Comment 11: Adjustments to Ocean Freight Data

A. Whether Commerce Should Exclude Certain Freight Routes from the Ocean Freight Benchmark Data

Yinfeng's Case Brief:[336]

- Commerce should not rely on the petitioner's ocean freight benchmark information for the LTAR programs because those ocean freight routes are not based upon prevailing market conditions, as described in section 771(5)(E) of the Act and 19 CFR 351.511(a)(2)(iv).
- The Descartes' Norfolk, VA to Tianjin, China freight route for sawn wood and plywood should not be used because the rate is based on a non-standard size container that the petitioner has not demonstrated is consistent with prevailing marketing conditions. Furthermore, this route is not a major shipping route and is not reflective of the market.
- Commerce should not rely on the hypothetical sawn wood and plywood freight routes from New Zealand to China provided by the petitioner. The petitioner calculated a route based on a price-per-mile calculation from another shipping route. This is a hypothetical freight rate and is not a reliable measure of freight costs as distance is not the only factor in determining freight price. Furthermore, these rates also contain atypical charges such as weight cargo and port congestion surcharges.
- Commerce should not accept hypothetical freight rates that are contrary to Commerce's typical practice, as they are not a reliable measure of surrogate freight costs and falsely assume that distance is the only difference between freight costs among trade routes. If Commerce does use hypothetical freight routes, Commerce should also calculate hypothetical rates from the freight data provided by Yinfeng.
- Commerce should not rely on the petitioner's Descartes paint freight routes from Los Angeles to Shanghai and New York to Shanghai. The freight rates for these routes are based on shipments of less than a container load (LCL) and are for a hazardous material, neither of which is reflective of prevailing market conditions. Further, the Descartes New York to Shanghai freight route for paint expired in April 2019 and the validity of the rate is uncertain.
- The Descartes glue freight routes from Columbus, Ohio to Ningbo, China and Los Angeles to Ningbo, China are identical routes with the same tariff code and TLI {Tariff Line Item} number. Commerce should not consider these routes to be separate. Furthermore, these routes are based on shipments of LCL and have additional unusual port congestion surcharges.
- Commerce should utilize only the benchmark data Yinfeng supplied, as these data encompass the busiest ports in the United States and China and are representative of prevailing market conditions, including standard container sizes and shipping loads, with no unusual added charges.

Petitioners' Rebuttal Brief: [337]

- Yinfeng's contention that the Descartes data for ocean freight are based on a nonstandard container size is unfounded and unsupported by information on the record. The petitioner made clear in its benchmark submission that the freight quotes are for standard size containers.

[336] *See* Yinfeng's Redacted Case Brief at 8-15.
[337] *See* Petitioner's Rebuttal Brief at 27-33.

- There is no evidence on the record that the surcharges in the Descartes ocean freight quotes provided for sawn wood and plywood include atypical charges. The weight cargo surcharge is not for overweight cargo but is applied on a metric ton basis regardless of the total weight. Yinfeng provides no support for its claims. Instead, Yinfeng provides information that there are various other fees charged by shipping lines and port authorities.
- Yinfeng has provided no information that the fees shown on the Descartes freight routes are not routine or not reflective of prevailing market conditions under section 771(5)(E) of the Act. Commerce should reject Yinfeng's arguments in the final determination.
- Descartes freight quotes that are not major shipping routes do reflect world pricing, as nothing on the record indicates that any of the inputs provided for LTAR would always be sourced from a busy port. It is reasonable to include freight quotes from a wide spectrum of ports, and Tianjin is listed in information on the record as one of the largest ports in the world.
- Commerce should continue to use the calculated ocean freight rates for New Zealand to China because Commerce should use New Zealand export data to value Yinfeng's purchases of sawn wood and plywood. The petitioner conservatively adjusted the freight rate to account for the shorter distance from New Zealand.
- Commerce should continue to use the petitioner's ocean freight rates for paint, as Yinfeng's assertions that the petitioner's freight rate is not based on a full capacity standard container and involves additional surcharges not incurred in the normal market are not supported by the record.
- Commerce should continue to use the petitioner's ocean freight rates for glue, as Yinfeng's assertion that the petitioner's freight rate is based on a less than full container and that the routes provided by the petitioner are the same, but with the inclusion of additional inland freight, are not supported by the record.

Commerce's Position:

For the final determination, we have excluded certain ocean freight rates submitted by the petitioner that do not reflect prevailing market conditions, according to section 771 (5)(E)(iv) of the Act. 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."[338] The CIT has upheld our application of these adjustments as lawful and in compliance with our regulations.[339]
We agree with Yinfeng that any freight routes that the petitioner derived from other, existing freight routes should be excluded from the benchmark calculation. In the *Preliminary Determination*, we calculated the ocean freight benchmark from all available ocean freight routes on the record, including routes that the petitioner estimated by using other freight rates it placed on the record and calculating by sea distance based on nautical miles.[340] However, Yinfeng argues that the calculated freight rates provided by the petitioner are hypothetical and not a reliable measure of freight costs because distance is not the only difference between freight costs among trade routes.[341]

[338] *See* 19 CFR 351.511(a)(2)(iv).
[339] *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).
[340] *See, e.g.*, Petitioner's Letter, "Benchmark Pricing Information," dated May 11, 2020 (Petitioner Benchmark Submission) at Exhibits 5 and 7.
[341] *See* Yinfeng's Redacted Case Brief at 9-10.

Commerce determined in the *Preliminary Determination* and the Post-Prelim Decision Memorandum that it is appropriate to apply a tier-two benchmark price in measuring the benefit of the four input LTAR programs in this investigation because we have found market distortion in their respective markets.[342] For this reason, we are comparing the government-determined price of the inputs to a world market price because actual market-determined prices are not available. Where there is more than one world market price available on the record, it is Commerce's practice to average the available prices.[343] Commerce's regulations state that "{w}here there is more than one commercially available world market price, {Commerce} will average such prices to the extent practicable."[344] In this particular case, both Yinfeng and the petitioner provided usable world market prices with supporting documentation from shipping sources.[345] Furthermore, Yinfeng provided documentation showing that a variety of factors affect ocean freight costs, demonstrating that the petitioner's use of distance to calculate estimated freight routes did not reflect all the factors affecting shipping costs.[346] Because both parties provided different commercially available world market prices, there is no need to rely on additional derived freight prices that may unnecessarily introduce inaccuracies into the calculation. Thus, for the final determination, we averaged the freight routes on the record that contained supporting documentation of their commercial availability to determine a tier-two benchmark price to compare to the Chinese government price.

Yinfeng also argues all the freight routes submitted by the petitioner should be excluded from the respective benchmark calculations because there is no record evidence to suggest that Yinfeng or another commercial purchaser would have paid the included surcharges and fees.[347] The petitioner's Descartes ocean freight rates contain surcharges such as a weight cargo surcharges and port congestion surcharges.[348] We disagree with Yinfeng that the surcharges in the petitioner's freight routes are not consistent with prevailing market conditions, in accordance with section 771(5)(E) of the Act. While the ocean freight quotes submitted by Yinfeng demonstrate that such surcharges and fees may not be included, they do not demonstrate that such surcharges are never included. Furthermore, the petitioner provided supporting documentation from Descartes that the routes in question include the charges, showing that such rates do exist commercially. The fact that the ocean freight quotes submitted by the petitioner do include such surcharges suggests that the surcharges may or may not be charged by shipping companies depending on the circumstances of the shipment. Moreover, there is no evidence on the record of this investigation to demonstrate that these charges would not be paid. In addition, we note that the petitioner used the same source to obtain this information as Yinfeng did to obtain its ocean freight benchmark data (*i.e.*, Descartes). Yinfeng provided information regarding market conditions for ocean freight, but contrary to Yinfeng's assertions that the charges are unusual and not reflective of prevailing market conditions,[349] information on the

[342] *See* PDM at 21-23; *see also* Post-Prelim Decision Memorandum at 6-8.
[343] *See* 19 CFR 351.511(a)(2)(ii).
[344] *Id.*
[345] *See* Petitioner Benchmark Submission at Exhibit 5; *see also* Yinfeng Benchmark Submission at Exhibits 4 and 5; Petitioner's Letter, "Benchmark Information Concerning New Subsidy Allegations," dated August 31, 2020 (Petitioner NSA Benchmark Submission) at Exhibits 4 and 5; and Yinfeng's Letter, "Yinfeng NSA Benchmark Submission," dated August 31, 2020 (Yinfeng NSA Benchmark Submission) at Exhibit 3.
[346] *See* Yinfeng Rebuttal Benchmark Submission at Exhibit 2.
[347] *See* Yinfeng's Redacted Case Brief at 9.
[348] *See* Yinfeng Rebuttal Benchmark Submission at Exhibits 2-4; *see also* Yinfeng's Letter, "Yinfeng Rebuttal NSA Benchmark Submission," dated September 10, 2020 at Exhibit 3.
[349] *See* Yinfeng's Redacted Case Brief at 9.

record from multiple sources demonstrates that service charges, fees, and fines are factors that can affect freight rates.[350] Because we cannot discount the probity of the ocean freight quotes submitted by the petitioner, we continued to include the freight routes that had surcharges, including additional charges included in the petitioner's ocean freight costs, in our calculation of the benchmark for the final determination.

Sawn Wood and Plywood Freight Route

We disagree with Yinfeng that the Norfolk, VA to Tianjin, China route provided by the petitioner should be excluded from the ocean freight benchmark calculation. Yinfeng argues that the route is inconsistent with prevailing market conditions because it contains atypical surcharges, is not a major shipping route, and has a rate for a high cube shipping container.[351] As discussed above, there is no evidence on the record that the surcharges in question are inconsistent with prevailing market conditions. Likewise, we disagree with Yinfeng that only major shipping routes are consistent with prevailing market conditions. There is no evidence on the record that only major shipping routes would be used by exporters of sawn wood or plywood. Furthermore, information on the record indicates that Tianjin is a major world port.[352] Finally, we disagree with Yinfeng that evidence on the record demonstrates that the route has a rate for a high cube shipping container. The petitioner provided Descartes shipping data demonstrating that the maximum payload weight of the container for the rate was 28,200 kilograms; information on the record demonstrates that this payload weight is equivalent to the maximum payload of a 20-foot standard shipping container.[353]

Adhesives and Primer Freight Routes

We agree with Yinfeng that the four Descartes routes provided by the petitioner to benchmark ocean freight for adhesives and primer should be excluded from the ocean freight benchmark calculation. Yinfeng argues that all four routes are not consistent with prevailing market conditions because they have charges for hazardous material and are shipping LCL.[354] Furthermore, Yinfeng maintains that the New York to Shanghai route for primer should be excluded because it expired on April 20, 2019, and the Columbus, Ohio to Ningbo, China route should be excluded because it shares the same TLI and tariff number as the Los Angeles to Ningbo, China route the petitioner submitted, and is therefore the same route.[355]

We find that the four ocean freight rates provided by the petitioner are routes inconsistent with prevailing market conditions because they reflect a freight rate for LCL. The petitioner's source documentation from Descartes shows that, for all the freight routes in question, the rates are priced on a weight/measure (W/M) basis which are, by inference, associated with an LCLshipping option as opposed to full container load (FCL) normally denoted by "PC" or "per-container" basis.[356] Yinfeng's rebuttal data demonstrate that the basis code, W/M, is associated with LCL freight rates, and, as W/M is also indicated on the petitioner's Descartes freight quotes,

[350] *See* Yinfeng's Letter, "Yinfeng Rebuttal Benchmark Submission & Preliminary Comments," dated May 21, 2020 (Yinfeng Rebuttal Benchmark Submission) at Exhibit 2.
[351] *See* Yinfeng's Redacted Case Brief at 8-9.
[352] *See* Yinfeng Benchmark Submission at Exhibit 6.
[353] *See* Petitioner Benchmark Submission at Exhibits 6 and 8.
[354] *See* Yinfeng's Redacted Case Brief at 11-12.
[355] *Id.* at 12-13.
[356] *See* Petitioner NSA Benchmark Submission at Exhibits 4 and 5.

it is reasonable to conclude that the petitioner's freight quotes, on a W/M basis, are LCL freight rates rather than FCL freight rates.[357] Regardless of whether or not the rebuttal data Yinfeng provided pertain directly to the petitioner's submitted freight routes/rate quotes, the Descartes key of terms would be identical for any freight quote searches conducted by any party.

As discussed above, world market prices under a tier-two benchmark should reflect the price that a firm actually paid or would pay if it imported the product.[358] Shipping LCL, and paying higher freight rates accordingly, would not be consistent with normaal commercial practice and thus we find that the adhesives and primer ocean freight rates submitted by the petitioner do not provide a commercially available freight rate that a firm would actually pay. Accordingly, we have excluded the Los Angeles to Shanghai and New York to Shanghai ocean freight rates for primer and the Columbus, Ohio to Ningbo, China, and Los Angeles, to Ningbo China freight rates for adhesives when calculating the benefits for the sawn wood and continuously shaped wood for LTAR (sawn wood for LTAR), plywood for LTAR, wood glues and adhesives for LTAR, and primer for LTAR programs.[359]

B. Whether Commerce Should Average Freight Data by Shipping Data Source

Yinfeng's Case Brief:[360]

- The method used in the *Preliminary Determination* of averaging data based on which party provided the data is not logical and is contrary to normal Commerce practice. Averaging the data based on the source is more logical as it gives equal weight to the sources.

Petitioners' Rebuttal Brief:[361]

- Commerce should continue to follow the methodology from the *Preliminary Determination* when calculating the average freight routes, rather than first averaging data from each source. Yinfeng provides no compelling reason to change the methodology and no citation to support its claim that it is Commerce's normal methodology to average by source.

Commerce's Position:

Pursuant to 19 CFR 351.511(a)(2)(ii), where there is more than one commercially available world market price, Commerce will average the prices to the extent practicable. We agree with Yinfeng that the methodology of averaging ocean freight rates by the interested party submitting the rates was contrary to our normal practice, but do not agree that averaging data by source, *i.e.* the average of a Maersk average price and Descartes average price, is in accordance with our normal practice. Furthermore, neither Yinfeng nor the petitioner provided evidence that either averaging the data by shipping source or interested party is consistent with Commerce practice. Based on review of prior wood product cases,[362] a simple average of all freight rates on the record that reflect prevailing market conditions best reflects a world market price because it

[357] *See* Yinfeng NSA Benchmark Rebuttal at Exhibit 1.
[358] *See* 19 CFR 351.511(a)(2)(iv).
[359] *See* Yinfeng Final Calculation Memorandum.
[360] *See* Yinfeng's Redacted Case Brief at 8-10.
[361] *See* Petitioner's Rebuttal Brief at 30.
[362] *See, e.g.*, *MLWF 2017 Prelim* PDM at 13-15, unchanged in *MLWF 2017 Final* IDM at Comment 7.

accounts equally for possible freight routes.[363] Therefore, we have revised our calculation to a simple average of all the ocean freight routes submitted by the petitioner and Yinfeng that were not excluded from the benchmark calculation as discussed above[364] in accordance with Commerce practice.[365]

C. Whether to Rely on Maximum Volume Capacity of Containers to Calculate Ocean Freight for Wood Inputs

Petitioner's Case Brief:[366]

- Commerce should calculate the amount of ocean freight to include in the benchmark for sawn wood and plywood by volume in cubic meters rather than weight in kilograms.
- Information on the record provides a maximum volume capacity for standard containers, which would be a more accurate calculation because containers of sawn wood or plywood are full by volume before they reach their maximum weight capacity and it eliminates the need to rely on an imprecise weight-to-volume conversion.[367]

No other interested party commented on this issue.

Commerce's Position:

We agree with the petitioner that because information for the maximum volume of shipping containers exists on the record, there is no need to unnecessarily rely on a density conversion to benchmark ocean freight values. Mangrove submitted its wood purchases in cubic meters and we are able to determine the maximum volume load in cubic meters for each freight route based on the supporting documentation from Descartes or Maersk. Therefore, calculating the ocean freight benchmarks in dollars per cubic meter, which can then be directly applied to the average unit values (AUVs) for wood inputs without relying on a kilogram to cubic meter conversion, is the most precise method of calculation. Accordingly, we adjusted the AUV calculations to reflect the volume of the shipping containers in cubic meters.[368]

Comment 12: Calculation of Mangrove's Creditworthiness

Yinfeng's Case Brief:[369]

- When calculating the premium on the interest rates and default rates for Mangrove's policy loans and receipt of land-use rights in the years 2017 and 2019, Commerce should rely upon the Moody's Default Report released in 2020 submitted by Yinfeng as a benchmark.[370]

[363] *See, e.g.*, *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015) (*Boltless Steel Shelving from China*), and accompanying IDM at Comment 7 ("{T}he best methodology is to calculate a simple average of these {benchmark} prices. To derive the most robust … benchmark possible, we have sought to include as many data points as possible.")
[364] *See* Comment 11a for discussion of ocean freight rates excluded from the benchmark calculation.
[365] *See* Yinfeng Final Calculation Memorandum.
[366] *See* Petitioner's Case Brief at 16.
[367] *Id.* at 16 (citing Petitioner Benchmark Submission at Exhibit 4).
[368] *See* Yinfeng Final Calculation Memorandum.
[369] *See* Yinfeng's Redacted Case Brief at 19-20.
[370] *Id.* at 20 (citing Yinfeng Benchmark Submission at Exhibit 11).

No other interested party commented on this issue.

Commerce's Position:

We agree with Yinfeng that Commerce should rely on the Moody's Default Report for 2020. Pursuant to 19 CFR 351.505(a)(3)(iii), Commerce will normally rely on Moody's study of historical default rates of corporate bond issuers to determine the probabilities of default by uncreditworthy and creditworthy companies. Accordingly, consistent with the regulations and Commerce's practice,[371] we are relying upon the Average Cumulative Issuer-Weighted Global Default Rates, 1920-2019, in the Moody's Default Report for 2020 submitted by Yinfeng to apply a creditworthiness premium to the discount rate when calculating the benefits for certain programs, where appropriate, for the final determination.[372]

Comment 13: Benchmark Data

A. Whether to Rely Exclusively on New Zealand Export Data to Benchmark Sawn wood and Plywood Purchases

Petitioner's Case Brief:[373]

- Commerce should rely on the New Zealand benchmark data submitted by the petitioner for benchmarking sawn wood and plywood purchases because the UN Comtrade data supplied by Yinfeng contains significant unexplained irregularities in HS subheadings 4407.11, 4407.12, and 4412.39, wherein the unit values calculated from the data are identical for every transaction for every month for many countries.
- Benchmark data for the types of sawn wood and plywood purchased by Yinfeng are distorted in the UN Comtrade data from Australia, Canada, Chile, Hong Kong, India, Japan, Malaysia, New Zealand, Philippines, Singapore, and South Africa. It is improbable that these countries have the same pattern of repeating unit prices over many months as a market-driven coincidence that accurately reflects the unit prices of transactions.[374]
- Comparison of the UN Comtrade data provided by Yinfeng to the information obtained from New Zealand exports by the petitioner for HS 4407.11 shows that, unlike the UN Comtrade data, the New Zealand data average unit price varied significantly from month to month. This demonstrates that the UN Comtrade data was erroneous.
- Yinfeng failed to provide any explanation for the irregularities or information that would describe how UN Comtrade obtains its data from each national authority or what processing UN Comtrade does to the data before it is released.

[371] *See, e.g.*, *Wooden Cabinets Final* IDM at Comments 10 and 12.
[372] *See* Yinfeng Final Calculation Memorandum at 5-6 ("provision of land-use rights by the GOC to encouraged industries for LTAR" and "policy loans to the millworks product industry" programs).
[373] *See* Petitioner's Case Brief at 3-14.
[374] *Id.* at 3-4 (citing Yinfeng Benchmark Submission at 1-2; and PDM at 33).

- Commerce has a practice of excluding unusual benchmark data. In *Transfer Drive Components from China* and *Aluminum Extrusions from China*, Commerce excluded portions of benchmarking data it considered to be aberrational.[375]
- Using a single country's export data as an international benchmark is consistent with Commerce practice, such as using Malaysian export data to value wood products from Indonesia because Malaysia's export statistics provide species-specific data for the input in question.[376]
- New Zealand radiata pine export data are robust and provide a fully reflective market price indicative of prevailing market conditions. Radiata pine is only produced commercially in five countries including New Zealand, which represents 37.7 percent of the total export value of radiata pine and maintains a tariff schedule that provides data specific to exported radiata pine.[377]
- Yinfeng's claim that New Zealand is not a top exporter of the sawn wood Yinfeng purchases is inaccurate because the supporting evidence is based on the distorted UN Comtrade data.
- Commerce should use the New Zealand data as the benchmark data because these data are recorded in cubic meters and require no conversion to match Yinfeng's purchases in cubic meters. As the net weight of the wood varies depending upon the moisture, and the moisture content of the wood is not on the record, Commerce should not rely unnecessarily on an imprecise conversion factor.[378]
- The record shows that sawn wood purchases vary widely in density by a significant percentage. Using a single average conversion factor for benchmarking purposes gives distorted results when compared to transaction-specific purchases.[379]
- Information on the record from the Global Trade Information Services, Inc. (GTIS) establishes that 57 out of 65 countries accounting for 98.9 percent of total exports under HS 4407.11 in 2019 report their results in cubic meters; The results for HS subheadings 4407.12 and 4412.39 are similar. GTIS sources its data directly from relevant authorities in each

[375] *Id.* at 4-5 (citing *Transfer Drive Components from China Final* IDM at Comment 7 ("The Department has previously disregarded aberrational data when calculating benchmarks."); *Aluminum Extrusions from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent To Rescind, in Part; 2014*, 81 FR 38137 (June 13, 2016) (*Aluminum Extrusions Prelim*), and accompanying PDM at 63, unchanged in *Aluminum Extrusions from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 81 FR 92778 (December 20, 2016) (*Aluminum Extrusions Final*)).

[376] *Id.* at 7 (citing *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016) (*Uncoated Paper from Indonesia*), and accompanying IDM at Comment 7; *Certain Uncoated Groundwood Paper from Canada: Final Affirmative Countervailing Duty Determination*, 83 FR 39414 (August 9, 2018) (*Groundwood Paper from Canada*), and accompanying IDM at Comment 30; and *Supercalendered Paper from Canada: Preliminary Results of Countervailing Duty Expedited Review*, 81 FR 85520 (November 28, 2016), and accompanying PDM at 32-33 ("To construct benchmarks that match the species and grades of logs purchased by Catalyst in British Columbia, we are using data provided by the petitioner for monthly delivered prices of logs in Washington and Oregon," and "{f}or a benchmark for measuring the adequacy of remuneration for wood chips, we are using U.S. export data from the U.S. Bureau of the Census for wood chips exported from the PNW."), unchanged in final *Supercalendered Paper From Canada: Final Results of Countervailing Duty Expedited Review*, 82 FR 18896 (April 24, 2017) (*Supercalendered Paper from Canada*), and accompanying IDM)).

[377] *Id.* at 8 (citing Petitioner's Letter, "Initial Pre-Preliminary Determination Comments and Submission of Rebuttal Benchmark Information," dated May 21, 2020 at Exhibit 3).

[378] *Id.* at 9 (citing Yinfeng SQR at 10).

[379] *Id.* at 11 (citing Yinfeng SQR at 10-11; and Petitioner Benchmark Submission at Exhibit 4).

exporting company. There is no comparable information from UN Comtrade, and it is not established in the record how UN Comtrade converts its data.[380]

- In previous cases, Commerce has matched sawn wood benchmark data by species to the wood species purchased by the companies, recognizing that the species of a tree is an integral part of the value of the tree. Commerce should value the purchases of radiata pine using export data specific to this input based on the ten-digit HS subheadings specific to that type of pine.[381]

Yinfeng's Rebuttal Brief:[382]

- Commerce should not rely on the New Zealand data the petitioner provided as a benchmark for sawn wood and plywood for LTAR, as the data do not fulfill Commerce's regulatory preferences for benchmarks under 19 CFR 351.511(a)(2)(ii). Prices from New Zealand, a single country, are not world prices and are less representative of world prices that would be available to purchasers in China.
- In *Uncoated Paper from Indonesia*, Commerce resorted to a tier-three benchmark for standing timber because standing timber cannot be traded across borders and chose a single country for log purchases because of the unique circumstances of the Log Export Ban. The unique circumstances of these programs are not applicable to the programs at issue in this case.[383]
- In *Groundwood Paper from Canada* and *Supercalendered Paper from Canada*, parties only submitted regional and state-based benchmarks due to geographical proximity to the input being countervailed.[384]
- While New Zealand is a producer of radiata pine, it does not necessarily follow that New Zealand's export pricing for sawn wood is preferable to a broadly-based world price. The record does not establish that New Zealand is a major exporter and that its pricing is demonstrative of world prices.
- Under HS subheadings 4407.11 and 4407.12, New Zealand accounted for only 8 and 0.0015 percent, respectively, of total world exports. Under HS subheading 4412.33, New Zealand had no exports for five months of the POI.
- Commerce has a practice of relying on export data from all countries as a benchmark for input LTAR programs unless specific circumstances preclude it.[385]
- Despite repeating unit values during the POI from different countries, there is not adequate information to determine that the UN Comtrade data Yinfeng provided are unreliable. Each country total in the data has a unique quantity and a unique value, and the unit value is in range with other AUVs.
- Furthermore, the petitioner only identified the issue with respect to some of the data under HS 4407.11 and not under any other HS code.

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[380] *Id.* at 13 (citing Petitioner Pre-Prelim Comments at Exhibits 3 and 4).

[381] *Id.* at 13-14 (citing *Certain Uncoated Paper from Indonesia: Final Results of Countervailing Duty Administrative Review; 2015-2016*, 83 FR 52383 (October 17, 2018), and accompanying IDM at Comment 3 ("In selecting benchmarks for determining subsidy rates for timber products, Commerce normally relies on species-specific prices, where possible."); *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination*, 75 FR 59209 (September 27, 2010), and accompanying IDM at Comment 8; and *Softwood Lumber from Canada* IDM at Comment 23).

[382] *See* Yinfeng's Rebuttal Brief at 1-6.

[383] *Id.* at 1-2, (citing *Uncoated Paper from Indonesia* IDM at Comment 7).

[384] *Id.* at 2 (citing *Groundwood Paper from Canada* IDM at Comment 30; and *Supercalendered Paper from Canada* IDM at Comment 9).

[385] *Id.* (citing *Beijing Tianhai Indus. Co. v. United States*, 52F.Supp 3d 1351, 1374 (CIT 2015)).

- UN Comtrade is a reputable source of official government statistics and Commerce primarily relies upon its data for LTAR program benchmarks. Asserting that these data are not correct is contrary to Commerce's longstanding practice.[386]
- Reporting data on either a kilogram or cubic meter basis for wood inputs is common and should not affect whether Commerce chooses to use the UN Comtrade data. Yinfeng provided conversions for its purchases, and Commerce made conversions between benchmark values and Yinfeng's reporting unit consistent with Commerce's normal practice.[387]
- Commerce relied on UN Comtrade data for the same two programs (sawn wood for LTAR and plywood for LTAR) in the recent investigation of *Wooden Cabinets*.[388]

Commerce's Position:

We agree with the petitioner that the UN Comtrade data appear to be aberrational for certain countries, but do not agree that Commerce should exclusively rely on the New Zealand data submitted by the petitioner for sawn wood and plywood benchmarks. Under a tier-two, world price benchmark according to 19 CFR 351.511(a)(2)(ii), Commerce seeks "to measure the adequacy of remuneration by comparing the government price to a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question." The regulation outlines that where there is more than one commercially available world market price, Commerce will average the prices to the extent practicable.[389] Commerce's typical practice is therefore to rely on all of the data submitted to construct the most robust benchmark possible.[390]

We agree with Yinfeng that *Uncoated Paper from Indonesia*, *Groundwood Paper from Canada*, and *Supercalendered Paper from Canada* do not reflect circumstances similar to the sawn wood for LTAR and plywood for LTAR programs in this investigation; in those cases, there was compelling information regarding the wood species that required a species-specific benchmark.[391] The petitioner notes that the radiata pine species of sawn wood reported in Mangrove and Yinfeng's wood purchases is only grown in a few countries, and that sawn wood itself has a wide range of densities, but provides no further evidence regarding the properties or characteristics of the radiata pine sawn wood that would necessitate a benchmark price based on species. In fact, evidence on the record suggests that radiata pine sawn wood "is the most widely

[386] *Id.* (citing *MLWF 2017 Prelim* PDM at 14-15 (relying on UN Comtrade data for benchmarks for plywood and veneer); and *MLWF 2016 Final* (relying on UN Comtrade data for benchmarks for plywood and veneer)).
[387] *Id.* at 4-5 (citing *Wooden Cabinets and Vanities and Components Thereof: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 39,798 (August 12, 2019) (*Wooden Cabinets Prelim*), and accompanying PDM at 41).
[388] *Id.* at 5 (citing *Wooden Cabinets Prelim* PDM at 41).
[389] *See* 19 CFR 351.511(a)(2)(ii) (discussing circumstances when there is no useable market-determined price with which to make a comparison to the government price).
[390] *See, e.g.*, *Boltless Steel Shelving from China* IDM at Comment 7.
[391] *See Uncoated Paper from Indonesia* IDM at Comment 7 ("APRIL stresses the importance of identifying a benchmark that corresponds to the type of wood consumed by APRIL, asserting that pulpwood consumed to produce the subject merchandise is fundamentally different than wood logs used for high-value applications such as furniture and flooring manufacture"); *see also Supercalendered Paper from Canada* PDM at 32 ("The construction of a log benchmark consisting of data from the U.S. Pacific Northwest (PNW) is consistent with the Department's prior findings that the lumber species in the PNW are sufficiently similar to those in British Columbia"); and *Groundwood Paper from Canada* IDM at Comment 30.

planted pine in the world," indicating the availability of a reliable world market price.[392] While we acknowledge that most of the wood purchases by the respondent did come from a single species, there is no evidence on the record indicating that the respondent purchasing a different species of wood would result in a substantial pricing difference necessitating a species-specific benchmark.

However, Commerce has a practice of disregarding data that are aberrational.[393] The petitioner presented evidence that for specific countries, under specific HS subheadings, the UN Comtrade data are likely inaccurate. We agree with the petitioner that it is unrealistic that certain countries have identical AUVs for all reported UN Comtrade data. Additionally, the petitioner demonstrated by comparing UN Comtrade data under HS 4407.11 to the New Zealand authority under the same HS code that the UN Comtrade data for New Zealand are inaccurate.[394] Accordingly, we have adjusted the benchmark pricing information to exclude the aberrational UN Comtrade data under HS 4407.11, HS 4407.12, and HS 4412.39 from the eleven countries cited in the petitioner's case brief.[395] Thus, we averaged the data for the remainder of the countries in the UN Comtrade data, for which the petitioner made no specific allegations of abnormality, with the New Zealand data to construct a broad world market price in accordance with 19 CFR 351.511(a)(2)(ii).[396]

B. Whether to Use All Available Sources when Calculating a Density Conversion from Kilograms to Cubic Meters

Petitioner's Case Brief:[397]

- Commerce relied on density conversions for sawn wood provided by the respondent in the *Preliminary Determination*, and did not utilize two sources of density conversions provided by the petitioner. Instead Commerce should use an average of all available sources for the final determination.[398]
- All of the sources on the record are equally valid and derived from third-party sources; there is no basis to select one source over the other.

No other interested party commented on this issue.

Commerce's Position:

We agree with the petitioner that Commerce should rely on all third-party sources of information on the record to calculate a density conversion value for sawn wood. In the *Preliminary Determination*, we relied on a density conversion value provided by Yinfeng from a third-party

[392] *See* Petitioner Benchmark Submission at Exhibit 4.
[393] *See, e.g.*, *Aluminum Extrusions Prelim* and accompanying PDM at 56, n.289 ("Therefore we have adjusted the {benchmark} data by removing the aberrational data related to Estonia from the export data for the months of January, February, and March 2014."), unchanged in *Aluminum Extrusions Final*.
[394] *See* Petitioner's Case Brief at 6-7.
[395] The countries include Australia, Canada, Chile, Hong Kong SAR, India, Japan, Malaysia, New Zealand, Philippines, Singapore, and South Africa. *See* Petitioner's Case Brief at Exhibits 1-3.
[396] *See* Yinfeng Final Calculation Memorandum.
[397] *See* Petitioner's Case Brief at 15-16.
[398] *Id.* at 15 (citing Petitioner's Letter, "Benchmark Pricing Information, dated May 11, 2020 at Exhibit 4).

source, Engineering ToolBox.[399] However, as the petitioner noted in its case brief, the record contains additional density conversion ranges from third-party sources that we did not include in the calculations in the *Preliminary Determination*.[400] Because there are multiple reliable third-party sources of density conversions of wood species on the record, we have, for the final determination, relied on all available density conversion values for the purposes of developing a realistic, average kilogram to cubic meter conversion for the final benefit calculations.[401]

C. Whether HS 4412.32 is Appropriate for Benchmarking Certain Plywood Species Purchases

Petitioner's Case Brief:[402]

- Commerce should reject using HS 4412.32 as a benchmark for plywood because that HS code was eliminated in the 2017 revision for the HS system and no longer exists. Very few countries continued to report data in the HS category during the POI.
- The record clearly establishes that HS 4412.32 was eliminated in the 2017 HS updates, including for China, which ceased importing plywood under HS 4412.32 in 2016 and imported under HS 4412.33 and 4412.34 instead in 2017. Yinfeng incorrectly described the current description of these HS categories and it would be inappropriate to rely on the small amount of data from a few countries.[403]

Yinfeng's Rebuttal Brief:[404]

- Commerce should continue to rely upon the same benchmark data as used in the *Preliminary Determination*. UN Comtrade data show that HS code 4412.32 is still being used despite its discontinuation. There is no reason to disregard the data.
- In *Wooden Cabinets*, Commerce specifically considered whether to rely upon HS 4412.32 and determined it was still appropriate to use the data and that HS subheadings 4412.32 and 4412.39 were most appropriate for plywood.[405]

Commerce's Position:

We disagree with the petitioner's argument that it would be appropriate to exclude HS subheading 4412.32 and only use 4412.33 to calculate the benchmark used for measuring the adequacy of remuneration of Mangrove's purchases of plywood; the record does not support such a finding. The petitioner argues that HS subheading 4412.32 was eliminated in 2017 and very few countries continued to report data in the HS category during the POI.[406] While it is correct that the HS 2017 revised Chapter 44 indicates that HS 4412.32 was eliminated in the Harmonized Tariff System, there is no information on the record that would lead us to conclude that this HS category has been discontinued worldwide.[407] While HS 4412.32 was discontinued,

[399] *See* Yinfeng Preliminary Calculation Memorandum; *see also* Yinfeng's Letter, "Yinfeng Third Supplemental Questionnaire Response," dated May 18, 2020 at Exhibit SQ2-17.
[400] *See* Petitioner's Case Brief at 15 (citing Petitioner Benchmark Submission at Exhibit 4).
[401] *See* Yinfeng Final Calculation Memorandum.
[402] *See* Petitioner's Case Brief at 17-18.
[403] *Id.* ((citing Petitioner's Letter, "Initial Pre-Preliminary Determination Comments and Submission of Rebuttal Benchmark Information, dated May 21, 2020 (Petitioner Pre-Prelim Comments) at Exhibit 7)).
[404] *See* Yinfeng's Rebuttal Brief at 6.
[405] *Id.* (citing *Wooden Cabinets Final* IDM at Comment 8).
[406] *See* Petitioner's Case Brief at 17.
[407] *See* Petitioner Pre-Prelim Comments at 10 and Exhibit 7.

Mangrove's reporting of its own plywood purchases under HS 4412.32, as well as the benchmark UN Comtrade data, indicate that this HS subheading is still in some use.[408] Furthermore, HS 4412.33, which the petitioner argues is the subheading replacing HS 4412.32, is also on the record as a benchmark. As trade for this category of plywood took place under both HS 4412.32 and 4412.33 during the POI, according to the UN Comtrade data, there is no basis for Commerce to rely only on a small amount of data or specific countries to develop the benchmark. This decision is consistent with *Wooden Cabinets*, wherein Commerce considered the use of HS subheading 4412.32 by a respondent and determined that there was no information on the record to conclude that the HS category had been discontinued worldwide.[409] Accordingly, we have continued to use data from HS 4412.32 for the plywood benchmark.

VII. RECOMMENDATION

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

☒ ☐

Agree Disagree

12/28/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[408] *See* Yinfeng SQR at 6-7.
[409] *See Wooden Cabinets Final* IDM at Comment 8.