C-570-123
POI: 1/1/2019 – 12/31/2019
Investigation
**Public Document**
E&C/OI: TP/NC

January 25, 2021

**MEMORANDUM TO:** Christian Marsh
Acting 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 Corrosion Inhibitors 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 corrosion inhibitors from the People's Republic of China (China), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). The petitioner in this case is Wincom, Inc. (the petitioner). The mandatory respondents subject to this investigation are Nantong Botao Chemical Co., Ltd. (Botao) and Jiangyin Delian Chemical Co., Ltd. (Delian). As a result of our analysis, we made changes to the subsidy rate calculations. Below is the complete list of issues in this investigation for which we received comments from interested parties.

Comment 1: Whether Commerce Should Reconsider the Petitioner's Standing to Bring the Investigation
Comment 2: Whether Commerce Should Renew Suspension of Liquidation and Collection of Cash Deposits Prior to the Publication of an Affirmative Determination by the International Trade Commission (ITC)
Comment 3: Countervailability of the Export Buyer's Credit (EBC) Program
Comment 4: Whether Commerce Should Select a Different Benchmark for the Provision of Land-Use Rights for Less Than Adequate Remuneration (LTAR) for Encouraged Industries
Comment 5: Countervailability of the Provision of Electricity for LTAR
Comment 6: Whether the Provision of Ortho Phenylene Diamine (oPDA) for LTAR is Specific
Comment 7: Benchmarks for the Calculation of Inputs for LTAR

## II. BACKGROUND

### A. Initiation and Case History

On July 13, 2020, Commerce issued its *Preliminary Determination*.[1] In the *Preliminary Determination*, Commerce stated that it would subsequently examine whether to initiate an investigation on new subsidy allegations (NSA) petitioner had raised regarding the provision of oPDA for LTAR.[2] In early August, Commerce received requests for a hearing from Botao,[3] Delian,[4] and the petitioner.[5] On August 5, 2020, Commerce initiated an investigation on the NSA of oPDA for LTAR.[6] On August 7, 2020, Commerce issued NSA questionnaires to Botao, Delian, and the Government of China (GOC),[7] and received timely responses in late August.[8] On September 4, 2020, Commerce issued an NSA supplemental questionnaire to the GOC[9] and

[1] *See Certain Corrosion Inhibitors from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 41960 (July 13, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).
[2] *See Preliminary Determination* PDM at 10.
[3] *See* Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Hearing Request," dated August 12, 2020.
[4] *See* Delian's Letter, "Corrosion Inhibitors from China; C-570-123; Request for Hearing," dated August 7, 2020.
[5] *See* Petitioner's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Petitioner's Request for Hearing Pursuant to 19 CFR 351.310(c)," dated August 11, 2020.
[6] *See* Memorandum, "Corrosion Inhibitors from the People's Republic of China: New Subsidy Allegations in Countervailing Duty Investigation," dated August 5, 2020.
[7] *See* Commerce's Letters, "Certain Corrosion Inhibitors from the People's Republic of China: New Subsidy Allegation Questionnaire," dated August 7, 2020; *see also* Commerce's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: New Subsidy Allegation Questionnaire for the Government of China," dated August 7, 2020.
[8] *See* Delian's Letter, "Corrosion Inhibitors from China; C-570-123; NSA Questionnaire Response," dated August 17, 2020; *see also* Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Botao NSA Questionnaire Response," dated August 20, 2020; and GOC's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Government of China's Response to New Subsidy Allegation Questionnaire," dated August 20, 2020 (GOC NSAQR).
[9] *See* Commerce's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: New Subsidy Allegation Supplemental Questionnaire for the Government of China," dated September 4, 2020.

requested benchmark information for oPDA from all interested parties.[10] On September 14, 2020, the petitioner timely filed benchmark information for oPDA,[11] and, on September 21, 2020, the GOC timely responded to the NSA supplemental questionnaire.[12] On October 29, 2020, Commerce issued its Post-Preliminary Analysis regarding oPDA for LTAR.[13]

On November 10, 2020, Commerce directed Customs and Border Patrol to discontinue the suspension of liquidation unless and until a final affirmative determination on this case is published in the Federal Register by the ITC.[14] On November 30, 2020, Commerce issued questionnaires in lieu of an on-site verification for Botao and Delian, including Delian's unaffiliated supplier, Nantong Kanghua Chemical Co., Ltd (Kanghua).[15] On December 7, 2020, Botao and Delian responded to Commerce's in lieu of an on-site verification questionnaires[16] and Delian filed minor corrections.[17] Botao, Delian, the GOC, and the petitioner timely submitted case briefs on December 23, 2020.[18] On January 4, 2021, Botao, Delian and the petitioner timely submitted rebuttal briefs.[19] On January 6, 2021, Botao, Delian and the petitioner withdrew their requests for a hearing.[20]

---

[10] *See* Commerce's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: New Subsidy Allegation Benchmark Submissions," dated September 4, 2020.
[11] *See* Petitioner's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Benchmark Information for New Subsidy Allegation," dated September 14, 2020.
[12] *See* GOC's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Government of China's Response to New Subsidy Allegation Supplemental Questionnaire," dated September 21, 2020.
[13] *See* Memorandum, "Post-Preliminary Analysis in the Countervailing Duty Investigation of Corrosion Inhibitors from the People's Republic of China," dated October 29, 2020 (Post-Preliminary Analysis).
[14] *See* Message No. 82150, "Discontinuation of Suspension of Liquidation in the Countervailing Duty Investigation of Corrosion Inhibitors from the People's Republic of China (C-570-123)," dated November 10, 2020.
[15] *See* Commerce's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Nantong Botao Chemical Co., Ltd. Verification Questionnaire," dated November 30, 2020; *see also* Commerce's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Jiangyin Delian Chemical Co., Ltd. Verification Questionnaire," dated November 30, 2020.
[16] *See* Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Botao Verification Questionnaire Response," dated December 7, 2020; *see also* Delian's Letter, "Corrosion Inhibitors from China; C-570-123; CVD Questionnaire in Lieu of Verification," dated December 7, 2020.
[17] *See* Delian's Letter, "Corrosion Inhibitors from China; C-570-123; Minor Corrections," dated December 7, 2020 (Delian Minor Corrections). We note that these "minor corrections" were part of the information and data requested by Commerce in its in lieu of an on-site verification questionnaire.
[18] *See* Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Case Brief," dated December 23, 2020 (Botao Case Brief); *see also* Delian's Letter, "Corrosion Inhibitors from China; C-570-123; Case Brief of Jiangyin Delian Chemical Co., Ltd.," dated December 23, 2020 (Delian Case Brief); GOC's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Government of China's Affirmative Case Brief," dated December 23, 2020 (GOC Case Brief); and Petitioner's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Petitioner's Case Brief," dated December 23, 2020 (Petitioner Case Brief).
[19] *See* Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Rebuttal Brief Letter," dated January 4, 2021 (Botao Rebuttal Brief); *see also* Delian's Letter, "Corrosion Inhibitors from China; C-570-123; Rebuttal Brief of Jiangyin Delian Chemical Co., Ltd.," dated January 4, 2021 (Delian Rebuttal Brief); and Petitioner's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Petitioner's Rebuttal Brief," dated January 4, 2021 (Petitioner Rebuttal Brief).
[20] *See* Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Withdrawal of Hearing Request," dated January 6, 2021; *see also* Delian's Letter, "Corrosion Inhibitors from China; C-570-123; Withdrawal of Request for Hearing," dated January 6, 2021; and Petitioner's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Withdrawal of Hearing Request," dated January 6, 2021.

## B. Period of Investigation

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

## III. SUBSIDIES VALUATION

## A. Attribution of Subsidies

Our attribution methodology is unchanged from the *Preliminary Determination*.[21] However, in response to our in lieu of an onsite verification questionnaire, Delian submitted changes affecting the weight of each producer's contribution to Delian's exports to the United States during the POI accounted for by each producer.[22] We have incorporated the changes into the calculation of the cumulated benefit of the subsidies provided to Delian, as a trading company, and of the subsidies provided to Delian's producers, pursuant to 19 CFR 351.525(c). For further information, *see* Delian Final Calculation Memorandum.[23]

## B. Allocation Period

The allocation period is unchanged from the *Preliminary Determination*.[24] Pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System,[25] the AUL in this proceeding is 9.5 years. Consistent with Commerce's practice, we have rounded the 9.5 years up to 10 years for purposes of setting the AUL.[26]

## C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for a respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. We identified the denominator used to calculate the countervailable subsidy rate below and in the calculation memoranda prepared for this final determination.[27]

---

[21] *See Preliminary Determination* PDM at 8-9.
[22] *See* Delian Minor Corrections at Exhibit MC-1.
[23] *See* Memorandum, "Countervailing Duty Investigation of Corrosion Inhibitors from China; Post-Preliminary Determination Calculations for Jiangyin Delian Chemical Co., Ltd..," dated January 25, 2021 (Delian Final Calculation Memorandum).
[24] *See Preliminary Determination* PDM at 7.
[25] *See* U.S. Internal Revenue Service Pub 946 (2017), "Appendix B – Table of Class Lives and Recovery Periods."
[26] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review*, 72 FR 43607 (August 6, 2007), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008).
[27] *See* Delian Final Calculation Memorandum; *see also* Memorandum, "Countervailing Duty Investigation of Corrosion Inhibitors from China; Post-Preliminary Determination Calculations for Nantong Botao Chemical Co., Ltd.," dated January 25, 2021 (Botao Final Calculation Memorandum).

### D. Loan Interest Rate Benchmarks and Discount Rates

Commerce made no changes to the loan interest rate benchmarks and discount rates used in the *Preliminary Determination*.[28]

## IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

### A. Legal Standard

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."[29] Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[30] At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that, while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."[31] Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act

[28] *See Preliminary Determination* PDM at 33-36.
[29] *See, e.g.*, *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).
[30] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol. 1 (1994) at 870.
[31] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

to the best of its ability. While the Federal Circuit noted that the "best of its ability standard" does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.[32] The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.[33] Moreover, affirmative evidence of bad faith on the part of a respondent is not required before Commerce makes an adverse inference.[34]

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[35] It is Commerce's practice to consider information to be corroborated if it has probative value.[36] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.[37] However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.[38] Furthermore, Commerce is not required to corroborate any countervailing subsidy rate applied in a separate segment of the same proceeding.[39]

Under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[40]

Commerce relied upon facts available (FA), including AFA, for several findings in the *Preliminary Determination* and Post-Preliminary Analysis.[41] For a description of these findings, *see* the *Preliminary Determination* and Post-Preliminary Analysis. For the final determination, Commerce has made several changes regarding the use of FA and AFA. Please *see* Application

---

[32] *Id*., 337 F.3d at 1382.
[33] *Id*.
[34] *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel*, 337 F.3d at 1382-83.
[35] *See*, *e.g.*, SAA at 870.
[36] *Id*.
[37] *Id.* at 869.
[38] *Id.* at 869-70.
[39] *See* section 776(c)(2) of the Act.
[40] *See* section 776(d)(3) of the Act.
[41] *See Preliminary Determination* PDM at 10-33; *see also* Post-Preliminary Analysis at 3-10.

of AFA sections below, Comment 6, Comment 7B, and Comment 8. Additionally, Commerce continues to apply AFA to three companies – CAC Shanghai Chemical Co., Ltd., Jiangyin Gold Fuda Chemical Co., Ltd., and Xinji Xi Chen Re Neng Co., Ltd. – that did not respond to our quantity and value questionnaires at the outset of the investigation.[42] The rates used as AFA for these three companies are listed in the Appendix to this decision memorandum.

## B. Application of AFA: Provision of Land-Use Rights for LTAR to Encouraged Industries

In the *Preliminary Determination*,[43] we stated that we had not received information necessary to perform an analysis of financial contribution and specificity for this program and that we issued supplemental questionnaire to the GOC addressing the issue for which the due date was after the *Preliminary Determination*. However, we found, as FA, that the GOC's provision of land-use rights constituted a financial contribution under section 771(5)(D)(iii) of the Act and that the program was specific under section 771(5A)(D)(i) of the Act.[44] On July 6, 2020, the GOC responded to Commerce's supplemental questionnaire.[45]

In our supplemental questionnaire, we asked the GOC to provide city, provincial and national laws and regulations affecting the provision of land-use rights, in particular the local laws that would affect the mandatory respondents.[46] In response, the GOC provided provincial laws related to land-use rights but did not provide all the national laws Commerce requested while stating that it had provided the relevant national laws.[47] The GOC also omitted local laws and regulations specifically affecting the authorities involved in the provision of land-use rights to the mandatory respondents.[48] Thus, the GOC did not provide all information necessary for Commerce to properly analyze the program, and we find it necessary to rely on facts available pursuant to section 776(a) of the Act. Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with the request for information when it failed to provide the regulations specifically affecting local authorities or the national law *Urban Real Estate Administration Law of the People's Republic of China*. Consequently, we find that an adverse inference is warranted, pursuant to section 776(b)(1) of the Act. In applying AFA, we determine that the GOC's provision of land-use rights for encouraged industries constitutes a financial contribution through the provision of a good within the meaning of section 771(5)(D)(iii) of the Act, and that the provision of land-use rights is specific within the meaning of section 771(5A)(D)(i) of the Act because it is limited to certain encouraged industries.[49]

## C. Application of AFA: oTDA and Sodium Nitrite Producers are "Authorities"

---

[42] *See Preliminary Determination* PDM at 12-20.
[43] *Id.* at 24-26, "Application of Facts Available: Provision of Land-Use Rights for LTAR to Encouraged Industries."
[44] *Id*. at 24-26, 41.
[45] *See* GOC's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Government of China's Response to Section II First Supplemental Questionnaire," dated July 6, 2020 (GOCSQR1).
[46] *See* Commerce's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Section II Supplemental Questionnaire for the Government of China," dated June 16, 2020 (GOCSQ1).
[47] *See* GOCSQR1 at 1-2 and Exhibit S-1.
[48] *Id*.
[49] *See Preliminary Determination* PDM at 25-26 and 41-42.

In the *Preliminary Determination*,[50] we stated that we had not received information regarding the identity of certain oTDA and sodium nitrite producers, that there was incomplete information on the record to determine whether these producers are "authorities," and that we issued a supplemental questionnaire to the GOC addressing the issue for which the due date was after the *Preliminary Determination*. Consequently, for the *Preliminary Determination*, we found these certain producers to be "authorities" within the meaning of section 771(5)(B) of the Act based on facts available.[51] On July 6, 2020, the GOC responded to Commerce's supplemental questionnaire.[52]

In response to our questions on oTDA and sodium nitrite, the GOC provided similar information for certain companies as it had included in its initial questionnaire response, and also informed Commerce that the information included in Exhibits II.E3.2, II.E4.2, II.E3.3 and II.E4.3 of the GOC's initial questionnaire response were sufficient to "demonstrate ownership status and changes (if any) of all the related input producers during the POI."[53] However, the information in these exhibits provides only a few details regarding the ownership of multiple producers of the inputs, including state-owned corporations, publicly listed corporations, and corporations owned by private individuals, as well as registration information for those producers.[54] Furthermore, the GOC did not complete the "Input Producers Appendix" for any of the producers, nor did the GOC provide information on the Chinese Communist Party (CCP) membership of key individuals.[55] The GOC argued that the requested CCP information is irrelevant.[56]

The information we requested regarding the role of CCP officials in the management and operations of the respondents' oTDA and sodium nitrite producers is necessary for our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. The GOC did not indicate that it had attempted to contact the CCP or that it consulted any other sources. The GOC's responses in prior CVD proceedings involving China demonstrate that it is, in fact, able to access information similar to what was requested in this investigation.[57] Additionally, pursuant to section 782(c) of the Act, if the GOC could not provide any of the requested information, it should have promptly explained to Commerce what attempts it undertook to obtain this information and proposed alternative forms of providing the

[50] *Id.* at 28-30, section "Application of Facts Available: Input Producers are 'Authorities.'"
[51] *Id*.
[52] *See* GOCSQR1.
[53] *See* GOCSQR1 at 7.
[54] *Id.* at Exhibits II.E3.2, II.E4.2, II.E3.3 and II.E4.3.
[55] *Id.* at 7-8.
[56] *Id*.
[57] *See High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying IDM at 13.

information.[58] As we explained in the Public Bodies Memorandum,[59] the CCP exerts significant control over economic activities in China, and we consider the CCP part of the governing structure of China. Thus, we find that the information requested regarding the role of CCP officials and CCP committees in the management and operations of the respondents' oTDA and sodium nitrite producers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act.

Consequently, Commerce considers the GOC's provision of the similar exhibits and written responses for certain companies, as well as references back to exhibits found to be insufficient from the GOCIQR, in response the supplemental questionnaire response for oTDA and sodium nitrite to be insufficient, requiring the use of "facts otherwise available" pursuant to sections 776(a)(1) and (a)(2)(A) and (C) of the Act. Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with the request for information when it provided identical exhibits and responses to those already stated by Commerce to be insufficient. Consequently, we find that an adverse inference is warranted, pursuant to section 776(b)(1) of the Act. In applying AFA, we determine that oTDA and sodium nitrite producers are "authorities" within the meaning of section 771(5)(B) of the Act.

## V. ANALYSIS OF PROGRAMS

### A. Programs Determined to Be Countervailable

#### 1. *Export Buyer's Credit Program*

We have made no changes to our methodology for determining the AFA rate for this program.[60] For further discussion, *see* Comment 3 below. The final *ad valorem* subsidy rate for this program is 10.54 percent *ad valorem* for Botao, Delian, and the non-responsive companies.

#### 2. *Income Tax Reductions for High or New Technology Enterprises*

We have made no changes to our methodology for calculating the *ad valorem* subsidy rate for this program.[61] However, as discussed above in the section "Subsidies Valuation: A: Attribution of Subsidies," Delian submitted changes in response to the in lieu of an on-site verification questionnaire that affect the final *ad valorem* subsidy rate. Consequently, the final

[58] Section 782(c)(1) of the Act states, "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."
[59] *See* Memorandum, "Countervailing Duty Investigation of Corrosion Inhibitors from the People's Republic of China: Placing Documents on the Record," dated March 3, 2020 (Public Bodies Memorandum).
[60] *See Preliminary Determination* PDM at 39-40.
[61] *Id*. at 40.

*ad valorem* subsidy rates for this program are 3.55 percent for Botao, 1.78 percent for Delian and 3.55 percent for the non-responsive companies.

3. *Provision of Land-Use Rights for LTAR to Encouraged Industries*

We have made no changes to our methodology for calculating the *ad valorem* subsidy rate for this program.[62] For further discussion, *see* Comment 4 below. However, as discussed above in the section "Subsidies Valuation: A: Attribution of Subsidies," Delian submitted changes in response to the in lieu of an on-site verification questionnaire that affect the final *ad valorem* subsidy rate. Consequently, the final *ad valorem* subsidy rates for this program are 1.54 percent for Botao, 1.30 percent for Delian and 1.54 percent for the non-responsive companies.

4. *Provision of Electricity for LTAR*

We have made no changes to our methodology for calculating the *ad valorem* subsidy rate for this program.[63] For further discussion, *see* Comment 5 below. However, as discussed above in the section "Subsidies Valuation: A: Attribution of Subsidies," Delian submitted changes in response to the in lieu of an on-site verification questionnaire that affect the final *ad valorem* subsidy rate. Consequently, the final *ad valorem* subsidy rates for this program are 0.65 percent for Botao, 0.58 percent for Delian and 0.65 percent for the non-responsive companies.

5. *Provision of oTDA for LTAR*

As discussed in Comment 7D below, we have made alterations to the benchmark for ocean freight that affect the calculation of the *ad valorem* subsidy rate for this program. For further discussion, *see* Comment 7D below. Additionally, as discussed above in the section "Subsidies Valuation: A: Attribution of Subsidies," Delian submitted changes in response to the in lieu of an on-site verification questionnaire that affect the *ad valorem* subsidy rate. Consequently, the final *ad valorem* subsidy rates for this program are 19.74 percent for Botao, 54.89 percent for Delian and 54.89 percent for the non-responsive companies.

6. *Provision of Sodium Nitrite for LTAR*

As discussed in Comment 7D below, we have made alterations to the benchmark for ocean freight that affect the calculation of the *ad valorem* subsidy rate for this program. For further discussion, *see* Comment 7D below. Additionally, as discussed above in the section "Subsidies Valuation: A: Attribution of Subsidies," Delian submitted changes in response to the in lieu of an on-site verification questionnaire that affect the *ad valorem* subsidy rate. Consequently, the final *ad valorem* subsidy rates for this program are 10.69 percent for Botao, 10.73 percent for Delian and 10.73 percent for the non-responsive companies.

[62] *See Preliminary Determination* PDM at 41-42.
[63] *Id.* at 42-43.

7. *Provision of oPDA for LTAR*

As discussed in Comment 7D below, we have made alterations to the benchmark for ocean freight that affect the calculation of the *ad valorem* subsidy rate for this program. For further discussion, *see* Comment 7D below. Additionally, as discussed above in the section "Subsidies Valuation: A: Attribution of Subsidies," Delian submitted changes in response to the in lieu of an on-site verification questionnaire that affect the *ad valorem* subsidy rate. Consequently, the final *ad valorem* subsidy rates for this program are 14.14 percent for Botao, 12.84 percent for Delian and 14.14 percent for the non-responsive companies.

8. *Other Subsidies*

We have made no changes to our methodology for calculating the *ad valorem* subsidy rate for the following programs and treating them as non-recurring subsidies.[64] Botao stated in its supplemental questionnaire response that the date of approval is accurate based off their records.[65]

1. City-level Subsidy of Science and Technology Bureau
2. Employment Injury Insurance Subsidy
3. Industrial Economic Incentives and Subsidies of 2018
4. Patent Fund Subsidy for the Second Half of 2018
5. Policy Incentives and Subsidies of Jiang'an Town
6. Service Charges of Individual Income Tax
7. Subsidy for Post Stability
8. Subsidy for Removed Boilers
9. Subsidy for Supply and Marketing Cooperative
10. Tax Offsets for Research and Development

For further discussion, *see* Comment 8 below. However, as discussed above in the section "Subsidies Valuation: A: Attribution of Subsidies," Delian submitted changes in response to the in lieu of an on-site verification questionnaire that affect the final *ad valorem* subsidy rate. Consequently, the final *ad valorem* subsidy rates for this program are 0.77 percent for Botao and 0.39 percent for Delian. For the non-responsive companies, as discussed in the *Preliminary Determination*,[66] for all the programs self-reported by mandatory respondents for which we calculated a rate, we selected that rate as the AFA rate applicable to the non-cooperating companies.

## B. Programs Determined Not to Be Used by Botao and Delian

1. Preferential Policy Lending
2. Export Seller's Credits
3. Export Credit Guarantees

[64] *See Preliminary Determination* PDM at 47-48.
[65] *See* Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Botao Affiliation Supplemental Questionnaire Response," dated July 6, 2020.
[66] *See Preliminary Determination* PDM at 47-48.

4. Export Credit Insurance
5. Special Fund Grants for Energy Saving Technology Reform
6. Grants for Energy Conservation and Emission Reduction
7. Grants, Loans, and Other Incentives for the Development of Famous Brands
8. SME Technology Innovation Fund
9. State Key Technology Fund Grants
10. SME International Market Exploration Fund
11. Import Tariff Exemptions for Foreign Invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported Equipment
12. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment

## VI. ANALYSIS OF COMMENTS

### Comment 1: Whether Commerce Should Reconsider the Petitioner's Standing to Bring the Investigation

*Delian's Arguments*:[67]

- The petitioner does not have standing to bring the investigation because the petitioner has not presented substantial evidence indicating that the production of the percentage of the industry supporting the petition is sufficient or that other domestic manufacturers' (that were not party to the Petition) production is insufficient, to meet the statutory requirements under section 702(c)(4) or 19 CFR 351.203(b)(2).
- The petitioner's claim of standing consists solely of letters of support and self-serving affidavits from itself and two other companies. By contrast, Suez WTS USA, Inc's (Suez) submission submitted during the initiation phase of the investigation demonstrates that there are multiple other domestic producers. Furthermore, Suez, a domestic producer, is opposed to the imposition of duties.
- The petitioner is not a domestic producer but an importer, and, consequently, the petitioner can be excluded from the domestic industry, pursuant to section 771(4)(B).
- While Commerce normally adjudicates issues of standing pre-initiation, Commerce should consider the issue here because the briefs represent the first opportunity for Delian to present its argument and critical facts have come to light.

*Petitioner's Arguments*:[68]

- Commerce is statutorily prohibited from reconsidering industry support after the initiation of investigation under section 702(c)(4)(E). Furthermore, the Statement of Administrative Action (SAA) from the Uruguay Rounds Agreement Act (URAA) precludes reconsideration of support for a petition after initiation of an investigation.
- Commerce correctly determined at initiation that the Petition demonstrated sufficient industry support because the petitioner manufactures 100 percent of the domestic like

[67] *See* Delian Case Brief at 3-6.
[68] *See* Petitioner Rebuttal Brief at 44-49.

product and because the list of companies provided by Suez does not demonstrate that those companies produce the domestic like product. Furthermore, Commerce evaluated all comments and submissions by Suez and conducted an internet search at initiation and determined that none of the companies listed by Suez appear to be manufacturers of domestic like product.

**Commerce's Position:** Section 702(c)(4)(E) of the Act directs Commerce as follows regarding the consideration of comments regarding industry support:

> Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. *After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.*[69]

Therefore, Commerce is statutorily precluded from reconsidering its industry support determination at this stage of the investigation. As a result, we continue to rely on our determination of industry support provided in the Initiation Checklist.[70]

As stated in the Initiation Checklist:

> Commerce finds that the petitioner provided sufficient information to establish all known producers of the domestic like product … and that record information regarding the production of the domestic like product supports a conclusion that the petitioner has properly accounted for all production of the domestic like product and has demonstrated adequate industry support for initiating the investigations …{W}e find that the domestic producers and workers who support the Petitions account for at least 25 percent of total production of the domestic like product. We further find that domestic producers and workers who support the petitions account for more than 50 percent of the total production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions. Therefore, we find there is adequate industry support within the meaning of sections 702(c)(4)(A) and 732(c)(4)(A) of the Act.[71]

[69] *See* section 702(c)(4)(E) of the Act (emphasis added); *see also*, *e.g.*, *Certain Quartz Surface Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 85 FR 25391 (May 1, 2020) (*Certain Quartz Surface Products from India*), and accompanying IDM at Comment 12. Although *Certain Quartz Surface Products from India* was an antidumping duty investigation, the statutory provisions for CVD and antidumping duty cases are identical.
[70] *See* Initiation Checklist at Attachment II.
[71] *Id.* at Attachment II, p. 6-8.

Further, with respect to Delian's reference to the submission from Suez,[72] Commerce addressed Suez's arguments in detail at the initiation stage of the investigation.[73] Specifically, we stated:

> {W}ith regard to the companies identified by Suez,[74] we note that none appear to be producers of {the domestic like product}.[75] Of the companies identified, most appear to be distributors or importers of the corrosion inhibitors, rather than producers, and therefore should not be included in the industry support calculation.[76] Finally, while Suez claims to "oppose" the Petitions, it did not provide its 2019 production of the domestic like product; therefore, even if it were appropriate to consider Suez's production in the industry support calculation, we would be unable to do so because Suez did not provide it.

Thus, we determined that the petitioner had provided sufficient, reasonably available information regarding the production of the domestic like product and that the petitioner had demonstrated adequate industry support for initiating the investigation, which we are not revisiting for the final determination.

**Comment 2: Whether Commerce Should Renew Suspension of Liquidation and Collection of Cash Deposits Prior to the Publication of an Affirmative Determination by the ITC**

*Petitioner's Arguments*:[77]

- In the event of a final affirmative material injury determination by the ITC, Commerce should renew suspension of liquidation and collection of cash deposits on the date of the determination by the ITC rather than the date of publication for that determination. Renewing suspension and collection would prevent an additional three to seven-day gap within which Chinese producers could export without countervailing duties and such a period would not be subject to administrative review.
- Under section 706(a)-(b) of the Act, Commerce has the discretion in determining the date to resume the suspension of liquidation and collection of cash deposits when the ITC makes an affirmative finding of material injury. In *Corus Staal BV*,[78] the Court of International Trade (CIT) found that it was permissible under the statute to select dates other than the ITC's publication date for the purposes of determining the end date of the gap period. Furthermore, the CIT noted that Commerce has used dates other than that of the publication of the ITC's final determination in other situations.

[72] *See* Suez's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Industry Support Comments on the Petitions for Antidumping and Countervailing Duties and Request to Poll Industry," dated February 21, 2020 (Suez Comments).
[73] *See* Initiation Checklist at Attachment II, p. 7.
[74] *See* Suez Comments at Attachment 1.
[75] *See* Petitioner's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Petitioner's Response to Comments from SUEZ WTS USA, Inc. Regarding Industry Support," dated February 24, 2020 at 4-5 and Exhibits 3-8.
[76] *Id.*
[77] *See* Petitioner Case Brief at 1-8.
[78] *See Corus Staal BV. v. United States DOC*, 279 F. Supp. 2d 1363 (CIT 2003) (*Corus Staal BV*).

*Respondents' Arguments*:[79]

- The petitioner's concerns are not in regard to the instant countervailing duty investigation, for which there is already a gap period, but the companion antidumping investigation that may have a brief gap period in March 2021 should the ITC find affirmatively.
- Under section 703(d) of the Act and 19 CFR 351.210(h), Commerce can only suspend liquidation and collect cash deposits for 120 days after publication of a preliminary determination in a CVD investigation, after which Commerce cannot suspend liquidation or collect cash deposits "until the Secretary publishes a countervailing duty order."[80] Commerce has a longstanding practice of using the publication date of the ITC's final affirmative determination, upon which the publication of a countervailing duty order then becomes certain, to resume suspension and collection. Indeed, Commerce's prior customs instructions note that suspension will not resume until the publication of an ITC final affirmative determination. Commerce does not have reason to now change its longstanding practice of using publication dates considering that gap periods are common in investigations.
- *Corus Staal BV* is not comparable to the instant investigation because that case concerned whether the appropriate date to renew suspension and collection of cash deposits was the publication date of the order or the publication date of the ITC's final affirmative determination, not the date of the ITC's final affirmative determination itself. Additionally, the *Corus Staal BV* decision arose because of an extraordinarily unique situation: the September 11, 2001 attacks.

**Commerce's Position**: Commerce finds the petitioner's request in regard to the ongoing gap period to be extraordinary and contrary to Commerce's longstanding practice. Under section 703(d) of the Act and 19 CFR 351.210(h), Commerce can only suspend liquidation and collect cash deposits for 120 days after publication of a preliminary determination, after which the gap period begins. Although the Act does not explicitly state when the gap period ends, we find instructive section 707 of the Act and 19 CFR 351.212(b), which indicate that the provisional measures cash deposit cap terminates at the date of publication of the ITC's final determination. Thus, it is logical that the gap period would, like the provisional measures cash deposit cap, also end with the publication of the ITC's final determination, even though the Act does not explicitly state when the end of the gap period shall end.

Additionally, we find that *Corus Staal BV* does not support the petitioner's argument to end the gap period on the date the ITC issues its opinion. The issue in *Corus Staal BV* was whether the gap period should end on the date of the publication of the order or the date of publication of the ITC's final determination, not whether the gap period should end on the date of issuance of the ITC's final determination.[81] Furthermore, it was Commerce's position in *Corus Staal BV* that the gap period should end with the date of publication of the ITC's final determination.[82]

[79] *See* Botao Rebuttal Brief at 1-4; *see also* Delian Rebuttal Brief at 2-8.
[80] *See* 19 CFR 351.210(h).
[81] *See Corus Staa BV*, 279 F. Supp. 2d at 1367-1370.
[82] *Id.* at 1367-1368.

Consistent with that position, it has been Commerce's longstanding practice to end the gap period on the date of publication of the ITC's final determination, and not on the date the ITC made its determination. Thus, for the purposes of this *Final Determination*, we intend to end the gap period on the date of publication of the ITC's final determination in the *Federal Register*.

**Comment 3: Countervailability of the EBC Program**

*Respondents' Arguments*:

- Since the *Preliminary Determination*, the GOC submitted additional factual information in response to Commerce's questionnaires and, consequently, Commerce's AFA determination should be revisited.[83]
- Botao and Delian provided sufficient and verifiable evidence, including record declarations from their U.S. customers, showing non-use of the program.[84] Commerce was apparently satisfied with Botao and Delian's response as it did not ask supplemental questions regarding EBC.[85] Without usage, Commerce cannot find financial contribution because, even as an AFA decision, Commerce must "make the necessary factual findings to satisfy the requirements of countervailability."[86] In this investigation, there is no potential or direct transfer of loan or credit to the Chinese respondents and, thus, no financial contribution and no basis to resort to AFA.[87]
- The GOC provided sufficient and verifiable information to find non-use of the program.[88] The GOC stated that Commerce's questions related to the China Ex-Im Bank were "not applicable" because none of Botao, Delian, or their U.S. customers used EBC. Commerce cannot apply AFA to the GOC's "not applicable" response because the GOC did cooperate commensurately to Botao and Delian's demonstrations of non-use of EBC.[89]
- Commerce cannot apply AFA to EBC because there is no gap in the record created by a failure of the GOC's to cooperate.[90] Commerce practice, where non-use is demonstrated by record evidence, is to find non-use of a program even in the event of a country's non-cooperation.[91] Additionally, the information identified as missing by Commerce, the 2013 Administrative Measures Revisions and a list of correspondent/partner banks, is useful only for describing the program and is irrelevant for determining usage of EBC or

[83] *See* GOC Case Brief at 3-4.
[84] *See* GOC Case Brief at 5-6; *see also* Botao Case Brief at 1-2; and Delian Case Brief at 9-10.
[85] *See* Botao Case Brief at 2.
[86] *See* GOC Case Brief at 6 (citing *Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334, 1350 (CIT 2016) (*Trina Solar 2016*); *Yama Ribbons and Bows Co., v. United States*, No. 18-00054, 2019 WL 7373856 (CIT December 30, 2019); *Guizhou Tyre Co. v. United States*, 415 F. Supp. 3d 1402 (CIT 2019) (*Guizhou Tyre 2019A*); *Guizhou Tyre Co. v. United States*, 389 F. Supp. 3d 1315 (CIT 2019) (*Guizhou Tyre 2019B*); and *RZBC Group Shareholding Co. v. United States*, No. 15-00022, 2016 WL 3880773 (CIT 2016) at *5).
[87] *See* GOC Case Brief at 6-7.
[88] *Id.* at 7-10.
[89] *Id.* at 8-9.
[90] *Id.* at 10; *see also* Botao Case Brief at 3.
[91] *See* GOC Case Brief at 10-11 (citing *Countervailing Duty New Shipper Review: Certain In-shell Roasted Pistachios from the Islamic Republic of Iran*, 73 FR 9993 (February 25, 2008) (*Pistachios from Iran*); and *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40,295 (July 14, 2008) (*HRC from India*), and accompanying IDM at Comment 6.

verifying usage of EBC.[92] First, the 2013 Administrative Measures Revisions were not used to demonstrate usage prior to their effective date and do not now demonstrate usage. Second, there is no link between the list of correspondent/partner banks and the determination that, without the list, Commerce cannot verify non-usage. Consequently, the missing information does not create a gap in the record, and the CIT has repeatedly ruled that Commerce cannot find AFA where there is no gap on the record.[93] Thus, Commerce has two non-AFA options: accept the record declarations or verify the declarations, which Commerce has not done in this investigation.[94]

- Commerce has not conducted a fair investigation into EBC because it has not forced compliance from certain U.S. customers of Delian to provide record declarations attesting to their non-use.[95] Commerce should find Delian to have not used EBC because Commerce has not compelled its U.S. customers to provide these declarations.[96]

*Petitioner's Arguments*:

- The GOC failed to provide information requested by Commerce that was necessary for verifying non-use of EBC because it did not provide a list of correspondent/partner banks or the 2013 Administrative Measures Revisions.[97] Moreover, the GOC did not provide a full and complete response to Commerce's questionnaire, which requested information regardless of whether or not the program was used.[98] Information regarding EBC is not verifiable if Commerce does not fully understand the program. Consequently, the GOC has failed to cooperate to the best of its ability under all four criteria of AFA.[99]
- The GOC created a gap in the record by failing to provide the missing information.[100] Commerce's practice is to consider customer statements insufficient to demonstrate non-usage because Commerce must verify all information. Thus, the GOC, not the respondents, must provide information demonstrating that the respondents' customer declarations are accurate.
- The respondents have not demonstrated non-use of EBC because the record declarations are insufficient for that purpose and record evidence indicates that EBC is available to multiple groups beyond U.S. customers.[101] The ultimate holder of the information necessary to prove non-use is the China Ex-Im Bank.
- Commerce should continue to find that Delian uses EBC as AFA because Delian may still benefit from the program even if its U.S. customers do not.[102]
- The respondents' references to case law are unpersuasive because the CIT has required Commerce only to explain in sufficient detail its reasoning behind the application of

[92] *See* GOC Case Brief at 13.
[93] *See* GOC Case Brief at 15-17; *see also* Botao Case Brief at 3.
[94] *See* Botao Case Brief at 5-7.
[95] *See* Delian Case Brief at 9-11.
[96] *See* Delian Case Brief at 10-11.
[97] *See* Petitioner Rebuttal Brief at 7-9.
[98] *Id*. at 9.
[99] *Id*. at 12.
[100] *Id*.
[101] *Id.* at 14-15.
[102] *Id*. at 15-16.

AFA, which it has in this investigation.[103] Unlike *Guizhou Tyre 2018*, there is ambiguity as to the reliability and verifiability of the record declarations and Commerce has not conflated EBC's operation with its use. Finally, unlike *Pistachios from Iran* and *HRC from India*, Commerce cannot verify non-use of EBC but, as in *Archer Daniels*, Commerce can impute the GOC's failure onto the respondents and apply AFA.[104]

**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.[105] 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*.[106] 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."[107] Commerce initially asked the GOC to complete the "standard questions appendix" for the EBC Program. The appendix requests, among other information, a description of the program and its purpose, a description of the types of relevant records the government maintains, the identification of the relevant laws and regulations, and a description of the application process (along with sample application documents). The standard questions appendix is intended to help Commerce understand the structure, operation, and usage of the program.[108]

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."[109] 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

[103] *Id*. at 17 (citing *Guizhou Tyre Co. v. United States*, 348 F. Supp. 3d 1261 (CIT 2018) (*Guizhou Tyre 2018*) and *Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp. 3d 1316, 1327-28 (CIT November 30, 2018) (*Trina Solar 2018*).
[104] *Id.* at 19 (citing *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331 (CIT 2013) (*Archer Daniels*)).
[105] *See Preliminary Determination* PDM at Section "D: Application of AFA: Export Buyer's Credit"; *see also 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 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.
[106] *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.
[107] *See Solar Cells Final Determination* IDM at 59.
[108] *Id*.
[109] *Id*.

implemented without knowledge of the exporters because the program has a substantial impact on the exporter's financial and foreign exchange business matters."[110] 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.[111] 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.[112]

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.[113] 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 {Commerce} needs to examine in order to verify that the information is complete and accurate. For verification purposes, {Commerce} must be able to test books and records in order to assess whether the questionnaire responses are complete and accurate, which means that we need to tie information to audited financial statements, as well as to review supporting documentation for individual loans, grants, rebates, *etc.* If all a company received was a notification that its buyers received the export credits, or if it received copies of completed forms and approval letters, we have no way of establishing the completeness of the record because the information cannot be tied to the financial statements. Likewise, if an exporter informs Commerce that it has no binder (because its customers have never applied for export buyer's credits), there is no way of confirming that statement unless the facts are reflected in the books and records of the respondent exporter.[114]

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.[115]

---

[110] *Id*. at 60.
[111] *Id*. at 60-61
[112] *Id*. at 61.
[113] *Id*.
[114] *Id*. at 61-62.
[115] 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 CIT in *Trina Solar 2016*. In *Trina Solar 2017*, the CIT noted that the explanation from *Solar Products Final Determination* constituted "detailed reasoning for why

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.[116]

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

---

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 CIT found that the 2014 review of solar cells from China at issue in *Trina Solar 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*; and *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 from China*), and accompanying 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 CIT in *Guizhou Tyre2018* reached a similar conclusion concerning the 2014 review of tires from China. *See Guizhou Tyre 2018* 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.

[116] The Court agreed with Commerce in *RZBC 2017*, finding that Commerce could not verify non-use of the program by examining the respondent-exporter's audited financial statements or other books and records because record evidence demonstrated that the program terms were ambiguous. *See RZBC Group Shareholding Co. v. United States*, 222 F. Supp. 3d 1196, 1201-02 (CIT 2017) (*RZBC 2017*); *see also Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid 2012*), and accompanying IDM at Comment 6.

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."[117] 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."[118] However, the GOC refused to allow Commerce to query the databases and records of the China Ex-Im Bank.[119] 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*,[120] 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."[121]

*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

[117] *See Solar Cells Final Determination* IDM at 62.
[118] *Id*.
[119] *Id*.
[120] *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.
[121] *Id*.

statements concerning the operation and use of the program, were thwarted by the GOC.[122] 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.[123] 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.[124] 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."[125] The GOC further stated that "those internal guidelines do not formally repeal or replace the provisions of the {*Administrative Measures*} which remain in effect."[126]

However, we found the GOC's responses incomplete and unverifiable, explaining:

> Through its response to {Commerce's} supplemental questionnaire, the GOC has refused to provide the requested information or any information concerning the 2013 program revision, which is necessary for {Commerce} to analyze how the program functions.
>
> We requested the 2013 *Administrative Measures* revisions (2013 Revisions) because information on the record of this proceeding indicated that the 2013 Revisions affected important program changes. For example, the 2013 Revisions may have eliminated the USD 2 million contract minimum associated with this lending program. By refusing to provide the requested information, and instead asking {Commerce} to rely upon unverifiable assurances that the 2000 Rules Governing Export Buyer's Credit remained in effect, the GOC impeded {Commerce}'s understanding of how this program operates and how it can be verified.
>
> Additional information in the GOC's supplemental questionnaire response also indicated that the loans associated with this program are not limited to direct

[122] *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 {Commerce} from verifying the non-use claims made by the RZBC Companies and the GOC.")
[123] *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.
[124] *Id*.
[125] *Id*.
[126] *Id*.

> 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.[127]

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."[128]

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."[129]

*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.[130] Instead of providing the requested information, the GOC stated that our question was not applicable.[131] We also asked the GOC to submit the *Administrative Measures* that were revised in 2013, but the GOC refused.[132] 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."[133] The Standard Questions Appendix requested various information that Commerce requires in order to analyze the specificity and financial contribution of this program, including the following: translated copies of the laws and regulations pertaining to the program; a description of the agencies and types of records maintained for administration of the program; a description of the program and the application process; program eligibility criteria; and program usage data. Rather than respond to the questions in the Standard Questions

[127] *Id*. at 12.
[128] *Id*. at 62.
[129] *Id*.
[130] *See Preliminary Determination* PDM at section D: Application of AFA: Export Buyer's Credit.
[131] *Id.*
[132] *Id*.
[133] *See* Commerce's Letter, "Countervailing Duty Questionnaire," dated April 10, 2020 (Initial Questionnaire), Section II at 4-5.

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."[134]

In its initial 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.[135] 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*.[136] Information in that document indicates that the GOC revised this program in 2013 to eliminate this minimum requirement.[137] Thus, we requested in our Initial Questionnaire that the GOC also provide original and translated copies of any laws, regulations or other governing documents cited by the GOC in the EBC Supplemental Questionnaire Response.[138] This request included the 2013 *Administrative Measures* revisions to the EBC Program. In its response, the GOC failed to provide the 2013 Revisions.[139] We, therefore, again specifically requested that the GOC provide the 2013 Revisions.[140] In response, the GOC, referencing Exhibit II.A.10 of the GOCIQR, stated that "The Ex-Im Bank has confirmed to the GOC that its 2013 guidelines are internal to the bank, and are not public nor available for release. The GOC has no authority or right to force the Ex-Im Bank to provide a copy of the 2013 guidelines. Therefore, the GOC is unable to provide a copy to {Commerce}."[141] 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*,[142] where we asked the GOC about the amendments to the EBC Program,[143] 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

[134] *See* GOC's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Government of China's Response to Section II Questionnaire," dated May 28, 2020 (GOCIQR)
[135] *Id*. at Exhibit II.A.8.
[136] *See* GOCIQR at II.A.9; *see also Silica Fabric Investigation* IDM at Comment 17.
[137] *Id*.
[138] *See* Initial Questionnaire, Section II at 4-5.
[139] *See* GOCIQR.
[140] *See* Commerce's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Section II Supplemental Questionnaire for the Government of China," dated June 29, 2020 (GOC Supplemental) at 3.
[141] *See* GOC's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Government of China's Response to Section II Second Supplemental Questionnaire," dated July 9, 2020 (GOCSQR2) at 2.
[142] *See Silica Fabric Investigation* IDM at Comment 17.
[143] *See* GOCIQR at Exhibit II.A.9 (containing the GOC's September 6, 2016 7th SQR in the *Silica Fabric Investigation*).

provision of loans under the program, *i.e.*, by eliminating the $2 million minimum business contract requirement identified in the 2000 *Administrative Measures*.[144]

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.[145] 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.[146] 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:[147]

- Provide a list of all partner/correspondent banks involved in disbursement of funds under the EBC program.
- As requested in the Initial Questionnaire, please provide a sample application for each type of financing provided under the Buyer Credit Facility, the application's approval, and the agreement between the respondent's customer and the China Ex-Im Bank that establish the terms of the assistance provided under the facility. Please submit a sample application for each type of financing provided under the Buyer Credit Facility even if a "fixed format" does not exist.

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

[144] *See Silica Fabric Investigation* IDM at 12 and 61.
[145] 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.
[146] *See Silica Fabric Investigation* IDM at 12.
[147] *See* GOC Supplemental at 3.

questions, with regard to our request for the 2013 revised *Administrative Measures*, stating instead that the 1995 *Rules Governing Export Buyers' Credit of the Export-Import Bank of China* are still in effect.[148] The GOC did not address our request for the 2013 revised *Administrative Measures* despite Commerce's direct request:: "Please provide the 2013 amendment and guidelines to the Administrative Measures of Export Buyers' Credit of Export-Import Bank of China (Exhibit II.A.8)."[149]

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 "This question is not applicable as explained below. The Ex-Im Bank's general process or disbursement is as follows. According to certain provisions of the *1995 Implementation Rules*, the Ex-Im Bank will disburse the funds when several conditions or milestones are met."[150]

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.[151]

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.[152]

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.[153]

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

[148] *See* GOCSQR2 at 3.
[149] *See* GOC Supplemental at 3.
[150] *See* GOCSQR2 at 3.
[151] *See* Initial Questionnaire at Electricity Appendix.
[152] *See* GOCIQR at Exhibit II.E2.7.
[153] *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.")

program) has changed.[154] Specifically, the record indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank.[155]

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.[156] 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.[157] 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.[158]

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,[159] 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.[160] 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*,[161] 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

[154] *See* GOCIQR at Exhibit II.A.8 (containing the GOC's September 6, 2016 7th SQR in the *Silica Fabric Investigation*).
[155] *Id*.
[156] *Id*.
[157] *Id*.
[158] 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.
[159] *See* GOC SQR at Exhibit II.A.9 (containing the GOC's September 6, 2016 7th SQR in the *Silica Fabric Investigation*).
[160] *See Chlorinated Isos* IDM at 15.
[161] *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.

> 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.[162]

In other words, there will not necessarily be an account in the name "China Ex-Im Bank" in the books and records (*e.g.*, subledger, tax return, bank statements) of the U.S. customer. Thus, if we cannot verify claims of non-use at the GOC,[163] 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

---

[162] *Id.*

[163] *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).

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 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.[164] 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.[165]

According to the GOC, none of Botao or Delian's U.S. customers used the export buyer's credits from the China Ex-Im Bank during the POI.[166] The GOC explained that to make this determination: (1) the GOC 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.[167] 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

[164] 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.
[165] *See* GOCIQR; *see also* GOCSQR2.
[166] *See* GOCSQR2 at 2.
[167] *See* GOCIQR at 12.

nor Botao nor Delian 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 Botao and Delian'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 Botao and Delian's customers. Furthermore, the lack of information concerning the operation of the EBC Program prevents an accurate assessment of usage at verification:

> 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.[168]

We continue to find that usage of the EBC Program could not be verified at Botao and Delian in a manner consistent with Commerce's verification methods because Commerce could not confirm usage or non-usage by examining books and records which can be reconciled to audited financial statements[169] 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 Botao's and Delian'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 Botao and Delian, their customers, and/or the GOC's participation in the program.[170] Thus, Commerce would need a better understanding of the program *before* it could verify the program; without this understanding, Commerce cannot know which documents to request to review at verification or what information in the books and records to tie to the respondents' reported information from their questionnaire responses. Therefore, we found it necessary to have had this information prior to a verification, so that verification could be used to

---

[168] *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).
[169] *Id*.
[170] *Id.*

ensure the accuracy and completeness of that information. This would be the only way to analyze and calculate accurately the benefits Botao and Delian 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; rather, 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.[171] It is a well-established principle that verification is not an opportunity to submit new factual information.[172] 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 other interested parties of the opportunity to provide factual information to rebut that information and would be contrary to the purpose of verification. Thus, Botao, Delian 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 determining 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.[173] 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 corrosion inhibitors 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 explained 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 prevents complete and effective verification of

---

[171] *See* 19 CFR 351.307(a).

[172] *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.

[173] *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).

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 *Trina Solar 2016*,[174] 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-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 …").[175]

Moreover, we disagree with the GOC that Commerce has not identified any gap in the record resulting from missing information. 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 the 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 Botao's and Delian'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.[176] 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.

---

[174] *See Trina Solar 2016*, 195 F. Supp. 3d at 1355 (citing *Solar Products Final Determination* IDM at 91-94).
[175] *Id*.
[176] *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.")

Regarding Delian's arguments related to its U.S. customers' failure to provide documentation supporting non-use, Commerce continues to determine that documentation from U.S. customers is not the only relevant information under this program and that, without full and complete cooperation from the GOC, Commerce is unable to meaningfully analyze or verify Delian's use of the program. Consequently, we decline Delian's request to find non-use of the program as AFA.

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 (2)(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 that conferred a benefit to Botao and Delian 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 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.[177] Finally, Commerce has found this program to be an export subsidy in past CVD proceedings involving China.[178] 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.

**Comment 4: Whether Commerce Should Select a Different Benchmark for the Provision of Land-Use Rights for LTAR for Encouraged Industries**

*Botao's Arguments*:[179]

- Commerce should not rely on the 2010 "Asian Marketview Reports" by CB Richard Ellis (CBRE) for Thailand; the record contains contemporaneous world benchmark prices from the same CBRE Research as well as Malaysian data from the Malaysia Investment Development Authority (MIDA) that are more suitable.
- 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.

[177] *See* GOCIQR at Exhibits II.A.8 and II.A.10.
[178] *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.
[179] *See* Botao Case Brief at 12-13.

- Thailand is no longer considered economically comparable to China. The *Corrosion Inhibitors 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 2018* discussed that, based on 2017 GNI, Thailand is not comparable to China. The contemporaneous data are data from Malaysia, Mexico, and Brazil, which are countries considered by Commerce to be economically comparable to China. Botao has provided Malaysia data from MIDA.

*Petitioner's Arguments*:[180]

- Commerce should reject Botao'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.
- Commerce's Thailand benchmark is more contemporaneous with the respondents' land purchases than Botao's suggested benchmark. Furthermore, Thailand was a better comparison to the Chinese market than Mexico, Brazil and Malaysia around the time of the respondents' land purchases, as shown by Commerce's use of Thailand as a comparator in 2012-2013 administrative reviews.

**Commerce's Position**: In our *Preliminary Determination*, we explained that we cannot rely on tier one or tier two benchmarks to assess the benefits from the provision of land-use rights for LTAR in China.[181] Pursuant to the *Sacks from China*,[182] we determined that "Chinese land prices are distorted by the significant government role in that market," and hence, no usable tier one benchmarks exist.[183] We also explained that tier two benchmarks (i.e., world market prices) are also inappropriate to value land in China.[184] As a result, and consistent with past CVD investigations (*e.g.*, *Solar Cells Final Determination* and *Transfer Drive Components from China*),[185] we relied on 2010 prices for land in Thailand contained in CBRE's "Asian

[180] *See* Petitioner Rebuttal Brief at 37-39.
[181] *See Preliminary Determination* PDM at 38-39.
[182] *See Preliminary Determination* PDM at 38-39. *(*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, *Sacks from China*); *see also* Memorandum, "Land Analysis Memo," dated March 3, 2020 at Attachment 1, p. 27 (Land Analysis Memorandum) (containing a memorandum titled "Benchmark Analysis of the Government Provision of Land-Use Rights in China for Countervailing Duty Purposes," dated October 2, 2018) (Land Benchmark Analysis)).
[183] *See Preliminary Determination* PDM at 38-39.
[184] *Id*.
[185] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells 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*

Marketview Reports" for use as a tier-three benchmark after considering a number of factors, including national income levels, population density, and producers' perceptions that Thailand is a reasonable alternative to China as a location for Asian production.[186]

Botao submitted two alternative benchmarks for land prices: CBRE's Global Prime Logistics Rent Report from May 2016 and 2014-2019 MIDA data.[187] After examining Botao's proposed land benchmarks, we disagree with Botao and continue to find that the world market prices (i.e., tier two) provided by CBRE Research are not appropriate for valuing land in China for purposes of CVD investigations and that the Malaysia data is less preferable than the Thailand data used in the *Preliminary Determination*.

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."[188] 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."[189]

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.[190] Botao'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 of whether Botao'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, and, furthermore, consistent with Commerce's practice, Commerce accounted for contemporaneity by adjusting the 2010 Thai data for inflation. For example, Botao'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, Botao's submission does not include data that allows us to evaluate these locations' economic comparability with respect to China.

---

*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*).

[186] *See Preliminary Determination* PDM at 38-39. 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.

[187] *See* Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Benchmark Submissions," dated June 11, 2020 (Botao Benchmark Submission) at Exhibit 9 and Exhibit 10.

[188] *See* Land Analysis Memorandum at 27.

[189] *Id*.

[190] *Id*. at 20.

With respect to the MIDA data submitted by Botao, 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. Botao'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. However, Botao 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 analysis in countervailing duty cases.[191] Botao'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,[192] we will continue to value land using indexed prices from "Asian Marketview Reports" by CBRE for Thailand for 2010 as a tier-three benchmark.[193]

**Comment 5: Countervailability of the Provision of Electricity for LTAR**

*GOC's Arguments*:[194]

- Commerce found that the GOC failed to provide a full explanation regarding the roles and nature of cooperation between the National Development and Reform Commission (NDRC) and provinces in setting electricity prices and that the information on the record only shows that the NDRC continues to play a major role in setting and adjusting prices. 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 section 771(5A) of the Act.
- Commerce must provide reasons for considering the electricity program to be specific before resorting to countervailing that program. Specificity is the first step in determining whether a subsidy program falls within a defined scope of the law. Commerce cannot rely just on the Initiation Checklist to satisfy he specificity requirement, as the CIT has found in *Trina Solar 2019*.[195]

[191] *See e.g.*, *Sacks from China* 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.").
[192] *See Solar Cells Final Determination* IDM at 6 and Comment 11; *see also Transfer Drive Components from China* PDM at 13, unchanged in *Transfer Drive Components from China Final*.
[193] *See* Land Benchmark Analysis.
[194] *See* GOC Case Brief at 17-19.
[195] *See Changzhou Trina Solar Energy Co. v. United States*, 2019 Ct. Intl. Trade LEXIS 138, Slip Op. 2019-137, (CIT 2019) (*Trina Solar 2019*) at 32.

*Petitioner's Arguments*:

- Commerce reasonably applied AFA to the provision of electricity for LTAR because the GOC did not provide sufficient responses to Commerce's questions on the program, replying that "all of the provincial governments have been given authority to prepare and publish electricity tariff rates for their own jurisdiction."[196] However, record evidence indicates that the provinces are not solely responsible for determining prices and that the NDRC is involved.[197]
- Commerce provided reasons for its preliminary finding regarding specificity within the framework of its AFA analysis.[198] Notably, the GOC has not explained the role of the NDRC in the rate setting process.
- The GOC's reliance on certain legal precedents is misplaced because those cases differ from the instant investigation in that Commerce has provided explanation and supporting documentation on the record of this proceeding and because the CIT ultimately sustained Commerce's AFA analysis in those cases.[199]

**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.[200] 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 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.[201] 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.[202] Specifically, we asked how increases in cost elements led to retail price increases, the derivations of those cost increases, how cost increases were

[196] *See* Petitioner Rebuttal Brief at 21 (quoting GOCIQR at 43).
[197] *See* Petitioner Rebuttal Brief at 22.
[198] *Id.* at 23 (citing *Preliminary Determination* PDM at 23).
[199] *Id*. at 24.
[200] *See Preliminary Determination* PDM at 26-28, section "Application of AFA: Provision of Electricity for LTAR."
[201] *Id*.
[202] *Id*.

calculated, and how cost increases impacted final prices.[203] 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.[204]

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. Therefore, the GOC significantly impeded the proceeding, within the meaning of section 776(a)(2)(C) 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.[205] Accordingly, Commerce applied facts available with an adverse inference to the determination of the appropriate benchmark.[206] 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 AFA, 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.[207]

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.[208]

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

---

[203] *Id*.
[204] *Id*.
[205] *Id*.
[206] *Id*.
[207] *Id*.
[208] *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), 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*).

financial contribution and is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act, respectively.[209] 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.[210]

**Comment 6: Whether the Provision of oPDA for LTAR is Specific**

*GOC's Arguments*:[211]

- The GOC fully cooperated with Commerce's requests for information regarding the program, confirming that the oPDA market functions according to market mechanisms and that the GOC does not regulate or track the oPDA industry or its broader, encompassing industry. The GOC cannot be expected to provide what it does not have.
- Commerce mistakenly relied upon information about the market for oPDA that describe the banning of carbendazim, an oPDA-based pesticide, in multiple markets. However, carbendazim is not banned in China.
- Commerce cannot establish that the corrosion inhibitor industry is the predominant user of oPDA based upon growing corrosion inhibitor exports because exports of other, oPDA-based products could also have increased proportionally.
- Commerce typically finds *de facto* specificity on the grounds of limited recipients pursuant to section 771(5A)(D)(iii)(I) of the Act. However, the GOC has demonstrated that the recipients of oPDA are not limited on an enterprise or industry basis.

*Petitioner's Arguments*:[212]

- Commerce should continue to find that the provision of oPDA for LTAR is specific because the GOC has misrepresented Commerce's decision in the Post-Preliminary Analysis. Commerce did not consider the provision of oPDA to be specific under section 771(5A)(D)(iii)(I) of the Act and that is not the sole statute that provides for specificity. Furthermore, the GOC failed to provide the information necessary for Commerce to determine whether actual recipients of the program are limited in number or whether the corrosion inhibitor industry is a predominant user of the program.
- The *Modern Agrochemicals* article did not provide necessary information for making a *de facto* specificity determination because the data from the article is from 17 years prior to the POI and does not provide volume or value of oPDA purchased by industry. Furthermore, the GOC's claims of cooperation are erroneous because the claim to not track usage of oPDA or its encompassing industry is a self-serving statement from the National Bureau of Statistics.

[209] *See Preliminary Determination* PDM at 42.
[210] *See* section 776(a)-(b) of the Ac
[211] *See* GOC Case Brief at 23-27.
[212] *See* Petitioner Rebuttal Brief at 25-29.

- Commerce correctly concluded that the record supports a *de facto* specificity determination under section 771(5A)(D)(iii)(II) of the Act because the record demonstrates that the corrosion inhibitor industry is a predominant user due to corrosion inhibitors being an encouraged industry that warrants specific mention in chemical publications and the other primary usage of oPDA, for carbendazim, is increasingly banned.

**Commerce's Position**: Regarding our post-preliminary determination that the provision of oDPA for LTAR is specific, as FA, under section 771(5A)(D)(iii)(II) of the Act, we have reassessed the record evidence. We now find that not only is FA appropriate, but AFA is also warranted for purposes of this final determination, because the GOC failed to cooperate to the best of its ability in response to our request for information. We have also reassessed the basis for specificity for this program. After further review of the record, Commerce finds, relying on AFA, that the provision of oPDA for LTAR is specific under section 771(5A)(D)(iii)(I) of the Act rather than section 771(5A)(D)(iii)(II) of the Act.

In the Post-Preliminary Analysis, we stated that the *Modern Agrochemicals* did not contain sufficient information to conduct a *de facto* specificity analysis and that Commerce had requested further information from the GOC regarding the volume and value of oPDA purchases in China or, failing that, the chemical or industry classification that includes oPDA[213] We also stated that the GOC responded by providing a statement from the National Bureau of Statistics, which states that the GOC does not maintain statistics on either oPDA or its overlying classification, organic chemical material.[214] Lastly, we stated that, while the GOC had failed to provide specificity information for Commerce to conduct the analysis, information provided by the petitioner did indicate that the corrosion inhibitor industry is a predominant user of oPDA.[215]

Upon further review, we find that, for the purposes of this final determination, the *Modern Agrochemicals* article does not include any of the information necessary to conduct a *de facto* specificity analysis for determining whether oPDA is *de facto* specific because: (1) the article does not include the required *de facto* information, including volume and value information for purchasers of oPDA; (2) the data is from 17 years prior to the POI; and (3) the GOC has not demonstrated that the market for oPDA in 2002 is identical to the market today.[216] Consequently, while the GOC states that the purchasers of oPDA are diverse and that actual recipients of oPDA are not limited on an enterprise or industry basis, the GOC has not demonstrated this claim through record evidence. In fact, the petitioner's rebuttal comments indicate that there have been large changes in the oPDA industry since 2002,[217] and, consequently, Commerce cannot extrapolate or infer from the *Modern Agrochemicals* article the current status of the Chinese oPDA market.

[213] *See* Post-Preliminary Analysis at 7.
[214] *Id.*
[215] *Id*.
[216] *See* GOC NSAQR at Exhibit NSA-5.
[217] *See* Petitioner's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Comments on New Subsidy Allegation Questionnaire Response," dated August 31, 2020 at Attachments 1-6.

The information requested by Commerce in its NSA questionnaire[218] and NSA supplemental questionnaire[219] is necessary because Commerce must analyze the data for the number of users, industries, and quantities of inputs supplied to various industries to determine specificity. However, the GOC did not provide full and complete answers to either questionnaire, and as previously discussed, the *Modern Agrochemicals* article is not sufficient to answer Commerce's questions. Thus, the GOC's lack of cooperation has created a gap in the record, which does not allow Commerce to conduct a complete *de facto* specificity analysis.
Consequently, while we applied facts available to find oPDA specific for the Post-Preliminary Analysis, upon reassessing the record evidence, we find it appropriate to apply AFA, pursuant to sections 776(a)-(b) of the Act, for this final determination. Specifically, necessary information is unavailable on the record, because the GOC withheld information that was requested of it and also significantly impeded this proceeding. Accordingly, we continue the use of FA is warranted, pursuant to sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act. Additionally, the GOC failed to act to the best of its ability in responding to Commerce's requests for information. The *Modern Agrochemicals* does not contain the information Commerce needed to conduct a *de facto* specificity analysis, and when Commerce requested further data from the GOC in a supplemental questionnaire, the GOC stated that it did not have such information. However, the existence of the *Modern Agrochemicals* article does indicate that the usage of oPDA within China is tracked, and, thus, that such information was available to the GOC. As such, we find that the GOC failed to provide data that was available to it and that the GOC failed to act to the best of its ability in responding to Commerce's request for information. As a result, an adverse inference is warranted under section 776(b) of the Act, and we find it appropriate to conclude, based on AFA, that the provision of oPDA is specific.

We are no longer relying on section 771(5A)(D)(iii)(II) of the Act as the basis for our specificity determination. As noted above, after reconsidering the GOC's argument that oPDA is not banned in China and that the overall market for all end-uses of oPDA may have grown equivalently to that of corrosion inhibitors, we find that predominant use is not the most appropriate basis for specificity for this program. Rather, the record evidence indicates that the number of recipients is limited in number on an industry basis: the petitioner provided contemporaneous information supporting that corrosion inhibitors are a designated end-use amongst a limited number of total possible industries.[220] These facts that are available on our record demonstrate specificity under section 771(5A)(D)(iii)(I) of the Act.

In sum, in view of the availability of information regarding the oPDA market in China, and the GOC's failure to provide full and complete answers, Commerce determines that the GOC did not cooperate to the best of its ability to provide Commerce with requested information, which warrants AFA pursuant to sections 776(a)-(b) of the Act and an affirmative finding of specificity based on section 771(5A)(D)(iii)(I) of the Act.

---

[218] *See* Commerce's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: New Subsidy Allegation Questionnaire for the Government of China," dated August 7, 2020.
[219] *See* Commerce's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: New Subsidy Allegation Supplemental Questionnaire for the Government of China," dated September 4, 2020.
[220] *See* Petitioner's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: New Subsidy Allegations," dated June 10, 2020 at Exhibit 6a (indicating that listed uses of oPDA include "surface treatment," including "corrosion inhibitors," "manufacture of dyes, photographic developing agent, organic synthesis, laboratory reagent," and "agricultural fungicides.")

**Comment 7: Benchmarks for the Calculation of Inputs for LTAR**

**A. Whether Commerce Should Use Only Commercial Shipment Volumes for the Calculation**

*Respondent's Arguments*:[221]

- Botao argues that, for oTDA and oPDA, Commerce should rely solely on commercial quantities based off of a container load. Botao imported container loads of oTDA in 16 megaton (MT) volumes and showed that oPDA is purchased in higher volumes, maximizing at container load capacity of 28 MT from a standard commercial purchase of 30 MT. Shipments of less than these volumes are not reflective of commercial value. Consequently, non-commercial shipments are not reflective of prevailing market conditions as considered under section 771(5)(E) of the Act or reflective of the price a firm would have paid, as directed by 19 CFR 351.511(a)(2)(iv).
- Delian argues that Commerce should only consider large volume purchases of at least 20 MT for the input benchmarks. Other small volume, high value purchases should be eliminated because they are not industrial shipments.

*Petitioner's Arguments*:[222]

- Both Botao and Delian's assertions that volumes below a certain MT are not viable are contradicted by record. Record evidence indicates that multiple purchases by the respondents are below some or all proposed standards. Furthermore, Commerce's method of calculation naturally gives higher weight to high volume purchases that compose a larger proportion of the benchmarks.

**Commerce's Position**: In the *Preliminary Determination*, Commerce relied upon UN Comtrade data, which included numerous shipment volumes. Respondents have argued that Commerce should limit the shipments used in these benchmark calculations to not include smaller shipments. We find these arguments unavailing.

First, Delian argued Commerce should only use large volume purchases of at least 20 MT as benchmarks on the basis that smaller shipments are not industrial shipments. However, beyond its claims in its case brief, Delian has not pointed to any record information that supports this claim. Further, we note that Delian did not make any such assertions about a 20 MT limit in its benchmark submission.[223] By contrast, this submission shows that volumes below 20 MT are commonly offered for sale.[224]

[221] *See* Botao Case Brief at 8-9; *see also* Delian Case Brief at 8.
[222] *See* Petitioner Rebuttal Brief at 35-37.
[223] *See* Delian's Letter, "Corrosion Inhibitors from China; C-570-123; Benchmark Data and Request for Extension," dated June 11, 2020 (Delian Benchmark Submission) at 2 and Exhibit B-1 and B-2.
[224] *Id*. at Exhibit B-1 and B-2.

Second, regarding Botao's proposed MT volume cutoffs, (i.e., "commercial quantities") Commerce notes that Botao made numerous purchases of oTDA and oPDA that were below these commercial quantities that it wanted removed. Furthermore, Botao's proposal of not using shipments of oPDA below 28 MT is not supported by record evidence. Botao argues that corrosion inhibitor producers purchase oPDA via domestic commercial trucking in volumes of 30 MT, and that Commerce should use this volume as a "commercial quantity." However, Botao also notes that the maximum weight for a commercial ocean freight purchase is 28 MT. Botao has not demonstrated by record evidence that the typical ocean freight shipment of oPDA is one at maximum capacity. Applying Botao's proposed benchmark is therefore inappropriate because volume purchases for domestic trucks are inherently separate from volume purchases for ocean freight because domestic trucks carry higher volumes and are a separate type of purchase. Consequently, the volume of oPDA capable of being purchased by domestic truck does not inform the "commercial quantity" relevant for ocean freight.

Thus, for the oTDA, Sodium Nitrite and oPDA benchmarks, Commerce has not excluded any shipments from the UN Comtrade data by volume with the exception of zero volume shipments already excluded in the *Preliminary Determination*. For further analysis, *see* the Final Calculation Memoranda.[225]

### B. Whether Commerce Should Use Tier-One Import Purchases for Input Benchmarks

*Delian's Arguments*:[226]

- Commerce should use Kanghua's input purchases from market economies, which are not distorted, to calculate input benchmarks. Such purchases are similar to those paid in non-market economies but reflect open market prices for Chinese purchasers.

*Petitioner's Arguments*:[227]

- Commerce's practice is to reject the use of in-country, tier-one benchmarks, such as Delian's proposed benchmark of Kanghua's import purchases from market economies. Commerce has already determined that the Chinese market for these inputs is distorted and the respondents have not disproven Commerce's determination.
- The GOC did not provide, in either its initial questionnaire response or supplemental questionnaire response, information needed by Commerce to determine whether the markets for inputs were distorted. Consequently, Commerce's AFA findings from the *Preliminary Determination* and Post-Preliminary Analysis are still warranted.

**Commerce's Position**: We reject Delian's argument that Commerce should use Kanghua's actual import purchases as input benchmarks for sodium nitrate, oTDA, and oPDA. In the *Preliminary Determination* Commerce preliminarily determined that the markets for oTDA and sodium nitrite were distorted pending further information requested in a supplemental

[225] *See* Botao Final Calculation Memorandum at Attachment 2; *see also* Delian Final Calculation Memorandum at Attachment 2.
[226] *See* Delian Case Brief at 7-8.
[227] *See* Petitioner Rebuttal Brief at 29-33.

questionnaire.[228] We asked the GOC numerous questions about these industries. These questions included, but were not limited to, information regarding the total number of producers, the total volume and value of domestic production and domestic consumption, the total volume and value of imports, and the percentage of volume and value of production accounted for by companies in which the GOC maintains a majority ownership or controlling management interest.[229] In response to Commerce's supplemental questionnaire, the GOC did not provide further requested and necessary information regarding the oTDA and sodium nitrite markets.[230]

The requested information on the oTDA and sodium nitrite industries is necessary for Commerce to conduct a full analysis of the GOC's involvement in the market and thus determine if the domestic prices are distorted (i.e., unusable as a "tier one" benchmark). Consequently, we determine that the necessary information on the oTDA and sodium nitrite industries is not available on the record. Because the GOC withheld information that was requested of it and significantly impeded this proceeding, Commerce must rely on "facts available" in this final determination, in accordance with sections 776(a)(1) and (a)(2)(A) and (C) of the Act. Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in selecting among the facts available pursuant to section 776(b)(1) of the Act. Accordingly, as AFA, we determine that the GOC's involvement in the oTDA and sodium nitrite markets in China results in the significant distortion of the prices of oTDA and sodium nitrite, such that they cannot be used as a tier one benchmark under 19 CFR 351.511(a)(2)(i). Hence, the use of external benchmarks, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the provision of oTDA and sodium nitrite for LTAR.

In the Post-Preliminary Analysis, Commerce preliminarily determined, as AFA, that the market for oPDA was distorted and, therefore, that we needed to use a tier-two benchmark.[231] None of the interested parties contested Commerce's determination and Commerce has not received information to indicate that the market for oPDA is not distorted since the Post-Preliminary Analysis. As such, we continue to find as AFA that the Chinese market for oPDA is distorted and cannot serve as a tier one benchmark under 19 CFR 351.511(a)(2)(i). Hence, we will continue to use an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), to calculate the benefit for the provision of oPDA.

Delian argues that Commerce should use Kanghua's import purchases as benchmarks for calculating the benefit for sodium nitrate, oPDA, and oTDA. However, consistent Commerce's benchmark hierarchy, tier-one prices "include prices stemming from actual transactions between private parties, *actual imports*, or, in certain circumstances, actual sales from competitively run government auctions."[232] Therefore, pursuant to the plain language of the regulation, Commerce will not use import prices as benchmarks when it is conducting a tier-two analysis. It is also

[228] *See Preliminary Determination* PDM at 31-32, section "I. Application of Facts Available: Whether Certain Input Markets Are Distorted."
[229] *See* GOCSQ1.
[230] *See* GOC's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Government of China's Response to Section II First Supplemental Questionnaire," dated July 6, 2020 at 8.
[231] *See* Post-Preliminary Analysis at 8-10, section "D. Application of AFA: Whether the oPDA Market is Distorted."
[232] *See* 19 CFR 351.511(a)(2)(i) (emphasis added).

Commerce's practice that when it finds the domestic prices are distorted, import prices also cannot serve as a tier one benchmark.[233] The reason is that imports are priced to compete in the market into which they are sent; thus, distortion of the "home" prices in that mark*et al*so affects imports into that market.

Consequently, Commerce continues to use "tier-two" input benchmarks selected in the *Preliminary Determination* and Post-Preliminary Analysis for calculating the benefits for the provision of sodium nitrite, oPDA, and oTDA.

### C. Whether Commerce Should Factor Market Data into Input Benchmarks

*Delian's Arguments*:[234]

- Commerce should factor Kanghua and Delian's market economy economic data into the total value when determining the benchmarks to apply to the LTAR calculation.

**Commerce's Position**: In the *Preliminary Determination*, Commerce found that Delian's Benchmark Submission consisted of advertised prices, grading information, and trade data for oTDA and sodium nitrite, which was found to be incompatible with any of the benchmarks provided or, regarding the trade data, a less comprehensive and viable benchmark than UN Comtrade data.[235] Delian has argued that, when calculating the input benchmarks, Commerce should incorporate prices from its benchmark submission for this final determination. However, we disagree, in part because we continue to find the listed grading information is non-numerical and incompatible with Commerce's selected benchmarks. Additionally, as with other proposed benchmarks that Commerce rejected in the *Preliminary Determination*,[236] we continue to find that Delian's market economy benchmark data consist of a small number of self-selected countries. Consequently, we have not incorporated Kanghua and Delian's market economy data into our input benchmark calculations for the final determination.

### D. Whether Commerce Should Select a Different Benchmark for the Calculation of Ocean Freight

*Botao's Arguments*:[237]

- Commerce should change its selected benchmark for ocean freight used in the calculation of input benchmarks because the petitioner's ocean freight benchmark used in the *Preliminary Results* is not reflective of prevailing market conditions. The petitioner's data duplicates two identical routes from Portland and Seattle, which have the same unique freight code, includes inland shipping from Wisconsin, and features a unique $7,500 "PRC Arbitraries" fee for the Portland and Seattle routes. The "PRC Arbitraries"

[233] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 71312 (November 9, 2020) (*Chlorinated Isos 2017 AR*), and accompanying IDM at Comment 4.
[234] *See* Delian Case Brief at 9.
[235] *See Preliminary Determination* PDM at 37.
[236] *See* Comment 7E.
[237] *See* Botao Case Brief at 9-12.

fee, which shows shipment to Tianjin, is only included when the final destination is not one of several other, major ports.
- Botao provided contemporaneous and standard ocean freight benchmark data from Maersk and Descartes reflecting chemical shipping prices for four sites in the United States to Shanghai.

*Petitioner's Arguments*:[238]

- Commerce should continue to use the petitioner's ocean freight benchmark because the issues cited by Botao are incorrect. The origin of the Portland and Seattle shipments are listed as "WCBP," reflecting a base freight originating on the U.S. west coast, not Wisconsin. Furthermore, the "PRC Arbitraries" fees identified by Botao are not related to the destination, as in a "DPA" fee. Additionally, Tianjin is a major port itself, among the top ten in the world, which shows that it is normal to have "PRC Arbitraries" fees for major ports.
- Botao's Descartes data is incorrectly provided, showing freight from China to the United States as opposed to the reverse. Additionally, the petitioner's Descartes data is preferable to Botao's Maersk data because it reflects multiple carriers as opposed to one.

**Commerce's Position**: Commerce agrees with Botao that the petitioner's Descartes ocean freight benchmark is not reflective of prevailing market conditions. In particular, we find that the information provided in Botao's rebuttal benchmark submission reveals concerns regarding the Descartes data used in the *Preliminary Determination*. We are thus changing our *Preliminary Determination* and using Botao's Maersk data for the ocean freight benchmark in this *Final Determination.*

First, the information in the petitioner's Descartes data appears to show the same quote for various routes. Specifically, regarding the origin, the Portland and Seattle shipments appear to share the same freight codes (TLI/item number) and prices quote from multiple additional west coast ports to multiple Chinese ports.[239] Next, it is unclear as to whether the Descartes data includes inland shipping costs. The detailed rate quote lists WCBP only as "OriginVia" as part of the routing, but lists the origin is as Spencer, Wisconsin.[240]

Finally, the Descartes prices include a unique "PRC Arbitraries" fee. This fee is for one specific carrier, Westwood Shipping Lines, to deliver to one of multiple ports in China that follow a hierarchy of destinations.[241] While the listed "PRC Arbitraries" are not accompanied by a corresponding shipping code in their description,[242] Commerce agrees with Botao that the listed shipment includes unique fees based off of destination that are unreflective of standard ocean shipment, regardless of whether those fees are strictly "DPA" fees or other, related fees related

[238] *See* Petitioner Rebuttal Brief at 39-41.
[239] *See* Petitioner's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Petitioner's Benchmark Submission," dated June 11, 2020 (Petitioner Benchmark Submission) at Attachment 2; *see also* Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Rebuttal Benchmark Submission," dated June 22, 2020 (Botao Rebuttal Benchmark Submission) at Exhibit 5.
[240] *See* Botao Rebuttal Benchmark Submission at Exhibit 5.
[241] *Id*. (showing that "destination is not" to arrive at the final price).
[242] *Id*. at Exhibit 5 and Exhibit 6.

specific to the quote provided by Westwood Shipping Lines. Thus, Commerce determines that the Descartes data provided by the petitioner is unreliable, not reflective of prevailing market conditions and, on the whole, unusable as a benchmark for ocean freight.

We note that Botao has also submitted Descartes data in its benchmark submission. However, all of these quotes show prices from China to the United States.[243] Thus, we find these prices are not usable.

For the reasons discussed above, Commerce cannot use Descartes data from either the petitioner or Botao. The other benchmark for ocean freight available on the record of this investigation is Botao's Maersk data, which consists of freight quotes for two routes, Savannah, Georgia to Shanghai and Long Beach, California to Shanghai, and does not contain duplicative routes, nor contains unique "PRC Arbitraries" or cover routes from China to the United States.[244] Commerce also notes that Maersk's data has been used and found as a reliable source in several investigations.[245] Therefore, for the final determination we find the Maersk data to be the more appropriate ocean freight benchmark data. Consequently, Commerce has adjusted calculations for all input benchmarks to reflect the updated ocean freight benchmark.[246]

### E. Whether Commerce Should Select a Different Benchmark for the Provision of oTDA for LTAR

*Botao's Arguments*:[247]

- Commerce should change the benchmark for oTDA from the UN Comtrade data used in the *Preliminary Determination* to Botao's oTDA benchmark submission. Botao's oTDA benchmark submission is 8- and 10-digit data that is more specific to oTDA than 6-digit UN Comtrade data. Additionally, Botao's oTDA benchmark submission contains data only for countries known to export to China during the POI, which better reflects world market prices for oTDA.

*Petitioner's Arguments*:[248]

- Commerce should not change the benchmark used for the provision of oTDA. Botao has not provided evidence to demonstrate that the 6-digit UN Comtrade data is a basket category and less specific than Botao's 8- and 10-digit data.

---

[243] *See* Botao Benchmark Submission at Exhibit 5.
[244] *Id*. at Exhibit 4.
[245] *See e.g.*, *Wood Mouldings and Millwork Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 67 (January 4, 2021), and accompanying IDM at Comment 11; *see also Refillable Stainless Steel Kegs from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, in Part*, 84 FR 57005 (October 24, 2019).
[246] *See* Botao Final Calculation Memorandum at Attachment 2; *see also* Delian Final Calculation Memorandum at Attachment 2.
[247] *See* Botao Case Brief at 7-8.
[248] *See* Petitioner Rebuttal Brief at 33-35.

- Botao's method for selecting the six countries for the benchmark is based upon countries known to export to China during the POI. However, that method is illogical because those countries' exports to China are explicitly excluded by Commerce due to the distortion of the Chinese oTDA market. Additionally, Botao's benchmark submission does not include certain countries known to export to China during the POI and, thusly, excludes countries that meet Botao's own criteria. Furthermore, while Botao's oTDA benchmark submission contains only six countries, the record indicates that many more countries are involved in the global oTDA market.

**Commerce's Position**: We find Botao's arguments regarding use of a different oTDA benchmark unconvincing. In the *Preliminary Determination*, we found that Botao's benchmark submission is self-selected and less inclusive than the UN Comtrade data provided in the Botao Rebuttal Benchmark Submission.[249]

As an initial matter, as discussed in Comment 7b, Botao's benchmark submission includes exports to China, which is a distorted market for oTDA and, therefore, not usable. Including such imports in a benchmark is in direct contrast to regulation, which indicates that actual imports are tier-one benchmarks,[250] and Commerce's practice.[251]

Even considering Botao's benchmark in the absence of exports to China, Commerce continues to find that it is less inclusive and representative of the overall market for oTDA. Under 19 CFR 351.511(a)(2)(ii), Commerce selects 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 does not expressly limit the world price to only that which originates from a country known to export to the respondent country. Rather, a world price is one that is a representative price of the overall market that would be "reasonable to conclude … would be available" to the purchasers in the country. By contrast, Botao has not provided any evidence to show that oTDA prices from producers located in countries that Botao did not include in its benchmark submission *would not* be available to Chinese corrosion inhibitor producers.

Furthermore, regarding the self-selected nature of Botao's benchmark submission, Botao's benchmark submission omits, without explanation, multiple countries included within its own exhibits as known exporters to China, the criteria by which Botao selected countries for a world benchmark.[252] Therefore, Commerce concludes that Botao's benchmark submission is self-selected and likely to not reflect an accurate "world market price."

Botao has also not provided documentation showing any explanation of the difference in specificity or product descriptions between the 6-digit UN Comtrade data with the 8- and 10-digit data provided in Botao's benchmark submission. While the Eurostat data provided in Botao's benchmark submission describes the product, information provided for the Global Trade Atlas (GTA) data appears to lack complete product descriptions and, for one country, completely

[249] *See Preliminary Determination* PDM at 37.
[250] *See* 19 CFR 351.511(a)(2)(i).
[251] *See Chlorinated Isos 2017 AR* IDM at Comment 4.
[252] *See* Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Botao Section III Response," dated May 28, 2020 (Botao IQR) at Exhibit 24 and 25.

excludes description.[253] Even with a description, Botao has not provided any evidence that demonstrates that the 6-digit UN Comtrade data, which inarguably includes oTDA, is not reflective of the world price during the POI. Indeed, Botao does not contest that the UN Comtrade data is a valid benchmark for oPDA, which is also included in the Eurostat data alongside oTDA. Consequently, Commerce determines that Botao's benchmark submission is still self-selected and less comprehensive than the 6-digit UN Comtrade benchmark, which is still preferable for the calculation of *ad valorem* subsidy rates.

### F. Whether Commerce Erred in Calculating the Benchmark for Provision of Sodium Nitrite for LTAR

*Delian's Arguments*:[254]

- Commerce erred in its calculation of the benchmark for the provision of sodium nitrite for LTAR by incorrectly totaling the volume and value of exports to China and should correct the error.

**Commerce's Position**: We disagree with Delian. Commerce reviewed the *Preliminary Determination* calculations and it appears that Delian has inadvertently excluded a shipment from the United States to China dating to January 2019.[255] Including this shipment creates a total volume of 35,197 kilograms (kg) and value of $53,905 for exports to China. The sum of the monthly totals in the benchmark is 24,911,825 kg and $20,026,568. The overall totals for all oTDA shipments are 24,947,022 kg and $20,080,473. Taking the overall totals of all oTDA shipments (24,947,022 kg and $20,080,473) and subtracting the exports to China (35,197 kg and $53,905) equals final totals of 24,911,825 kg and $20,026,568, equivalent to the sum of the monthly totals as calculated in the *Preliminary Determination*.

### Comment 8: Countervailability of Other Subsidies

*GOC's Arguments*:

- Under section 702 of the Act, Commerce can only commence investigation of a subsidy after sufficient evidence of financial contribution, benefit and specificity have been found.[256] Similarly, Commerce will include an investigation of a discovered practice that appears to provide a countervailable subsidy only if it concludes that sufficient time remains before the scheduled date for the final determination.[257]
- In the instant investigation, Commerce has pre-emptively investigated other subsidies without having prior legal standing to investigate such subsidies.[258] Commerce erred by requesting information on "other subsidies" in its questionnaire because such information

[253] *See* Botao Benchmark Submission at Exhibit 3 (lacking full descriptions of the tariff lines for India and South Korea and providing no description for Japan).
[254] *See* Delian Case Brief at 8-9.
[255] *See* Delian Final Calculation Memorandum at Attachment 2.
[256] *See* GOC Case Brief at 19-21.
[257] *Id*.
[258] *Id*. at 21-23.

was not necessary to Commerce's investigation. At most, the statute and Commerce's regulations provide Commerce the authority, upon proper notice to the parties, to investigate such practices upon discovery, or defer consideration to a subsequent administrative review, but nothing more. Commerce has not made a discovery in this investigation or followed proper procedure for investigating any discovered practices. Thus, Commerce must assign no subsidy rate to other subsidies.

- Commerce's determination to countervail other subsidies is inconsistent with its obligations under the SCM agreement.[259]

*Petitioner's Arguments*:[260]

- Commerce's preliminary findings regarding other subsidies are consistent with U.S. law and practice because section 775 of the Act expressly provides for discovered subsidies. Furthermore, the CIT has expressly found that Commerce is not required to provide a formal initiation in investigating other subsides.[261] The GOC refused to provide requested information regarding other subsides and, consequently, Commerce was correct to countervail other subsidies as AFA.

**Commerce's Position**: We disagree with the GOC's interpretation of the statute and regulations regarding the lawful initiation of investigation of other subsidies and the scope of Commerce's authority. For the reasons detailed below, we continue to find that other subsidies self-reported by the respondents are countervailable.

Section 775(1) of the Act states that, if, during a proceeding, Commerce discovers "a practice that appears to provide a countervailable subsidy, but was not included in the matters alleged in the underlying CVD petition" Commerce "*shall* include the practice, subsidy, or subsidy program if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding."[262] Thus, section 775 of the Act imposes an affirmative obligation on Commerce to "consolidate in one investigation … all subsidies known by petitioning parties to the investigation or by {Commerce} relating to {subject merchandise}" to ensure "proper aggregation of subsidization practices."[263] Commerce's regulations carve out a limited exception to its obligation to investigate what "appear" to be countervailable subsidies: when Commerce discovers a potential subsidy too late in a proceeding, it may defer its analysis of the program until a subsequent review, if any.[264]

[259] *Id*. at 22.
[260] *See* Petitioner Rebuttal Brief at 41-44.
[261] *Id*. at 43 (citing *Jiangsu Zhongji Lamination Materials Co. v. United States*, 405 F. Supp. 3d 1317, 1342-43 (CIT 2019)).
[262] *See* section 775(1) of the Act (emphasis added).
[263] *See* S. Rep. No. 96-249 at 98 (1979); *see also Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d 1141, 1150n.12 (CIT 2000) ("Congress … clearly intended that all potentially countervailable programs be investigated and catalogued, regardless of when evidence on these programs became reasonably available.")
[264] *See* 19 CFR 351.311(a) and (c).

Moreover, Commerce has broad discretion to determine which information it deems relevant to its determination, and to request that information.[265]

Thus, consistent with the CIT's holding in *Trina Solar 2016*,[266] we find that Commerce's "other assistance" question enables Commerce to effectuate its obligation to investigate subsidies that it discovers in the course of a proceeding. We further find that this practice is consistent with Commerce's broad discretion to seek information it deems relevant to its determination.

Further, under 19 CFR 351.311(b), Commerce will examine the practice, subsidy, or subsidy program "if during a countervailing duty investigation …{Commerce} discovers a practice that appears to provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding …{and} will examine that practice, subsidy, or subsidy program if the Secretary concludes that sufficient time remains before the scheduled date for the final determination or final results of review." Therefore, the regulation clearly provides for the investigation of subsidy programs during an ongoing investigation, which thereby permits a determination of whether the subsidy in question is countervailable.

We also disagree with the contention that our examination of these programs is inconsistent with the SCM Agreement. We conducted this proceeding pursuant to U.S. CVD law, specifically the Act and Commerce's regulations. To the extent that the GOC is raising arguments concerning certain provisions of the SCM Agreement in this proceeding, the U.S. CVD law fully implements the United States' obligations under the SCM Agreement. Indeed, as we have previously explained:

> {O}ur CVD laws are consistent with our WTO obligations. Moreover, it is the Act and {Commerce's} regulations that have direct legal effect under U.S. law, and not the WTO Agreements or WTO reports. In this regard, WTO reports "do not have any power to change U.S. law or to order such a change.[267]

Additionally, as stated in 19 CFR 351.311(d), Commerce must notify the parties of any subsidy discovered in the course of the ongoing proceeding and state whether it will be included in the proceeding. Commerce notified the mandatory respondents of its investigation of these

---

[265] *See Trina Solar 2016*, 195 F. Supp. 3d at 1342 (holding that Commerce has "independent authority, pursuant to {section 775 of the Act}, to examine additional subsidization in the production of subject merchandise," and this "broad investigative discretion" permits Commerce to require respondents to report additional forms of governmental assistance); *see also, e.g.*, *Acciai Speciali Terni S.p.A., et al., v. United States*, 26 CIT 148, 167 (CIT 2002); and *Ansaldo Componeti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986).

[266] *See Trina Solar 2016*, 195 F. Supp. 3d at 1342 ("Commerce's inquiry concerning the full scope of governmental assistance provided by the {GOC} and received by the Respondents in the production of subject merchandise was within the agency's independent investigative authority pursuant to {section 702}(a) {and 775 of the Act}, and this inquiry was not contrary to law.").

[267] *See Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at Comment 1; *see also Oil Country Tubular Goods from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 11504 (March 27, 2019), and accompanying IDM at Comment 1.

programs, as the respondents self-reported the programs in their initial CVD questionnaire responses.[268]

In the *Preliminary Determination*, Commerce stated that we had "inadvertently omitted a standard question that directly requests the GOC to coordinate with the mandatory respondents regarding any other subsidies or assistance under any other subsidy programs that the companies may have received and are reporting. Thus, while the GOC was directed to provide full and complete responses regarding all programs, the GOC was not explicitly requested to coordinate with the mandatory respondents to identify, and provide full responses for, any other assistance the mandatory respondents may have received."[269] In supplemental questionnaires, Commerce requested that the GOC coordinate with the mandatory respondents and answer all questions in the appropriate appendices for any programs under which the mandatory respondents received assistance and for which the GOC wishes to challenge the countervailability.[270] However, because the questionnaire responses were not due until after the *Preliminary Determination* was issued, Commerce relied on facts available, under sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, to find that the "other subsidies" reported by mandatory respondents constitute a financial contribution, pursuant to section 771(5)(D) of the Act, and are specific, within the meaning of section 771(5A) of the Act.[271]

In its subsequent response, the GOC stated that Commerce's request was "contrary to law" and that "{t}he GOC believes, therefore, that an answer to the question would not be appropriate."[272] Consequently, the GOC declined to cooperate with the investigation in regard to the other subsidies programs.

For the reasons discussed above, Commerce acted consistently with its authority, and its practice, in investigating subsidy programs that came to light during the course of the investigation. Furthermore, we have made no change to the *Preliminary Determination* with respect to our treatment of respondents' self-reported other subsidies (*i.e.*, grants). We continue to find that information necessary to perform our analysis of financial contribution and specificity is not available on the record and that application of facts available, pursuant to section 776(a) of the Act, is warranted. Furthermore, Commerce determines, in accordance with section 776(b) of the Act, that the GOC has not cooperated to the best of its ability and that application of an adverse inference in selecting among the facts available is warranted. Thus, we determine, as AFA, that other subsidies constitute a financial contribution, pursuant to section 771(5)(D)(i) of the Act, with the exception of Tax Offsets for Research and Development, which constitutes a financial contribution pursuant to section 771(5)(D)(ii) of the Act, and are specific, within the meaning of section 771(5A) of the Act.

---

[268] *See* Botao IQR at Exhibit 14; *see also* Kanghua's Letter, "Corrosion Inhibitors from China; C-570-123; Response to Section III of the Department's Initial Countervailing Duty Questionnaire," dated May 28, 2020 (Kanghua IQR) at Exhibit 20.
[269] *See Preliminary Determination* PDM at section at 32-33, "J: Application of Facts Available: Other Subsidies."
[270] *See* Commerce's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Section II Supplemental Questionnaire for the Government of China," dated June 16, 2020.
[271] *See Preliminary Determination* PDM at 32-33.
[272] *See* GOC's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Government of China's Response to Section II First Supplemental Questionnaire," dated July 6, 2020.

## VII. RECOMMENDATION

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

| ☒ | ☐ |
|---|---|
| Agree | Disagree |

1/25/2021

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

## APPENDIX

| Program | Subsidy Rate |
|---|---|
| **Preferential Lending** | |
| Preferential Policy Lending | 10.54%[273] |
| Export Buyer's Credit | 10.54%[274] |
| Export Credit Guarantees | 10.54%[275] |
| Export Seller's Credit | 4.25%[276] |
| **Export Credit Insurance[277]** | |
| Export Credit Insurance | 1.27% |
| **Grants[278]** | |
| Special Funds Grants for Energy Saving Technology Reform | 1.27% |
| Grants for Energy Conservation and Emission Reduction | 1.27% |
| Grants, Loans and Other Incentives for Development of Famous Brands | 1.27% |
| SME Technology Innovation Fund | 1.27% |
| State Key Technology Fund Grants | 1.27% |
| SME International Market Exploration Fund | 1.27% |
| **Tax Programs** | |
| Income Tax Reductions for High and New Technology Enterprises[279] | 25% |
| Import Tariff Exemptions for Foreign Invested Enterprises and Certain Domestic Enterprises Using Imported Equipment[280] | 9.71% |
| Income Tax Credit for Domestically Owned Companies Purchasing Domestically Produced Equipment[281] | 9.71% |
| **Provision of Goods/Services for Less Than Adequate Remuneration** | |
| Provision of Land-Use Rights to Corrosion Inhibitor Producers for LTAR | 1.54% |
| Provision of Electricity For LTAR | 0.65% |
| Provision of Ortho Toluene Diamine (oTDA) for LTAR | 54.89% |

[273] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010).
[274] *Id*.
[275] *Id*.
[276] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011).
[277] *See High Pressure Steel Cylinders from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017*, 84 FR 71373 (December 27, 2019) (*High Pressure Steel Cylinders*).
[278] *Id*.
[279] *See* GOCIQR at 27, indicating the standard income tax rate.
[280] *See also Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016).
[281] *Id*.

| | |
|---|---|
| Provision of Sodium Nitrite for LTAR | 10.73% |
| Provision of Ortho Phenylene Diamine (oPDA) for LTAR | 14.14% |
| **Self-Reported Programs[282]** | |
| 2013 Provincial Agricultural Industrialization Subsidy | 1.27% |
| 2013 Rewards for Opening | 1.27% |
| 2015 Nantong Award for Scientific and Technological Advancement | 1.27% |
| 2016 Rewards for Foreign Trade and Service Outsourcing | 1.27% |
| 2017 Funds for Transformation and Upgrading of International Trade and Business | 1.27% |
| Agricultural Product Promotion Award, Leading Enterprise Subsidy | 1.27% |
| Award for Energy Saving and Audit | 1.27% |
| Booth Subsidy | 1.27% |
| Bronze Award of Tourism Administration | 1.27% |
| City-Level Subsidy of Science and Technology Bureau | 0.01% |
| Cold-Chain Logistics Project Funds | 1.27% |
| Development Funds for Small/Medium Enterprises | 1.27% |
| E-Commerce Platform Award | 1.27% |
| Employment Injury Insurance Subsidy | 0.01% |
| Employment Subsidy | 1.27% |
| Excellent Performance Unit in Enterprise Engineering Technology Research Center | 1.27% |
| Excess Sales | 1.27% |
| Exhibition Booth Subsidy | 1.27% |
| Exhibition Expense Subsidy | 1.27% |
| Extension of Workshop | 1.27% |
| Famous Trademark Incentives | 1.27% |
| Financial Subsidy | 1.27% |
| Hefei Exhibition Subsidy | 1.27% |
| Industrial Economic Award, Technological Award | 1.27% |
| Industrial Economic Incentives and Subsidies Of 2018 | 0.02% |
| Industrial Rewards | 1.27% |
| Infrastructure Funding | 1.27% |
| Intellectual Property Protection Award | 1.27% |
| Key Enterprise Ranking Promotion | 1.27% |
| Key Industry Ranking Promotion Award | 1.27% |
| Nantong Famous Brand Incentives | 1.27% |
| National Torch Plan Acceptance Rewards | 1.27% |
| Patent Award | 1.27% |
| Patent Fund Subsidy for The Second Half Of 2018 | 0.01% |
| Patent Funds for The First Half Year Of 2016 | 1.27% |

[282] *See High Pressure Steel Cylinders* for all rates of 1.27%.

| | |
|---|---|
| Patent Funds for The Second Half Of 2013 | 1.27% |
| Patent Funds for The Second Half Of 2016 | 1.27% |
| Patent Funds for The Second Half Of 2017 | 1.27% |
| Patent Grants | 1.27% |
| Policy Incentives and Subsidies of Jiang'an Town | 0.01% |
| Poverty Alleviation Funds for Old Revolutionary Base Areas | 1.27% |
| Project Subsidy | 1.27% |
| Prosperous County Project | 1.27% |
| Qualified Acceptance Award for National Torch Plan | 1.27% |
| Reward | 1.27% |
| Rugao City-Level Project Approval of Science and Technology Bureau In 2019 | 1.27% |
| Science and Technology Bureau Patent Grants | 1.27% |
| Service Charges of Individual Income Tax | 0.01% |
| Sewage Treatment | 1.27% |
| Software Subsidies | 1.27% |
| Steaming Technology Award | 1.27% |
| Subsidy for Booth Fees | 1.27% |
| Subsidy for Clean Production | 1.27% |
| Subsidy for Demonstration Enterprise in The Integration of Informatization And Industrialization | 1.27% |
| Subsidy for Post Stability | 0.02% |
| Subsidy for Removed Boilers | 0.04% |
| Subsidy for Supply and Marketing Cooperative | 0.11% |
| Subsidy Income of Intellectual Property Strategy | 1.27% |
| Tax Offsets for Research and Development | 0.53% |
| Technology Bonus | 1.27% |
| Technology Innovation Incentives | 1.27% |
| The Award for Technology Progress | 1.27% |
| Well-Known Trademark Review | 1.27% |
| **Total AFA Subsidy Rate** | 239.21% |