C-570-136
Investigation
POI: 1/1/2019 – 12/31/2019
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March 15, 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 Determination in the Countervailing Duty Investigation of Certain Chassis and Subassemblies thereof from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to the producers and exporters of certain chassis and subassemblies thereof (chassis) in 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 the Coalition of American Chassis Manufacturers, which is comprised of Cheetah Chassis Corporation; Hercules Enterprises, LLC; Pitts Enterprises, Inc.; Pratt Industries, Inc.; and Stoughton Trailers, LLC. The mandatory respondents subject to this investigation are Qingdao CIMC Special Vehicles Co., Ltd. (QCVC) and Dongguan CIMC Vehicle Co., Ltd. (DCVC) (collectively, with other cross-owned companies, CIMC).[1] As a result of our analysis, we made changes to the subsidy rate calculations. Below is a complete list of issues in this investigation for which we received comments from interested parties:

Comment 1: Whether CIMC and Its Cross-Owned Affiliates are State-Owned
Comment 2: Whether the Provision of International Ocean Shipping Services for Less Than Adequate Remuneration (LTAR) is Countervailable

[1] Commerce finds the following companies to be cross-owned with Qingdao CIMC Special Vehicles Co., Ltd. and Dongguan CIMC Vehicle Co., Ltd.: CIMC Vehicles (Group) Co., Ltd.; Shenzhen CIMC Vehicle Co., Ltd.; Zhumadian CIMC Huajun Casting Co., Ltd.; China International Marine Containers (Group) Co., Ltd.; Liangshan CIMC Dongyue Vehicles Co., Ltd.; Shandong Wanshida Special Vehicle Manufacturing Co., Ltd.; Yangzhou CIMC Tonghua Special Vehicles Co., Ltd.; Zhumadian CIMC Huajun Vehicle Co., Ltd.; Gansu CIMC Huajun Vehicles Co., Ltd.; CIMC Vehicles (Liaoning) Co., Ltd.; and Zhumadian CIMC Wanjia Axle Co., Ltd.

Comment 3: Whether Shipping Services Provided by Non-Chinese Firms and For Merchandise Not Subject to the Investigation are Countervailable
Comment 4: Whether the Application of Adverse Facts Available to the Export Buyer's Credit Program is Warranted
Comment 5: Whether the Application of Adverse Facts Available is Warranted in Finding the Provision of Electricity for LTAR Countervailable
Comment 6: Whether Electricity Surcharges are Countervailable
Comment 7: Whether Commerce Should Use Alternative Benchmark Rates for Land-Use Rights
Comment 8: Whether Intercompany Loans are Countervailable
Comment 9: Whether Commercial Loans are Countervailable
Comment 10: Whether Subsidies to Huajun Casting's Production are Attributable to Chassis Production
Comment 11: Whether Commerce Should Have Initiated an Investigation into Currency Undervaluation
Comment 12: Whether CIMC Failed Verification with Respect to Reported Input Purchases

II. BACKGROUND

A. Case History

On January 4, 2021, Commerce published the *Preliminary Determination*.[2] On January 8, 2021, Commerce issued supplemental questionnaires to CIMC and the Government of China (GOC) requesting additional information regarding issues identified in the *Preliminary Determination*.[3] On January 22 and 26, 2021, the GOC and CIMC timely submitted their respective responses to Commerce's supplemental questionnaires.[4] On February 3, 2021, CIMC and the petitioner requested a hearing.[5] Also, on February 3, 2021, Commerce issued a questionnaire to CIMC in lieu of on-site verification.[6] On February 10 and 11, 2021, CIMC responded to Commerce's in lieu of an on-site verification questionnaire.[7] On February 25, 2021, Commerce received case

[2] *See Certain Chassis and Subassemblies Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 86 FR 56 (January 4, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).
[3] *See* Commerce's Letter, "Countervailing Duty Investigation of Certain Chassis and Subassemblies Thereof: Post-Preliminary Determination Supplemental Questionnaire," dated January 8, 2021 (Post-Prelim Supplemental for CIMC); *see also* Commerce's Letter, "Countervailing Duty Investigation of Certain Chassis and Subassemblies Thereof: Supplemental Questionnaire for the GOC," dated January 8, 2021.
[4] *See* GOC's Letter, "GOC Post-Preliminary Supplemental Questionnaire Response in the Countervailing Duty Investigation on Certain Chassis and Subassemblies Thereof from the People's Republic of China (C-570-136)," dated January 22, 2021 (GOC SQR 1-22-21); *see also* CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Response to Post-Preliminary Determination Supplemental Questionnaire," dated January 26, 2021 (CIMC SQR 1-26-21).
[5] *See* Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Request for Hearing," dated February 3, 2021; *see also* CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Hearing Request," dated February 3, 2021.
[6] *See* Commerce's Letter, "Countervailing Duty Investigation of Certain Chassis and Subassemblies Thereof: CIMC Vehicles (Group) Co., Ltd. Verification Questionnaire," dated February 3, 2021 (CIMC Verification Questionnaire).
[7] See CIMC's Letters, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Response to Questions 1 Through 4 of the Verification Questionnaire," dated February 10, 2021; and "Certain Chassis and

briefs from the petitioner, CIMC, and the GOC.[8] On March 4, 2021, Commerce received rebuttal briefs from the petitioner and CIMC.[9] On March 4 and 5, 2021, the petitioner, CIMC, and the GOC withdrew their requests for a hearing.[10] On March 5, 2021, we cancelled the hearing on the basis that no interested party had an outstanding hearing request.[11]

B. Period of Investigation

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

III. SUBSIDIES VALUATION

A. Allocation Period

We made no changes to, and interested parties raised no issues in their case briefs, regarding the allocation period used in the *Preliminary Determination*.[12]

B. Attribution of Subsidies

Interested parties raised issues in their case and rebuttal briefs regarding the attribution methodology used in the *Preliminary Determination* at Comment 9.[13] We have made no changes to our attribution methodology in this final determination.

C. Denominators

We made no changes to, and interested parties raised no issues in their case briefs regarding, the denominators used in the *Preliminary Determination*.[14]

Subassemblies Thereof from the People's Republic of China: Response to Questions 5 Through 7 of the Verification Questionnaire," dated February 11, 2021 (CIMC's VQR2).

[8] *See* Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Response to Post-Preliminary Determination Supplemental Questionnaire," dated February 25, 2021 (Petitioner's Case Brief); *see also* CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Case Brief," dated February 25, 2021 (CIMC's Case Brief); and GOC's Letter, "GOC Administrative Case Brief -- Countervailing Duty Investigation of Certain Chassis and Subassemblies Thereof from the People's Republic of China (C-570-136)," dated February 25, 2021 (GOC's Case Brief).

[9] *See* Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Rebuttal Case Brief," dated March 4, 2021 (Petitioner's Rebuttal Brief); *see also* CIMC's Letter, "Reply Brief of CIMC Vehicles (Group) Co., Ltd., on Behalf of Mandatory Respondents Dongguan CIMC Vehicle Co., Ltd., and Qingdao CIMC Special Vehicles Co., Ltd.," dated March 4, 2021 (CIMC's Rebuttal Brief).

[10] *See* GOC's Letter, "GOC Hearing Request Withdrawal: Countervailing Duty Investigation on Certain Chassis and Subassemblies Thereof from the People's Republic of China (C-570-136)," dated March 4, 2021; *see also* CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Withdrawal of Hearing Request," dated March 5, 2021; and Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Withdrawal of Hearing Request," dated March 5, 2021.

[11] *See* Memorandum, "Cancellation of Hearing Scheduled for March 8, 2021," dated March 5, 2021.

[12] *See Preliminary Determination* PDM at 6.

[13] *Id.* at 6-8.

[14] *Id.* at 8.

D. Benchmarks and Interest Rates

Interested parties' issues regarding the benchmarks and interest rates used in the *Preliminary Determination* at Comment 7.[15]

IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Commerce relied on "facts otherwise available," including adverse facts available (AFA), for a number of its findings in the *Preliminary Determination*. Specifically, we found the provision of electricity for LTAR to be countervailable on the basis of AFA,[16] found the Export Buyer's Program to be countervailable and calculated a subsidy rate on the basis of AFA,[17] found CIMC's self-reported "other subsidies" to be countervailable as AFA,[18] found input markets to be distorted as AFA,[19] found input service providers and producers to be "authorities" as AFA.[20] We found CIMC to be a state-owned enterprise (SOE),[21] and found the provision of inputs and international ocean shipping to be *de facto* specific on the basis of facts available (FA).[22]

Interested parties submitted comments in their case and rebuttal briefs regarding Commerce's application of facts otherwise available and AFA in its *Preliminary Determination*.[23] Commerce has made changes to its use of facts otherwise available and AFA, as applied in the *Preliminary Determination*. Those changes are discussed in detail below.

A. Legal Standard

Section 776(a) of the Act provides that Commerce shall, subject to section 782(d) of the Act, select from among the "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.[24] When selecting an AFA rate from among the possible

[15] *Id.* at 20-26.
[16] *Id.* at 11.
[17] *Id.* at 18-20 and 26-27.
[18] *Id.* at 17-18.
[19] *Id.* at 16-17.
[20] *Id.* at 14-15.
[21] *Id.* at 11.
[22] *Id.* at 16.
[23] *See* Comments 1, 2, 4, and 5.
[24] *See also* 19 CFR 351.308(c).

sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."[25] 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."[26]

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.[27] 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."[28] It is Commerce's practice to consider information to be corroborated if it has probative value.[29] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.[30] However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.[31] Furthermore, Commerce is not required to corroborate any countervailable subsidy rate in a separate segment of the same proceeding.[32]

In a countervailing duty (CVD) investigation, Commerce requires information from both the foreign producers and exporters of subject merchandise and the government of the country in which those exporters and producers are located. When the government fails to provide requested and necessary information concerning alleged subsidy programs, Commerce, in selecting from among the facts otherwise available with an adverse inference, may find that a financial contribution exists under the alleged program and that the program is specific. However, where possible, Commerce will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit conferred, to the extent that those records are usable and verifiable.

Otherwise, under section 776(d) of the Act, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest such rates. Additionally, when selecting an AFA rate, Commerce is not required for the purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-

[25] *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), and accompanying Issues and Decision Memorandum (IDM); and *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909 (February 23, 1998).
[26] *See* Statement of Administrative Action accompanying the Uruguay Round Agreement Act, HR Doc. 103-316. Vol. 1 (1994) (SAA) at 870, reprinted at 1994 U.S.C.C.A.N. 4040, 4199.
[27] *See* 19 CFR 351.308(d).
[28] *See, e.g.*, SAA at 870.
[29] *Id.* at 870.
[30] *Id.* at 869.
[31] *Id.* at 869-870.
[32] *See* section 776(c)(2) of the Act.

cooperating interested party had cooperated or to demonstrate that that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[33]

B. Application of Adverse Facts Available: CIMC and CIMC Group are State-Owned Enterprises

Record evidence demonstrates that China Merchants Group Limited (CMG) and China COSCO Shipping Corporation Limited (COSCO) account for 24.56 percent[34] and 22.70 percent[35] of CIMC Group ownership, respectively. CMG and COSCO are SOEs, fully owned by the State-Owned Assets Supervision and Administration Commission.[36] The petitioner alleged that Hony Group Management Limited (Hony Management), which holds 11.99 percent[37] of CIMC Group shares, is an SOE.[38] We had requested information regarding the ownership of Hony Management and Hony Capital Management Limited (Hony Capital); however, the information CIMC provided did not account for a substantial proportion of ownership shares. Should Commerce find that Hony Management is state-owned, as we have found for Hony Capital in a previous determination of separate proceeding,[39] state ownership of CIMC Group, and therefore CIMC, would be greater than 50 percent. Because information necessary to make this determination was missing from the record of the investigation, we preliminarily determined that CIMC and their cross-owned affiliates were SOEs on the basis of facts otherwise available.[40]

We stated that, in order to make a determination as to whether Hony Management, and therefore CIMC, was an SOE, we needed additional information regarding the shareholders of Hony Management and Hony Capital, and the nature of the relationship between Hony Management and Hony Capital.[41] We requested this information in a supplemental questionnaire subsequent to the *Preliminary Determination*.[42] CIMC provided information indicating that Hony Management was the successor-in-interest to Hony Capital.[43] However, CIMC again failed to provide the information we requested regarding the shareholders of Hony Management and Hony Capital.[44]

Pursuant to section 776(a)(1) of the Act, we find that necessary information is missing from the record of the investigation to determine whether Hony Management is an SOE. Further,

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[33] *See* section 776(d)(3) of the Act.
[34] *See* Petitioner's Letters, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Comments on Government of The People's Republic of China's Initial Questionnaire Response," dated November 10, 2020 at Exhibit 6, at 115.
[35] *Id.* at 111.
[36] *Id.* at 193.
[37] *Id.* at 191.
[38] *See* Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Comments in Advance of the Department's Preliminary Determination," dated December 14, 2020 at 36.
[39] *See 53-Foot Domestic Dry Containers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 21209 (April 17, 2015) (*53-Foot Containers from China*), and accompanying IDM at Comment 2.
[40] *See Preliminary Determination* PDM at 11-12.
[41] *Id.* at 11.
[42] *See* Post-Prelim Supplemental Questionnaire for CIMC at 3.
[43] *See* CIMC SQR 1-26-21 at 1.
[44] *Id.* at 2.

pursuant to section 776(a)(2)(A) of the Act, we find that CIMC has withheld this information. Information on the record of this investigation indicates that Hony Management is the successor-in-interest to Hony Capital.[45] Pursuant to section 776(b)(2)(D) of the Act, we are using this record information to determine that Hony Management, and therefore CIMC Group and any cross-owned affiliates, are SOEs.

C. Application of Adverse Facts Available: SOE-Specific Subsidy Programs

As discussed under the section "Programs Determined to be Countervailable," Commerce is investigating government directed debt restructuring in the Chinese chassis industry and capital injections and other payments from the State Capital Operating Budget (SCOB). Commerce determines that the use of AFA is warranted in determining the countervailability of both of these programs because neither the GOC nor CIMC provided the requested information needed to allow Commerce to fully analyze either of these programs.

In the initial questionnaire, we requested that the GOC provide the information requested in the Standard Questions Appendix, Allocation Appendix, and Grant Appendix regarding government directed debt restructuring in the Chinese chassis industry and regarding capital injections and other payments from the SCOB.[46] The GOC refused to respond to these questions in its initial questionnaire response, stating that none of the mandatory respondents used either program.[47] We notified the GOC in a supplemental questionnaire that we require a full response for each alleged program, regardless of whether the GOC believes that a respondent used it, and again requested that it submit the requested information for both programs.[48] The GOC again did not provide a full response to our questions regarding either program, restating that no respondents used the programs.[49] Further CIMC refused to respond to these questions in its initial questionnaire response, indicating it was not state-owned.[50] However, as discussed above, we are finding CIMC to be an SOE for purposes of this final determination.

Pursuant to section 776(a)(1) of the Act, we find that necessary information is missing from the record for Commerce to have a clear understanding of how these programs operate. Furthermore, pursuant to sections 776(a)(2)(A) and (2)(C) of the Act, when an interested party withholds information requested by Commerce or significantly impedes a proceeding, Commerce uses facts otherwise available. We find that the use of facts otherwise available is

[45] *See* CIMC SQR 1-26-21 at 1.
[46] *See* Commerce's Letter, "Countervailing Duty Investigation of Certain Chassis and Subassemblies thereof from the People's Republic of China: Countervailing Duty Questionnaire," dated September 3, 2020 (Initial Questionnaire) at 4, 40-41, and 91-93.
[47] *See* GOC's Letter, "GOC Initial Questionnaire Response in the Countervailing Duty Investigation on Certain Chassis and Subassemblies Thereof from the People's Republic of China (C- 570-136)," dated October 27, 2020 (GOC IQR) at 6 and 301.
[48] *See* Commerce's Letter, "Countervailing Duty Investigation of Certain Chassis and Subassemblies Thereof: Supplemental Questionnaire Regarding GOC's Initial Questionnaire Response," dated December 4, 2020 at 3.
[49] *See* GOC's Letter, "GOC Supplemental Questionnaire Response Part 2 in the Countervailing Duty Investigation on Certain Chassis and Subassemblies Thereof from the People's Republic of China (C-570-136)," dated December 21, 2020 (GOC SQR 12-21-20) at 10 and 151.
[50] *See, e.g.*, CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Response to Section III of the Initial Questionnaire Response," dated October 27, 2020 at DCVC-36.

appropriate in light of the GOC and CIMC's repeated refusal to provide requested information necessary for Commerce to make a determination regarding these programs.

For these reasons, we find, as AFA, these programs provide a financial contribution pursuant to section 771(5)(D) of the Act, provided a benefit pursuant to section 771(5)(E) of the Act, and to be specific within the meaning of sections 771(5A) and (B) of the Act.

Based on the AFA rate selection hierarchy described above, for government directed debt restructuring in the Chinese chassis industry, we are using an AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in the *Coated Paper from China Amended Final* proceeding.[51] For capital injections and other payments from the SOCB, we are using an AFA rate of 1.27 percent *ad valorem*, the highest rated determined for a similar program in the *Steel Cylinders from China* proceeding.[52]

V. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

1. Export Buyer's Credits

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are discussed in Comment 4. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[53]

CIMC: 10.54 percent *ad valorem*

2. Export Seller's Credits

No interested parties submitted comments in their case or rebuttal briefs regarding this program. However, Commerce received additional information regarding this program following the *Preliminary Determination.*[54] Accordingly, Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[55]

CIMC: 0.46 percent *ad valorem*

3. Policy Loans to the Chassis Industry

Interested parties submitted comments in their case and rebuttal briefs regarding this program at Comments 8 and 9. Additionally, Commerce received additional information regarding this

[51] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from China Amended Final*).
[52] *See High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*Steel Cylinders from China*), and accompanying IDM at 13.
[53] *See Preliminary Determination* PDM at 26-27.
[54] *See* Calculations Memo at "F. Export Seller's Credit."
[55] *Id*. at 27.

program following the *Preliminary Determination*.[56] As a result, Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[57]

CIMC: 1.71 percent *ad valorem*

4. Provision of Land Use Rights to SOEs by the GOC for LTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program at Comments 1 and 7. Additionally, Commerce received additional information regarding this program following the *Preliminary Determination.*[58] As a result, Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[59]

CIMC: 2.12 percent *ad valorem*

5. Provision of Electricity for LTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program at Comments 5 and 6. Additionally, Commerce received additional information regarding this program following the *Preliminary Determination*.[60] As a result, Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[61]

CIMC: 0.47 percent *ad valorem*

6. Provision of Hot-Rolled Steel Sheet and Plate for LTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program at Comment 12. Additionally, Commerce received additional information regarding this program following the *Preliminary Determination*.[62] As a result, Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[63]

CIMC: 5.37 percent *ad valorem*

[56] *See* Memorandum, "Countervailing Duty Investigation of Certain Chassis and Subassemblies Thereof from the People's Republic of China: Final Determination Calculations for CIMC Vehicles (Group) Co., Ltd.," dated March 15, 2021 (Calculations Memo) at "C. Policy Lending to the Chassis Industry."
[57] *See Preliminary Determination* PDM at 27-29.
[58] *See* Calculations Memo at "B. Provision of Land Use Rights to SOEs for LTAR."
[59] *See Preliminary Determination* PDM at 29.
[60] *See* Calculations Memo at "D. Provision of Electricity for LTAR."
[61] *See Preliminary Determination* PDM at 31.
[62] *See* Calculations Memo at "A. Inputs for Less than Adequate Remuneration (LTAR) and Input Benchmarks."
[63] *See Preliminary Determination* PDM at 32.

7. Provision of Galvanized Steel for LTAR

No interested parties submitted comments in their case or rebuttal briefs regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[64]

CIMC: 0.09 percent *ad valorem*

8. Provision of Steel Bar for LTAR

No interested parties submitted comments in their case or rebuttal briefs regarding this program. However, Commerce received additional information regarding this program following the *Preliminary Determination.*[65] As a result, Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[66]

CIMC: 0.39 percent *ad valorem*

9. Provision of Steel Beams for LTAR

No interested parties submitted comments in their case or rebuttal briefs regarding this program. However, Commerce received additional information regarding this program following the *Preliminary Determination.*[67] As a result, Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[68]

CIMC: 1.29 percent *ad valorem*

10. Provision of Steel Channels for LTAR

No interested parties submitted comments in their case or rebuttal briefs regarding this program. However, Commerce received additional information regarding this program following the *Preliminary Determination.*[69] As a result Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[70]

CIMC: 0.65 percent *ad valorem*

11. Provision of Steel Angles for LTAR

No interested parties submitted comments in their case or rebuttal briefs regarding this program. However, Commerce received additional information regarding this program following the

[64] *Id.* at 32-33.
[65] *See* Calculations Memo at "A. Inputs for Less than Adequate Remuneration (LTAR) and Input Benchmarks."
[66] *See Preliminary Determination* PDM at 33-34.
[67] *See* Calculations Memo at "A. Inputs for Less than Adequate Remuneration (LTAR) and Input Benchmarks."
[68] *See Preliminary Determination* PDM at 34.
[69] *See* Calculations Memo at "A. Inputs for Less than Adequate Remuneration (LTAR) and Input Benchmarks."
[70] *See Preliminary Determination* PDM at 35.

Preliminary Determination.[71] As a result, Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[72]

CIMC: 0.15 percent *ad valorem*

12. Provision of Hollow Structural Shapes for LTAR

No interested parties submitted comments in their case or rebuttal briefs regarding this program. However, Commerce received additional information regarding this program following the *Preliminary Determination.*[73] As a result, Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[74]

CIMC: 1.90 percent *ad valorem*

13. Income Tax Reductions for High and New Technology Enterprises

No interested parties submitted comments in their case or rebuttal briefs regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination.*[75]

CIMC: 0.90 percent *ad valorem*

14. Tax Offsets for Research and Development under the Enterprise Income Tax Law

No interested parties submitted comments in their case or rebuttal briefs regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination.*[76]

CIMC: 0.24 percent *ad valorem*

15. Interest Payment Subsidies

No interested parties submitted comments in their case or rebuttal briefs regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination.*[77]

CIMC: 0.01 percent *ad valorem*

[71] *See* Calculations Memo at "A. Inputs for Less than Adequate Remuneration (LTAR) and Input Benchmarks."
[72] *See Preliminary Determination* PDM at 35-36.
[73] *See* Calculations Memo at "A. Inputs for Less than Adequate Remuneration (LTAR) and Input Benchmarks."
[74] *See Preliminary Determination* PDM at 36-37.
[75] *Id.* at 37.
[76] *Id.* at 38.
[77] *Id.* at 38-39.

16. Other Subsidies

No interested parties submitted comments in their case or rebuttal briefs regarding these programs. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[78]

CIMC: 1.03 percent *ad valorem*

17. Provision of Wire Rod for LTAR

In the *Preliminary Determination*, we found this program not to have conferred a measurable benefit.[79] Based on information received subsequent to the *Preliminary Determination* and changes to our benchmark calculation for wire rod, we have determined that benefits from this program are measurable during the POI.[80]

Dongyue, HJV, Tonghua, and QCVC reported that they purchased wire rod during the POI.[81] As we explained in the "Use of Facts Otherwise Available and Adverse Inferences" section of the *Preliminary Determination*, we determine that all domestic producers that provided wire rod to CIMC are "authorities" within the meaning of section 771(5)(B) of the Act[82] and, therefore, CIMC received a financial contribution in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act. Further, we also determine that the provision of wire rod is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.[83] Finally, we determine that the domestic market for wire rod is distorted by government involvement in the market.[84] Consequently, as discussed in the "Input Benchmarks" section of the *Preliminary Determination*, to determine the benefit from the provision of wire rod under section 771(5)(E)(iv) of the Act, we are relying on world market benchmark prices consistent with 19 CFR 351.511(a)(2)(ii).

We compared the monthly benchmark prices to the purchase prices paid by each of the CIMC companies for individual domestic transactions, including delivery charges and VAT. The benefit is the difference between the benchmark prices and the prices reported by the CIMC companies. To determine the net countervailable subsidy rate for CIMC, we divided the benefits received by each company by the appropriate sales denominator, as described in the "Subsidies Valuation" section of the *Preliminary Determination*. On this basis, we determine a net countervailable subsidy rate of 0.01 percent *ad valorem* for CIMC.

18. *Government Directed Debt Restructuring in the Chinese Chassis Industry*

In our *Preliminary Determination*, we found that this program was not used. However, for the reasons explained in the "Application of Adverse Facts Available: CIMC and CIMC Group are

[78] *Id.* at 39.
[79] *Id.*
[80] *See* CIMC SQR 1-26-21 at Exhibit SQ-5; *see also* Calculations Memo.
[81] *See* CIMC SQR 1-26-21 at Exhibit SQ-5; *see also* CIMC SQR 11-20-20 at Exhibit Dongyue-WROD-1; and CIMC SQR 11-13-20 at Exhibits Tonghua-WROD-1 and HJV-WROD-1.
[82] *See Preliminary Determination* PDM at "Use of Facts Available and Adverse Inferences" section.
[83] *Id.*
[84] *Id.*

State-Owned Enterprises" section, we have found, as AFA, that CIMC is an SOE. Further, CIMC declined to provide responses to our questions regarding the SOE-specific programs government directed debt restructuring in the Chinese chassis industry and capital injections and other payments from the SOCB.[85] For reasons explained in Commerce's position at Comment 1, we are determining that CIMC used this program during the AUL period.

For the reasons explained in the "Application of Adverse Facts Available: SOE-Specific Subsidy Programs" section, we determine that this program constitutes a financial contribution, is specific, and confers a benefit on the basis of AFA, pursuant to sections 776(a) and (b) of the Act. As AFA, we determine that government-directed debt restructuring to the Chinese chassis industry confers a financial contribution within the meaning of section 771(5)(D)(i) of the Act. As AFA, we determine that the program is specific because it is limited to SOEs and enterprises in priority or pillar industries, including the logistics industry, under section 771(5A)(D)(i) of the Act. As AFA, we determine that the program confers a benefit to the mandatory respondents, pursuant to sections 771(5)(E) of the Act. Furthermore, for the reasons explained in the "Application of Adverse Facts Available: CIMC and CIMC Group are State-Owned Enterprises" section, we determine that that CIMC benefited from this program during the POI within the meaning of section 771(5)(E)(ii) of the Act. On this basis, we assign a countervailable subsidy rate of 10.54 percent *ad valorem* to CIMC.[86]

19. *Capital Injections and Other Payments from the State Capital Operating Budget*

In our *Preliminary Determination*, we found that this program was not used. However, for the reasons explained in the "Application of Adverse Facts Available: CIMC and CIMC Group are State-Owned Enterprises" section, we have found, as AFA, that CIMC is an SOE. Further, CIMC declined to provide responses to our questions regarding the SOE-specific programs government directed debt restructuring in the Chinese chassis industry and capital injections and other payments from the SOCB.[87] For reasons explained in Commerce's position at Comment 1, we are determining that CIMC used capital injections and other payments from the SCOB during the AUL period.

For the reasons explained in the "Application of Adverse Facts Available: SOE-Specific Subsidy Programs" section, we determine that this program constitutes a financial contribution, is specific, and confers a benefit on the basis of AFA, pursuant to sections 776(a) and (b) of the Act. As AFA, we determine that capital injections and other payments from the SCOB confer a financial contribution in the form of a direct transfer of funds within the meaning of sections 771(5) (D) (i) of the Act. As AFA, we determine that the program is specific because it is limited to SOEs under section 771(5A)(D)(i) of the Act. As AFA, we determine that the program confers a benefit to the mandatory respondents, pursuant to sections 771(5)(E)(ii) of the Act. Furthermore, for the reasons explained in the "Application of Adverse Facts Available: CIMC and CIMC Group are State-Owned Enterprises" section, we determine that that CIMC benefited from this program during the POI within the meaning of section 771(5)(E)(ii) of the

[85] *See* CIMC IQR at DCVC-12 and DCVC-38-39.
[86] *See Coated Paper from China Amended Final*.
[87] *See* CIMC IQR at DCVC-12 and DCVC-38-39.

Act. On this basis, we assign a countervailable subsidy rate of 1.27 percent *ad valorem* to CIMC.[88]

B. Programs Determined Not to Have Conferred a Measurable Benefit

1. Subsidies for Development of Famous Brands and Chinese World Top Brands

No interested parties submitted comments in their case and rebuttal briefs regarding this program. Commerce has not modified its analysis or calculation of the subsidy rate for this program from the *Preliminary Determination*.

2. Other Subsidies

No interested parties submitted comments in their case and rebuttal briefs regarding these programs. Commerce has not modified its analysis or calculation of the subsidy rate for these programs from the *Preliminary Determination*.

C. Programs Determined Not to be Used

1. Provision of Land for LTAR in Industrial and Other Special Economic Zones
2. Provision of Land for LTAR to the Certain Chassis Industry
3. Foreign Trade Development Fund Grants
4. Export Assistance Grants
5. State Key Technology Fund Grants
6. Grants for Retiring Outdated Capacity/Industrial Restructuring
7. Grants for Energy Conservation and Emissions Reduction
8. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Procured Equipment
9. Import Tariff and Value-Added Tax Exemptions on Imported Equipment in Encouraged Industries
10. Export Loans from Chinese State-Owned Banks

D. Program For Which We Are Deferring a Final Determination

Provision of International Ocean Shipping Services for LTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program. Commerce has not calculated a subsidy rate for this program for the final determination and has deferred its analysis of the countervailability of this program until the first requested administrative review of any CVD order that results from this investigation. *See* Comment 2.

[88] *See Steel Cylinders from China* IDM at 13.

VI. ANALYSIS OF COMMENTS

Comment 1: Whether CIMC and Its Cross-Owned Affiliates are State-Owned

CIMC's Arguments:

- Hony Management is not state-owned, which has been demonstrated by the list of top shareholders, who are not affiliated with the Chinese Communist Party (CCP), as well as signed statements the Hony Management is not state-owned.[89] Because Hony Management is not an SOE, CIMC Group is not majority state-owned. Further, because state ownership of CIMC is indirect, via ownership of CIMC Group, it accounts for only 18 percent of CIMC ownership.[90]
- CIMC Group operates independently of its state-owned shareholders, including China Merchants Group (CMG) and China Ocean Shipping Company, Limited (COSCO), as stated in their 2019 annual report.[91] CIMC operates independently of the GOC, as demonstrated by an independent legal opinion and the company's governing documents.[92]

Petitioner's Arguments:

- Commerce previously determined that Hony Capital Management Limited (Hony Capital), the successor-in-interest to Hony Management, to be state-owned.[93] CIMC has failed to cooperate with Commerce's repeated requests for information regarding the ownership of Hony Management, specifically with respect to providing the full list of Hony Management's shareholders.
- Therefore, Commerce should find that CIMC is an SOE on the basis of AFA. Further, Commerce should apply AFA to find that CIMC benefited from capital injections and other payments from the State Capital Operating Budget and from government directed debt restructuring, and apply an AFA subsidy rate to both of these programs, as well as the provision of land for LTAR to SOEs.

CIMC's Rebuttal Arguments:

- The petitioner's assertion that Hony Management is state-owned is not supported by record evidence.[94] Further, the petitioner's assertion that CIMC failed to report the respondent's ownership is misleading and is not a basis for applying AFA.[95] Finally, the petitioner's claims regarding another shareholder have no bearing on whether CIMC Group is an SOE.[96]
- Because record evidence demonstrates that CIMC is not state-owned, there is no basis for the application of AFA and Commerce should continue to find non-use for government

[89] *See* CIMC's Case Brief at 4-5; *see also* CIMC's SQR 1-26-21 at 2-3 and Exhibit SQ-1; and CIMC's SQR 12-4-20 at 3.
[90] *Id.* at 6.
[91] *See* CIMC's Case Brief at 5; *see also* CIMC's IQR 10-30-20 at Exhibit CIMC-8.
[92] *Id.* at 6-7.
[93] *See* Petitioner's Case Brief at 2; *see also 53-Foot Containers from China* IDM at Comment 2.
[94] The record evidence consists primarily of business proprietary information. *See* CIMC's Rebuttal Brief at 3.
[95] The record evidence consists primarily of business proprietary information. *Id.* at 3-4.
[96] The record evidence consists primarily of business proprietary information. *Id.* at 4.

directed debt restructuring and capital injections and other payments from the State Capital Operating Budget.

Petitioner's Rebuttal Arguments:

- CIMC has not cooperated in providing evidence that would enable Commerce to determine whether Hony Management, and therefore CIMC, is an SOE. What evidence is on the record indicates that Hony Management is an SOE: Commerce previously determined that Hony Capital was an SOE,[97] and Hony Capital's own website lists CIMC as an SOE.[98] CIMC relies heavily on a declaration regarding the ownership of Hony Management, which is unverifiable and inconsistent with other information on the record of the investigation.[99]
- CIMC's claim that state ownership is entirely indirect and only accounts for 18 percent of its ownership is contrary to Commerce's practice of determining state ownership. In *53-Foot Containers from China*, Commerce calculated the GOC's ownership share by aggregating the ownership shares of entities ultimately owned by the State-Owned Asset Supervision and Administration Commission (SASAC).[100] Only considering SASAC's direct ownership percentage would fail to capture state ownership of companies further down the ownership chain that are, in practice, controlled by the GOC.[101]
- Finally, Commerce requested information regarding the 86 percent of Hony Management's shareholders that remain unaccounted for.[102] CIMC refused to provide this information.[103] Accordingly, Commerce should continue to find that CIMC is an SOE and apply AFA to determine the subsidy rate for each SOE-specific program.

Commerce's Position: In the *Preliminary Determination*, we found that CIMC was an SOE on the basis of facts otherwise available, pursuant to sections 776(a)(1), 776(a)(2)(A), and 776(a)(2)(C) of the Act. Specifically, we requested a full list of shareholders for Hony Management during the POI, in order to determine whether it was an SOE.[104] CIMC provided an organization chart illustrating some, but not all, of Hony Management's shareholders.[105] Subsequent to the *Preliminary Determination*, we issued a supplemental questionnaire to CIMC, providing an opportunity to identify Hony Management's and Hony Capital's remaining shareholders.[106] CIMC declined for a second time to provide the complete list of shareholders.[107]

As detailed above, in the "Use of Facts Otherwise Available and Adverse Inferences" section, we find that CIMC has failed to cooperate to the best of its ability, pursuant to section 776(b)(1), by

[97] *See* Petitioner's Rebuttal Brief at 6; *see also 53-Foot Containers from China* IDM at 40.
[98] *Id.* at 8; *see also* Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Submission of Other Factual Info," dated November 30, 2020 at Exhibit 10.
[99] The record evidence consists primarily of business proprietary information. *See* Petitioner's Rebuttal Brief at 8-9.
[100] *Id.* at 10; *see also 53-Foot Containers from China* IDM at Comment 2.
[101] *See* Petitioner's Rebuttal Brief at 12-13.
[102] *Id*. at 5.
[103] *Id.*; *see also* CIMC SQR 1-26-21 at 2.
[104] *See* Commerce's Letter, "Countervailing Duty Investigation of Certain Chassis and Subassemblies Thereof: Supplemental Questionnaire Regarding CV's Initial Questionnaire Response," dated November 20, 2020 at 3.
[105] *See* CIMC SQR 12-4-20 at 2 and Exhibit SQ-1.
[106] *See* Post-Prelim Supplemental for CIMC at 3.
[107] *See* CIMC SQR 1-26-21 at 2.

not providing the requested information regarding Hony Management. We disagree with CIMC that the GOC's indirect ownership share is only 18 percent. As the petitioner notes, Commerce's practice is to calculate ownership by aggregating the ownership shares of entities ultimately owned by the GOC.[108] Accordingly, we find, as AFA, that Hony Management is state-owned. Therefore, we continue to find, as in the *Preliminary Determination*, that SOEs account for more than 50 percent of CIMC Group's ownership.[109]

Furthermore, CIMC did not provide responses to our questions regarding government directed debt restructuring on the basis that it did not use the program. Additionally, CIMC did not provide responses to our questions regarding capital injections for SOEs and other payments from the SCOB to SOEs on the basis that CIMC is not an SOE.[110] Prior to the *Preliminary Determination*, we requested additional details regarding other payments from the SCOB in a supplemental questionnaire.[111] CIMC maintained that it was not an SOE and therefore benefited neither from this program nor from government-directed debt restructuring.[112]

We agree with the petitioner that an AFA countervailable subsidy rate is warranted for government-directed debt restructuring and other payments from the SCOB. We have determined that CIMC is an SOE, and therefore eligible for these programs. As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are determining that CIMC used these programs, that they constitute a financial contribution, confer a benefit, and are specific. Further, we are determining the countervailable subsidy rate for these programs based on AFA, using the highest rate determined for a similar program.

However, we disagree that an AFA rate is warranted for the provision of land-use rights to SOEs for LTAR. While we are finding that CIMC is an SOE based on AFA, we are not calculating subsidy rates for SOE programs based on AFA. CIMC provided sufficient information regarding its land-use rights acquisitions to calculate a countervailable subsidy rate. Accordingly, we will continue to calculate the subsidy rate for this program based on information available on the record.

Comment 2: Whether the Provision of International Ocean Shipping Services for LTAR is Countervailable

CIMC's Arguments:

- In the *Preliminary Determination*, Commerce determined ocean shipping providers to be authorities. However, the GOC submitted information indicating that shipping services are not government-owned and demonstrating that Chinese law prohibits the CCP from

[108] *See* Petitioner's Case Brief at 10; *see also 53-Foot Containers from China IDM* at Comment 2.
[109] China Merchants Group Limited holds 24.56 percent of CIMC Group shares, China COSCO Shipping Corporation Limited holds 22.70 percent, and Hony Management holds 11.99 percent. *See* Petitioner's IQR Comments at Exhibit 6 at 111, 115, and 191.
[110] *See, e.g.*, CIMC IQR 10-27-20 at DCVC-39, SCVC-38, CV-32, CIMC-31, HJC-33.
[111] *See* Commerce's Letter, "Countervailing Duty Investigation of Certain Chassis and Subassemblies Thereof: Supplemental Questionnaire Regarding CV's Initial Questionnaire Response," dated November 20, 2020 at 3-4.
[112] *See* CIMC's SQR 12-4-20 at 8.

interfering in the independent operation of private companies.[113] Therefore, Commerce should find ocean shipping not to be countervailable.

- Furthermore, shipping services are not specific to any industry. The GOC provided additional information demonstrating that "virtually all" goods traded between the U.S. and China are shipped via ocean freight.[114] Commerce has previously found that the provision of international ocean shipping services is not *de facto* specific, and it has failed to establish the existence of a government program beyond the broad policy goal of promoting trade.[115]

GOC's Arguments:

- International ocean shipping is not *de facto* specific because the number of industries that use it is not limited. Commerce has previously determined that ocean shipping is not specific to any particular industry on the basis of the same information placed on the record in this investigation.[116] Therefore, Commerce should find, consistent with previous investigations, that international ocean shipping does not constitute a countervailable subsidy.

Petitioner's Rebuttal Arguments:

- The information that the GOC provided regarding the purchase of international ocean shipping services shows exports by Harmonized Tariff Schedule (HTS) codes, but does not show the volume or value of purchases by industry.[117] It is unclear from this information which of these products are exported through the purchase of ocean shipping, or to what industry each HTS code corresponds.[118] Accordingly, Commerce should continue to find that the program is specific within the meaning of section 771(5A)(D)(iii) of the Act, on the basis that the GOC failed to cooperate to the best of their ability in providing the requested information. If Commerce does not find the program to be specific through AFA, it should find that the program is specific to enterprises that buy or sell goods internationally (*i.e.*, the traded goods sector), pursuant to 19 CFR 351.502(c).
- CIMC's argument that the providers of international ocean shipping are not "authorities" within the meaning of section 771(5)(B) of the Act is incorrect. Commerce's practice is to find that majority government-owned companies are "authorities."[119] Furthermore, Commerce's finding that shipping providers not majority-owned by the GOC are

[113] *See* CIMC's Case Brief at 9; *see also* GOC IQR at 49.
[114] *See* CIMC's Case Brief. at 12.
[115] *Id.* at 13; *see also Aluminum Wire and Cable from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 58137 (October 30, 2019) (*AWC from China*); GOC's Letter, "GOC Supplemental Questionnaire Response Part 1 in the Countervailing Duty Investigation on Certain Chassis and Subassemblies Thereof from the People's Republic of China (C-570-136)," dated December 17, 2020 at Exhibit II.E9.7 (which included the post-preliminary analysis memorandum from the Aluminum Wire and Cable Investigation); and *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission, in Part, 2017*, 84 FR 55913 (October 18, 2019) (*Passenger Tires from China)*, and accompanying PDM at 32.
[116] *See* GOC Case Brief at 23-25; *see also AWC from China*; and *Passenger Tires from China*.
[117] *See* Petitioner's Rebuttal Brief at 15-16; *see also* GOC SQR 1-22-21 at Exhibit PPS-1 and PPS-2.
[118] *Id.* at 16-17.
[119] *Id.* at 19; *see also* Memorandum, "Countervailing Duty Investigation of Certain Chassis and Subassemblies Thereof from the People's Republic of China: Placing Documents on the Record," dated September 21, 2020 at 5.

authorities is consistent with previous determinations, on the basis that the GOC exercises meaningful control.[120] Finally, because the GOC did not provide the information necessary to reach a determination regarding the role of CCP officials in the ocean shipping industry, Commerce should continue to apply AFA in finding shipping providers to be an authority.[121]

Commerce's Position: In the *Preliminary Determination*, we found the provision of international ocean shipping services to be countervailable.[122] Specifically, as AFA, we found all domestic providers of international ocean shipping services to CIMC to be "authorities" within the meaning of section 771(5)(B) of the Act.[123] Further, in the *Preliminary Determination*, as FA, we found the provision of international ocean shipping services to be specific within the meaning of section 771(5A)(D)(iii) of the Act.[124] Following the *Preliminary Determination*, we collected additional information regarding this program from the GOC.[125] In their case briefs, the GOC and CIMC argue that the international ocean shipping service providers are not "authorities" and that the provision of international shipping services is not specific. As discussed further below, after considering the totality of record evidence and parties' arguments on this issue, Commerce has determined to defer making a finding with respect to the countervailability of this program for this final determination. However, Commerce will continue to investigate this program in the first administrative review, should this investigation result in a CVD order and a review be requested.

On February 4, 2020, Commerce published the *Final Rule*, explaining that companies in the traded goods sector of the economy can constitute a group of enterprises or industries for purposes of determining whether a subsidy is specific.[126] On August 19, 2020, Commerce initiated this investigation, including the provision of international ocean shipping services for LTAR comprising of a specificity allegation concerning the traded goods sector regulation mentioned above[127]

The deadline for the CVD investigation is not aligned with the AD investigation. Without this alignment, the CVD investigation deadline cannot be further extended. Therefore, Commerce

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[120] *Id*. at 21; *see also, e.g.*, *Cast Iron Soil Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination* 84 FR 6770 (February 28, 2019), and accompanying IDM at 11; *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), and accompanying IDM at Comment 1; and *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 11962 (February 28, 2020), and accompanying IDM at Comment 6.
[121] *See* Petitioner's Rebuttal Brief at 23.
[122] *See Preliminary Determination* PDM at 14-15.
[123] *Id*.
[124] *Id*.
[125] *See* GOC SQR 1-22-21
[126] *See Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings*, 85 FR 6031 (February 4, 2020) (*Final Rule)*.
[127] *See* Memorandum, "Countervailing Duty Investigation Initiation Checklist: Certain Chassis and Subassemblies Thereof from the People's Republic of China," dated August 19, 2020 (Initiation Checklist); *see also Certain Chassis and Subassemblies Thereof Inhibitors from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 85 FR 52549 (August 26, 2020).

faces significant time constraints in this investigation. Furthermore, and as Commerce has acknowledged in the past, "because {a subsidy} had not been previously investigated, a complex specificity analysis would have been required."[128] We have determined, therefore, that Commerce needs additional time and, potentially, record evidence before making a final determination on this program.

It is not unusual for Commerce to defer consideration of, or a final determination concerning, a subsidy allegation made in an investigation. Commerce has deferred determinations regarding subsidy programs in cases as diverse as *OCTG from China, Silicon Metal from Kazakhstan, Softwood Lumber from Canada,* and Shrimp from various countries, among many others.[129]

Specifically, in *Silicon Metal from Kazakhstan,* Commerce deferred making a final determination regarding whether a debt forgiveness program constituted a countervailable subsidy, despite making a preliminary finding of countervailability based on AFA, determining that it needed additional information to analyze the program.[130] Further, the CIT has expressly recognized that the complexity of an alleged subsidy program might necessitate deferral and postponement of a final determination regarding that program. In *Bethlehem Steel*, the CIT acknowledged that "when Commerce is faced with unreasonably late or extraordinarily complex subsidy allegations, it may 'lack the resources or the time necessary to investigate' the new allegations…."[131]

Although the provision of international ocean shipping services for LTAR was not filed unreasonably late by any means, it is a complex allegation which, as described above, requires additional time and resources to analyze. This includes the allegation from the petitioners that this program is specific to the traded goods sector in accordance with our recently enacted regulation, 19 CFR 351.202(c), from the *Final Rule*. In *RTG*, the CIT placed more emphasis on the complexity of the subsidy program at issue rather than the time remaining in the investigation since the allegation was filed.[132]

In sum, given the time constraints faced by Commerce to fully consider parties' arguments and determine if additional information is required and available to conduct a more complete and thorough analysis of the novel issues presented with respect to this allegation, Commerce has determined to defer making a finding with respect to the countervailability of this program until the first administrative review, should this investigation result in a CVD order and a review be

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[128] *See Oil Country Tubular Goods from The Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*OCTG from China*), and accompanying IDM at Comment 28.
[129] *See, e.g.*, *OCTG from China* IDM at Comment 28; *Silicon Metal from the Republic of Kazakhstan: Final Affirmative Countervailing Duty Determination*, 83 FR 9831 (March 8, 2018) (*Silicon Metal from Kazakhstan*), and accompanying IDM at Comment 6; *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying IDM; and *Shrimp from China* IDM at Comment 7.
[130] *See Silicon Metal from Kazakhstan* IDM at Comment 6. While Commerce stated its intention to examine this program in a future administrative review, *Silicon Metal from Kazakhstan* did not result in a CVD order.
[131] *See Bethlehem Steel Corp. v. United States*, 140 F. Supp. 2d 1354 (CIT 2001) (*Bethlehem Steel*) at 1361.
[132] *See Royal Thai Government v. United States*, 341 F. Supp. 2d 1315, 1323 (CIT 2004) (*RTG*).

requested. As a result, there is no need for Commerce to address the individual arguments presented by parties for this program.

Comment 3: Whether Shipping Services Provided by Non-Chinese Firms and For Merchandise Not Subject to the Investigation are Countervailable

CIMC's Arguments:

- Shipping firms that are not Chinese are not authorities within the meaning of section 771(5)(B) of the Act. CIMC provided revised shipping information in a post-preliminary supplemental questionnaire that indicates whether each purchase was provided by a Chinese or non-Chinese firm and whether each purchase was for the shipment of subject or non-subject merchandise. Commerce should adjust its calculations to exclude shipping services from non-Chinese providers and shipping for non-subject merchandise.

Petitioner's Rebuttal Arguments:

- CIMC has not demonstrated that the GOC intended to benefit specific products through this program.[133] Consistent with the *CVD Preamble*, Commerce should not restrict its calculation of the benefit to shipping services used for subject merchandise.[134] Regarding non-Chinese shipping services, Commerce stated in its *Preliminary Determination* that it had already "removed all shipping purchases from companies that appear to be international (non-Chinese) freight providers."[135] Accordingly, Commerce should make no changes from its *Preliminary Determination*.

Commerce's Position: As discussed above in Comment 2, Commerce is deferring a determination with respect to the countervailability of this program until the first administrative review, should this investigation result in a CVD order and a review be requested. Therefore, there is no need for Commerce to address parties' arguments as to whether shipping services provided by non-Chinese firms and for merchandise not subject to this investigation are countervailable.

Comment 4: Whether the Application of Adverse Facts Available to the Export Buyer's Credit Program is Warranted

CIMC's Comments[136]

- Commerce should find the export buyer's credit program (EBC) is not countervailable and the application of FA and AFA is not warranted. Although CIMC and the GOC confirmed that the program was not used by the respondents, Commerce incorrectly found that the GOC provided insufficient information for Commerce to fully analyze the program and verify claims of non-usage. Commerce further relied upon its determination in a separate investigation for which it had found this program to be countervailable.

[133] *Id.* at 23-24.
[134] *Id.* at 24.
[135] *See* Memorandum, "Countervailing Duty Investigation of Certain Chassis and Subassemblies Thereof from China; Preliminary Determination Calculations for CIMC," dated December 28, 2020 at 9.
[136] *See* CIMC's Case Brief at 15-20.

- The CIT rejected Commerce's approach in several other cases where there was evidence on non-use of the program.[137] The CIT found that missing information concerning the operation of the program is not necessary to verify non-use.[138] The CIT specifically found that Commerce did not explain why the GOC's failure to explain this program was necessary to assess claims of non-use and why other information accessible to respondents was insufficient to fill whatever gap was left by the GOC's refusal to provide internal bank records.[139]
- Like those cases, Commerce here failed to explain why its complete understanding of how this program is administered is necessary where CIMC submitted evidence establishing that it did not use the program during the POR, as confirmed by the GOC.
- The courts have recognized the distinction between the administration" (or operation) of an alleged subsidy program and the existence and amount of the benefit conferred (*i.e.*, use) under the program.[140]
- Whether credit is extended by third party banks or the Ex-Im bank itself falls squarely within the realm of the operation of the program and has no bearing on usage of the program.[141]
- Here, the record evidence demonstrates that none of the thirteen responding companies had U.S. customers of subject merchandise that used this program during the POI.[142] CIMC asserts that: (1) the companies that exported subject merchandise to the United States did not have any U.S. customers that used export buyer credits during the POI; (2) for companies that exported non-subject merchandise to the United States during the POI, no customers used the export buyer credits during the POI; and, in any event, any usage of export buyer credits must be attributed to non-subject merchandise; (3) for companies that did not export any products to the United States during the POI, any usage of export buyer credits must be attributed to non-U.S. markets; and (4) certain companies did not export any products during the POI; consequently, these companies did not have any customers that used export buyer credits during the POI. In any event, the GOC also confirmed that none of the U.S. customers of the mandatory respondents or their reported cross-owned affiliates applied for and used Export Buyer's Credits during the POI.[143] CIMC provided customer declarations confirming non-use for subject merchandise.
- The GOC did not refuse to answer questions related to the operation of the program, but merely explained that such information was unnecessary because respondents did not use the program. The items that Commerce claims are missing from the record are irrelevant

[137] *Id*. at 16 (citing *Yama Ribbons & Bows Co. v. United States*, 419 F. Supp. 3d 1341, 1349-50 (CIT 2019); *Guizhou Tyre Co., Ltd. v. United States*, 399 F. Supp. 3d 1346, 1350 (CIT 2019) (*Guizhou Tyre II*); *Guizhou Tyre Co. Ltd. v. United States*, 348 F. Supp. 3d 1261, 1271 (CIT 2018) (*Guizhou Tyre I*); and *Clearon Corp. v. United States*, 359 F. Supp. 3d 1344, 1360 (CIT 2019) (*Clearon Corp*)).
[138] *See* CIMC's Case Brief at 16 (citing *Guizhou Tyre II*, 399 F. Supp. 3d at 1350; *Guizhou Tyre I*, 348 F. Supp. 3d at 1271; and *Clearon Corp.*, 359 F. Supp. 3d at 1360).
[139] *See* CIMC's Case Brief at 16 (citing *Trina I*, 352 F. Supp. 3d at 1326-27; *Clearon Corp. v. United States*, No. 17-00171, 2020 Ct. Intl. Trade LEXIS 149 (CIT Oct. 8, 2020); and *Clearon Corp.* 359 F. Supp. 3d at 1358-60).
[140] *See* CIMC's Case Brief at 16 (citing *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1297 (CIT 2010), aff'd in part and rev'd in part on other grounds, 678 F.3d 1268 (Fed. Cir. 2012)); *see also Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1342 (CIT 2013).
[141] *See* CIMC's Case Brief at 16-17 (citing to *Guizhou Tyre I*, 348 F. Supp. 3d at 1271).
[142] *See* CIMC's Case Brief at 17-19 (citing CIMC IQR 10-27-21, CIMC IQR 10-30-20, CIMC SQR 11-13-20, and CIMC SQR 11-20-20).
[143] *See* CIMC Case Brief at 19 (citing GOC IQR).

to CIMC's actual usage. This program should not be countervailed in the final determination.

GOC's Case Brief[144]

- Commerce's application of AFA to the Export Buyer's Credit Program is unlawful and unsupported by substantial evidence. The CIT has now ruled in at least 15 separate decisions under virtually identical circumstances that Commerce's application of AFA to the Export Buyer's Credit Program is nothing more than an attempt by Commerce to manufacture a conclusion that is not supported by record evidence and in violation of the applicable statute (section 776 of the Act).[145]
- Based on essentially the same facts presented here, Commerce has reversed its finding on remand in every appealed case since *Guizhou Tyre* and correctly found the program was not used based on the non-use declarations submitted by respondents' customers. Those declarations are virtually identical to the declarations presented to Commerce by respondents in this review. Accordingly, Commerce should make the same non-use determination in this case.
- To be consistent with the law, Commerce's AFA finding must satisfy three criteria: (1) there must be a gap in the record; (2) the offending party must have failed to cooperate to the best of its ability; and (3) the overall AFA decision must be supported by substantial evidence in the record. Commerce's decision here fails to satisfy these criteria, rendering its resort to AFA for this program unlawful.
- CVD proceedings are different from antidumping duty proceedings due to the involvement of the government of the target country as a responding party in addition to the selected mandatory respondents. The involvement of a government as a third party in the proceedings, the actions of which can impact the respondents, has resulted in a modified application of AFA when directed at the government respondent.
- Commerce explained in *Roasted Pistachios from Iran* that it is not Commerce's practice to assign an adverse facts available rate to a respondent in CVD proceedings based solely on the fact that the foreign government failed to participate to the best of its ability. Rather, in instances in which the foreign government fails to adequately respond to Commerce's questionnaires, it is Commerce's practice to apply adverse inferences and assume that the alleged subsidy programs constitute a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. Commerce also found that if information on the record indicates that the respondent did not use the program, Commerce will find the program was not used, regardless of whether the foreign government participated to the best of its ability.[146]

[144] *See* GOC Case Brief at 25-37.

[145] *Id.* at 26 (citing *Changzhou Trina Solar Energy Co., Ltd. v. United States*, No. 17-00246, 2019 WL 6124908 at *4 (CIT Nov. 18, 2019); *Changzhou Trina Solar Energy Co. v. United States*, No. 17-00198, 2019 WL 5856438 at *2 (CIT Nov. 8, 2019); *Jiangsu Zhongji Lamination Materials Co. v. United States*, No. 18-00089, 405 F.Supp.3d 1317, 1330-31 (CIT 2019); *Guizhou Tyre II*, 399 F.Supp.3d at 1346; *Changzhou Trina Solar Energy Co.*, 352 F. Supp. 3d 1316, 1326 (CIT 2018); *Guizhou Tyre Co., Ltd. v. United States*, 389 F.Supp.3d 1315 (CIT 2019); and *Clearon Corp. v. United States*, 359 F. Supp. 3d 1344 (CIT 2019)).

[146] *See* GOC Case Brief at 27 (citing *Countervailing Duty New Shipper Review: Certain In-shell Roasted Pistachios from the Islamic Republic of Iran*, 73 FR 9993 (Feb. 25, 2008), and accompanying IDM at Comment 2 (*Roasted Pistachios from Iran*)).

- Commerce reiterated and emphasized the point in *HRC from India*, rejecting the application of AFA in circumstances where the Government of India failed to respond to a new subsidy allegation questionnaire.[147]
- The courts have also embraced this legal principle. For example, in *Archer Daniels*, the CIT noted that the application of AFA to the GOC under such circumstances may adversely impact a cooperating party, although Commerce should seek to avoid such impact if relevant information exists elsewhere on the record.[148] In *Fine Furniture*, the CIT indicated that in the context of a CVD investigation, an inference adverse to the interests of a non-cooperating government respondent may collaterally affect a cooperative respondent. While such an inference is permissible under the statute, it is disfavored and should not be employed when facts not collaterally adverse to a cooperative party are available.[149] Further, the CIT has noted that it would be inappropriate for Commerce to apply AFA for no reason other than to deter the government's non-cooperation in future proceedings when relevant evidence existed elsewhere on the record.[150]
- More recently, in *Changzhou II*, when faced with similar questionnaire responses for the same program and the application of AFA, the CIT found that Commerce, did not explain why the GOC's failure to explain this program was necessary to assess claims of non-use and why other information accessible to respondents was insufficient to fill whatever gap was left by the GOC's refusal to provide internal China ExIm bank records. Further, Commerce did not explain how an adverse inference regarding the operation of the Export Buyer's Credit Program logically leads to a finding that respondents used the program. The Court found that while Commerce provided reasoning as to why the GOC's failure to respond adequately made it impossible for it to understand fully the operation of the program, but it failed to show why a full understanding of the program's operation was necessary to verify non-use certifications.[151]
- In *Guizhou Tyre* litigation, the CIT found that Commerce impermissibly found a failure to cooperate when the record's inadequacies originated with Commerce. Instead of seeking additional information that would aid in Commerce's verification process, Commerce has focused its inquiry on the operation of the program rather than the respondent's alleged use.[152]
- The circumstances in the above-mentioned CIT cases are precisely those presented in this case, requiring that Commerce refrain from using AFA in the final results. In this case, not only did the GOC conclusively establish that none of the respondents' U.S. customers

[147] *See* GOC Case Brief at 28 (citing *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008), and accompanying IDM at Comment 6 (*HRC from India*)).
[148] *See* GOC Case Brief at 29 (citing *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331 (CIT 2013) (*Archer Daniels*)).
[149] *See* GOC Case Brief at 29 (citing *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254 at n.10 (CIT 2012) (*Fine Furniture*)).
[150] *See* GOC Case Brief at 29 (citing *Changzhou Trina Solar Energy Co. v. United States*, 255 F. Supp. 3d 1312, 1313 (CIT 2017)).
[151] *See* GOC Case Brief at 30 (citing *Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp. 3d at 1326 (*Changzhou II*)).
[152] See GOC Case Brief at 31 (citing *Guizhou Tyre II*, Slip Op. 19-114 at 9-10; confirmed and re-emphasized in *Guizhou Tyre Co., Ltd. V. United States*, 43 CIT __, Slip Op 19-155 (Dec. 10, 2019) (*Guizhou Tyre III*)).

used the Export Buyer's Credit Program, but the respondents themselves placed substantial verifiable evidence on the record establishing their non-use of the program.

- None of the information Commerce deems as missing creates a material gap in the record concerning usage. Looking at each of the missing pieces of information Commerce identifies, it is difficult to determine how Commerce could reach this conclusion. Even if the information was critical to Commerce's understanding, the information was only critical to understanding the operation (*i.e.*, the function) of the program, and has no bearing on establishing usage of the program or the ability to verify its usage.
- In the PDM, Commerce noted that it requested translated copies of the laws and regulations pertaining to the program, but Commerce failed to explain what specific laws were missing from the record. In prior cases, Commerce specifically noted the 2013 Administrative Measures Revisions to the Export Buyer's Credit Program were not provided; however, this information is irrelevant to whether Commerce could have established usage in the course of an China Ex-Im Bank verification. The GOC explained very clearly in its questionnaire responses how China Ex-Im Bank determined usage in this case, including screen shots from those database searches. These methods were no different than the methods China Ex-Im Bank used to determine and report usage prior to the effective date of the 2013 Administrative Measures Revisions. Moreover, Commerce never inquired whether the 2013 Administrative Measures Revisions impacted how the China Ex-Im Bank can determine usage; the GOC has said that it does not. Thus, Commerce failed to investigate whether the absence of these laws and regulations from the record had any real impact on the usage determination and whether it in fact created a gap in the record that required the application of AFA.
- Commerce explained that it requested information on the names of partner/correspondent banks and intermediary banks through which the program could be indirectly disbursed by China Ex-Im Bank. In response to these requests, the GOC explained that this information was not necessary because the respondents' customers did not use this program, and this information was not relevant to Commerce's usage determination. Commerce failed to make a rational connection between the information requested (a list of third-party banks) and the conclusion made (that without this information, Commerce could not determine or verify use). The information that was not provided goes to the countervailability of the program; it neither impacts the evaluation of the program nor the determination of usage of the program.
- In *Guizhou Tyre II*, the CIT stated that Commerce has failed to demonstrate why the 2013 EBC rule change is relevant to verifying claims of non-use, and how that constitutes a "gap" in the record. Additionally, the CIT found that Commerce's anemic conclusion that verification of the non-use declarations would be unreasonably onerous is based on speculation that stems from Commerce's own failure to "clearly and adequately" request information to aid in its verification.[153]
- Record evidence in the instant case shows that the EBC was not used. First, the GOC clearly stated that the respondents' customers did not use this program and provided database search screen shots. Second, the respondent provided customer statements of non-use in its initial response after confirmation with its U.S. customers and submission of customer declarations. Although Commerce was fully aware of the GOC's and the

[153] *See* GOC Case Brief at 35 (citing *Guizhou Tire II*, 399 F. Supp. 3d at 1350).

respondent's explanations of non-use, it nonetheless concluded that as AFA, the GOC bestowed a financial contribution pursuant to section 771(5)(D) of the Act, provided a benefit pursuant to section 771(5)(E) of the Act, and is contingent on exports within the meaning of sections 771(5A)(A) and (B) of the Act, notwithstanding the GOC's and respondent's claims of non-use. The courts have criticized as indefensible Commerce's mindset to continually ignore such declarations and stubbornly adhere to the same analysis.

- Here, as in *Guizhou Tyre II and III*, if there was failure for a gap in the record, it is Commerce's failure to review the reported non-use information and statements provided by the GOC and the respondents and to ask the appropriate questions.
- The GOC demonstrated that the information it provided regarding non-use is valid regardless of whether the loans may have been issued through partner banks. Commerce could have verified this at China Ex-Im Bank but apparently abandoned such an effort on its own volition despite the GOC's provision of the detailed description of its reporting process and implied invitation that Commerce do so. These claims of non-use were expressly corroborated by the U.S. customer declarations on the record. At the very least, the agency policy and precedents discussed above, require Commerce to consider and accept these respondent non-use statements. Commerce also could have attempted to verify claims of non-use at the respondent's U.S. customers' offices but chose not to. There are no GOC actions or failures that in any way call into question the substantial evidence proffered by the GOC and the respondents in this case.

Petitioner's Rebuttal Brief[154]

- Commerce should continue to apply AFA and find use of the Export Buyer's Credit, which is consistent with Commerce practice and not contrary to law. The GOC did not provide the requested information needed for Commerce to analyze the program, substituting its own judgement for Commerce's and CIMC, similarly failed to provide sufficient information to establish non-use.
- Commerce correctly decided in the *Preliminary Determination* that AFA was warranted because the GOC did not provide the information needed to allow Commerce to analyze the program fully. In its initial questionnaire, Commerce asked the GOC to provide a copy of the September 6, 2016, GOC 7th Supplemental Response in the CVD Investigation of Certain Amorphous Silica Fabric from China, but the GOC responded that it did not believe the old questionnaire response is relevant to this proceeding, and it did not provide the document. The GOC also failed to provide original and translated copies of the 2013 internal guidelines, referenced at page one of the documents from the Amorphous Silica Fabric investigation, which Commerce also specifically requested in its original questionnaire. Commerce has consistently demonstrated that it needs the 2013 administrative measures, or other evidence, to demonstrate the non-involvement of the China Ex-Im Bank in financing U.S. customers.
- Commerce also instructed the GOC to provide full and complete responses regardless of whether the companies under investigation or their cross-owned companies applied for, used, or benefited from a program. For the Export Buyer's Credit program, the GOC refused to provide the following information on the basis of an unfounded assertion that

[154] *See* Petitioner Rebuttal Brief at 25-29.

CIMC's customers did not apply for, use, or benefit from the program: Standard Questions Appendix; interest rate established during the POI for the buyer credit facility; additional guidelines, rules, or administrative measures issued since 2013; and list of all partner/correspondent banks involved in the disbursement of funds under the program. In its supplemental questionnaire, Commerce gave the GOC a second opportunity to provide much of this information but the GOC refused.

- Accordingly, Commerce correctly found that the use of facts otherwise available is appropriate considering the GOC's provision of non-verifiable claims and refusal to provide requested information, which are necessary information for Commerce to make a determination regarding this program. As such, Commerce also correctly determined that the GOC, by virtue of not providing this information, failed to cooperate by not acting to the best of its ability.
- CV and the GOC assert that there is no "gap" in the record regarding non-use of the program. This assertion fails to acknowledge that the CV has not provided sufficient verifiable evidence to demonstrate non-use of the Export Buyer's Credit Program by CIMC companies. Commerce has established that customer affidavits or declarations alone are insufficient to establish non-use of the program. CIMC's declarations do not sufficiently demonstrate that none of their customers used the program.[155]
- Commerce correctly noted that the necessary information is missing from the record for Commerce to have a clear understanding of how this program operates and to be able to verify purported claims of non-use of this program. Commerce also based this conclusion on the GOC's refusal to provide requested information on this program.
- Additionally, applying AFA to determine the financial contribution, specificity, and benefit of the Export Buyers Credit Program is consistent with the Commerce's established practice.
- The U.S. Court of Appeals for the Federal Circuit has not held that this practice is unlawful.
- Commerce has already addressed the GOC's claim that this is a punitive AFA rate. When selecting an AFA rate, Commerce may select a rate to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully and considers the extent to which a party may benefit from its own lack of cooperation. Not only is the 10.54 percent rate consistent with Commerce's practice, but it ensures that the respondents do not receive a more favorable result than had the GOC cooperated. For the Export Buyer's program in particular, Commerce has already rejected the argument that the rate from *Coated Paper from China* is punitive and stated that Commerce has the discretion to apply the highest calculated rate. The CIT has also affirmed the 10.54 percent AFA rate applied for Export Buyer's Credit program in the past, demonstrating its lawfulness. For these reasons, Commerce correctly applied an AFA rate for the GOC's flagrant refusal to provide the requested information, which is in accordance with law and consistent with the agency's practice.

Commerce's Position: Consistent with the *Preliminary Determination* and Commerce's practice, we continue to find that the record of this investigation does not support a finding of

[155] *See* Petitioner's Rebuttal Brief at 28 (citing *Multilayered Wood Flooring from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2016*, 84 FR 38221 (August 6, 2019), and accompanying IDM at Comment 4).

non-use of the EBC Program.[156] 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*.[157] 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."[158] 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.[159]

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."[160] In response to a request from Commerce for information concerning the operation of the EBC Program and how we might verify usage of the program, the GOC stated that none of the respondents' customers had used the program either. The GOC added: "{t}he GOC understands that this program, including the buyer's credit cannot be implemented without knowledge of the exporters because the program has a substantial impact on the exporter's financial and foreign exchange business matters."[161] 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.[162] 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.[163]

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[156] *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.
[157] *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.
[158] *See Solar Cells Final Determination* IDM at 59.
[159] *Id*.
[160] *Id*.
[161] *Id*. at 60.
[162] *Id*. at 60-61
[163] *Id*. at 61.

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.[164] 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.[165]

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.[166]

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[164] *Id*.

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

[166] 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 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 Final Determination*), 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.

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.[167]

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 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."[168] 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."[169] However, the GOC refused to allow Commerce to query the databases and records of the China Ex-Im Bank.[170] Furthermore, there was no information on the record of *Solar Cells Final Determination* from the respondent exporters' customers.

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[167] 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.

[168] *See Solar Cells Final Determination* IDM at 62.

[169] *Id*.

[170] *Id*.

Chlorinated Isos Investigation of the EBC Program

Two years later, in the investigation of *Chlorinated Isos*,[171] 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."[172]

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 China Ex-Im Bank disbursed funds under the program and the corresponding timeline; however, Commerce's attempts to verify the program's details, and to obtain accurate statements concerning the operation and use of the program, were thwarted by the GOC.[173] 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.[174] 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

[171] *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.
[172] *Id*.
[173] *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.")
[174] *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.

"*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.[175] 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."[176] The GOC further stated that "those internal guidelines do not formally repeal or replace the provisions of the {*Administrative Measures*} which remain in effect."[177]

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 disbursements through the China 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 China Ex-Im Bank 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. 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 China Ex-Im Bank, impeded {Commerce's} ability to conduct its investigation of this program.[178]

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."[179]

[175] *Id*.
[176] *Id*.
[177] *Id*.
[178] *Id*. at 12.
[179] *Id*. at 62.

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."[180]

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.[181] Instead of providing the requested information, the GOC stated that our question was not applicable.[182] We also asked the GOC to submit the *Administrative Measures* that were revised in 2013, but the GOC refused.[183] 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 ExIm under the Buyer Credit Facility."[184] 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 Appendix, the GOC stated it had confirmed that "none of the U.S. customers of the mandatory respondents or their reported 'cross-owned' affiliates used the alleged program during the POI. Therefore, this question is not applicable."[185]

In its initial questionnaire response, the GOC provided the *2000 Administrative Measures*, which confirmed that the China Ex-Im Bank strictly limits the provision of export buyer's credits to business contracts exceeding USD 2 million.[186] However, the GOC refused to provide a copy of its *7th Supplemental Response in the Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China*, as well as China Ex-Im's 2013 administrative measures.[187] We have used information in that document in previous, separate proceedings to determine that the GOC revised this program in 2013 to eliminate this minimum requirement.[188] We again requested this information in a supplemental questionnaire, and the GOC again refused

[180] *Id*.
[181] *See Preliminary Determination* PDM at section "H: Application of Adverse Facts Available: Export Buyer's Credits."
[182] *Id*.
[183] *Id*.
[184] *See* Initial Questionnaire, Section II at 5-6.
[185] *See* GOC IQR at 19.
[186] *Id*. at Exhibit II.B.9.
[187] *See* GOC IQR at21.
[188] *See, e.g., Silica Fabric Investigation* IDM at Comment 17.

to provide it.[189] Through its response to Commerce's initial and supplemental questionnaires, the GOC twice refused to provide the *Silica Fabric 7th Supplemental Response* and the requested information concerning the 2013 program revisions, which are 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*, where we asked the GOC about the amendments to the EBC Program, 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.[190] We requested information regarding the 2013 revisions to the *Administrative Measures*, and information on the partner/correspondent banks that are involved in the disbursement of funds under this program, because our prior knowledge of this program demonstrates that the 2013 revisions effected important program changes. Specifically, the 2013 revisions (which the GOC refers to as "internal guidelines") appear to be significant and have impacted a major condition in the provision of loans under the program, *i.e.*, by eliminating the $2 million minimum business contract requirement identified in the 2000 *Administrative Measures*.[191]

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.[192] 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.[193] Thus, Commerce asked the GOC to provide the same information it provided in the *Silica Fabric Investigation* regarding the rules

[189] *See* GOC SQR 12-21-20 at 2.
[190] *See Silica Fabric Investigation* IDM at Comment 17.
[191] *Id.* at 12 and 61.
[192] 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.
[193] *See Silica Fabric Investigation* IDM at 12.

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:[194]

- Provide a list of all partner/correspondent banks involved in disbursement of funds under the Export Buyer's Credit Program.
- 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 ExIm that establish the terms of the assistance provided under the facility.

In its supplemental response, the GOC did not provide any additional documents, and simply referred back to its IQR.[195] The GOC restated its position that the *Silica Fabric 7th Supplemental Response* was not relevant to this proceeding, and that the 2013 *Administrative Measures* are internal guidelines to China Ex-Im and not available for release.[196]

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 simply stated: "Not applicable."[197]

We note that in this 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.[198]

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.[199]

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.[200]

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[194] *See* GOC SQR 12-21-20 at 13-14.
[195] *Id.* at 2-3.
[196] *Id.*
[197] *Id.* at 14.
[198] *See* Initial Questionnaire at Electricity Appendix.
[199] *See* GOC IQR at Exhibit II.E10.3.
[200] *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.")

Accordingly, we continue to find the GOC's responses deficient and unresponsive to our request for necessary information with respect to the operation of the EBC Program. This information is necessary to our understanding of the program and for any determination of whether the "manufacture, production, or export" of the respondent's merchandise has been subsidized. As noted above, based on the information obtained in the *Silica Fabric Investigation*, Commerce's understanding of how the EBC Program operated (*i.e.*, how funds were disbursed under the program) has changed.[201] Specifically, the record indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank.[202]

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.[203] 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.[204] 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.[205]

This missing information is especially significant because we have previously determined 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,[206] 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.[207] 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.

[201] *See Silica Fabric Investigation* IDM at Comment 17.
[202] *Id*.
[203] *Id*.
[204] *Id*.
[205] 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.
[206] *See Silica Fabric Investigation* IDM *at Comment 17*.
[207] *See Chlorinated Isos* IDM at 15.

customers if they received the credits. Commerce recently addressed this issue in *Aluminum Sheet from China*,[208] stating:

> Record evidence indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank. Specifically, the record information indicates that customers can open loan accounts for disbursements through this program with other banks, whereby the funds are first sent to … the importer's account, which could be at the China Ex-Im Bank or other banks, and that these funds are then sent to the exporter's bank account.[209]

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,[210] 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

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[208] *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.

[209] *Id*.

[210] *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 the GOC's refusal to provide the 2013 revisions to the administrative rules).

China Ex-Im Bank, discussed above. Commerce would simply not know what to look for behind each loan in attempting to identify a loan provided by the China Ex-Im Bank via a correspondent bank.

This same sample "paper trail" would be necessary even if the GOC provided the list of correspondent banks. For instance, assuming that one of the correspondent banks is HSBC, Commerce would need to know how to differentiate ordinary HSBC loans from loans originating from, facilitated by, or guaranteed by the China Ex-Im Bank. In order to do this, Commerce would need to know what underlying documentation to look for in order to determine whether particular subledger entries for HSBC might actually be China Ex-Im Bank financing: specific applications; correspondence; abbreviations; account numbers; or other indicia of China Ex-Im Bank involvement. As explained above, the GOC failed to provide Commerce with any of this information. Thus, even were Commerce to attempt to verify a respondent's non-use of the EBC Program, notwithstanding its lack of knowledge of which banks are intermediary/correspondent banks, by examining *each* loan received by the respondent's U.S. customers, Commerce still would not be able to verify which loans were normal loans versus EBC Program loans due to its lack of understanding of what underlying documentation to expect to review, and whether/how 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.[211] 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.[212]

[211] 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.
[212] *See* GOC SQR 12-21-20 at 2-3.

According to the GOC, none of CIMC's U.S. customers used the export buyer's credits from the China Ex-Im Bank during the POI.[213] 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.[214] The GOC's response indicated that exporters would know whether there was an interaction between the China Ex-Im Bank and the borrowers (*i.e.*, a respondent's U.S. customers, who are not participating in this proceeding), but neither the GOC nor CIMC 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 CIMC'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 CIMC'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.[215]

We continue to find that usage of the EBC Program could not be verified at CIMC 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[216] 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 CIMC'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,

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[213] *See* GOC IQR at 19.
[214] *Id.* at 12.
[215] *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).
[216] *Id*.

emails, *etc.*, is insufficient for Commerce to verify any bank disbursement or loan amount pertaining to CIMC, their customers, and/or the GOC's participation in the program.[217] 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 ensure the accuracy and completeness of that information. This would be the only way to analyze and accurately calculate the benefits CIMC received under this program during 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.[218] It is a well-established principle that verification is not an opportunity to submit new factual information.[219] 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, CIMC's and GOC's arguments that Commerce could have conducted verification, but did not, are unavailing.

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.[220] 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 chassis 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

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[217] *Id.*
[218] *See* 19 CFR 351.307(a).
[219] *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.
[220] *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).

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 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*,[221] 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 …").[222]

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 CIMC'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.[223] Therefore,

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[221] *See Trina Solar 2016*, 195 F. Supp. 3d at 1355 (citing *Solar Products Final Determination* IDM at 91-94).
[222] *Id*.
[223] *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.")

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.

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 respondent's use of the program.

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 CIMC 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.[224] Finally, Commerce has found this program to be an export subsidy in past CVD proceedings involving China.[225] 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.

Finally, Commerce has previously elaborated at length on its choice of the 10.54 percent rate as the AFA rate for this program in investigations.[226] We have also explained at length why we follow a different AFA rate hierarchy for investigations than for reviews.[227] Our explanations have been upheld in full by the CIT.[228]

Comment 5: Whether the Application of Adverse Facts Available is Warranted in Finding the Provision of Electricity for LTAR Countervailable

[224] *See* GOC IQR at Exhibits II.B.9 and II.B.10.
[225] *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.
[226] *See, e.g., Wooden Cabinets and Vanities* IDM at Comment 3.
[227] *Id.*
[228] *See, e.g., SolarWorld Americas, Inc. v. United States*, 229 F.Supp.3d 1362 (CIT 2017).

GOC's Arguments:

- Commerce applied AFA in finding the provision of electricity to be countervailable and in selecting the benchmark rate on the basis that the GOC did not provide detailed information regarding the National Development and Reform Commission (NDRC) and its role in setting electricity prices.[229] However, the NDRC has delegated its price-setting authority to the provinces, and the price proposals that Commerce requested do not exist.[230] Therefore, the information on the record is complete, and Commerce cannot continue to apply AFA in finding this program to be countervailable.

Petitioner's Rebuttal Arguments:

- Although the GOC argues that the NDRC has delegated responsibility for setting electricity prices to the provincial level, the GOC has not fully explained the roles and nature of cooperation between the NDRC and provinces in determining those prices.[231] Further, the GOC provided information indicating that the NDRC continues to play a major role in setting and adjusting prices.[232] Specifically, Commerce has previously found that the NDRC directs provinces to reduce prices and report price changes to the NDRC.[233] Further, the GOC has explained neither how provincial prices are derived nor the penalties for deviating from NDRC guidelines.[234] Because the GOC withheld this information, Commerce was correct in applying AFA and should continue to do so for the final determination.

Commerce's Position: We disagree with the GOC that the application of AFA is unwarranted. In the *Preliminary Determination*, we determined that the GOC withheld information that was repeatedly requested for our analysis of financial contribution, specificity and benefit.[235] Although the GOC claims that the NDRC no longer sets electricity prices via Provincial Price Proposals, none of the documentation that the GOC submitted in support of that claim explicitly eliminates those price proposals.

Further, Commerce requested that the GOC explain, for each province in which a respondent or cross-owned affiliate is located, how increases in labor costs, capital expenses, and transmission and distribution costs are factored in Provincial Price Proposals, and how cost element increases, and the final price increases were allocated across the provinces and across tariff end-user categories. The GOC provided information regarding the sale price of electricity, requirements for provincial pricing departments to set and report specific electricity tariff adjustments, and notices reducing electricity prices.[236] However, the GOC failed to provide the provincial price proposals themselves, arguing that such proposals do not exist.[237] The GOC stated that price

[229] *See* GOC's Case Brief at 39; *see also Preliminary Determination* PDM at 12-14.
[230] *Id.* at 42.
[231] *See* Petitioner's Case Brief at 35.
[232] *Id.; see also Preliminary Determination* PDM at 14.
[233] *See* Petitioner's Case Brief at 35; *see also Preliminary Determination* PDM at 13.
[234] *See* Petitioner's Case Brief at 37.
[235] *See Preliminary Determination* PDM at 12.
[236] *See* GOC IQR at Exhibits II.E10.1, II.E10.2, II.E10.4, and II.E10.5.
[237] *Id.* at 289; *see also* GOC Case Brief at 42.

proposals were not involved in adjustments during the POI, and that the question was therefore not applicable.[238]

In the absence of the requested information, and due to the GOC's non-cooperation in providing it, we applied AFA pursuant to section 776(b) of the Act, finding that the provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. Because the GOC failed to provide information with regard to electricity prices, we also drew an adverse inference in selecting the benchmark for determining the amount of the benefit conferred to CIMC.[239] We continue to find that the GOC withheld requested information and that they therefore failed to cooperate to the best of their ability. Accordingly, we continue to apply AFA for this program with respect to financial contribution, specificity, and benefit.

Comment 6: Whether Electricity Surcharges are Countervailable

CIMC's Arguments:

- In the *Preliminary Determination* Commerce included electricity surcharges in its calculation of the countervailable subsidy rate. CIMC clarified in its post-preliminary supplemental questionnaire response which of these reported electricity purchases were surcharges (*i.e.*, fees paid in order to qualify for, or to receive, the benefit of the countervailable subsidy).[240] Pursuant to section 771(6)(A) of the Act, Commerce may subtract these fees from its calculation of the benefit.

Commerce's Position: The electricity purchase information that CIMC provided prior to the *Preliminary Determination* was not sufficient to determine which purchase categories reported usage and which reported surcharges. Because we could not distinguish between usage and surcharges, we calculated a rate on the basis of all reported charges and requested additional information from CIMC in a post-preliminary supplemental questionnaire.[241] CIMC provided that information in their response to a supplemental questionnaire.[242] No interested party submitted rebuttal comments. Accordingly, we will exclude electricity surcharges from our calculation of the countervailable subsidy rate.

Comment 7: Whether Commerce Should use Alternative Benchmark Rates for Land-Use Rights

CIMC's Arguments:

- In the *Preliminary Determination*, Commerce used land benchmarks included in the Asian Marketview report.[243] These benchmarks are a decade old. Commerce should rely

[238] *Id.* at 289-296.
[239] *See Preliminary Determination* PDM at 13-14.
[240] *See* CIMC's Case Brief at 20; *see also* CIMC's SQR 1-26-21 at 5.
[241] *See* Preliminary Calculations Memo at 7; *see also* Post-Prelim Supplemental for CIMC at 4.
[242] *See* CIMC SQR 1-26-21 at 5.
[243] *Id.* at 21; *see also* Memorandum, "Countervailing Duty Investigation of Certain Chassis and Subassemblies Thereof from the People's Republic of China: Asian Marketview Report," dated September 21, 2020 (Asian Marketview Report) (containing "Asian Marketview Report" pricing data).

on the more contemporaneous benchmarks from the Malaysian Investment Development Authority Reports compiled and submitted by CIMC.[244]

Petitioner's Rebuttal Arguments:

- CIMC has not provided any information demonstrating that Malaysia is at a level of economic development comparable to China for the purpose of selecting a land benchmark.

Commerce's Position: In the *Preliminary Determination*, we relied upon benchmark information from "Asian MarketView Reports" by CB Richard Ellis (CBRE) for Thailand for 2010 to value land.[245] The Thailand benchmark was originally used in *Sacks from China*,[246] and this finding was revisited and reconfirmed in *Solar Cells Final Determination*.[247] Commerce's finding regarding land in Thailand was based on 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.[248]

CIMC argues that Commerce should use prices from the Malaysian Investment Development Authority Reports the company provided in its benchmark submission.[249] CIMC holds that the prices from these reports are more contemporaneous with the POI and therefore, more appropriate for use as the basis for land benchmarks. We disagree.

While the Malaysian benchmark prices on the record of this investigation are more contemporaneous with the POI than the Thailand benchmarks used by Commerce in the *Preliminary Determination*, CIMC has not provided a reasonable basis for Commerce to find that Malaysian prices provide a suitable benchmark for land prices, and a suitable substitute for the Thailand benchmark Commerce has relied on for some time. In neither its benchmark submission nor its case brief has CIMC provided information or arguments demonstrating that the proffered land prices in Malaysia are a reasonable alternative to China as a location for Asian production. In contrast, as discussed above, Commerce analyzed several factors regarding land prices in Thailand and concluded that it provides a reasonable alternative to China as a location for Asian production. Therefore, for purposes of this final determination, we are continuing to use CBRE prices from Thailand as the basis for land benchmarks.

Comment 8: Whether Intercompany Loans are Countervailable

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[244] *Id.* at 21; *see also* CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Benchmark Submission," dated December 3, 2020 at 2 and Exhibit 2.
[245] *See* PDM at 25; *see also* Asian Marketview Report; *Preliminary Determination* PDM at 25; and Asian Marketview Report.
[246] *See 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) (*Sacks from China*).
[247] *See Solar Cells Final Determination* IDM at Comment 11.
[248] *See Preliminary Determination* PDM at page 25.
[249] *See* CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Benchmark Submission," dated December 3, 2020.

CIMC's Arguments:

- In the *Preliminary Determination*, Commerce included CIMC's intercompany lending in its calculation of the countervailable subsidy rate. After the *Preliminary Determination*, Commerce requested and CIMC provided information clarifying which of its reported loans were intercompany lending.[250] Accordingly, Commerce should not include these loans in its calculation of the benefit, consistent with its practice in previous determinations.[251]

Petitioner's Arguments:

- A number of the loans identified by CIMC are from certain affiliates who for which it is appropriate to calculate a countervailable subsidy.[252] Although Commerce has previously excluded intercompany loans between cross-owned affiliates from its calculation of the benefit, it has found in other proceedings that subsidies from certain other affiliates may confer a benefit.[253] Because CIMC Group, and therefore its affiliates, are state-owned enterprises, Commerce should include intercompany loans from these affiliates in its calculation of the countervailable subsidy rate.

CIMC's Rebuttal Arguments:

- Contrary to the petitioner's arguments, Commerce's practice has been to exclude intercompany loans from its benefit calculations.[254] The petitioner cites a case in which Commerce countervailed an intercompany loan from a parent company as precedent. However, this determination hinged on a unique fact pattern regarding the ownership and role of that parent company that does not apply to this case. Therefore, Commerce should remove intercompany loans from its subsidy rate calculations.

Petitioner's Rebuttal Arguments:

- CIMC's citation of *Stainless Steel Sheet and Strip from China* is not applicable because Commerce clarified that it excluded internal financing among cross-owned affiliates.[255] In this case, Commerce has not determined whether that standard applies.[256] CIMC could have provided additional information to enable Commerce to make that determination.[257] Therefore, Commerce should find that the intercompany loans in question are financial contributions from government authorities pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act.

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[250] *Id.* at 22-23; *see also* CIMC's SQR 1-26-21 at Exhibits SQ-3 and SQ-4.
[251] *Id.* at 22; *see also Countervailing Duty Investigation of Stainless Steel Sheet and Strip From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017) (*Steel Sheet and Strip from China*), and accompanying IDM; and *Solar Products Final Determination* IDM.
[252] Relevant pieces of this argument contain business proprietary information. *See* Petitioner's Case Brief at 20-21; *see also* the Calculations Memo for a full discussion.
[253] *Id.* at 22.
[254] *See, e.g., Stainless Steel Sheet and Strip from China, Solar Products Final Determination.*
[255] *See Stainless Steel Sheet and Strip from China* at Comment 9.
[256] Relevant pieces of this argument contain business proprietary information. *See* Petitioner's Case Brief at 39-40; *see also* the Calculations Memo for a full discussion.
[257] *Id.* at 40.

Commerce's Position: Commerce has previously determined that intercompany loans do not constitute a countervailable subsidy.[258] In the Calculations Memo accompanying our *Preliminary Determination*, we stated that we would request additional information indicating which loans were intercompany.[259] CIMC provided that information in a post-preliminary supplemental questionnaire response.[260] Although the petitioner objects that Commerce has previously countervailed intercompany transactions, the facts of that case are substantially different from this investigation.[261] For example, in the case referred to by the petitioner, Commerce determined the parent company of the respondent was a provider of public services and infrastructure. That critical fact is not present on the record of this investigation. Accordingly, we will exclude intercompany lending from our calculation of the countervailable subsidy rate.

Comment 9: Whether Commercial Loans are Countervailable

CIMC's Arguments:

- In the *Preliminary Determination*, Commerce calculated a countervailable subsidy rate for policy lending to the chassis industry using all lending reported by CIMC. CIMC identifies lending provided by an international commercial bank, incorporated and headquartered outside of China.[262] Because this bank is not Chinese, Commerce cannot consider it an authority within the meaning of section 771(5)(B)(i) of the Act, and therefore should exclude these loans from the calculation of the countervailable subsidy rate.

Petitioner's Rebuttal Arguments:

- The burden of demonstrating that a lender operates independently of the GOC is on the GOC and the respondent; neither have provided evidence to this effect.[263] The fact that the parent bank is not headquartered or incorporated in China says nothing about its individual branches. Further, Commerce's prior determinations were reached during different time frames that may have no bearing on the facts during the POI.[264] Because neither CIMC nor the GOC have demonstrated that the bank in question is not an authority, Commerce should continue to countervail lending from that bank.

Commerce's Position: Commerce disagrees that it should exclude from its benefit calculations the lending provided by the international commercial bank identified by CIMC. As the petitioner notes, CIMC has not distinguished between the headquarters of the international bank, which is located outside of China, and the branch that provided lending to CIMC. That the headquarters of that bank is located and incorporated outside of China does not imply that the branch issuing the loans is independent from the GOC.[265]

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[258] *See, e.g., Steel Sheet and Strip from China, Solar Products Final Determination*
[259] *See* Preliminary Calculations Memo at 6.
[260] *See* CIMC SQR 1-26-21 at Exhibits SQ-3 and SQ-4.
[261] Relevant pieces of this argument contain business proprietary information. *See* the Calculations Memo for a full discussion.
[262] *See* CIMC's Case Brief at 23.
[263] *See* Petitioner's Case Brief at 41-42.
[264] *Id.* at 43.
[265] *See* Petitioner's Rebuttal Brief at 38.

Information placed on the record by Commerce indicates that all banks and trust companies in China are controlled by the GOC, and, therefore, are authorities within the meaning of section 771(5)(B) of the Act.[266] Commerce's practice is to require CIMC or the GOC to provide evidence indicating that the branch of the bank in question is exempt from GOC control.[267] Neither the GOC nor CIMC provided such information in this investigation. Accordingly, Commerce will continue to include lending provided by this bank in its calculations for the final determination.

Comment 10: Whether Subsidies to Huajun Casting's Production are Attributable to Chassis Production

CIMC's Arguments:

- In the *Preliminary Determination*, Commerce found that Huajun Casting was a cross-owned producer of inputs primarily dedicated to the production of subject merchandise.[268] However, Huajun Casting produces inputs that are not primarily dedicated to the production of subject merchandise. During the POI, sales of inputs to produce subject merchandise accounted for only a small percentage of Huajun Casting's total sales.[269] Accordingly, subsidies received by Huajun Casting are not countervailable, consistent with Commerce's practice in *Cold-Rolled Steel from Korea*.[270]

Petitioner's Rebuttal Arguments:

- Commerce has previously determined that, by avoiding the use of the term "subject merchandise," 19 CFR 351.525(b)(6)(iv) refers to downstream products that can encompass more than subject merchandise.[271] In those cases, Commerce found that inputs could be primarily dedicated to the production of downstream products just because they were used in products other than subject merchandise.[272] Further, the appropriate comparison to make is not, as CIMC suggests, *Cold-Rolled Steel from Korea*, but *Lined Paper from Indonesia*, on the basis that Huajun Casting's products clearly have one purpose: "the production of a high value-added product," including chassis.[273]

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[266] *See* Memorandum "Countervailing Duty Investigation of Certain Chassis and Subassemblies Thereof from the People's Republic of China; Analysis of Banks and Trust Companies in China Memo," dated September 21, 2020 at 2.

[267] *See, e.g., Certain Vertical Shaft Engines between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 86 FR 1933 (January 11, 2021), and accompanying IDM at Comment 23.

[268] *See* CIMC's Case Brief at 24-25; *see also Preliminary Determination* PDM at 8.

[269] *Id.* at 25.

[270] *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 38361 (June 26, 2020) (*Cold-Rolled Steel from Korea*), and accompanying IDM at 30.

[271] *See* Petitioner's Rebuttal Brief at 47; *see also Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China*, 75 FR 57444 (September 21, 2010), and accompanying IDM at 97-98; and *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from Indonesia*, 71 FR 47174 (August 16, 2006) (*Lined Paper from Indonesia*), and accompanying IDM at 30.

[272] *Id.*

[273] *See* Petitioner's Rebuttal Brief at 47-48; *see also Cold-Rolled Steel from Korea* IDM at 29; and *Lined Paper from Indonesia* IDM at 31.

Commerce's Position: CIMC states that only a small percentage of Huajun Casting's total sales went towards the production of subject merchandise.[274] The specific inputs provided are business proprietary information. However, the exhibit that CIMC cites shows that the overwhelming majority of the sales of these inputs is for the production of subject merchandise.[275] When determining whether an input is primarily dedicated to the production of subject merchandise, we need not consider whether all other products manufactured by that producer are inputs in the production of subject merchandise. Accordingly, we continue to find that Huajun Casting supplies inputs primarily dedicated to the production of subject merchandise within the meaning of 19 CFR 351.525(b)(6)(iv) and will continue to attribute subsidies received by Huajun Casting to CIMC.

Comment 11: Whether Commerce Should Have Initiated an Investigation into Currency Undervaluation

GOC's Case Brief[276]

- Commerce's decision to initiate the currency undervaluation program is not supported by law. In the NSA Memo, Commerce referenced the November 9, 2020, United States Treasury Memorandum on currency undervaluation of the *Twist Ties from China* investigation.[277] Commerce and the petitioner allege that the Treasury Memorandum found the GOC's actions had the effect of undervaluing the Chinese renminbi (RMB) exchange rate to the U.S dollar by approximately five percent in 2019. Based on this information, Commerce found that the petitioner sufficiently alleged the elements of a subsidy and provided reasonably available information to support its allegation on which to initiate on the alleged program.
- Commerce has no authority to countervail the alleged program under Article XV of the General Agreement on Tariffs and Trade (GATT), section 2 of Article IV of the Articles of Agreement of the International Monetary Fund (IMF), or U.S. law. Commerce's failure to address these legal questions in the final determination of *Twist Ties from China* nullifies any reasonable support that the alleged currency undervaluation program exists or can be countervailed. Therefore, the GOC asserts that the investigation of this program does not conform to the relevant rules established by the World Trade Organization (WTO). Consequently, the GOC reserves its right to seek resolution of all legal issues arising from this case by taking any dispute resolution measures it deems necessary.
- In *Twist Ties from China,* Commerce determined that it lacked the evidence to make a final determination on the benefit and specificity elements for this program. Specifically, Commerce found there was no need to address the individual arguments presented by parties on the authority of Commerce to countervail currency-related subsidies, the consistency of the *Final Rule* with the Act, and the existence of a financial contribution, specificity, or benefit at this time, because it lacked information to conduct a more

[274] *See* CIMC's Case Brief at 25.
[275] *See* CIMC SQR 11-13-20 at Exhibit HJC-8.
[276] *See* GOC Case Brief at 3-22.
[277] *See Twist Ties from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 10542 (February 22, 2021) (*Twist Ties from China*).

complete and thorough analysis of the novel issues presented with respect to this complex allegation. Commerce deferred making any finding with respect to the countervailability of this program until the first administrative review. A primary basis for Commerce's deferral and failure to address the arguments presented by parties in *Twist Ties from China* was that Commerce recognized that currency undervaluation involves a complex and multifaceted analysis involving multiple economic variables, in which it is not an expert.

- Commerce should not initiate on any further currency undervaluation allegations until it can address the legal arguments concerning its authority to countervail currency-related subsidies and whether the *Final Rule* is consistent with the statute. If Commerce cannot address the fundamental legal issues, then it cannot also claim that information is reasonably available to support the allegation or initiate the erroneous currency undervaluation program. WTO members can adopt any foreign exchange arrangement other than gold, including a floating exchange rate system, a pegged exchange rate system, or other exchange rate arrangements. When Commerce does finally turn to analyzing the legal issues, it must keep this flexibility in mind and address it in an appropriate way in its analysis. Consequently, Commerce should reverse its determination to initiate the currency undervaluation program in this investigation, at least until the issues of law asserted in *Twist Ties from China* and discussed here are resolved.
- Commerce can find no support for its initiation and decision to potentially countervail this alleged subsidy in the GATT, the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), or the Articles of Agreement of the IMF. The Act also does not provide Commerce with any authority to countervail the exchange currency.
- Commerce's unlawful initiation of currency undervaluation violates the commitments made by the United States under Chapter V of the First Phase Economic and Trade Agreement. This binding agreement, signed in January 2020, has provisions that deal directly with exchange rate issues. The Agreement also gives primacy to the IMF in addressing exchange rate practices by confirming that the United States and China are bound under the IMF Articles of Agreement. The Agreement provides that if there is failure to arrive at a mutually satisfactory resolution under the Bilateral Evaluation and Dispute Resolution Arrangement, the U.S. Secretary of the Treasury or the Governor of the People's Bank of China may also request that the IMF undertake rigorous surveillance of the macroeconomic and exchange rate policies and data transparency and reporting policies of the requested Party; or initiate formal consultations and provide input, as appropriate.
- The only way Commerce was able to make the finding that it did was to unlawfully expand the meaning of the term "financial contribution" and "direct transfer of funds" to encompass an ordinary transaction – the exchange of currency – which happens every day all over the world between all groups of people. There is no direct transfer of funds from financial institutions authorized to exchange currency. The financial institutions that are exchanging currency are not transferring any of their own "excess RMB" funds or foregoing anything. There is also no cost to the financial institution in exchanging currency, and thus it is not providing any type of financial contribution. Financial institutions merely provide an equal amount of RMB for USD based on the market exchange rate.

- The WTO has clarified in multiple cases that Member States must identify alleged subsidies as "subsidy programs" under Article 2.1 of the SCM Agreement when conducting a *de facto* specificity analysis. If no written instrument or explicit pronouncement to provide subsidies exists, the investigating authority must have adequate evidence of the existence of a systematic series of actions pursuant to which financial contributions that confer a benefit are provided to certain enterprises. This requirement cannot be met by simply relying on generic references to "program{s} of action" or "policy mandates" as these alone do not suffice to provide a reasoned and adequate explanation as to the identification of an unwritten subsidy program.
- While Commerce has only applied the standards for purposes of initiation in this case, Commerce's failure not to address these issues in *Twists Ties from China* results in a presumption that there is no reasonable evidence that shows the existence of any subsidy program. Just as the WTO has found that the alleged provision of hot-rolled steel for LTAR is not a program, neither is the act of exchanging currency at market-determined exchange rates.
- In the NSA Memo, Commerce failed to follow its regulations and instead concluded, in contradiction of its determination in *Twist Ties from China,* that the exchange of currency was *de facto* specific after analyzing only the second factor – an enterprise or industry is a predominant user of the subsidy. To conclude that the exchange of currency is *de facto* specific, even for purposes of initiation, because an enterprise or industry or group of enterprises or industries are "users" of the so-called exchange of currency program violates the fundamental basis for fairness included in the SCM Agreement and the Act. The distinguishing element of specificity is that the alleged subsidy is limited in some way to an enterprise or industry or group of enterprises or industries. Both the WTO and U.S. courts recognize that while a specificity analysis cannot be reduced to a rigid quantitative formula, a subsidy that is specific is one that is not broadly available and widely used throughout an entire economy.[278]
- Indeed, the United States has recognized in other proceedings that alleged subsidies provided to an entire sector are too broad and diverse to merit a *de facto* specificity finding. Except for one or two of these industry groupings, there are companies that "buy or sell goods internationally" in nearly all of these industry groupings. In other words, there is nothing specific about this group because there are companies that "buy or sell goods internationally" in just about all of the industry categories identified by Commerce. Yet, Commerce did not question the petitioner's specificity allegations before concluding that the petitioner supported the alleged subsidy allegation as specific, in complete contrast to the fact that Commerce could not make such a finding in *Twist Ties from China.*
- Numerous legislative attempts over at many years to amend the Act to authorize countervailing undervalued currency failed, further demonstrating lack of statutory authority. In other words, if the Act already provided statutory authority to treat an undervalued currency as a countervailable subsidy then it would not have been necessary for the numerous attempts to revise the law to provide such authority. Given the absence

[278] The CIT in *Wilmar Trading* noted that the statute requires that the subsidy not be spread throughout the economy. Similarly, the WTO in US– Upland Cotton stated that a subsidy would cease to be specific because it is sufficiently broadly available throughout an economy as not to benefit a particular limited group of producers of certain products. *See Wilmar Trading Pte Ltd. v. United States,* 466 F. Supp. 3d 1334, 1358 (Wilmar Trading).

of legislative authority, Commerce's promulgation of its regulations that treat currency undervaluation as a countervailable subsidy is *ultra vires.* Yet, Commerce acted unilaterally and promulgated regulations that purport to provide authority for treating an undervalued currency as a specific subsidy and setting out the method for calculating a benefit from currency undervaluation. However, absent legislative authority, 19 CFR 351.502(c) and 351.528 are unlawful and void.

- As discussed, nothing in the Act provides Commerce with statutory authority to treat currency undervaluation as a countervailable subsidy. Commerce also cannot rely on Congress' silence in not addressing currency undervaluation as a countervailable subsidy as a basis for authority to promulgate its regulations. This is especially true here where numerous attempts were made in Congress to amend the Act to provide this authority and all failed.

Petitioner's Rebuttal Brief [279]

- Commerce properly initiated an investigation into currency undervaluation as a countervailable subsidy. The initiation of a new subsidy only requires that the petitioner alleges all elements in section 701(a) of the Act and that each allegation be accompanied by information reasonably available to the petitioner supporting those allegations.
- Section 771(5)(B) of the Act requires that a subsidy shall be deemed to exist if there is a financial contribution from an authority that confers a benefit. The subsidy must also be specific under the meaning of section 771(5A) of the Act. Following the *Preliminary Determination*, Commerce announced that it was initiating an investigation into several additional subsidies, including Currency Undervaluation. Specifically, Commerce found that the petitioner sufficiently alleged the elements of a subsidy and provided reasonably available information to support its allegation. This supporting information included Commerce's consultation with the Treasury from *Twist Ties from China*, where Treasury noted that the RMB exchange rate was undervalued by 5 percent due to the GOC's actions. The petitioner also supported this allegation with additional information from Treasury that China's lack of transparency on this issue means that GOC actions could result in undervaluation as high as 7 percent. Further, Commerce found that the petitioner sufficiently alleged that this program is specific to enterprises buying or selling goods internationally.
- However, Commerce also recommended postponing its investigation of the properly alleged new subsidies, due to the complexity and number of new subsidies and the short time remaining before the final CVD determination. Instead, Commerce proposed that the new subsidy allegations be fully investigated in the first administrative review, should an order be put in place. This decision is consistent with the CVD investigation into *Twist Ties from China*, where Commerce deferred a finding on countervailability of this program and indicated that it would continue to investigate this program in the first administrative review. As a result, Commerce declined to take up other arguments on its authority to countervail currency-related subsidies, the consistency of the *Final Rule* with the Act, and the existence of a financial contribution, specificity, or benefit. As such, Commerce's practice on this issue is to initiate an investigation on currency

[279] *See* Petitioner's Rebuttal Brief at 29-34

undervaluation but defer full investigation on substantive issues until the first review. Commerce should continue to do so here.

- The GOC claims that Commerce should reverse its determination to initiate the currency undervaluation program in this investigation at least until the issues of law asserted in *Twist Ties from China* and the GOC's brief are addressed. The GOC, however, has not cited any law or Commerce regulation requiring Commerce to reverse initiation of an investigation on a subsidy allegation. Instead, the CIT recognizes that Commerce may defer or postpone a final determination on a program where it is extraordinarily complex. Here, the GOC makes identical arguments that it made in *Twist Ties from China* regarding the countervailability of the currency undervaluation program. Because Commerce has already found this program to be extraordinarily complex, it has already deferred a determination until the first administrative review. There is no requirement that Commerce reverse its initiation pending other predicate findings or based on the outcome of a different proceeding.
- Notwithstanding that Commerce has already deferred a full investigation of this program until the first administrative review, the GOC's currency undervaluation is countervailable. On February 4, 2020, Commerce issued the *Final Rule*. In the *Final Rule*, Commerce addressed many of the arguments the GOC now raises in its brief, including, *inter alia*, whether CVD law is an appropriate remedy for currency undervaluation subsidies, whether Commerce has the statutory authority to promulgate the rule, whether currency undervaluation constitutes a financial contribution, and whether the rule contravenes U.S. obligations under the SCM for purposes of specificity. Ultimately, Commerce found that none of these issues were barriers to its ability to analyze the countervailability of currency manipulation.
- Regarding financial contribution, Commerce found that the issue of whether there was a "direct transfer of funds" is best raised within a specific CVD proceeding based on the particular facts therein. Likewise, Commerce determined that it has the statutory authority to promulgate a rule finding currency undervaluation to be a countervailable subsidy. The GOC's reference to Congressional attempts to address currency manipulation directly ignore that Congress has already given Commerce the authority to remedy injurious trade actions regardless of the form the action takes. Any action by Congress on currency undervaluation would merely further define Congress's original broad grant of authority to Commerce to conduct investigations into unfair trade practices and the domestic industry's access to an appropriate remedy. The GOC's interpretation would inappropriately narrow Congress's intent.

Commerce's Position: We agree with the petitioner. On February 3, 2021, we initiated an investigation of Currency Undervaluation, among other programs and allegations. However, given the complexity of the newly alleged subsidies, as well as the number of allegations and the short time Commerce has to complete its investigation, we determined it would be impossible to conduct a meaningful examination in this investigation of the these newly alleged programs. Thus, we deferred further analyses of these alleged programs until the first administrative review, should the case result in an order and a review be requested. As discussed in Comment 2 above, it is not unusual for Commerce to defer consideration of, or a final determination concerning, a subsidy allegation made in an investigation.

The GOC claims we should reverse the initiation of this program because of the findings in *Twist Ties from China*. In *Twist Ties from China,* Commerce found that the currency allegation was not filed late, but it was an extraordinarily complex allegation which required additional time and resources to analyze. Thus, given the time constraints faced by Commerce to fully consider parties' arguments and determine if additional information was required and available to conduct a more complete and thorough analysis of the novel issues presented with respect to the complex currency allegation, Commerce deferred making a finding with respect to the countervailability of the currency allegation in the *Twist Ties from China* case until the first administrative review, should this investigation result in a CVD order and a review be requested. Commerce did not find the currency allegation to be not countervailable or reverse the initiation of the program in the Twist Ties cases. Given this, the GOC is incorrect that Commerce's determination in *Twist Ties from China* nullifies the alleged elements of a reasonable basis on which to initiate a currency undervaluation program.

Section 702(b)(1) of the Act states that an interested party must allege the elements necessary for the imposition of the duty as set forth by section 701(a) of the Act, and each allegation must be accompanied by information reasonably available to the petitioner supporting those allegations. Section 771(5)(B) of the Act states that a subsidy shall be deemed to exist if: (1) there is a financial contribution by an "authority" (*i.e.*, a government of a country or any public entity within the territory of the country) or an "authority" entrusts or directs a private party to make a financial contribution to a person,[280] and (2) a benefit is thereby conferred. To be countervailable, the subsidy must also be specific within the meaning of section 771(5A) of the Act. In this case, the petitioner properly alleged each of these elements with information reasonable available to it.

In this case, as discussed in the NSA Memo, the petitioner alleged that the GOC provides a countervailable subsidy to chassis producers by undervaluing its currency through government intervention in the exchange rate between the U.S. dollar and the RMB. The petitioner further asserted that this undervaluation provides an unfair subsidy to firms in China that receive more RMB in exchange for dollars earned on their exports than they otherwise would, but for GOC interventions. The petitioner supported each of the elements of a subsidy (financial contribution, benefit, and specificity) with information reasonably available to it including a letter from the Treasury Department regarding the *Twist Ties from China* case, a news article about Chinese currency control, a Treasury Department press release, administrative rules by the GOC on foreign exchange, and the IMF's 2019 balance of payments data China.[281]

Comment 12: Whether CIMC Failed Verification with Respect to Reported Input Purchases

Petitioner's Arguments:

[280] *See, e.g.*, section 701(a)(1) of the Act

[281] *See* Memorandum, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: New Subsidy Allegations in Countervailing Duty Investigation, and Uncreditworthiness and Unequityworthiness," dated February 3, 2021 at 5-6; *see also* Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: New Subsidy Allegation," dated November 18, 2020 at 29-36 and Exhibits 11-15.

- CIMC's reconciliation of its input purchase of hot-rolled steel sheet and plate (HRSSP) and wire rod correspond to the affiliates' balance sheets, rather than the year-end income statements, as requested by Commerce. As a result, CIMC's reconciliation does not give a complete description of its affiliates' input purchases over the POI. That CIMC is selectively reconciling some of its purchases to the year-end income statements and others to balance sheets demonstrates that CIMC has not cooperated to the best of its ability, and Commerce should apply an AFA rate for these LTAR programs.

CIMC's Rebuttal Arguments:

- CIMC correctly reconciled its reported HRSSP and wire rod purchases. The reconciliation methodology used by CIMC, for its three affiliates, fully conforms to Commerce's verification questionnaire instructions and correctly reconciles these companies' purchases to their inventories of raw materials on each company's audited financial statements.

Commerce's Position: In response to our in-lieu of verification questionnaire, CIMC reconciled the POI HRSSP and wire rod purchases made by its affiliates DCVC, QCVC, and HJV.[282] The petitioner argues that CIMC's reconciliation methodology for these purchases does not conform to the verification questionnaire and fails to correctly reconcile these purchases. Specifically, the petitioner argues that CIMC should have reconciled these purchases to each company's income statement, and not their balance sheet. In particular, the petitioner holds that a balance sheet represents a snapshot of a assets, liabilities, and equity at a specific time, whereas an income statement represents activity over a specific time period. Further, noting to *Washers from Korea*,[283] the petitioner argues that Commerce has recognized a request for POI information requires reconciliation through the POI, rather than an amount at the end of the POI. We disagree with the petitioner.

As an initial matter, Commerce did not stipulate the precise methodology CIMC must use to reconcile its purchases. Specifically, our verification questionnaire stated the following regarding DCVC, QCVC, and HJV's purchases of HRSSP and wire rod:

> Please reconcile the total amount of POI purchases reported by each of these companies to that company's year-end financial statements. Provide a detailed narrative for this reconciliation, explaining each step of the reconciliation, as well as a table of contents listing the documents within this package."[284]

In other words, we did not explicitly stipulate which type of financial statement that CIMC needed to reconcile these purchases to in the questionnaire. As such, we disagree that the petitioner's assertion that CIMC's reconciliation methodology did not confirm to our verification questionnaire.

[282] *See* CIMC's VQR2.
[283] *See Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers from Korea*), and accompanying IDM at Comment 4.
[284] *See* CIMC Verification Questionnaire.

Further, the petitioner argues that CIMC's reconciliation is merely a snapshot of its purchases, and in-turn, contends that this reconciliation does not give an accurate depiction of these HRSSP and wire rod purchases over the POI. As such, the petitioner holds that the purchases of these material cannot be verified. We disagree. For each of these three affiliates, CIMC reconciled the companies' reported POI purchases of HRSSP and wire rod with the companies' warehouse systems, which-in turn, reconciled to the companies' accounting systems. The figures in the companies' warehouse systems and accounting records provided purchase totals during the POI. Further, the figures from these accounting records reconciled with the ending balance of inventories in the companies' balance sheets.[285] In its review of these reconciliation, Commerce has found no discrepancies. Other than disagreeing with the methodology employed to reconcile the reported purchase figures, the petitioner identifies no errors or inconsistencies in the records that would cause us to find that CIMC failed this verification exercise.

Finally, contrary to the petitioner's assertion, we find that the results of *Washers from Korea* are not applicable in this proceeding. In that investigation, we found that the company had only reported short-term loans that were outstanding at the end of the year (which tied to the company's balance sheet), instead of all short-term loans that were outstanding during the POI that Commerce had requested.[286] In this investigation, CIMC reported all input purchases during the POI, which was Commerce requested the company to do, and in-turn, reconciled its purchases to the year-end balance sheet.

Therefore, we are not finding that CIMC failed verification of its reported HRSSP and wire rod purchases during the POI.

[285] *See* CIMC's VQR2 at Exhibits VE-11, VE-12 and VE-13. For example, at VE-11, CIMC reconciled DCVC's reported POI purchases of HRSSP to the company's "Steel Materials" category in its warehouse system, the figures from this category tied to the "Main Raw Materials" category, which in-turn, tied to the "Raw Materials" category. The figures from this "Raw Materials" category in the warehouse system reconciled into the company's accounting system (under "Inventory"), which-in turn, tied to the company's balance sheet.
[286] *See Washers from Korea* IDM at Comment 4.

VII. RECOMMENDATION

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

☒	☐
Agree	Disagree

3/15/2021

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance