



C-570-134

Investigation

POI: 01/01/2019 – 12/31/2019

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June 28, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Countervailing Duty Investigation of Certain
Metal Lockers and Parts Thereof from the People's Republic of
China

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain metal lockers, and parts thereof (metal lockers) from the People's Republic of China (China), as provided in section 705 of the Tariff Act of 1930, as amended (Act). The petitioners in this case are List Industries, Inc., Lyon LLC, Penco Products, Inc, and Tennsco LLC.¹ The mandatory respondent in this investigation is Zhejiang Xingyi Metal Products Co., Ltd. (Zhejiang Xingyi). As a result of our analysis, we made changes to the subsidy rate calculations. Below is the complete list of issues in this investigation for which we received comments from interested parties.

Comment 1: Export Buyer's Credit Program

Comment 2: Whether Commerce Should Use Non-Alloy Hot-Rolled Steel and Galvanized Steel Benchmarks

Comment 3: Whether Zhejiang Xingyi Verified the Accuracy of its Reported Purchases of Galvanized Steel and Stainless Steel Coil

Comment 4: Electricity for Less than Adequate Remuneration (LTAR) Program

Comment 5: Whether Commerce Should Continue to Apply AFA to the Provision of Steel Inputs for LTAR

Comment 6: Most Favored Nation Duty Rates

¹ On October 15, 2020, the petitioners notified Commerce that Lyon LLC was withdrawing as a petitioner in this investigation. On November 6, 2020, DeBourgh Manufacturing Co. was listed with List Industries, Inc., Penco Products, Inc., and Tennsco LLC as the petitioners in this investigation.



II. BACKGROUND

A. Case History

On December 14, 2020, Commerce published in the *Federal Register* the *Preliminary Determination* of this investigation.² In the *Preliminary Determination*, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we aligned the deadline of the final determination of this countervailing duty (CVD) investigation with that of the final determination of the companion antidumping duty (AD) investigation of metal lockers from China.³ On February 11, 2021, Commerce postponed the deadline of the final determination in the companion AD investigation of metal lockers from China to June 28, 2021.⁴

On January 21, 2021, we issued a post-preliminary supplemental questionnaire to Zhejiang Xingyi.⁵ Zhejiang Xingyi filed a timely response to that questionnaire on February 1, 2021.⁶ On February 2, 2021, Commerce issued a preliminary scope determination which modified the scope laid out in the *Initiation Notice* and *Preliminary Determination*.⁷ On March 4, 2021, Commerce issued an *Amended Preliminary Determination* in this investigation.⁸

On March 15, 2021, Harbor Freight and George O'Days, Inc. (O'Days), an importer of the subject merchandise, provided final scope comments. On March 22, 2021, the petitioners filed rebuttal scope comments.⁹

On March 1, 2021, we notified counsel to Zhejiang Xingyi that Commerce intended to issue the company a verification questionnaire in lieu of on-site verification.¹⁰ On March 5, 2021, Commerce issued the verification questionnaire to Zhejiang Xingyi,¹¹ which submitted its

² See *Certain Metal Lockers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 80771 (December 14, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

³ See *Preliminary Determination* at "Alignment."

⁴ See *Certain Metal Lockers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 86 FR 9051, 9053 (February 11, 2021).

⁵ See Commerce's Letter, "Countervailing Duty Investigation of Certain Metal Lockers and Parts Thereof from the People's Republic of China: Zhejiang Xingyi Metal Products Co., Ltd. Post-Preliminary Determination Supplemental Questionnaire," dated January 21, 2021.

⁶ See Zhejiang Xingyi's Letter, "Certain Metal Lockers and Parts Thereof from China, Case No. C-570-134: ZXM Post-Preliminary Determination Supplemental Questionnaire Response," dated February 1, 2021.

⁷ See Memorandum, "Antidumping Duty and Countervailing Duty Investigations of Certain Metal Lockers and Parts Thereof from the People's Republic of China: Preliminary Scope Decision Memorandum," dated February 2, 2021; see also *Certain Metal Lockers and Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 85 FR 47353 (August 5, 2020) (*Initiation Notice*).

⁸ See *Certain Metal Lockers and Parts Thereof from the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination*, 86 FR 12611 (March 4, 2021).

⁹ See Petitioners' Letter, "Certain Metal Lockers and Parts Thereof from the People's Republic of China: Petitioners' Rebuttal Scope Comments," March 22, 2021.

¹⁰ See Memorandum, "Countervailing Duty Investigation of Certain Metal Lockers and Parts Thereof from the People's Republic of China: Ex-Parte Phone Call Concerning In Lieu of Verification Questionnaire," dated March 2, 2021.

¹¹ See Commerce's Letter, "Questionnaire in Lieu of Verification," dated March 5, 2021.

response on March 16, 2021.¹² On April 12, 2021, Commerce set the briefing schedule in this investigation.¹³ On April 19, 2021, interested parties submitted case briefs.¹⁴ On April 26, 2021, interested parties submitted rebuttal briefs.¹⁵

B. Period of Investigation

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

III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are metal lockers from China. For a full description of the scope of the investigation, see the accompanying *Federal Register* notice at Appendix I.

IV. SUBSIDIES VALUATION

A. Allocation Period

We made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation methodology used in the *Preliminary Determination*. For a description of the allocation period and the methodology used for this final determination, see the *Preliminary Determination*.¹⁶

B. Attribution of Subsidies

We made no changes to the methodology underlying our attribution of subsidies in the *Preliminary Determination*. For a description of the methodology used in this final determination see the *Preliminary Determination*.¹⁷

C. Denominators

Commerce made no changes to the denominators used in the *Preliminary Determination*.¹⁸

¹² See Zhejiang Xingyi's Letter, "Certain Metal Lockers and Parts Thereof from China, Case No. C-570-134: ZXM Verification Questionnaire Response," dated March 15, 2021.

¹³ See Memorandum, "Countervailing Duty Investigation of Certain Metal Lockers and Parts Thereof, from the People's Republic of China: Establishment of Briefing Schedule," dated April 12, 2021.

¹⁴ See GOC's Letter, "Certain Metal Lockers and Parts Thereof from the People's Republic of China, Case No. C-570-134: Case Brief," dated April 19, 2021 (GOC's Case Brief); see also Petitioners' Letter, "Certain Metal Lockers and Parts Thereof from the People's Republic of China: Petitioners' Case Brief," dated April 19, 2021 (Petitioners' Case Brief); and Zhejiang Xingyi's Letter, "Certain Metal Lockers and Parts Thereof from the People's Republic of China, Case No. C-570-134: ZXM Case Brief," dated April 19, 2021 (Zhejiang Xingyi's Case Brief).

¹⁵ See Zhejiang Xingyi's Letter, "Certain Metal Lockers and Parts Thereof from the People's Republic of China, Case No. C-570-134: ZXM Rebuttal Brief," dated April 26, 2021 (Zhejiang Xingyi's Rebuttal Brief); and Petitioners' Letter, "Certain Metal Lockers and Parts Thereof from the People's Republic of China: Petitioners' Rebuttal Brief," dated April 26, 2021 (Petitioners' Rebuttal Brief).

¹⁶ See *Preliminary Determination* PDM at 7.

¹⁷ *Id.* at 7-9.

¹⁸ *Id.* at 9.

D. Benchmarks and Interest Rates

We have revised the benchmark used to determine adequate remuneration for hot-rolled steel and galvanized steel for Zhejiang Xingyi. *See* Comment 2.

V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Application of Adverse Facts Available: Non-Responsive Companies

In the *Preliminary Determination*, Commerce determined that eight companies identified in the Petition did not respond to Commerce's quantity and value (Q&V) questionnaire thereby warranting the application of a total adverse facts available (AFA) rate to the companies.¹⁹ In the final determination, we continue to apply a total AFA rate to these companies. In assigning the total AFA rate to the eight companies that failed to submit a response to the Q&V questionnaire, we continue to utilize the methodology (hereinafter referred to as the AFA hierarchy) as described in the *Preliminary Determination*. As explained in the *Preliminary Determination*, the AFA hierarchy relies, in part, on the subsidy program rates calculated for the mandatory respondent.²⁰ As explained below, certain subsidy program rates for Zhejiang Xingyi have changed since the issuance of the *Preliminary Determination* and these changes have, in turn, resulted in the total AFA rate assigned to the eight companies at issue to change, as well. For information concerning the rates used as AFA, *see* the Final AFA Calculation Memorandum.²¹

B. Application of AFA: Export Buyer's Credit Program

In the *Preliminary Determination*, we determined that the use of AFA was warranted in determining the countervailability of the Export Buyer's Credit (EBC) program because the Government of China (GOC) did not provide the requested information needed for Commerce to analyze this program fully.²² Thus, we preliminarily determined as AFA, that the program constitutes a financial contribution pursuant to section 771(5)(D) of the Act and provides a benefit pursuant to section 771(5)(E) of the Act that is contingent on exports within the meaning of sections 771(5A)(A) and (B) of the Act.²³ We continue to apply AFA to this program. For further discussion, *see* Comment 1.

C. Application of AFA: Electricity for LTAR

In the *Preliminary Determination*, we determined that the use of AFA was warranted in determining the countervailability of the Provision of Electricity for LTAR program because the GOC did not provide the requested information needed for Commerce to analyze this program fully.²⁴ Thus, we preliminarily determined that the program constituted a financial contribution

¹⁹ *Id.* at 11-12.

²⁰ *Id.* at 12-19.

²¹ *See* Memorandum, "Countervailing Duty Investigation of Certain Metal Lockers and Parts Thereof from the People's Republic of China: Final AFA Calculation Memorandum," dated concurrently with this memorandum.

²² *Id.* at 20-23.

²³ *Id.*

²⁴ *Id.* at 23-26.

within the meaning of section 771(5)(D) of the Act that is specific within the meaning of section 771(5A) of the Act.²⁵ We also preliminarily determined to draw an adverse inference in selecting the benchmark for determining the existence and amount of the benefit. In the *Preliminary Determination*, we relied upon electricity usage and rates paid by the mandatory respondent during the POI to calculate its respective net subsidy rates under the program.²⁶ Our decision to apply AFA to this program and our subsidy calculations remain unchanged. For further discussion, *see* Comment 4.

D. Application of AFA: Cold-Rolled Steel Producers are “Authorities”

In the *Preliminary Determination*, we found that the majority government-owned enterprises, as well as the non-majority government-owned domestic producers of the cold-rolled steel (CRS) from which Zhejiang Xingyi purchased CRS, were “authorities” within the meaning of section 771(5)(B) of the Act, and that a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act, was provided.²⁷ We also preliminarily determined to apply AFA under sections 776(a) and (b) of the Act to find that the non-majority government-owned domestic producers of CRS purchased by Zhejiang Xingyi were “authorities” within the meaning of section 771(5)(B) of the Act, and that a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act, was provided.²⁸ Our findings from the *Preliminary Determination* remain unchanged. For further discussion, *see* Comment 5.

E. Application of AFA: Cold-Rolled Steel is Specific

In the *Preliminary Determination*, we found that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we found that an adverse inference was warranted in the application of facts available pursuant to section 776(b)(1) of the Act.²⁹ In drawing an adverse inference, we preliminary found that the GOC’s provision of CRS was specific within the meaning of section 771(5A)(D)(iii) of the Act. Our findings from the *Preliminary Determination* remain unchanged.

F. Application of AFA: Cold-Rolled Steel Market is Distorted

In the *Preliminary Determination*, we found that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we found that an adverse inference was warranted in the application of facts available pursuant to section 776(b)(1) of the Act.³⁰ Accordingly, as AFA, we preliminarily determined that the GOC’s involvement in the CRS market in China results in the significant distortion of the prices of CRS, such that they could not be used as a tier-one benchmark under 19 CFR 351.511(a)(2)(i), and hence, the use of external benchmarks, as described under 19 CFR 351.511(a)(2)(ii), was

²⁵ *Id.*

²⁶ *Id.* at 25-26.

²⁷ *Id.* at 26-28

²⁸ *Id.*

²⁹ *Id.* at 28-29.

³⁰ *Id.* at 29-31.

warranted to calculate the benefit for the provision of CRS for LTAR.³¹ Our findings from the *Preliminary Determination* remain unchanged.

G. Application of AFA: Hot-Rolled Steel Producers are “Authorities”

In the *Preliminary Determination*, we found that the majority government-owned enterprises, as well as the non-majority government-owned domestic producers of the hot-rolled steel from which Zhejiang Xingyi purchased hot-rolled steel, were “authorities” within the meaning of section 771(5)(B) of the Act, and that a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act, was provided.³² We also preliminarily determined to apply AFA under section 776(a) and (b) of the Act to find that the non-majority government-owned domestic producers of hot-rolled steel purchased by Zhejiang Xingyi were “authorities” within the meaning of section 771(5)(B) of the Act, and that a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act, was provided.³³ Our findings from the *Preliminary Determination* remain unchanged. For further discussion, *see* Comment 5.

H. Application of AFA: Hot-Rolled Steel is Specific

In the *Preliminary Determination*, we found that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we found that an adverse inference was warranted in the application of facts available pursuant to section 776(b)(1) of the Act.³⁴ In drawing an adverse inference, we preliminarily found that the GOC’s provision of hot-rolled steel was specific within the meaning of section 771(5A)(D)(iii) of the Act. Our findings from the *Preliminary Determination* remain unchanged.

I. Application of AFA: Hot-Rolled Steel Market is Distorted

In the *Preliminary Determination*, we found that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we found that an adverse inference was warranted in the application of facts available pursuant to section 776(b)(1) of the Act.³⁵ Accordingly, as AFA, we preliminarily determined that the GOC’s involvement in the hot-rolled steel market in China results in the significant distortion of the prices of hot-rolled steel, such that they could not be used as a tier-one benchmark under 19 CFR 351.511(a)(2)(i), and hence, the use of external benchmarks, as described under 19 CFR 351.511(a)(2)(ii), was warranted to calculate the benefit for the provision of hot-rolled steel for LTAR.³⁶ Our findings from the *Preliminary Determination* remain unchanged.

³¹ *Id.*

³² *Id.* at 31-32.

³³ *Id.*

³⁴ *Id.* at 32-33.

³⁵ *Id.* at 33-34.

³⁶ *Id.*

J. Application of AFA: Galvanized Steel Producers are “Authorities”

In the *Preliminary Determination*, we found that the majority government-owned enterprises, as well as the non-majority government-owned domestic producers of the galvanized steel from which Zhejiang Xingyi purchased galvanized steel, were “authorities” within the meaning of section 771(5)(B) of the Act, and that a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act, was provided.³⁷ We also preliminarily determined to apply AFA under sections 776(a) and (b) of the Act to find that the non-majority government-owned domestic producers of galvanized steel purchased by Zhejiang Xingyi were “authorities” within the meaning of section 771(5)(B) of the Act, and that a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act, was provided.³⁸ Our findings from the *Preliminary Determination* remain unchanged. For further discussion, *see* Comment 5.

K. Application of AFA: Galvanized Steel is Specific

In the *Preliminary Determination*, we found that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we found that an adverse inference was warranted in the application of facts available pursuant to section 776(b)(1) of the Act.³⁹ In drawing an adverse inference, we preliminarily found that the GOC’s provision of galvanized steel was specific within the meaning of section 771(5A)(D)(iii) of the Act. Our findings from the *Preliminary Determination* remain unchanged.

L. Application of AFA: Galvanized Steel Market is Distorted

In the *Preliminary Determination*, we found that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we found that an adverse inference was warranted in the application of facts available pursuant to section 776(b)(1) of the Act.⁴⁰ Accordingly, as AFA, we preliminarily determined that the GOC’s involvement in the galvanized steel market in China results in the significant distortion of the prices of galvanized steel, such that they could not be used as a tier-one benchmark under 19 CFR 351.511(a)(2)(i), and hence, the use of external benchmarks, as described under 19 CFR 351.511(a)(2)(ii), was warranted to calculate the benefit for the provision of galvanized steel for LTAR.⁴¹ Our findings from the *Preliminary Determination* remain unchanged.

M. Application of AFA: Stainless Steel Coil Producers are “Authorities”

In the *Preliminary Determination*, we found that the majority government-owned enterprises, as well as the non-majority government-owned domestic producers of the stainless steel coil from which Zhejiang Xingyi purchased stainless steel coil, were “authorities” within the meaning of section 771(5)(B) of the Act, and that a financial contribution from them in the form of a

³⁷ *Id.* at 34-36.

³⁸ *Id.* at 36.

³⁹ *Id.* at 36-37.

⁴⁰ *Id.* at 37-38.

⁴¹ *Id.*

provision of a good, pursuant to section 771(5)(D)(iii) of the Act, was provided.⁴² We also preliminarily determined to apply AFA under sections 776(a) and (b) of the Act to find that the non-majority government-owned domestic producers of stainless steel coil purchased by Zhejiang Xingyi were “authorities” within the meaning of section 771(5)(B) of the Act, and that a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act, was provided.⁴³ Our findings from the *Preliminary Determination* remain unchanged. For further discussion, *see* Comment 5.

N. Application of AFA: Stainless Steel Coil is Specific

In the *Preliminary Determination*, we found that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we found that an adverse inference was warranted in the application of facts available pursuant to section 776(b)(1) of the Act.⁴⁴ In drawing an adverse inference, we preliminarily found that the GOC’s provision of stainless steel coil was specific within the meaning of section 771(5A)(D)(iii) of the Act. Our findings from the *Preliminary Determination* remain unchanged.

O. Application of AFA: Stainless Steel Coil Market is Distorted

In the *Preliminary Determination*, we found that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we found that an adverse inference was warranted in the application of facts available pursuant to section 776(b)(1) of the Act.⁴⁵ Accordingly, as AFA, we preliminarily determined that the GOC’s involvement in the stainless steel coil market in China results in the significant distortion of the prices of stainless steel coil, such that they could not be used as a tier-one benchmark under 19 CFR 351.511(a)(2)(i), and hence, the use of external benchmarks, as described under 19 CFR 351.511(a)(2)(ii), was warranted to calculate the benefit for the provision of stainless steel coil for LTAR.⁴⁶ Our findings from the *Preliminary Determination* remain unchanged.

P. Application of AFA: Policy Loans to the Metal Lockers Industry

In the *Preliminary Determination*, we found that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we found that an adverse inference was warranted in the application of facts available pursuant to section 776(b)(1) of the Act.⁴⁷ Accordingly, as AFA, we preliminarily determined that the GOC’s program of preferential policy lending constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific to the metal lockers industry, within the meaning of section 771(5)(D)(iii) of the Act.⁴⁸ Our findings from the *Preliminary Determination* with respect to this program remain unchanged.

⁴² *Id.* at 38-41.

⁴³ *Id.* at 41.

⁴⁴ *Id.* at 41-42.

⁴⁵ *Id.* at 42-43.

⁴⁶ *Id.* at 43.

⁴⁷ *Id.* at 43-44.

⁴⁸ *Id.* at 44.

Q. Application of AFA: Other Subsidies

As explained in the *Preliminary Determination*, Zhejiang Xingyi reported in its questionnaire responses that it received certain “Other Subsidies” during the POI and over the average useful life period.⁴⁹ In the *Preliminary Determination*, we explained that the GOC failed to act to the best of its ability by not providing information necessary to perform our analyses of financial contribution and specificity for the other subsidy programs reported by Zhejiang Xingyi. Consequently, in the *Preliminary Determination*, we applied an adverse inference to find the other subsidy programs at issue that were self-reported by Zhejiang Xingyi constituted a financial contribution, pursuant to section 771(5)(D) of the Act, and were specific, within the meaning of section 771(5A) of the Act.⁵⁰ Where such subsidies appear to be contingent upon export performance, we found these subsidies to be specific within the meaning of sections 771(5A)(A) and (B) of the Act.⁵¹ In the *Preliminary Determination*, we relied upon the benefit information reported by Zhejiang Xingyi for the “other subsidy” programs at issue.⁵² Our findings from the *Preliminary Determination* with respect to these programs remain unchanged.

VI. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Policy Loans to the Metal Lockers Industry

We continue to find this program to be countervailable and have made no changes to our methodology from the *Preliminary Determination*.⁵³ The net subsidy rate for Zhejiang Xingyi is 0.46 percent *ad valorem*. Consistent with Commerce’s AFA rate selection methodology, we are assigning a countervailable subsidy rate of 0.46 percent *ad valorem* to the non-responsive companies, which is the highest rate calculated for an identical program in this investigation.

2. Export Buyer’s Credits

Interested parties provided comments on this program which are addressed in Comment 1. We have not changed our methodology for calculating the subsidy rate for the respondent for this program. For Zhejiang Xingyi and the non-responsive companies, we continue to apply an AFA rate of 10.54 percent *ad valorem*.

3. Provision of Hot-Rolled Steel for LTAR

In response to interested parties’ comments, we have revised the benchmark for hot-rolled steel for Zhejiang Xingyi. *See* Comment 2. Accordingly, the net subsidy rate for Zhejiang Xingyi is

⁴⁹ *Id.* (citing Zhejiang Xingyi’s Letter, “Certain Metal Lockers and Parts Thereof from China, Case No. C-570-134: ZXM’s Initial Questionnaire Response,” dated October 13, 2020 (Zhejiang Xingyi’s IQR) at Exhibit F-1).

⁵⁰ *Id.* at 44-45.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *See Preliminary Determination* PDM at 43-44 and 60-62.

5.58 percent *ad valorem*.⁵⁴ Consistent with Commerce's AFA rate selection methodology, we continue to assign the highest calculated rate for the mandatory respondent to determine a subsidy rate of 5.58 percent *ad valorem* for the non-responsive companies.

4. Provision of Cold-Rolled Steel for LTAR

We continue to find this program to be countervailable, but have made changes to our methodology for calculating the subsidy rate for this program.⁵⁵ For further discussion, *see* Comment 6 below. Accordingly, the net subsidy rate for Zhejiang Xingyi is 4.71 percent *ad valorem*.⁵⁶

Consistent with Commerce's AFA rate selection methodology, we continue to assign the highest calculated rate for the mandatory respondent to determine a subsidy rate of 4.71 percent *ad valorem* for the non-responsive companies.

5. Provision of Galvanized Steel for LTAR

In response to interested parties' comments, we have revised the benchmark for galvanized steel for Zhejiang Xingyi. *See* Comment 2. Accordingly, the net subsidy rate for Zhejiang Xingyi is 0.55 percent *ad valorem*.⁵⁷ Consistent with Commerce's AFA rate selection methodology, we continue to assign the highest calculated rate for the mandatory respondent to determine a subsidy rate of 0.55 percent *ad valorem* for the non-responsive companies.

6. Provision of Stainless Steel Coil for LTAR

We continue to find this program to be countervailable but have made changes to our methodology for calculating the subsidy rate for this program.⁵⁸ For further discussion, *see* Comment 6 below. Accordingly, the net subsidy rate for Zhejiang Xingyi is 2.19 percent *ad valorem*.⁵⁹

Consistent with Commerce's AFA rate selection methodology, we continue to assign the highest calculated rate for the mandatory respondent to determine a subsidy rate of 2.19 percent *ad valorem* for the non-responsive companies.

⁵⁴ *See* Memorandum, "Final Determination Calculations Memorandum for Zhejiang Xingyi Metal Products Co., Ltd.," concurrently with this memorandum (Zhejiang Xingyi's Final Calculation Memorandum).

⁵⁵ *See Preliminary Determination PDM* at 55-56.

⁵⁶ *See* Memorandum, "Preliminary Determination Calculations Memorandum for Zhejiang Xingyi Metal Products Co., Ltd.," dated December 7, 2020 (Zhejiang Xingyi's Preliminary Calculation Memorandum).

⁵⁷ *See* Zhejiang Xingyi's Final Calculation Memorandum.

⁵⁸ *See Preliminary Determination PDM* at 58-59.

⁵⁹ *See* Zhejiang Xingyi's Final Calculation Memorandum.

7. Provision of Electricity for LTAR

We continue to find this program to be countervailable and have made no changes to our methodology for calculating the subsidy rate for this program.⁶⁰ Accordingly, the net subsidy rate for Zhejiang Xingyi is 0.19 percent *ad valorem*.⁶¹

Consistent with Commerce's AFA rate selection methodology, we continue to assign the highest calculated rate for the mandatory respondent to determine a subsidy rate of 0.19 percent *ad valorem* for the non-responsive companies.

8. Other Subsidies

We continue to find the following programs self-reported by Zhejiang Xingyi to be countervailable and the following net subsidy rates to be unchanged:

- Trademark Subsidy from Haining Industry and Commerce Bureau Chang'an Office – 1.27 percent *ad valorem*
- 2012 Domestic and Overseas Exhibition Awards from Haining Finance Bureau – 1.27 percent *ad valorem*
- Reward for Reach the Standard of Safety Production Standardization from the People's Government of Chang'an Town, Haining – 1.27 percent *ad valorem*
- 2015 Haining Municipal Financial Incentive Fund – High-Tech Product from Haining Finance Bureau – 1.27 percent *ad valorem*
- The First Batch Patent Award from the People's Government of Chang'an Town, Haining – 1.27 percent *ad valorem*
- 2016 Machine Substitution Award from the People's Government of Chang'an Town, Haining – 1.27 percent *ad valorem*
- 2016 Roof Resource Enterprise Subsidy from the People's Government of Chang'an Town, Haining – 1.27 percent *ad valorem*
- 2017 Enterprise Cloud Project Financial Subsidy from the People's Government of Chang'an Town, Haining – 1.27 percent *ad valorem*
- Service Charge Refund for Individual Income Tax from Haining Tax Bureau – 1.27 percent *ad valorem*
- Smart Electricity Development Support Fund from the People's Government of Chang'an Town, Haining – 1.27 percent *ad valorem*

Consistent with Commerce's AFA rate selection methodology, we are assigning the rates for the aforementioned programs to the non-responsive companies, which is the highest rate calculated for an identical program in this investigation.

For two grants that were received and expensed in the POI, we determine the following net countervailable subsidy rates for Zhejiang Xingyi:

⁶⁰ See *Preliminary Determination* PDM at 54.55.

⁶¹ See Zhejiang Xingyi's Preliminary Calculation Memorandum.

- Social Insurance Premium Refund for Difficult Enterprise from Haining Employment Management Service Office – 0.15 percent *ad valorem*
- Enterprise Development Support Fund from the People’s Government of Chang’an Town, Haining – 0.29 percent *ad valorem*

We continue to find these programs to be countervailable and have made no changes to our methodology for calculating the subsidy rate for these programs.⁶² Accordingly, the net subsidy rate for Zhejiang Xingyi is 0.44 percent *ad valorem*.

Consistent with Commerce’s AFA rate selection methodology, we continue to assign the highest calculated rate for the mandatory respondent to determine a subsidy rate of 0.44 percent *ad valorem* for the non-responsive companies.

B. Programs Determined Not to Be Used or Not to Confer a Measurable Benefit During the POI

Based on the record evidence, we determine that the benefits from the following programs were fully expensed prior to the POI, or are less than 0.005 percent *ad valorem* when attributed to the respondent’s applicable sales as discussed in the “Attribution of Subsidies” section above. Consistent with Commerce’s practice,⁶³ we have not included the following programs in our final subsidy rate calculations for Zhejiang Xingyi.

1. Trademark Subsidy from Haining Industry and Commerce Bureau Chang’an Office –
2. 2012 Domestic and Overseas Exhibition Awards from Haining Finance Bureau
3. Reward for Reach the Standard of Safety Production Standardization from the People’s Government of Chang’an Town, Haining
4. 2015 Haining Municipal Financial Incentive Fund – High-Tech Product from Haining Finance Bureau
5. The First Batch Patent Award from the People’s Government of Chang’an Town, Haining
6. 2016 Machine Substitution Award from the People’s Government of Chang’an Town, Haining
7. 2016 Roof Resource Enterprise Subsidy from the People’s Government of Chang’an Town, Haining
8. 2017 Enterprise Cloud Project Financial Subsidy from the People’s Government of Chang’an Town, Haining
9. Service Charge Refund for Individual Income Tax from Haining Tax Bureau
10. Smart Electricity Development Support Fund from the People’s Government of Chang’an Town, Haining

⁶² See Preliminary Determination PDM at 63.

⁶³ See, e.g., *Certain Steel Wheels from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012) at “Income Tax Reductions for Firms Located in the Shanghai Pudong New District.”

C. Programs Determined To Be Not Used by the Mandatory Respondent

1. Export Loans from Chinese State-Owned Banks
1. Export Seller's Credit
2. Export Credit Guarantees
3. Income Tax Reduction for High or New Technology Enterprises
4. Income Tax Deduction for Research and Development Expenses Under the Enterprise Income Tax Law
5. Preferential Income Tax Policy for Enterprises in the Northeast Region
6. Provincial Government of Guangdong Tax Offset for Research and Development
7. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
8. VAT Refunds for FIEs Purchasing Domestically-Produced Equipment
9. The GOC's Provision of Land for LTAR for State-Owned Enterprises
10. Provision of Land for LTAR in Special Economic Zones
11. Provision of Zinc for LTAR
12. GOC and Sub-Central Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands
13. Special Fund for Energy Savings Technology Reform
14. SME International Market Exploration/Development Fund
15. SME Technology Innovation Fund
16. Export Assistance Grants

VII. ANALYSIS OF COMMENTS

Comment 1: Export Buyer's Credit Program

Zhejiang Xingyi's Case Brief:

- Commerce failed to address the fact that Zhejiang Xingyi did not use the EBC program in the *Preliminary Determination*. Zhejiang Xingyi “clearly stated in its {IQR} that it did not assist its customers in obtaining {export buyer's credit}s during the POI, and that it also obtained affidavits from its customers certifying that they did not use the {EBC} program during the POI.”⁶⁴
- The GOC stated that none of Zhejiang Xingyi's U.S. customers used the EBC program during the POI.⁶⁵
- The Court of International Trade (CIT) has held that “AFA may only be applied after the requirements of countervailability have been met, and that when {Commerce} invokes its authority to use AFA, ‘the agency must still make the necessary factual findings to satisfy the requirements for countervailability.’”⁶⁶

⁶⁴ See Zhejiang Xingyi's Case Brief at 3-4 (citing Zhejiang Xingyi's IQR at 17 and Exhibit B-2).

⁶⁵ *Id.* at 4 (citing GOC's Letter, “Certain Metal Lockers and Parts Thereof from the People's Republic of China, Case No. C-570-134: GOC's Initial Questionnaire Response,” dated October 13, 2020 (GOC's IQR) at 17).

⁶⁶ *Id.* at 4-5 (citing *Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334, 1350 (CIT 2016) (*Trina Solar*); *Yama Ribbons & Bows Co. v. United States*, 419 F. Supp. 3d 1341 (CIT 2019) (*Yama Ribbons*); *Guizhou Tyre Co. v. United States*, 415 F. Supp. 3d 1402 (CIT 2019) (*Guizhou Tyre III*); *Guizhou Tyre Co. v. United States*, 389 F. Supp. 3d 1315 (CIT 2019) (*Guizhou Tyre II*); and *RZBC Group Shareholding Co. v. United States*, Ct. No. 15-00022, Slip Op. 16-64 (June 30, 2016) (*RZBC Group*)).

- Before Commerce can apply AFA, “it must (1) establish that ‘necessary information is not available on the record’ and (2) that {Commerce} specifically requested that information. After those findings, {Commerce} must establish that (3) a respondent failed to cooperate to the best of its ability to comply by not providing the requested information.”⁶⁷
- Additionally, Commerce’s “‘obligation when drawing an adverse inference based on a lack of cooperation by a foreign government is to avoid collaterally impacting respondents to the extent practicable by examining the record for replacement information.’”⁶⁸
- Commerce ignored “the fact that the CIT has reversed {Commerce}’s determinations in multiple prior China CVD cases regarding this very program on records nearly identical to this one, holding that when the evidence on the record indicates that the EBC program was not used, {Commerce} cannot apply AFA to determine it was used.”⁶⁹
- The CIT has held that when evidence indicates that the EBC program was not used, Commerce cannot apply AFA to determine it was used.⁷⁰
- The CIT has also held that the 2013 revisions cited by Commerce cannot impact whether the program was used.⁷¹
- As Commerce’s determination to apply AFA was not based on substantial evidence and is contrary to law, Commerce should reverse its decision for the *Final Determination*.⁷²
- “This decision is unlawful, particularly because {Commerce}’s adverse inference was made as a result of the GOC’s alleged failure to provide ‘necessary information,’ ‘but the consequences of those alleged actions fall on {Zhejiang Xingyi}.”⁷³

The Government of China’s Case Brief

- The GOC reported that neither Zhejiang Xingyi nor its U.S. customers utilized the EBC program. “Therefore, it could not have provided a financial contribution, and an application of AFA was unlawful.”⁷⁴
- The CIT has held that, when applying AFA, Commerce “must make the necessary factual findings to satisfy the requirements of countervailability.”⁷⁵

⁶⁷ *Id.* at 5 (citing sections 776(a)(2)(A) and 776(b) of the Act).

⁶⁸ *Id.* at 5, n.12 (citing *RZBC Group* at 12).

⁶⁹ *Id.* at 6 (citing *Yama Ribbons*, 419 F. Supp. 3d at 1348; *Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp. 3d 1316, 1326 (CIT 2018) (*Changzhou Trina*); *Changzhou Trina Solar Energy Co. v. United States*, Ct. No. 17-00246, Slip Op. 18-167 (November 30, 2018) (*Changzhou Trina II*) at 7; *Guizhou Tyre Co.*, 348 F. Supp. 3d at 1271 (CIT 2018) (*Guizhou Tyre*); and *Clearon Corp. v. United States*, 359 F. Supp. 3d 1344, 1357 (CIT 2019) (*Clearon Corp.*)).

⁷⁰ *Id.* at 7 (citing *Yama Ribbons*, 419 F. Supp. 3d at 1348; *Changzhou Trina*, 352 F. Supp. 3d at 1326; *Changzhou Trina II* at 7; *Guizhou Tyre*, 348 F. Supp. 3d at 1271; and *Clearon Corp.*, 359 F. Supp. 3d at 1357).

⁷¹ *Id.* at 7-8 (citing *Preliminary Determination PDM* at 21; and *Guizhou Tyre*, 348 F. Supp. 3d at 1270).

⁷² *Id.* at 9.

⁷³ *Id.* at 9-10.

⁷⁴ See GOC’s Case Brief at 3.

⁷⁵ *Id.* at 3 (citing *Trina Solar*, 195 F. Supp. 3d at 1350; see also *Yama Ribbons*, 419 F. Supp. 3d 1341; *Guizhou Tyre I*, 415 F. Supp. 3d 1402; *Guizhou Tyre III*, 389 F. Supp. 3d 1315; *RZBC Group* at 12 (“{Commerce}’s obligation when drawing an adverse inference based on a lack of cooperation by a foreign government is to avoid collaterally impacting respondents to the extent practicable by examining the record for replacement information.”)).

- Financial contribution is defined as “the *direct* transfer of funds, such as grants, loans, and equity infusions, or potential direct transfer of funds or liabilities, such as loan guarantees.”⁷⁶
- There is no direct or potential direct transfer under the EBC program, since the loan or credit and preferential interest rate are provided to the U.S. customer or foreign importer and not to Zhejiang Xingyi.⁷⁷
- AFA may only be applied if: (1) “necessary information is note available on the record;” (2) that information was specifically requested; and (3) a respondent failed to cooperate to the best of its ability by not providing the requested information.⁷⁸
- The instant case mirrors *Narrow Woven Ribbons from China*,⁷⁹ where Commerce determined the respondent did not use the Export Buyer’s Credit on remand.⁸⁰ The issue is not whether Commerce has a full understanding of the program, but instead whether the respondent used and received benefit from the program.⁸¹ The CIT has repeatedly reversed Commerce’s determinations with respect to this program, noting specifically that information regarding 2013 revisions to this program will not impact whether the program was used.⁸²
- Additionally, AFA should not be applied in this instance since no information is missing from the record. The GOC confirmed that Zhejiang Xinyi did not use the program, after checking with the Export/Import Bank (ExIm Bank). The Court of Appeals for the Federal Circuit (Federal Circuit) held that an adverse inference “may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for the Department to expect that more forthcoming responses should have been made; *i.e.*, under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.”⁸³
- Assuming that the statutory requirements for AFA are met, Commerce has not established that the EBC program meets the requirements of countervailability, since its finding was not substantiated with record evidence and ignored evidence contrary to its determination.⁸⁴
- The CIT held that Commerce must consider the entirety of the record, including evidence that detracts from its conclusions.⁸⁵
- The instant record contains evidence that the EBC program was not used and, therefore, provided no financial contribution. Commerce did not address this evidence or how the

⁷⁶ *Id.* at 4 (citing section 771(5)(D) of the Act) (emphasis added).

⁷⁷ *Id.* at 4.

⁷⁸ *Id.* at 4 (citing sections 776(a)(2)(A) and 776(b) of the Act).

⁷⁹ See *Narrow Woven Ribbons With Woven Selvage from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 11052 (March 25, 2019).

⁸⁰ See GOC’s Case Brief at 5-6 (citing *Yama Ribbons*, 419 F. Supp. 3d at 1350; and *Final Results of Redetermination Pursuant to Court Remand, Yama Ribbons & Bows Co. v. United States*, Ct. No. 18-00054, Slip Op. 20-107 (July 31, 2020)).

⁸¹ *Id.* at 6.

⁸² *Id.* at 6-8 (citing, *e.g.*, *Guizhou Tyre*, 348 F. Supp. 3d at 1270).

⁸³ *Id.* at 9 (citing *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (*Nippon Steel*)).

⁸⁴ *Id.* at 9.

⁸⁵ *Id.* at 9 (citing *RZBC Grp. Shareholding Co. v. United States*, 100 F. Supp. 3d 1288, 1298 (CIT 2015); and *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 484 (1951)).

program could have otherwise been used given this evidence. Thus, its decision to apply AFA is contrary to law.⁸⁶

Petitioners' Rebuttal Brief

- The GOC failed to provide complete responses to Commerce's requests for information regarding the EBC program, specifically the 2013 revisions to the program and list of partner banks.⁸⁷
- The GOC claimed the Standard Questions Appendix was "not applicable" to the EBC program since it claims that the respondent's U.S. customers did not use it during the POI. Additionally, the GOC was non-responsive to Commerce's request for interest rates in effect during the POI; copies of relevant laws, regulations, and governing documents cited by the GOC in its response; and a list of the partner/correspondent banks involved in the disbursement of funds under this program.⁸⁸
- The GOC continued to state that such information was "not applicable" after Commerce requested a full response to its original questions about the EBC program in a supplemental questionnaire.⁸⁹
- The GOC's claim that there are no laws or regulations relevant to this program is undermined by its supplemental response which identifies "1995 Detailed Implementation Rules," "2000 Rules Governing Export Buyers' Credit," and "2013 Internal Guidelines."⁹⁰ Its claim that the China Ex-Im Bank was contacted to confirm that none of Zhejiang Xinyi's customers used the EBC program is unsupported by record evidence.⁹¹
- The GOC does not dispute that, and Zhejiang Xinyi agrees that, it did not provide a full response to Commerce's requests for information regarding this program.⁹²
- Given that a respondent fails to act to the best of its ability to cooperate when it does not apply "maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation," Commerce's preliminary finding is correct.⁹³
- Sections 776(a) and (b) of the Act establish that if information is missing from the record because a respondent failed to act to the best of its ability, Commerce may apply an adverse inference.
- Commerce correctly argued in the preliminary determination that it cannot verify use of the EBC program after the GOC refused to provide the requested information. Commerce has repeatedly argued that the 2013 Revisions and information regarding the involvement of third-party banks is necessary for it to verify use of this program, most

⁸⁶ *Id.* at 10-11.

⁸⁷ *See* Petitioner's Rebuttal Brief at 4-5.

⁸⁸ *Id.* at 5.

⁸⁹ *Id.* at 6.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 6-7.

⁹³ *Id.* at 7 (citing *Nippon Steel*, 337 F.3d at 1382).

recently in *Non-Refillable Steel Cylinders*.⁹⁴ Zhejiang Xinyi's and the GOC's arguments that the record is complete with respect to non-use of the EBC program are, thus, inapt.⁹⁵

- Interested parties do not determine what information is necessary for Commerce's analysis. Commerce has the "authority to determine the extent of investigation and information it needs."⁹⁶
- The GOC's claims regarding how the EBC program operates and relevant searches of the China ExIm Bank's database are "essentially useless" without the 2013 Revisions withheld by the GOC.⁹⁷
- Since intermediary banks are involved in the disbursement of funds from this program, the identities of those banks and information regarding how the program currently operates is necessary to verify any claims of non-use. This is the case even if Commerce verified Zhejiang Xinyi's customers' books and records, despite the fact that they are not party to this investigation.⁹⁸
- The CIT decisions cited by parties regarding this program predate Commerce's explanation that the GOC's continued refusal to provide complete documentation regarding this program prevents verification of any claims of non-use.⁹⁹
- It is incorrect that Commerce should use Zhejiang Xinyi's customer declarations as "replacement information" for the information GOC refused to provide.¹⁰⁰ These claims are not verifiable without the information the GOC has withheld and cannot be relied upon by Commerce.¹⁰¹
- Zhejiang Xinyi's customer declarations are not exhaustive. Moreover, Commerce has stated that it cannot rely on these declarations generally, since it lacks understanding of how the EBC program operates.¹⁰²
- The Federal Circuit held that "collateral impact on a cooperating party does not render the application of adverse inferences in a CVD investigation improper."¹⁰³

Commerce's Position: We continue to find that the record evidence of the instant investigation does not support a finding of non-use of the EBC program. Below we discuss the evolution of Commerce's treatment of this program.

⁹⁴ *Id.* at 9 (citing, e.g., *Certain Non-Refillable Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 15192 (March 22, 2021) (*Non-Refillable Steel Cylinders*), and accompanying IDM at Comment 1).

⁹⁵ *Id.* at 12.

⁹⁶ *Id.* at 13 (citing *Maverick Tube Corp. v. United States*, 857 F.3d 1353, 1360-61 (Fed. Cir. 2017); and *PPG Indus., Inc. v. United States*, 978 F.2d 1232, 1238 (Fed. Cir. 1992)).

⁹⁷ *Id.* at 14.

⁹⁸ *Id.* at 14-15.

⁹⁹ *Id.* at 15-16 (citing *Non-Refillable Steel Cylinders* IDM at Comment 1).

¹⁰⁰ *Id.* at 16 (citing Zhejiang Xinyi's Case Brief at 9-10).

¹⁰¹ *Id.* at 16 (citing sections 782(i)(1) and 776(a)(2)(D) of the Act).

¹⁰² *Id.* at 18 (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).

¹⁰³ *Id.* at 17 (citing, e.g., *KYD, Inc. v. United States*, 607 F.3d 760, 768 (Fed. Cir. 2010)).

Solar Cells from China Initial Investigation of the EBC Program

Commerce first investigated and countervailed the EBC program in the *Solar Cells from China* investigation.¹⁰⁴ Our initiation was based on, among other information, the China ExIm 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."¹⁰⁵ 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.¹⁰⁶

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."¹⁰⁷ 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."¹⁰⁸ 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.¹⁰⁹ 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.¹¹⁰

Based on the GOC's responses, Commerce's understanding was that, under this program, loans were provided directly from the China ExIm 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.¹¹¹ Additionally,

¹⁰⁴ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 12, 2012) (*Solar Cells from China*), and accompanying IDM at Comment 18. While Commerce's determination with respect to the EBC program was initially challenged, the case was dismissed.

¹⁰⁵ See *Solar Cells from China* IDM at 59.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 60.

¹⁰⁹ *Id.* at 60-61.

¹¹⁰ *Id.* at 61.

¹¹¹ *Id.*

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.¹¹²

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.¹¹³ 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.¹¹⁴

¹¹² *Id.* at 61-62.

¹¹³ Commerce provided a similar explanation in the 2014 investigation of solar products from China. *See Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products from China*), and accompanying IDM at 93. This was affirmed by the CIT in *Trina Solar*. In *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 255 F. Supp. 3d 1312, 1318 (CIT 2017) (*Changzhou II*), the Court noted that the explanation from *Solar Products from China* constituted "detailed reasoning for why documentation from the GOC was necessary" to verify non-use. However, the Court found that the 2014 review of solar cells from China at issue in *Changzhou II* was distinguishable because the respondents submitted customer certifications of non-use, and Commerce had "failed to show why a full understanding" of the program necessary to verify non-use. *Id.* at 10 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017), amended by *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 46760 (October 6, 2017), and accompanying IDM). The CIT in *Guizhou Tyre* reached a similar conclusion concerning the 2014 review of tires from China. *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 18285 (April 18, 2017)).

¹¹⁴ The Court agreed with Commerce in *RZBC Group Shareholding Co. v. United States*, 222 F. Supp. 3d 1196,

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 from China* investigation, however, despite Commerce’s repeated requests for information, the GOC failed to offer any guidance as to how Commerce could search for EBC program lending in the respondent exporters’ books and records that could be tied to financial statements, tax returns, or other relevant company documents. Therefore, Commerce concluded in that investigation that it could not verify usage of the program at the respondent exporters and instead attempted verification of usage of the program at the China ExIm 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.”¹¹⁵ 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} ExIm Bank’s financial statements.”¹¹⁶ However, the GOC refused to allow Commerce to query the databases and records of the China ExIm Bank.¹¹⁷ Furthermore, there was no information on the record of *Solar Cells from China* from the respondent exporters’ customers.

Chlorinated Isos Investigation of the EBC Program

Two years later, in the *Chlorinated Isos Investigation*,¹¹⁸ the respondents submitted certified statements from all customers claiming that they had not used the EBC program. This was the

1201-02 (CIT 2017) (*RZBC Group II*), following a remand, finding that Commerce could not verify non-use of the program by examining the respondent-exporter’s audited financial statements or other books and records because record evidence demonstrated that the program terms were ambiguous. See *RZBC Group II*, 222 F. Supp 3d at 1201-02 (concerning *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 78799 (December 31, 2014) (*Citric Acid 2012*), and accompanying IDM at Comment 6).

¹¹⁵ See *Solar Cells from China* IDM at 62.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ See *Chlorinated Isocyanurates from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*; 2012, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos Investigation*), and accompanying IDM.

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 ExIm 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 ExIm 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 ExIm,...{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.”¹¹⁹

2013 Amendments to the EBC Program

Our understanding of the operation of the EBC program began to change after *Chlorinated Isos Investigation* had been completed in September 2014. In *Citric Acid 2012*, Commerce began to gain a better understanding of how China ExIm 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.¹²⁰ In subsequent proceedings, Commerce continued to investigate and evaluate this program.

For example, in the *Silica Fabric Investigation*¹²¹ 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.¹²² 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 ExIm Bank}” which were issued by the China ExIm Bank on September 11, 1995 (referred to as “1995 Implementation Rules”); (2) “Rules Governing Export Buyer’s Credit of the {China ExIm Bank}” which were issued by the China ExIm 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 ExIm Bank.¹²³ According to the GOC, “{t}he {China ExIm Bank} has

¹¹⁹ See *Chlorinated Isos Investigation* IDM at 15.

¹²⁰ 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.”).

¹²¹ 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 Final*), and accompanying IDM at Comment 17.

¹²² See GOC’s IQR at Exhibit Export-1 (GOC 7th Supplemental Response (public version) (known as, Export Buyer’s Credit Supplemental Questionnaire Response)).

¹²³ *Id.*

confirmed to the GOC that ... its 2013 guidelines are internal to the bank, non-public, and not available for release.”¹²⁴ The GOC further stated that “those internal guidelines do not formally repeal or replace the provisions of the {*Administrative Measures*} which remain in effect.”¹²⁵

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 {ExIm} 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 {ExIm} Bank to the importer’s account, which could be at the {ExIm} Bank or other banks, and that these funds are then sent to the exporter’s bank account. Given the complicated structure of loan disbursements for this program {Commerce’s} complete understanding of how this program is administrated is necessary. Thus, the GOC’s refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administrated by the {ExIm} Bank, impeded {Commerce’s} ability to conduct its investigation of this program.¹²⁶

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 {ExIm} Bank of China.”¹²⁷

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

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *See Silica Fabric Final IDM* at 12.

¹²⁷ *Id.* at 62.

are unable to determine how the program now operates, and, thus, we cannot verify {the respondent's} declarations as submitted.”¹²⁸

The Instant Investigation

In this proceeding, we initiated an investigation of the EBC program based on information in the Petition indicating that foreign customers of Chinese exporters receive a countervailable subsidy in the form of preferential export loans from the China ExIm Bank.¹²⁹ In the Initial Questionnaire, we asked the GOC to respond to the Standard Questions Appendix “with regard to all types of financing provided by the China ExIm under the Buyer Credit Facility.”¹³⁰ The Standard Questions Appendix requested various information that Commerce requires in order to analyze the specificity and financial contribution of this program, including translated copies of the laws and regulations pertaining to the program, a description of the agencies and types of records maintained for administration of the program, a description of the program and the program application process, program eligibility criteria, and program usage data. In the Initial Questionnaire, we also asked the GOC to provide a list of all partner/correspondent banks involved in the disbursement of funds under the EBC program; a copy of the September 6, 2016, GOC 7th Supplemental Response in the Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China (Export Buyer’s Credit Supplemental Questionnaire Response); and original and translated copies of any laws, regulations, or other governing documents cited by the GOC in the Export Buyer’s Credit Supplemental Questionnaire Response, including the *1995 Implementation Rules*, the *Administrative Measures*, and the 2013 Revisions.¹³¹

Rather than responding to the questions, the GOC repeatedly stated that since none of Zhejiang Xingyi’s U.S. customers applied for, used, or benefited from this program during the POI, “a response to the Standard Questions Appendix is not required.”¹³² The GOC also did not provide the Export Buyer’s Credit Supplemental Questionnaire Response; laws/regulations cited in the Export Buyer’s Credit Supplemental Questionnaire Response; the interest rates established during the POI under the program; or a list of all partner/correspondent banks involved in the disbursement of funds under the program.¹³³ Commerce subsequently requested that the GOC provide a full and complete response regarding the EBC program. In response, the GOC stated that it “did not believe the additional information is applicable to this investigation.”¹³⁴

The Export Buyer’s Credit Supplemental Questionnaire Response indicates that the GOC revised the EBC program in 2013 to eliminate the requirement that loans under the program be a

¹²⁸ *Id.*

¹²⁹ See Checklist, “Certain Metal Lockers and Parts Thereof from the People’s Republic of China,” dated July 29, 2020 (Initiation Checklist) at 10-11.

¹³⁰ See Commerce’s Letter, “Countervailing Duty Investigation of Certain Metal Lockers and Parts Thereof from the People’s Republic of China: Countervailing Duty Questionnaire,” dated August 26, 2020 (Initial Questionnaire) at Section III, page 10-11.

¹³¹ *Id.* at Section II, page 7.

¹³² See GOC’s IQR at 17.

¹³³ *Id.* at 17-19; see also *Preliminary Determination PDM* at 20.

¹³⁴ See GOC’s Letter, “Certain Metal Lockers and Parts Thereof from the People’s Republic of China, Case No. C-570-134: GOC’s First Supplemental Questionnaire Response,” dated November 27, 2020 (GOC’s First SQR) at 3.

minimum of \$2 million.¹³⁵ The Export Buyer's Credit Supplemental Questionnaire Response also indicates that the China ExIm Bank may disburse export buyer's credits either directly or through third-party partner and/or correspondent banks.¹³⁶

Information on the 2013 Revisions and the role of third-party banks is necessary and critical to Commerce's understanding of the EBC 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.¹³⁷ Therefore, by refusing to provide the requested information, and instead providing unverifiable assurances for the program, the GOC impeded Commerce's ability to understand how this program operates and how it can be verified.

Additionally, the 2013 Revisions are significant because, as noted, the Export Buyer's Credit Supplemental Questionnaire Response indicates that the credits may not be direct transactions from the China ExIm Bank to U.S. customers of the respondent exporters, but rather, that there can be intermediary banks involved, the identities of which remain unknown to Commerce. As discussed above, in prior examinations of this program, Commerce found that the China ExIm Bank, as a lender, is the primary entity that possesses the supporting information and documentation that are necessary for Commerce to fully understand the operation of this program following the 2013 Revisions, which is a prerequisite to Commerce's ability to verify non-use of the program.¹³⁸

Performing the verification steps outlined above to verify claims of non-use would require knowing the names of the intermediary banks. The names of these banks, not the name "China ExIm Bank," would appear in the subledgers of the U.S. customers if they received the credits. As explained recently in the *Aluminum Sheet Investigation*:

Record evidence indicates that the loans associated with this program are not limited to direct disbursements through the China {ExIm} 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

¹³⁵ See *Silica Fabric Final*; see also *Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23760 (May 23, 2019) (*Quartz from China*), and accompanying IDM at Section V. Use of Adverse Facts Available, C. Application of AFA: Export Buyer's Credits.

¹³⁶ See *Silica Fabric Final*; see also *Quartz from China* IDM at Section V. Use of Adverse Facts Available, C. Application of AFA: Export Buyer's Credits.

¹³⁷ The GOC is the only party which could provide the identities of the correspondent banks that the China ExIm 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 ExIm Bank.

¹³⁸ See *Silica Fabric Final*; see *Quartz from China* IDM at Section V. Use of Adverse Facts Available, C. Application of AFA: Export Buyer's Credits.

sent to.... the importer's account, which could be at the China {ExIm} Bank or other banks, and that these funds are then sent to the exporter's bank account.¹³⁹

In other words, there will not necessarily be an account in the name "China ExIm Bank" in the books and records (*e.g.*, subledger and bank statements) of the U.S. customer. Thus, if Commerce cannot verify claims of non-use at the GOC,¹⁴⁰ having a list of the correspondent banks is critical to conducting a verification of non-use at the U.S. customers.

With regard to the respondent, in the initial questionnaire, Commerce stated "{i}f you claim that none of your customers used export buyer credits during the {period of investigation}, please explain in detail the steps you took to determine that no customer used the Buyer Credit Facility."¹⁴¹ Zhejiang Xingyi responded that confirmation of non-use was based on affidavits from its customers.¹⁴²

However, Zhejiang Xingyi did not provide such statements from each of its U.S. customers, only certain customers.¹⁴³ Nor did Zhejiang Xingyi explain, in the absence of statements from each of its customers, how it determined that none of its customers used the program. Specifically, although Zhejiang Xingyi argues that the customer statements on the record are sufficient to establish non-use, in its initial response and subsequent argumentation, Zhejiang Xingyi does not provide any information regarding the customer(s) without statements on the record.¹⁴⁴ Moreover, Zhejiang Xingyi never states it contacted *all* of its customers or otherwise confirmed that *all* of its customers did not use the program, only that the customer statements establish non-use.¹⁴⁵ In its case brief, Zhejiang Xingyi does state that "none of {its} U.S. customers applied for, used, or benefited from this program during the POI," but again does not discuss the customer(s) without statements on the record and cites the same initial responses.¹⁴⁶ The GOC also argues that Zhejiang Xingyi "contacted its U.S. customers and confirmed that *no customer* obtained buyer credits from the China ExIM Bank during the POR {sic}{, }"¹⁴⁷ but that is not supported by the information provided by Zhejiang Xingyi. In addition, the GOC itself also acknowledges that statements were only provided by "certain" customers.¹⁴⁸ Zhejiang Xingyi also states that it did not assist its customers in obtaining credits under the program during the

¹³⁹ 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 Investigation*), and accompanying IDM at Comment 4.

¹⁴⁰ *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).

¹⁴¹ See Zhejiang Xingyi's IQR at 17.

¹⁴² *Id.* at 17 and Exhibit B-2.

¹⁴³ See Zhejiang Xingyi's IQR at 17 and Exhibit B-2; see also Petitioners' Rebuttal Brief at 18 (comparing Zhejiang Xingyi's customer list and submitted declarations in Zhejiang Xingyi's IQR at 17 and Exhibit B-2, respectively).

¹⁴⁴ See Zhejiang Xingyi's IQR at 17-18; and Zhejiang Xingyi's Case Brief at 6.

¹⁴⁵ See Zhejiang Xingyi's IQR at 16-18; and Zhejiang Xingyi's Case Brief at 2-10 for various statements to this effect. See, *e.g.*, Zhejiang Xingyi's Case Brief at 10, "{Zhejiang Xingyi} *reported* that it did not use this program, and it obtained certifications from its customers demonstrating non-use {emphasis added}."

¹⁴⁶ See Zhejiang Xingyi's Case Brief at 6.

¹⁴⁷ See GOC's Case Brief at 6 (citing Zhejiang Xingyi's IQR at 17 and Exhibit B-2).

¹⁴⁸ See GOC's Case Brief at 6, stating that "*certain* of {Zhejiang Xingyi's} customers provided written declarations stating that they had not used this program" {emphasis added}.

POI and that it coordinated with the GOC.¹⁴⁹ However, we find that the lack of necessary information required from the GOC, detailed above, coupled with mere assertions from Zhejiang Xingyi that its customers did not use the program without a more fulsome explanation detailing the steps the company took to determine that none of its customers used the program, is insufficient to demonstrate non-use of the program.

We reiterate that the GOC's lack of cooperation with regard to numerous requests for information pertaining to the EBC program continues to leave Commerce with an incomplete understanding of the program, wherein Commerce cannot discern the entire universe of ways a party may receive financing. Indeed, the GOC is reticent to share any official information about its export credit programs. In numerous CVD proceedings before Commerce, the GOC has refused to provide adequate information relevant to understanding the EBC program,¹⁵⁰ demonstrating a purposeful and coordinated effort to withhold information in an attempt to prevent Commerce from ever fully comprehending the true details of the program. This treatment of the EBC program as a "black box" continues to inhibit Commerce's ability to evaluate claims of non-use and any attempts to verify company information. Notwithstanding these valid concerns, we also recognize that the court has directed Commerce in numerous decisions to consider whether the information provided by respondents may be sufficient to fill the gap of missing record information in considering claims of non-use for the EBC program.¹⁵¹

Here, we find that the facts of this case, in particular, the mere assertions of non-use from Zhejiang Xingyi, without a more fulsome explanation detailing the steps the company took to determine that *none* of its customers used the program, do not allow Commerce to fill the gaps in the record with respect to the claims of non-use. Thus, we disagree with Zhejiang Xingyi that its customer declarations establish non-use of the EBC program with a record "nearly identical" to instances where the CIT found Commerce's application of AFA to be in error.¹⁵² We agree with the petitioners that the declarations submitted by Zhejiang Xingyi are not exhaustive,¹⁵³ which the GOC acknowledges as well, confirming that not all of Zhejiang Xingyi's customers provided declarations.¹⁵⁴ Furthermore, as described in more detail in the proprietary analysis memorandum, we note the specific declarations that were provided are narrow in their assertions of non-use in the context of our concerns regarding the EBC program's administration discussed above.¹⁵⁵

As explained in the *Preliminary Determination*, necessary information from the GOC is missing from the record, and the GOC withheld the requested information described above, which is

¹⁴⁹ See Zhejiang Xingyi's IQR at 16-18.

¹⁵⁰ See, e.g., *Solar Products* IDM at Comment 16 ("At verification, the GOC repeatedly denied {Commerce} officials the opportunity to examine the basis for the GOC's contention that none of the company respondents in this investigation, or their customers, used this program during the POI... Despite repeated requests to verify the basis of statements made on the record of this investigation, the GOC refused to allow {Commerce} to query the databases and records of the {ExIm} Bank to establish the accuracy of its non-use claim.").

¹⁵¹ See, e.g., *Clearon*, 474 F. Supp. 3d at 1354.

¹⁵² See Zhejiang Xingyi's Case Brief at 9.

¹⁵³ See Petitioners' Rebuttal Brief at 18 (comparing Zhejiang Xingyi's customer list and submitted declarations in Zhejiang Xingyi's IQR at 17 and Exhibit B-2, respectively).

¹⁵⁴ See GOC's Case Brief at 6, stating that "*certain of* {Zhejiang Xingyi's} customers provided written declarations stating that they had not used this program" {emphasis added}.

¹⁵⁵ See Zhejiang Xingyi's IQR at Exhibit B-2; see also Zhejiang Xingyi's Final Calculation Memorandum.

necessary to determine whether the respondent's U.S. customers actually used the EBC program during the POI.¹⁵⁶ The GOC's withholding of this necessary information prevents us from fully understanding and analyzing the operation of this program, thereby impeding this proceeding. Accordingly, we find that we must rely on the facts otherwise available, pursuant to sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, to determine whether this program was used by the respondent and conferred a benefit.

Furthermore, pursuant to section 776(b) of the Act, we continue to find that the GOC, by withholding information and significantly impeding this proceeding, failed to cooperate with Commerce by not acting to the best of its ability.¹⁵⁷ As noted above, the GOC did not provide the requested information needed to allow Commerce to analyze this program fully. As a result, the GOC did not provide information that would permit Commerce to make a determination as to whether this program confers a benefit. Moreover, absent the requested information, we are unable to rely on the GOC's and the respondent's claims of non-use of this program. The GOC has not provided information with respect to whether it uses third-party banks to disburse/settle EBCs from the China {ExIm} Bank. Such information is essential to understanding how EBCs flow to/from foreign buyers and the China ExIm Bank. Absent the requested information, the GOC's and the respondent's claims of non-use of this program are not verifiable. Additionally, Zhejiang Xingyi does not acknowledge and Zhejiang Xingyi and the GOC do not provide any argument as to how Commerce should consider claims of non-use with respect to any customer(s) without a declaration of non-use provided to the record.

Thus, as discussed above, the GOC's refusal to provide the 2013 Revisions, setting internal guidelines for how this program is administered by the China ExIm Bank, and a list of partner/correspondent banks that are used to disburse funds through this program, constitutes a failure to cooperate to the best of the GOC's ability. Therefore, as AFA, we find that the respondent used and benefited from this program, despite its claim that its U.S. customers had not obtained EBCs from the China ExIm Bank during the POI.

Finally, relying on AFA because we do not have complete information, Commerce continues to find the EBC program to be an export subsidy for this final determination.¹⁵⁸ Although the record regarding this program suffers from significant deficiencies, we note that the GOC's description of the program and supporting materials (albeit ultimately found to be deficient) demonstrate that through this program, state-owned banks, such as the China ExIm Bank, provide loans at preferential rates for the purchase of exported goods from China.¹⁵⁹ Moreover, the program was alleged by the petitioners as a possible export subsidy.¹⁶⁰ Furthermore, Commerce has found this program to be an export subsidy in the past.¹⁶¹ Thus, taking all such information into consideration indicates the provision of the EBCs is contingent on exports within the meaning of sections 771(5A)(A) and (B) of the Act. Moreover, we find that under

¹⁵⁶ See *Preliminary Determination* PDM at 20-23.

¹⁵⁷ *Id.* at 21.

¹⁵⁸ *Id.* at 22.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ 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.

EBC program, the GOC bestowed a financial contribution pursuant to section 771(5)(D) of the Act.

Comment 2: Whether Commerce Should Use Non-Alloy Hot-Rolled Steel and Galvanized Steel Benchmarks

Zhejiang Xingyi's Case Brief

- While Commerce explained that it did not use the SBB/Platts data submitted by Zhejiang Xingyi for the *Preliminary Determination*, Commerce did not address the data placed on the record by the GOC.¹⁶²
- The data submitted by the GOC are from U.N. Comtrade, which is the same source as the petitioners' data. "These data also 'reflect world market prices and they exclude or allow {Commerce} to exclude export prices of {the steel input} into China.'" ¹⁶³
- The data used by Commerce to calculate the hot-rolled steel benchmark and the galvanized steel benchmark were both for alloy steel. However, the GOC explained that "'non-alloy steel is used in the production of metal lockers.'" ¹⁶⁴
- At the very least, Commerce should average the alloy and non-alloy data if it disagrees that the non-alloy data should be used exclusively.¹⁶⁵

GOC's Case Brief

- The GOC's rebuttal benchmark submission was timely, and the GOC agrees with Zhejiang Xingyi's arguments and incorporates them by reference.¹⁶⁶

Petitioners' Rebuttal Brief

- Should Commerce continue to calculate a benefit for Zhejiang Xingyi under the Provision of Galvanized Steel for LTAR program, Commerce should ignore the GOC and Zhejiang Xingyi's claims.¹⁶⁷
- In its initial questionnaire response, "the GOC explicitly confirmed that it had submitted its respective LTAR responses based on information from the respondent."¹⁶⁸
- Neither the GOC nor Zhejiang Xingyi "placed information on the record in an affirmative benchmark submission to challenge the GOC's initial {questionnaire} reporting."¹⁶⁹
- "Due to the timing of this submission and lack of supporting evidence, the GOC's and Zhejiang Xingyi's claims are unavailing and baseless."¹⁷⁰

¹⁶² See Zhejiang Xingyi's Case Brief at 13.

¹⁶³ *Id.* (citing GOC's Rebuttal Benchmark Submission at Attachment 1; *Preliminary Determination* PDM at 50 and 53; and Petitioners' Benchmark Submission at Attachment 1).

¹⁶⁴ *Id.* at 13-14 (citing Zhejiang Xingyi's Preliminary Calculation Memorandum at Attachment 1; and the GOC's Rebuttal Benchmark Submission at 2).

¹⁶⁵ *Id.* at 14 (citing *Preliminary Determination* PDM at 49; and 19 CFR 351.511(a)(2)(ii)).

¹⁶⁶ See GOC's Case Brief at 26-27 (citing GOC's Rebuttal Benchmark Submission).

¹⁶⁷ See Petitioners' Rebuttal Brief at 31.

¹⁶⁸ *Id.* (citing GOC's IQR at 25, 36, 48, and 62).

¹⁶⁹ *Id.* at 32 (citing GOC's IQR at 25, 36, 48, and 62; and GOC's Rebuttal Benchmark Submission at 2-3).

¹⁷⁰ *Id.*

- The record lacks information to corroborate the GOC’s claim that Zhejiang Xingyi only consumes non-alloy hot-rolled steel or galvanized steel in the production of subject merchandise.¹⁷¹
- The data submitted by the GOC in its rebuttal benchmark submission “is simply uncorroborated by record evidence pertaining to the actual inputs used by {Zhejiang Xingyi}. As a result, the GOC’s rebuttal benchmark submission should not be used in the final determination as it is unsubstantiated and not indicative of world market prices.”¹⁷²

Commerce’s Position: We disagree that the GOC’s statements in its rebuttal benchmark submission are untimely and should not be used in the final determination. The deadline for the rebuttal benchmark submission was December 7, 2020,¹⁷³ and the GOC submitted its rebuttal benchmark submission on December 7, 2020.¹⁷⁴ According to the GOC, it was not made aware that Zhejiang Xingyi used non-alloy steel to produce metal lockers until Zhejiang Xingyi’s second supplemental questionnaire response, which was due and submitted on November 27, 2020.¹⁷⁵

When Commerce resorts to using a “tier-two” world market price to construct a benchmark to measure the adequacy of remuneration, and there are multiple commercially available market prices, 19 CFR 351.511(a)(2)(ii) directs Commerce to “average such prices to the extent practicable.”¹⁷⁶ Even though Zhejiang Xingyi explained that “non-alloy steel is used in the production of metal lockers,”¹⁷⁷ Zhejiang Xingyi only pointed to the GOC’s rebuttal benchmark submission to support its claim. Since there is no information on the record to determine which type of steel is used, Commerce relies on its practice and regulations to determine the benchmark for hot-rolled steel and galvanized steel. Furthermore, we note that even if, *arguendo*, only non-alloy steel “is used in the production of metal lockers,” that is insufficient reason for Commerce to limit the benchmark to non-alloy steel because, under Commerce’s practice with regard to inputs for LTAR programs, the subsidy analysis is not predicated on the input being “tied” to subject merchandise. Accordingly, we do not limit the attribution of benefit to subject merchandise but instead attribute the benefit to a respondent’s overall operations, using total sales as denominator in calculating the subsidy rate. The case record does not support finding that Zhejiang Xingyi purchased and used non-alloy steel exclusively in its overall productive operations. Therefore, benchmark data available on the record for both alloy and non-alloy steel are equally applicable. As such, for this final determination, Commerce has averaged the two sets of benchmark data.¹⁷⁸

¹⁷¹ *Id.* at 33 (citing Zhejiang Xingyi’s Second Supplemental Questionnaire Response at Exhibit E-17).

¹⁷² *Id.*

¹⁷³ See 19 CFR 351.301(c)(3)(iv); *see also* Petitioners’ Benchmark submission. December 7, 2020 is 10 days after the petitioners submitted their affirmative benchmark submission on November 27, 2020.

¹⁷⁴ See GOC’s Rebuttal Benchmark Submission.

¹⁷⁵ *Id.* at 2 (citing Zhejiang Xingyi’s Rebuttal Benchmark Submission at 2-3; and Zhejiang Xingyi’s Second SQR).

¹⁷⁶ See also, e.g., *Steel Propane Cylinders from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 29159 (June 21, 2019) (*Propane Cylinders from China*), and accompanying IDM at Comment 8.

¹⁷⁷ See Zhejiang Xingyi’s Case Brief at 13-14 (citing Zhejiang Xingyi’s Preliminary Calculation Memorandum at Attachment 1; and the GOC’s Rebuttal Benchmark Submission at 2).

¹⁷⁸ See Zhejiang Xingyi’s Final Calculation Memorandum at Attachment 1.

Comment 3: Whether Zhejiang Xingyi Verified the Accuracy of its Reported Purchases of Galvanized Steel and Stainless Steel Coil

Petitioners' Case Brief

- In the verification questionnaire, Commerce asked Zhejiang Xingyi to “reconcile the total amount of purchases of galvanized steel, and stainless steel reported for the POI to the company’s year-end financial statements.” Zhejiang Xingyi failed to provide Commerce with a complete account of its unfiltered “sheet material” sub-account.¹⁷⁹
- By not providing Commerce with each line item within the sheet material sub-account, Zhejiang Xingyi kept Commerce from being able to verify that Zhejiang Xingyi reported all of its input purchases during the POI.¹⁸⁰
- “[Zhejiang Xingyi] began with a balance sheet, moved next to the raw materials account balance sheet, and then submitted screenshots of a *filtered* sub-account (‘sheet materials’) that, absent a filter, would depict all sheet materials purchased.”¹⁸¹
- Zhejiang Xingyi failed to reconcile its galvanized steel and stainless steel coil purchases pursuant to Commerce’s instructions. “[T]o determine the accuracy of {a} respondent’s reporting, {Commerce} at {an on-site} verification requires respondents identify the universe from which they are reporting.”¹⁸²
- “A failure to provide the required aforementioned reconciliation documents results in the unverifiable and, consequently, unusable program information.”¹⁸³
- In line with *CAAS from Turkey*, Commerce should find that Zhejiang Xingyi’s failure to corroborate its galvanized steel and stainless steel coil purchases results in unverified program use.¹⁸⁴
- Zhejiang Xingyi’s input purchases reconciliation would not have passed the basic dumping cost verifications, which “is applicable to verify LTAR purchases as LTAR purchases are costs ... LTAR benefit calculations are entirely based on accurate reporting of purchase costs and quantities.”¹⁸⁵
- Commerce informed Zhejiang Xingyi that it was using its standard “top down” reconciliation approach when Commerce asked Zhejiang Xingyi to start the reconciliation with its financial statement.¹⁸⁶
- Zhejiang Xingyi should have been familiar with the reconciliations required by Commerce as it is also a respondent in the companion dumping investigation on metal lockers. “[A] party’s obligation to respond to questionnaires to the ‘best of its ability’ ‘assumes that importers are familiar with the rules and regulations that apply to the

¹⁷⁹ See Petitioners’ Case Brief at 5-6 (citing Zhejiang Xingyi’s Verification Questionnaire Response at 11-12 and Exhibit 39).

¹⁸⁰ *Id.* at 6.

¹⁸¹ *Id.* (citing Zhejiang Xingyi’s Verification Questionnaire Response at Exhibit 39).

¹⁸² *Id.* at 7.

¹⁸³ *Id.* at 7-9 (citing *Common Alloy Aluminum Sheet from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, in Part*, 86 FR 13315 (March 8, 2021) (*CAAS from Turkey*), accompanying IDM at 21 and 22).

¹⁸⁴ *Id.* at 9.

¹⁸⁵ *Id.* at 10-11.

¹⁸⁶ *Id.* at 11 (citing Zhejiang Xingyi’s Verification Questionnaire Response at 11).

import activities undertaken, ‘ and thus a respondent’s lack of familiarity with {Commerce’s} requirements ‘does not preclude the application of AFA.’”¹⁸⁷

- Since Commerce is investigating four steel LTAR programs, Zhejiang Xingyi was fully aware that Commerce would examine the “sheet material” account to ensure accurate program use reporting. “{Zhejiang Xingyi} should have fully responded to {Commerce} to ensure that no outstanding questions remained pertaining to the sheet material account.”¹⁸⁸
- Additionally, Zhejiang Xingyi failed to confirm the accuracy of its reported quantity of stainless steel coils that it purchased during the POI. While Commerce used the uncorroborated data in the *Preliminary Determination*, Zhejiang Xingyi failed to respond sufficiently to Commerce’s post-preliminary supplemental questionnaire seeking additional information about its stainless steel coil purchases.¹⁸⁹
- Zhejiang Xingyi’s failure to report and reconcile accurately its purchases of galvanized steel and stainless steel coil warrant application of AFA to both the Provision of Galvanized Steel and the Provision of Stainless Steel Coil for LTAR programs.¹⁹⁰
- In *CAAS from Turkey*, Commerce determined that AFA was warranted under similar circumstances to Zhejiang Xingyi’s in this case.¹⁹¹
- Additionally, the CIT has affirmed Commerce’s application of AFA to a respondent for failing to submit complete and accurate reconciliations, and a respondent’s failure to completely reconcile its costs resulted in a gap in the record.¹⁹²
- For the provision of Galvanized Steel for LTAR, as AFA, Commerce should assign Zhejiang Xingyi a rate of 44.91 percent *ad valorem*.¹⁹³
- For the provision of Stainless Steel Coil for LTAR, as AFA, Commerce should assign Zhejiang Xingyi a rate of 15.01 percent *ad valorem*.¹⁹⁴

Zhejiang Xingyi’s Rebuttal Brief

- It is clear that Zhejiang Xingyi followed the plain language of Commerce’s instructions and submitted 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.”¹⁹⁵
- The condition necessary for the application of facts available and AFA is that Commerce actually request the alleged missing information from the respondent.¹⁹⁶

¹⁸⁷ *Id.* at 12 (citing *POSCO v. United States*, 353 F. Supp. 3d 1357, 1375 (CIT 2018)).

¹⁸⁸ *Id.* at 12-13.

¹⁸⁹ *Id.* at 14-16.

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 17-18 (citing *CAAS from Turkey* IDM at 6-7 and 24).

¹⁹² *Id.* at 18 (citing *Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. v. United States*, Consol. Ct. No. 19-149, Slip Op. 21-20 (CIT 2021); and *Pro-Team Coil Nail Enterprise, Inc. v. United States*, 419 F. Supp. 3d 1319, 1337 (CIT 2019) (*Pro-Team Coil Nail*)).

¹⁹³ *Id.* at 19-20 (citing *Vertical Metal File Cabinets from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 57394 (October 25, 2019), and accompanying IDM at 13).

¹⁹⁴ *Id.* at 20 (citing *Refillable Stainless Steel Kegs from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, in Part*, 84 FR 57005 (October 24, 2019), and accompanying IDM at 4).

¹⁹⁵ See Zhejiang Xingyi’s Rebuttal Brief at 2 (citing Zhejiang Xingyi’s Verification Questionnaire Response at 11).

¹⁹⁶ *Id.* at 3-4 (citing *Diamond Sawblades Manufacturers Coalition v. United States*, 986 F.3d 1351 (Fed. Cir. 2021); *Shantou Red Garden Foodstuff Co. v. United States*, 815 F. Supp. 2d 1311 (CIT 2012); and *Ta Chen Stainless Steel Pipe v. United States*, Ct. No. 97-08-01344, Slip Op. 99-117 (October 28, 1999)).

- Zhejiang Xingyi followed Commerce’s instructions exactly by: (1) providing the relevant excerpts from its year-end financial statements showing the opening balance and closing balance for raw materials; (2) tying the opening and closing balances to its raw material account in the requested table of contents; (3) segregating the requested purchase amounts for galvanized steel and stainless steel; and (4) tying those amounts to the relevant exhibits.¹⁹⁷
- “At no point did {Commerce} request ‘the entirety of {Zhejiang Xingyi’s} sheet materials sub account, ‘nor did {Commerce’s} questionnaire even hint at such a request.”¹⁹⁸
- The petitioners’ use of *CAAS from Turkey* is inapposite. In *CAAS from Turkey*, Commerce “specifically requested screen shots from {the respondent’s} accounting system to confirm whether {the respondent’s} reported sales and non-use of programs are accurate and complete.” The respondent failed to submit screen shots from its accounting system.¹⁹⁹
- In this case, Commerce never requested screenshots of any accounts in question 6 of the verification questionnaire, “let alone the ‘sheet material’ account in particular.”²⁰⁰
- The petitioners’ claim that Zhejiang Xingyi filtered the ‘sheet material’ account to exclude the identity of unidentified purchases is false. “{Zhejiang Xingyi}... filter{ed} the sub-ledger to tie the requested amounts to its accounts and ultimately its financial statements, as {Commerce} asked it to do.”²⁰¹
- In *Chassis and Subassemblies from China*, Commerce rejected an argument for the application of AFA for the purported failure of a respondent to reconcile its input purchases of hot-rolled steel sheet and plate. Commerce stated that its verification questionnaire “‘did not stipulate the precise methodology {the respondent} must use to reconcile its purchases.’”²⁰²
- In the instant investigation, Commerce’s instructions regarding reconciliation were nearly identical to the instructions in *Chassis and Subassemblies from China*. Therefore, there is no basis to apply AFA to Zhejiang Xingyi, because Commerce’s questionnaire did not mandate any particular method for preparing the reconciliation.²⁰³
- Zhejiang Xingyi’s “{f}ailure to conform a reconciliation to {p}etitioners’ requirements is not a basis for the application of AFA.”²⁰⁴
- The petitioners’ reliance on *Pro-Team Coil Nail* is also unfounded. This is not an AD cost verification, and Commerce never instructed Zhejiang Xingyi to follow the “allegedly ‘clear criteria’” envisioned by the petitioners.²⁰⁵

¹⁹⁷ *Id.* at 4-5 (citing Zhejiang Xingyi’s Verification Questionnaire Response at Exhibit 39; Zhejiang Xingyi’s Second Supplemental Questionnaire Response at Exhibit E-15 (for galvanized steel); and Zhejiang Xingyi’s Third Supplemental Questionnaire Response at Exhibit E-21 (for stainless steel)).

¹⁹⁸ *Id.* at 6 (citing Petitioners’ Case Brief at 6).

¹⁹⁹ *Id.* at 7-8 (citing *CAAS from Turkey* IDM at 22).

²⁰⁰ *Id.* at 8.

²⁰¹ *Id.* (citing Petitioners’ Case Brief at 9).

²⁰² *Id.* at 9 (citing *Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 15186 (March 22, 2021) (*Chassis and Subassemblies from China*), and accompanying IDM at Comment 12).

²⁰³ *Id.* at 9-10 (citing *Chassis and Subassemblies from China* IDM at Comment 12).

²⁰⁴ *Id.* at 10 (citing *Maui Pineapple Co. Ltd. v. United States*, 264 F. Supp. 2d 1244, 1245 (CIT 2003)).

²⁰⁵ *Id.* at 11.

- Finally, Zhejiang Xingyi’s participation in the companion AD investigation is irrelevant. Zhejiang Xingyi is familiar with the reconciliations required by Commerce and “believes that the record clearly demonstrates that it followed {Commerce}’s instructions throughout this investigation and in the questionnaire in lieu of verification.”²⁰⁶
- Regarding the petitioners’ argument that Zhejiang Xingyi failed to respond fully to Commerce’s enquiries, Zhejiang Xingyi notes that it fully responded to Commerce regarding its galvanized steel and stainless steel purchases at issue by providing detailed narratives and over one hundred pages of documents and reconciliations.²⁰⁷
- Commerce instructed Zhejiang Xingyi to use “the attached Microsoft Excel template to report all of {the company’s} purchases during the POI.” Commerce did not request purchase invoices, accounting screenshots, or other documents regarding stainless steel coil input purchases in its initial questionnaire.²⁰⁸
- In response to a request from Commerce to provide complete sales documentation, including original and translated copies of a sales invoice and explain the average unit value (AUV) for this purchase, Zhejiang Xingyi provided the requested documentation and explanation that the weight was incorrectly reported.²⁰⁹
- In the preparation for that response, Zhejiang Xingyi discovered that it incorrectly reported some weights and rectified those errors in the questionnaire response.²¹⁰
- Zhejiang Xingyi laid out the formula used and provided an updated input purchases template in excel form, a detailed explanation, and sample documentation to support its response.²¹¹
- Regarding the petitioners’ argument that Zhejiang Xingyi altered input purchase data in its third supplemental questionnaire response, Commerce “accepted {Zhejiang Xingyi’s questionnaire response} and did not ask further questions about these changes ...”²¹²
- If Commerce determines that facts available is warranted, it should select a neutral rate because any deficiencies are the results of the limited instructions for the requested reconciliations.²¹³
- Section 776(d)(2) of the Act directs Commerce to base its selection of the subsidy rate on an “evaluation... of the situation that resulted in the {agency} using an adverse inference.”²¹⁴
- “Petitioners have offered no case specific analysis that supports the use of the highest rates available. A review of the facts demonstrates that to the extent there is any deficiency in {Zhejiang Xingyi}’s reconciliation, it was not due to any failure to act to the best of its ability but was rather a result of the nature of {Commerce}’s question.”²¹⁵

²⁰⁶ *Id.* at 12.

²⁰⁷ *Id.* at 12-13 (citing Zhejiang Xingyi’s Verification Questionnaire Response at Exhibits 38-1, 38-2, 38-3, 38-4, and 39).

²⁰⁸ *Id.* at 14-15 (citing Zhejiang Xingyi’s IQR at 27).

²⁰⁹ *Id.* at 15 (citing Zhejiang Xingyi’s Second Supplemental Questionnaire Response at 14).

²¹⁰ *Id.* (citing Zhejiang Xingyi’s Second Supplemental Questionnaire Response at 14).

²¹¹ *Id.* at 16-17 (citing Zhejiang Xingyi’s Third Supplemental Questionnaire Response at 3 and Exhibits E-21 and E-22).

²¹² *Id.* at 18-19.

²¹³ *Id.* at 20.

²¹⁴ *Id.* (citing *POSCO v. United States*, 296 F. Supp. 3d 1320, 1349 (CIT 2018)).

²¹⁵ *Id.* at 21.

- At most, Commerce “should resort to a neutral facts available rate{ } { which } does not have to be a set rate from a similar or identical program in another investigation, but could be based on rates that {Commerce} has already calculated for other sheet metal products {in this investigation}.”²¹⁶
- As such, “the highest rate {Commerce} should apply is 2.3 percent.”²¹⁷

Commerce’s Position: We agree with Zhejiang Xingyi and find that the petitioners’ contentions are misplaced. In response to our verification questionnaire, Zhejiang Xingyi reconciled the POI galvanized steel and stainless steel coil purchases it made. The petitioners argue that Zhejiang Xingyi’s reconciliation methodology for these purchases does not conform to the verification questionnaire and fails to correctly reconcile these purchases. Specifically, the petitioners argue that Zhejiang Xingyi should have provided the entire raw material subledger, and by not doing so, Zhejiang Xingyi kept Commerce from being able to verify accurately that Zhejiang Xingyi reported all of its input purchase to Commerce.

As an initial matter, Commerce did not stipulate the precise methodology that Zhejiang Xingyi must use to reconcile its purchases. Specifically, our verification questionnaire stated the following regarding Zhejiang Xingyi’s purchases of stainless steel coil and galvanized steel:

Reconcile the total amount of purchases of galvanized steel, and stainless steel reported for the POI to the 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 the package.²¹⁸

In other words, we did not explicitly state that Zhejiang Xingyi should provide complete unfiltered accounts of each step of the process. As such, we disagree with the petitioners’ assertion that Zhejiang Xingyi’s reconciliation methodology did not conform to our verification questionnaire.

Further, the petitioners argue that Zhejiang Xingyi’s reconciliation does not give an accurate depiction of these purchases over the POI. As such, the petitioners hold that the purchase of these inputs cannot be verified. We disagree. In its review of the reconciliations, Commerce has found no discrepancies. Other than disagreeing with the methodology employed to reconcile the reported purchase figures, the petitioners identify no errors or inconsistencies on the record that would cause us to find that Zhejiang Xingyi failed this verification exercise.

Finally, in response to the petitioners’ argument that Zhejiang Xingyi failed to corroborate its conversions from pieces to metric tons, we also disagree.²¹⁹

²¹⁶ *Id.* at 22.

²¹⁷ *Id.*

²¹⁸ See Commerce’s Letter, “In Lieu of Verification Questionnaire,” dated March 5, 2021 at 3.

²¹⁹ Due to the proprietary nature of this information, see further discussion in Zhejiang Xingyi’s Final Calculation Memorandum.

Comment 4: Electricity for LTAR Program

The Government of China's Case Brief

- The GOC acted to the best of its ability to comply with Commerce's requests for information concerning the electricity for LTAR program.²²⁰
- Electricity prices in China are determined by the provincial governments within their jurisdictions and "the role of the {National Development and Reform Commission (NDRC)} is to review the electricity pricing schedules submitted by the provincial governments."²²¹
- The GOC answered each and every question in the Electricity Appendix in the initial questionnaire.²²²
- Additionally, the GOC applied its best efforts to answer Commerce's questions in the first supplemental questionnaire, provided information sufficient for Commerce to analyze the GOC's provision of electricity, "and to determine that it is not a countervailable subsidy."²²³
- Since the record demonstrates that the GOC acted to the best of its ability to cooperate, there is no lawful basis to apply AFA. "These are not 'circumstances in which it is reasonable to conclude that less than full cooperation has been shown.' Thus, there is no factual basis for {Commerce} to find that the GOC" failed to cooperate.²²⁴
- When using AFA, Commerce "must search 'the far reaches of the record' for facts that support the elements of a countervailable subsidy."²²⁵
- In this investigation, Commerce failed to provide factual support for its conclusion that the GOC's provision of electricity was specific under section 771(5A) of the Act.²²⁶
- In the IQR, the GOC explained that electricity prices in China are based on market principles and are determined by provincial governments, not the NDRC.²²⁷
- The GOC also explained that electricity prices are classified by ender user categories that "are equally applied to all end users." Additionally, the GOC provided evidence to support this argument.²²⁸
- "The GOC also provided detailed information about price adjustments, including relevant regulations, to further demonstrate the market-oriented nature of the electricity market in China."²²⁹
- In its IQR and first SQR, the GOC explained that "during the POI there was no NDRC review of the provincial price proposals and the provincial agencies are only required to provide their final adjustment price schedules to the NDRC for its records."²³⁰

²²⁰ See GOC's Case Brief at 28.

²²¹ *Id.* (citing GOC's IQR at 74 and Exhibit ELEC-1).

²²² *Id.* (citing GOC's IQR at Exhibit ELEC-1).

²²³ *Id.* at 29 (citing GOC's First SQR at 5-8).

²²⁴ *Id.* (citing *Nippon Steel*, 337 F.3d at 1383 (Fed. Cir. 2003)).

²²⁵ *Id.* (citing *Trina Solar*, 195 F. Supp. 3d at 1350).

²²⁶ *Id.* at 29-30 (citing *Preliminary Determination PDM* at 23-26).

²²⁷ *Id.* at 30 (citing GOC's IQR at 74-75).

²²⁸ *Id.* (citing GOC's IQR at 74-75 and Exhibit ELEC-1).

²²⁹ *Id.* at 30-31 (citing GOC's IQR at Exhibits ELEC-5 through ELEC-8).

²³⁰ *Id.* at 31 (citing GOC's IQR at Exhibit ELEC-1; and GOC's First SQR at 6).

- The record evidence makes clear that retail prices for electricity are set according to market principles. Thus, Commerce should reverse its finding that the GOC provided electricity for LTAR.²³¹

Petitioners' Rebuttal Brief

- “Contrary to the GOC’s claims that it acted to the best of its ability to cooperate with {Commerce’s} inquiries, the GOC in fact rejected {Commerce’s} questions and did not provide the required information, notwithstanding {Commerce’s} repeated requests.”²³²
- For example, in response to Commerce’s questions concerning wholesale electricity producers and suppliers, the GOC merely acknowledged that Zhejiang Xingyi “‘may purchase power through wholesale, ‘denied knowledge of any additional regulations, and otherwise stated its prior submissions ‘were sufficient for {Commerce} to calculate any benefit received by the mandatory respondent.’”²³³
- The GOC also failed to explain the fact that its own submissions suggest that “the NDRC continues to play a major role in setting and adjusting prices.”²³⁴
- The GOC “repeatedly rejected {Commerce’s} questions as not ‘applicable, ‘or baldly declared the ‘information already provided is sufficient’ to answer {Commerce’s} questions.”²³⁵
- Commerce’s determination that the GOC failed to cooperate to the best of its ability is clearly supported by the record and in accordance with the law.²³⁶
- “The GOC’s argument that the NDRC merely records provincial governments’ established electricity pricing, however, ignores the fact that the NDRC directs these governments to reduce pricing in accordance with the NRDC’s instructions.”²³⁷
- Commerce has repeatedly rejected similar arguments concerning the specificity finding of the GOC’s provision of electricity for LTAR.²³⁸
- Commerce provided reasons for its preliminary specificity finding within the framework of its AFA analysis by stating that it “‘lacks information that would allow it to determine whether the varying provincial prices established under the NDRC-administered program are the result of market considerations or the result of a design to subsidize certain regions or industries.’”²³⁹

²³¹ *Id.* (citing GOC’s IQR at 74-75).

²³² *See* Petitioners’ Rebuttal Brief at 36.

²³³ *Id.* at 36-37 (citing GOC’s IQR at 6).

²³⁴ *Id.* at 37 (citing *Preliminary Determination* PDM at 24).

²³⁵ *Id.* (citing GOC’s IQR at Exhibit ELEC-1).

²³⁶ *Id.*

²³⁷ *Id.* at 38 (citing GOC’s Case Brief at 31; GOC’s IQR at Exhibit ELEC-1; *Preliminary Determination* PDM at 24; and *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Countervailing Duty Determination*, 82 FR 58172 (December 11, 2017), and accompanying IDM at Comment 2).

²³⁸ *Id.* at 39 (citing *Forged Steel Fluid End Blocks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 80020 (December 11, 2020), and accompanying IDM at Comment 2; *Certain Coated Steel Staples from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 85 FR 33626 (June 2, 2020), and accompanying IDM at Comment 4; and *Propane Cylinders from China* IDM at Comment 14).

²³⁹ *Id.* (citing *Preliminary Determination* PDM at 24).

Commerce Position: For the final determination, we continue to find that the GOC did not provide the necessary information which Commerce requested pertaining to whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act.²⁴⁰

As we explained in the *Preliminary Determination*, the GOC did not provide complete responses to Commerce's questions regarding the provision of electricity for LTAR.²⁴¹ Furthermore, we explained in the *Preliminary Determination* that the various questions posed to the GOC throughout the course of this investigation requested information needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act and whether such a provision was specific within the meaning of section 771(5A) of the Act.²⁴² Consequently, in the *Preliminary Determination*, we relied on facts available pursuant to section 776(a)(2)(A) of the Act, because the GOC withheld information that was requested of it for our analysis, and we applied AFA pursuant to section 776(b) of the Act because the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information.²⁴³ Consistent with the Act and our practice,²⁴⁴ Commerce is continuing to apply AFA with respect to the provision of electricity for LTAR in this final determination.

As detailed in the *Preliminary Determination*, Commerce requested information regarding the derivation of electricity prices at the provincial level, the procedure for adjusting retail electricity tariffs, and the role of the NDRC and the provincial governments in this process.²⁴⁵ Specifically, Commerce asked how increases in cost elements led to retail price increases, the derivations of those cost increases, how cost increases are calculated, and how cost increases impacted the final electricity prices.²⁴⁶ The GOC provided electricity tariff schedules; however, the GOC failed to explain, in detail, how the prices in the electricity tariff schedules were derived, including the specific factors or information relied upon by the NDRC.²⁴⁷ Commerce additionally requested the GOC to explain, for each province in which the respondent or cross-owned company is located, how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the Provincial Price Proposals, and how cost element increases and final price increases were allocated across the province and across tariff end-user categories.²⁴⁸

As explained in the *Preliminary Determination*, the GOC failed to explain fully the respective roles and nature of the cooperation between the NDRC and the provincial governments in deriving and implementing electricity price adjustments.²⁴⁹ The GOC's refusal to answer

²⁴⁰ See *Preliminary Determination* PDM at 23 and 25-26.

²⁴¹ *Id.* at 23-25.

²⁴² *Id.*

²⁴³ *Id.* at 25.

²⁴⁴ See sections 776(a)(2)(A) and 776(b) of the Act.

²⁴⁵ See *Preliminary Determination* PDM at 23.

²⁴⁶ *Id.* at 23-24

²⁴⁷ *Id.* at 24-25 (citing GOC's IQR at Exhibit ELEC-4; and GOC's First SQR at 5-6).

²⁴⁸ *Id.* at 24.

²⁴⁹ *Id.*

Commerce's questions completely with respect to the relationship between the NDRC and the provinces in deriving electricity price adjustments, and its failure to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves, leaves Commerce unable to carry out a complete specificity and financial contribution analysis.²⁵⁰ Further, despite the GOC's claim that the responsibility for setting prices within each province has moved from the NDRC to the provincial governments, record evidence indicates that the NDRC continues to play a major role in setting and adjusting prices, and the GOC failed to explain fully the roles and nature of the cooperation between the NDRC and provinces in deriving electricity price adjustments.²⁵¹ In addition, as noted above, the GOC failed to explain both the derivation of price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves.

As a result of the GOC's refusal to provide the requested information and unwillingness to cooperate, Commerce was unable to determine whether the electricity rates included in the electricity schedules submitted by the GOC were calculated based on market principles. Accordingly, Commerce applied facts available with an adverse inference to the determination of the appropriate benchmark. Specifically, because the GOC provided the provincial electrical tariff schedules, Commerce relied on this information as facts available and, in making an adverse inference, Commerce identified the highest rates among these schedules for each reported electrical category and used those rates as the benchmarks in the benefit calculations.²⁵² While the GOC argues that Commerce did not undertake the necessary analysis to find electricity specific, the GOC's failure to cooperate means that both our specificity determination and our benchmark determination must rely on the facts available on the record, subject to adverse inferences. As we explained in the *Preliminary Determination*, we attempted to obtain information on how Chinese provincial electricity tariffs are calculated and why they differ, which could have contributed to Commerce's analysis of an appropriate benchmark for the benefit calculation in this program.²⁵³ The GOC's failure to provide complete responses to our questions warrants the application of AFA in this case with respect to the selection of an electricity benchmark. The fact that the GOC refused to answer Commerce's questions completely with respect to the roles and nature of cooperation between the NDRC and provinces in deriving electricity price adjustments, and failed to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves, means that Commerce is unable to carry out a full specificity analysis. The GOC has failed to explain the reason for these differences in this and previous cases, claiming without support that the provincial governments set the rates for each province in accordance with market principles.²⁵⁴

For the reasons stated above, we continue to find this program countervailable and rely on our findings in the *Preliminary Determination* that the GOC's provision of electricity confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively.

²⁵⁰ *Id.* at 23-24.

²⁵¹ *Id.*

²⁵² *Id.* at 25-26.

²⁵³ *Id.*

²⁵⁴ *See* GOC's Case Brief at 31.

Comment 5: Whether Commerce Should Continue to Apply AFA to the Provision of Steel Inputs for LTAR

GOC's Case Brief

- Commerce's application of AFA to the steel input LTAR programs is unlawful because: (1) the GOC cooperated to the best of its ability; (2) the GOC demonstrated that "CCP primary party organizations inside private companies do not make the private companies 'government entities,'" and (3) the finding that the producers of the steel inputs are government authorities based on AFA alone is unlawful.²⁵⁵
- The GOC explained that there is no central government database to search for "whether any individual owner, member of the board or directors, or senior manager is a Government or CCP official."²⁵⁶
- Commerce's finding did not provide any information as to how the GOC would be able to access the information it stated it could not.²⁵⁷
- Commerce "requested information that includes personal information of private persons and entities that are not obligated to respond to this investigation. The GOC cannot be required to provide information that it does not possess."²⁵⁸
- The GOC provided basic registration information and shareholder structures for the suppliers along with the relevant laws, "which indicate that the shareholders' meeting and the board of directors are entitled to make key corporate decisions."²⁵⁹
- As the record shows that the GOC acted to the best of its ability to comply with Commerce's request for information, there is no lawful basis to apply AFA.²⁶⁰
- "AFA is appropriate only when Commerce has first made a supported finding under {section 776(a) of the Act} that information is missing from the record for an enumerated reason, followed by a separate finding under {section 776(b) of the Act} that there has been a failure to cooperate."²⁶¹
- Finally, "an adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made..."²⁶²
- There are no "facts otherwise available" that Commerce can rely on to suggest that the CCP involvement in a private company is sufficient to transform the company into a government authority.²⁶³
- The GOC particularly disputes Commerce's established presumption that "the presence of CCP party groups and committees, or primary party organizations, in private

²⁵⁵ See GOC's Case Brief at 12.

²⁵⁶ *Id.* at 12-13 (citing GOC's IQR at Exhibits HRS-1, CRS-1, GS-1, and SSC-1).

²⁵⁷ *Id.* at 13.

²⁵⁸ *Id.* (citing GOC's IQR at Exhibits HRS-1, CRS-1, GS-1, and SSC-1).

²⁵⁹ *Id.* at 13-14 (citing *Preliminary Determination* PDM at 27, 32, 35, 39, and 40; and GOC's IQR at Exhibit GEN-6).

²⁶⁰ *Id.* at 14 (citing *JSW Steel Ltd. v. United States*, 315 F. Supp. 3d 1379, 1382 (CIT 2018) (*JSW Steel*)).

²⁶¹ *Id.* at 14-15 (citing *JSW Steel*, 315 F. Supp. 3d at 1382).

²⁶² *Id.* at 15 (citing *Nippon Steel*, 337 F.3d at 1383).

²⁶³ *Id.* at 15.

companies represents a ‘significant’ CCP presence and is relevant to whether an otherwise private company is a government authority.”²⁶⁴

- The GOC notes that the Public Bodies Memo does not find that the CCP exerts control over private companies through primary party organizations. “At most, the Public Bodies Memo expresses uncertainty over the role of primary party organizations in private companies.”²⁶⁵
- Additionally, *The Economist* article quoted in the Public Bodies Memo refers to primary party organizations in both private companies and in state-owned enterprises, “it is unlikely that the statements made in the article were intended to apply equally to primary party organizations in both types of entities.”²⁶⁶
- “The CCP Constitution plainly states that primary party organizations oversee all Party members, including the chief administrators, but do not direct their work... these CCP organizations in the private sector educate and promote the development of private enterprises.”²⁶⁷
- The CCP “does not fund the enterprise or otherwise control any of the company’s funds and the party organization cannot appoint or dismiss board members or managers.”²⁶⁸
- Commerce “has never presented any evidence to demonstrate that provisions of the Company Law in China are superseded or invalidated by primary party organization obligations.”²⁶⁹
- The provisions of the Chinese Company Law “demonstrate that a company’s shareholders, directors, and managers are solely responsible for the company’s internal operation and that it is unlawful for external organizations and authorities to interfere.”²⁷⁰
- The facts on the record show that the GOC is prohibited from interfering in the ordinary business operations and management of a company.²⁷¹
- Commerce’s “determination that the producers of hot-rolled steel, cold-rolled steel, galvanized steel, and stainless steel are government authorities on the basis of AFA alone is contrary to law for two reasons:” (1) Commerce did not support its determination with record evidence; and (2) Commerce did not consider contradictory evidence in making its decision.²⁷²
- Commerce did not “‘make the necessary factual findings to satisfy the requirements for countervailability;’ including by ‘search{ing} the far reaches of the record’ or

²⁶⁴ *Id.* at 15-16 (citing Memorandum, “Placing Documents on the Record Regarding Public Bodies,” dated August 26, 2020 at Memorandum, “Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People’s Republic of China: An Analysis of Public Bodies in the People’s Republic of China in Accordance with the WTO Appellate Body’s Findings in WTO DS379,” dated May 18, 2012 (Public Bodies Memo), and Attachment 1).

²⁶⁵ *Id.* at 16 (citing GOC’s IQR at Exhibits HRS-1, CRS-1, GS-1, and SSC-1; and Public Bodies Memo at 36).

²⁶⁶ *Id.* at 17 (citing Public Bodies Memo at 35-36).

²⁶⁷ *Id.* at 17-18 (citing GOC’s IQR at Exhibit GEN-7).

²⁶⁸ *Id.* at 18 (citing GOC’s IQR at Exhibits HRS-1, CRS-1, GS-1, and SSC-1).

²⁶⁹ *Id.* at 18-19 (citing GOC’s IQR at Exhibit GEN-6).

²⁷⁰ *Id.* at 19 (citing GOC’s IQR at Exhibit GEN-6).

²⁷¹ *Id.* at 20.

²⁷² *Id.* at 20-21.

considering evidence that ‘fairly detract{s} from the reasonableness of its conclusions.’”²⁷³

- Commerce must make the necessary findings regarding all elements of countervailability, as the CIT found in *Trina Solar*.²⁷⁴
- The GOC clearly reported that “private companies do not make decisions at the direction of the Government, including the CCP or any of the other entities identified by {Commerce},” and Commerce failed to address this evidence.²⁷⁵
- Commerce also failed to explain its determinations with regard to the specificity of the provision of hot-rolled steel, CRS, galvanized steel, and stainless steel. Additionally, Commerce failed “to acknowledge the information the GOC provided in response to {Commerce}’s requests.”²⁷⁶
- The GOC explained that it was impossible to provide the information requested by Commerce concerning specificity. “As it is impossible for the GOC to provide the data that it does not have, it is unreasonable for {Commerce} to conclude that the GOC did not act to the best of its ability.”²⁷⁷
- Commerce cannot apply AFA where the information asked for is impossible to provide, “as doing so would be punitive and contravene the purpose of AFA, which is ‘remedial, and not punitive.’”²⁷⁸
- Although the information was impossible to provide, the GOC still acted to the best of its ability to respond by providing complete responses to the Input Producer Appendix for each of these products.²⁷⁹
- Finally, Commerce’s determination that the hot-rolled steel, CRS, galvanized steel, and stainless steel markets are distorted based on AFA is not supported by substantial evidence and is otherwise not in accordance with law.²⁸⁰
- The GOC specifically stated that it was impossible to provide the requested information concerning the total volume and value of Chinese domestic consumption and production of the hot-rolled steel, galvanized steel, and stainless steel coil inputs.²⁸¹
- The GOC was able to provide production volume data for CRS. “{F}or each steel input product, the GOC also provided the total volume and value of imports during the POR {sic}.”²⁸²
- “AFA is appropriate only when {Commerce} has first made a supported finding under {section 776(a) of the Act} that information is missing from the record for an enumerated reason, followed by a separate finding under {section 776(b) of the Act} that there has been a failure to cooperate.”²⁸³

²⁷³ *Id.* at 21 (citing *Trina Solar*, 195 F. Supp. 3d at 1350).

²⁷⁴ *Id.* (citing *Trina Solar*, 195 F. Supp. 3d at 1349-50).

²⁷⁵ *Id.* at 22 (citing GOC’s IQR at Exhibits HRS-1, CRS-1, GS-1, and SSC-1).

²⁷⁶ *Id.* at 22-23 (citing *Preliminary Determination PDM* at 29, 33, 37, and 42).

²⁷⁷ *Id.* at 23 (citing GOC’s IQR at 24).

²⁷⁸ *Id.* (citing *Grobest & I-Mei Indus. (Vietnam) Co. v. United States*, 815 F. Supp. 2d 1342, 1365-66 (CIT 2012) (citing *Chaparral Steel Co. v. United States*, 901 F.2d 1097, 1103-04 (Fed. Cir. 1990); and *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990))).

²⁷⁹ *Id.* (citing GOC’s IQR at 22-73 and Exhibits HRS-1, CRS-1, GS-1, and SSC-1).

²⁸⁰ *Id.* at 24.

²⁸¹ *Id.* at 24 (citing GOC’s IQR at 26, 49, and 63).

²⁸² *Id.* at 24-25 (citing GOC’s IQR at 26, 27, 49, and 63).

²⁸³ *Id.* at 25 (citing *JSW Steel*, 315 F. Supp. 3d at 1382).

- “What the GOC has or has not been able to provide in other cases about different inputs does not provide sufficient evidence to support the conclusion that the GOC has failed to cooperate by not acting to the best of its ability in *this* investigation.”²⁸⁴
- The GOC reported that it was unable to provide the requested information; therefore, “there is no basis to apply AFA because the required finding that the GOC failed to cooperate by not acting to the best of its ability cannot be made in this administrative review {sic}.”²⁸⁵

Petitioners’ Rebuttal Brief

- The GOC twice failed to submit critical information regarding the ownership and operations of Chinese steel producers.²⁸⁶
- “The GOC’s insistence that it has provided the ‘necessary’ information for {Commerce’s} program analysis misses the point. {Commerce} repeatedly requested additional corporate information, and the GOC failed to provide it.”²⁸⁷
- The GOC’s failure to provide the requested information, “in combination with {Commerce’s} well-documented analysis of GOC control over Chinese producers, warranted the application of AFA... the absence of the required documentation precludes {Commerce} from analyzing the GOC’s claims regarding any purported absence of GOC control.”²⁸⁸
- The Company Law fails to support the GOC’s argument that non-majority government-owned input producers operate independently.²⁸⁹
- The GOC’s failure to provide the requested documentation regarding non-majority GOC-owned entities in China precludes Commerce from conducting the requisite analysis as to whether the producers are authorities.²⁹⁰
- Commerce’s finding is consistent with its established precedent.²⁹¹
- The GOC’s arguments concerning whether the CCP can direct authority over the operation of the company are simply incorrect. Commerce “has found, as documented in the Public Bodies Memorandum, that: (1) the CCP is a government entity; (2) CCP officials must be included ‘in all companies, whether state, private, domestic, or foreign-invested;’ and (3) CCP officials may control the company’s affairs.”²⁹²
- The GOC has provided the necessary information in prior proceedings, “and that statements from company respondents, rather than from the GOC, were not sufficient.”²⁹³

²⁸⁴ *Id.* at 26

²⁸⁵ *Id.*

²⁸⁶ See Petitioner’s Rebuttal Brief at 20 (citing *Preliminary Determination PDM* at 26-27, 31-32, 34-46, and 38-41).

²⁸⁷ *Id.* at 21 (citing GOC’s Case Brief at 14; and *Preliminary Determination PDM* at 26-41).

²⁸⁸ *Id.* at 21.

²⁸⁹ *Id.* at 22.

²⁹⁰ *Id.*

²⁹¹ *Id.* at 23 (citing *Certain Aluminum Foil from the People’s Republic of China: Final Results of the Countervailing Duty Administrative Review; 2017-2018*, 86 FR 12171 (March 2, 2021), and accompanying IDM at 12-13).

²⁹² *Id.* at 23-24 (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; 2017*, 85 FR 79163 (December 9, 2020), and accompanying IDM at 13-14).

²⁹³ *Id.* at 25 (citing *Wood Mouldings and Millwork Products from the People’s Republic of China: Final Affirmative*

Commerce’s request for company-specific information and documentation from the GOC was based on Commerce’s established practice and policy.

- Since the GOC failed to provide the required information for Commerce to conduct a *de facto* specificity analysis, Commerce properly “determined the GOC failed to act to the best of its ability, thereby warranting the application of AFA.”²⁹⁴
- Commerce’s application of AFA in this instance is lawful. “The Federal Circuit has held that a party’s compliance with the ‘best of its ability’ standard is determined by assessing whether the party has put forth its maximum effort to provide {Commerce} with ‘full and complete’ answers to all inquiries in an investigation.”²⁹⁵
- Additionally, the GOC’s claim that it does not maintain the required information regarding specificity is simply not true, as Commerce recently reaffirmed.²⁹⁶
- Therefore, since the GOC maintained the required information to demonstrate whether the provision of the “LTAR programs in *FSS from China* were *de facto* specific, and withheld this information from {Commerce}” in this proceeding, Commerce determined that AFA was warranted.²⁹⁷
- “Based on established precedent, the GOC carefully maintains production records for entities registered in China.” Importantly, in *FSS from China*, Commerce “determined that the GOC maintained this information for hot-rolled steel.”²⁹⁸
- Commerce should continue to find that the four steel LTAR input markets are distorted.
- “The GOC twice failed to provide complete information pertaining to volume, value, and consumption of Chinese {cold rolled steel, hot rolled steel, galvanized steel, and stainless steel coil} production. The GOC also twice failed to provide complete information ‘regarding the total volume and value of domestic production accounted for by the companies in which the {GOC} maintains ownership.’”²⁹⁹
- Commerce “properly concluded that the GOC maintains the required information in its Enterprise Credit Information Publicity System (ECIPS) database that could be used to establish whether the steel inputs markets are distorted,” and failed to provide that information.³⁰⁰
- The GOC’s argument that Commerce can only make determinations based on the information on the record of the instant proceeding is incorrect. Commerce “frequently relies on its findings and determinations in other cases, including specifically with regard to the GOC’s demonstrated capabilities.”³⁰¹

Countervailing Duty Determination, 86 FR 67 (January 4, 2021), and accompanying IDM at 43; and *High Pressure Steel Cylinders from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying IDM at 13).

²⁹⁴ *Id.* at 26 (citing *Preliminary Determination PDM* at 29, 32-33, 36-37, and 41-42).

²⁹⁵ *Id.* at 26-27 (citing *Nippon Steel*, 337 F.3d at 1382; Section 776(a)(1)-(2) of the Act; and the TPEA of 2015).

²⁹⁶ *Id.* at 28 (citing *Certain Fabricated Structural Steel from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 5384 (January 30, 2020) (*FSS from China*), and accompanying IDM at 43).

²⁹⁷ *Id.* at 28-29 (citing *FSS from China* IDM at 43).

²⁹⁸ *Id.* at 29 (citing *FSS from China*).

²⁹⁹ *Id.* (citing *Preliminary Determination PDM* at 30, 33-34, 37-38, and 42-43).

³⁰⁰ *Id.* at 30 (citing *Preliminary Determination PDM* at 30, 33-34, 37-38, and 42-43).

³⁰¹ *Id.* (citing *FSS from China* IDM at 43).

- The GOC has failed to explain why it could provide this information in other cases, but not here.³⁰²

Commerce’s Position: In the *Preliminary Determination*, we found, based on facts otherwise available, that the producers of hot-rolled steel, CRS, galvanized steel, and stainless steel coil purchased by the mandatory respondent are “authorities” within the meaning of section 771(5)(B) of the Act.³⁰³ We made this decision due to a lack of complete information from the GOC in response to our questions.³⁰⁴ Therefore, the premise of the GOC’s argument, that Commerce wrongly applied AFA on this issue in the *Preliminary Determination*, is incorrect. For the reasons detailed below, for the final determination, we continue to find that the producers of hot-rolled steel, CRS, galvanized steel, and stainless steel coil purchased by Zhejiang Xingyi are “authorities” within the meaning of section 771(5)(B) of the Act and, thus, that such producers provided a financial contribution in supplying these inputs to the respondent within the meaning of section 771(5)(D)(i) of the Act.

As discussed in the *Preliminary Determination*, in order to analyze whether the domestic producers that supplied hot-rolled steel, CRS, galvanized steel, and stainless steel coil to the mandatory respondent are “authorities” within the meaning of section 771(5)(B) of the Act, we sought information regarding the ownership of the input producers identified by the mandatory respondent.³⁰⁵ We specified that such information should include articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, articles of association, business group registrations, business licenses, and tax registration documents.³⁰⁶ Moreover, we requested information concerning whether any individual owners, board members, or senior managers involved with these producers were either government or CCP officials, and the role of any CCP primary organization within the producers.³⁰⁷ Specifically, to the extent that the owners, managers, or directors of a producer are CCP officials or are otherwise influenced by certain CCP-related entities, Commerce requested information regarding the means by which the GOC may exercise control over company operations and other CCP-related information.³⁰⁸

The GOC has objected to Commerce’s questions regarding the role of CCP officials and organizations in the management and operations of input suppliers. However, we have explained our understanding of the CCP’s involvement in China’s economic and political structure. Commerce has determined that “available information and record evidence indicates that the CCP meets the definition of the term ‘government’ ... for the limited purpose of applying the U.S. CVD law to China.”³⁰⁹ Additionally, publicly available information indicates that Chinese law requires the establishment of CCP organizations “in all companies, whether state, private,

³⁰² *Id.* (citing *FSS from China* IDM at Comment 1).

³⁰³ See *Preliminary Determination* PDM at 26-28, 31-32, 34-36, and 38-41.

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ See Memorandum, “The Relevance of the Chinese Communist Party for the Limited Purpose of Determining Whether Particular Enterprises Should be Considered to be ‘Public Bodies’ Within the Context of a Countervailing Duty Investigation,” dated May 18, 2012 at 33.

domestic, or foreign-invested” and that such organizations may wield a controlling influence in the company’s affairs.³¹⁰

The GOC’s response to our requests for information, or lack thereof, is fully described in the *Preliminary Determination*. Regarding the input producers identified by the mandatory respondent, the GOC did not provide a complete response to Commerce’s questions regarding these producers. When asked to provide detailed information (*e.g.*, company by-laws, articles of incorporation, licenses, capital verification reports, *etc.*) for all majority government-owned enterprises that produced hot-rolled steel, CRS, galvanized steel, and stainless steel coil purchased by the mandatory respondent during the POI, the GOC only provided partial information (*i.e.*, basic registration and shareholder structure).

The GOC stated in its initial questionnaire response that the information obtained from the ECIPS “is authoritative evidence of the ownership structure of enterprises in China,”³¹¹ suggesting this was sufficient to understand the ownership structure of these producers. However, the ownership structure and basic registration information that the GOC provided does not indicate whether the owners and shareholders of the companies have any CCP involvement. And while the GOC provided a long narrative explanation of the role of the CCP, when asked to identify any owners, members of the board of directors, or managers of the input producers who were government or CCP officials during the POI, the GOC explained that there is “no central informational database to search for the requested information.”³¹² However, based on our analysis of the GOC’s responses, we find that they lack the necessary information Commerce requested and hinder Commerce’s ability to determine whether the producers constitute “authorities.”

The information we requested regarding the role of CCP officials in the management and operations of these producers is necessary to our determination of whether these producers are “authorities” within the meaning of section 771(5)(B) of the Act. Commerce considers information regarding the CCP’s involvement in China’s economic and political structure to be relevant because public information suggests that the CCP exerts significant control over activities in China and is part of the governing structure in China. As explained in the Public Bodies Memorandum, record evidence demonstrates that producers in China that are majority-owned by the government, possess, exercise, or are vested with, governmental authority.³¹³ Record evidence also demonstrates that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.³¹⁴

³¹⁰ See Memorandum, “Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People’s Republic of China: An Analysis of Public Bodies in the People’s Republic of China in Accordance with the WTO Appellate Body’s Findings in WTO DS379,” dated May 18, 2012 (Public Bodies Memorandum) at 35.

³¹¹ See GOC’s IQR at Exhibits CRS-1, HRS-1, GS-1, and SSC-1.

³¹² *Id.*

³¹³ See Public Bodies Memorandum.

³¹⁴ *Id.*

Therefore, we determine that necessary information is not available on the record, and that the GOC withheld information that was requested of it with regard to purchases by the mandatory respondent. Accordingly, in accordance with sections 776(a)(1) and (a)(2)(A) of the Act, Commerce must rely on facts otherwise available in reaching a determination in this respect. Furthermore, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with requests for information regarding the ownership and CCP and government involvement in the management of producers of hot-rolled steel, CRS, galvanized steel, and stainless steel coil from whom the mandatory respondent purchased said inputs during the POI.

Consequently, in accordance with section 776(b) of the Act, we find that an adverse inference in selecting from the facts available is warranted in the application of facts available. As AFA, and in light of our prior findings and the GOC's failure to provide rebuttal information to the contrary, we determine that any majority government-owned input producers that supplied Zhejiang Xingyi are "authorities" within the meaning of section 771(5)(B) of the Act. In prior CVD proceedings, we found that the GOC was able to obtain the requested information independently regarding the companies involved and, thus, we found that statements from company respondents, rather than from the GOC, were insufficient.³¹⁵ In the instant case, however, we have received responses regarding CCP involvement only from the mandatory respondent, and not from the GOC.

In addition, we disagree with the GOC that it provided Commerce with sufficient information to determine whether any of the mandatory respondent's input producers are privately-owned entities. We explained in the *Preliminary Determination* that the GOC's responses to the Input Producer Appendix for the inputs being investigated were deficient, and that the information supplied from ECIPS was not sufficient for our analysis of whether the input producers identified by the mandatory respondent are "authorities" under the Act.³¹⁶ While the GOC asserted that the information provided from ECIPS was sufficient for our analysis, it is for Commerce, not the GOC, to determine what information is necessary in order for Commerce to complete its analysis. For the reasons described above, for the final determination, we find that the GOC failed to provide on the record information necessary for Commerce to analyze whether the respondent's input producers are authorities.

We continue to find that necessary information is missing from the record, and that the GOC withheld necessary information that was requested of it and significantly impeded this proceeding, pursuant to sections 776(a)(1) and (a)(2)(A) and (C) of the Act. Therefore, we must continue to rely on facts otherwise available in conducting our analysis of the respondent's input producers. Moreover, in light of the incomplete responses from the GOC to Commerce's supplemental questionnaire, we also continue to find that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, we continue to determine that an adverse inference is warranted in selecting from the facts available, pursuant to section 776(b)(1)(A) of the Act. As AFA, we find that CCP officials are present in each of the respondent's privately-owned input producers as individual owners, managers, and members of boards of directors, and that this gives the CCP, as the government, meaningful control over the companies and their resources. As explained in the Public Bodies

³¹⁵ See *Citric Acid 2012 IDM* at Comment 5.

³¹⁶ See *Preliminary Determination PDM* at 26-28, 31-32, 34-36, and 38-41.

Memorandum, an entity with significant CCP presence on its board, or in management, or in party committees may be controlled such that it possesses, exercises, or is vested with governmental authority.³¹⁷ Thus, for the final determination, we continue to find, as AFA, that the producers of hot-rolled steel, CRS, galvanized steel, and stainless steel coil purchased by Zhejiang Xingyi are “authorities” within the meaning of section 771(5)(B) of the Act.

Comment 6: Whether Commerce Should Use the Most Favored Nation Import Duty Rates

Zhejiang Xingyi’s Case Brief

- In the *Preliminary Determination*, Commerce used the general tariff rates reported by the GOC in its initial questionnaire response. In the GOC’s rebuttal benchmark submission, it clarified that only the most favored nation (MFN) rates were applied during the POI.³¹⁸
- As Commerce’s “regulations require {Commerce} to choose a benchmark ‘where it is reasonable to conclude that such price would be available to purchasers in the country in question, ‘ {Commerce} should therefore adjust the import duty rates used in its benchmark calculations for each of the four steel products.’”³¹⁹

Petitioners’ Rebuttal Brief

- Commerce instructed the GOC to report the import duty rates associated with each input under investigation. “The GOC did so, and {the petitioners} submitted benchmark data for the respective HTS codes reported,” and Commerce correctly used this information to calculate program benefits.³²⁰
- In the GOC’s rebuttal, not affirmative, benchmark submission, the GOC decided that the rates it reported no longer applied. “The GOC failed to submit any evidence that the import duty rates initially reported were not in effect during the POI.”³²¹
- The GOC’s tariff documentation “is: (1) untranslated (Attachment 2); (2) references a purported 2017 regulation (Attachment 3); and (3) there is no identification of the source of the purported import data that was used to allegedly corroborate the GOC’s claims (Attachment 4).”³²²
- Commerce should reject Zhejiang Xingyi and the GOC’s last minute attempt to lower the margins calculated for the steel input LTAR programs.³²³

Commerce’s Position: We agree with Zhejiang Xingyi. For the *Preliminary Determination*, we incorrectly used the general import duty rates in our steel input benchmark price calculations.³²⁴ Commerce’s practice is to use MFN rates, because these rates reflect the general tariff rates applicable to world trade.³²⁵ Therefore, we have used the MFN rates of five percent,

³¹⁷ See Public Bodies Memorandum.

³¹⁸ See Zhejiang Xingyi’s Case Brief at 15 (citing Zhejiang Xingyi’s Preliminary Calculation Memorandum at Attachment 1; GOC’s IQR at 28, 40, 51, and 66; and GOC’s Rebuttal Benchmark Submission at 2-3).

³¹⁹ *Id.* at 15-16 (citing 19 CFR 351.511(a)(2)(ii)).

³²⁰ See Petitioners’ Rebuttal Brief at 34 (citing GOC’s IQR at 26, 37, 49, and 63).

³²¹ *Id.* (citing GOC’s Rebuttal Benchmark Submission at Attachment 3).

³²² *Id.* (citing GOC’s Rebuttal Benchmark Submission at Attachments 2, 3, and 4).

³²³ *Id.*

³²⁴ See Zhejiang Xingyi’s Preliminary Calculation Memorandum at Attachment 1.

³²⁵ See *Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), accompanying IDM at Comment 20.

5.25 percent,³²⁶ four percent, and six percent to calculate the benchmark prices for hot-rolled steel, CRS, galvanized steel, and stainless steel coil, respectively, for the final determination.³²⁷

VIII. 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 ITC of our determination.



Agree

Disagree

6/28/2021

X



Signed by: CHRISTIAN MARSH