

Guizhou Tyre Co., Ltd., et al., v. United States

Consol. Ct. No. 18-00100, Slip Op. 19-59 (CIT May 15, 2019)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

SUMMARY

The Department of Commerce (Commerce) has prepared these final results of redetermination (*Final Remand Results*) pursuant to the decision and remand order issued by the U.S. Court of International Trade (the Court) on May 15, 2019.¹ This action arises from the final results of the 2015 administrative review of the countervailing duty (CVD) order on off-the-road tires (OTR Tires) from the People’s Republic of China (China).²

The Court ordered Commerce to: (1) reconsider its decision to apply adverse facts available (AFA) in finding that respondents used the Export Buyer’s Credit Program (EBCP), and (2) reconsider and further explain its market distortion analysis with respect to the synthetic rubber market in China. The Court sustained all other challenged aspects of the *OTR Tires PRC Final*.³

As set forth in detail below, pursuant to the *Remand Order*, Commerce has reexamined its decision to apply AFA to the EBCP and provided additional explanation in support of its

¹ See *Guizhou Tyre Co., Ltd., et al., v. United States*, CIT Slip Op. 19-59, Consol. Ct. No. 18-00100 (May 15, 2019) (*Remand Order*).

² See *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018) (*OTR Tires PRC Final*), and the accompanying Issues and Decision Memorandum (IDM); see also *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Amended Final Results of Countervailing Duty Administrative Review, 2015*, 83 FR 32078 (July 11, 2018).

³ See *Remand Order* at 23-24.

treatment of the program. In accordance with the *Remand Order*, Commerce also reexamined its synthetic rubber market distortion finding, providing a more detailed analysis of market conditions, and continued to find the synthetic rubber market was not distorted in China during the 2015 period of review (POR).

DISCUSSION

I. BACKGROUND

On April 13, 2018, Commerce published its *OTR Tires PRC Final* pertaining to mandatory respondents Guizhou Tyre Co., Ltd. (Guizhou Tyre) and Xuzhou Xugong Co., Ltd. (Xuzhou Xugong), along with other exporters.⁴ The POR was January 1, 2015 through December 31, 2015. In the *OTR Tires PRC Final*, we found that the use of AFA was warranted in determining that respondents benefited from the EBCP because the Chinese government (GOC) did not provide the requested information needed to allow Commerce to fully analyze this program and thus had not cooperated to the best of its ability in response to our information requests.⁵ Guizhou Tyre argued that Commerce's determination to apply AFA to this program was not supported by substantial evidence on the record, particularly in light of the non-use certifications submitted by its customers.⁶

Also, in the *OTR Tires PRC Final*, we found that the market for synthetic rubber was not distorted and therefore used a tier 1 benchmark to measure whether the GOC provided synthetic rubber at less than adequate remuneration (LTAR). Guizhou Tyre argued that this finding was

⁴ See *OTR Tires PRC Final*.

⁵ See *OTR Tires PRC Final* IDM at 13-14.

⁶ See Guizhou Tyre's Letter, "Case Brief of Guizhou Tyre Certain New Pneumatic Off-the-Road Tires from the People's Republic of China (C-570-913) (POR 2015)," dated February 8, 2018, at 14-15.

inconsistent with our finding in the 2014 administrative review that the market was distorted, contending that “nearly identical” market conditions existed in these two years.⁷

On May 15, 2019, the Court remanded the *OTR Tires PRC Final* to Commerce to: (1) reconsider its decision to apply AFA in finding use of the China’s Export Buyer’s Credit program; and (2) reconsider or further explain our decision that the synthetic rubber market in China was not distorted during the POR.⁸

In light of the Court’s remand order, on July 19, 2019, Commerce released a draft version of this remand redetermination to interested parties for comment.⁹ On August 2, 2019, Guizhou Tyre submitted comments on the draft remand redetermination.¹⁰ No other party filed comments. Responses to Guizhou Tyre’s comments are provided below.

II. ANALYSIS

Pursuant to the Court’s instructions, we are providing further explanations and addressing the deficiencies identified by the Court.

A. Export Buyer’s Credit Program

Commerce first investigated and countervailed EBCP in the 2012 investigation of solar cells.¹¹ Our initiation was based on, among other information, the China Export-Import Bank’s (China Ex-Im Bank) 2010 annual report, demonstrating that the credits provided under this

⁷ *Id.* at 3-6.

⁸ *See Remand Order* at 23-24.

⁹ *See Draft Results of Redetermination Pursuant to Remand: Guizhou Tyre Co., Ltd., et. al., v. United States, U.S. Court of International Trade, Consol. Ct. No. 18-00100, Slip Op. 19-59, issued on July 19, 2019 (Draft Remand Results).*

¹⁰ *See Guizhou Tyre’s Letter, “GTC’s Comments on Draft Results of Redetermination Off-the-road Tires from the People’s Republic of China (C-570-913),” dated August 2, 2019.*

¹¹ *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 FR 63788 (October 17, 2012) (Solar Cells Inv), and accompanying IDM at 9 and Comment 18.*

program are “medium- and long-term loans, and have preferential, low interest rates.”¹² The GOC provided none of the information requested by Commerce in the ensuing investigation, despite being given multiple opportunities to do so, but 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.”¹³ In response to a request from Commerce for information concerning the operation of the EBCP 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 that it “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.”¹⁴ Although asked to do so, the GOC provided no additional information concerning exactly how an exporter’s financial and foreign exchange matters would be affected. Based on the GOC’s responses, it was Commerce’s understanding that under this program loans were provided directly from the China Ex-Im Bank to the borrowers (*i.e.*, a respondent’s customers), and that a respondent might have knowledge of loans provided to its customers through its involvement in the application process. Commerce then gave the GOC another opportunity to provide the information requested.¹⁵

The GOC once again refused to provide the sample application documents or any regulations or manuals governing the approval process, instead simply repeating its statement

¹² See *Solar Cells Inv* IDM at 59.

¹³ *Id.* Commerce initially asked the GOC to complete the “standard questions appendix” for the EBCP. 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 attached to the initial questionnaire issued in every CVD investigation and review and is intended help Commerce understand the structure, operation, and usage of the program.

¹⁴ See *Solar Cells Inv* IDM at 60.

¹⁵ See Commerce’s Letter, “Supplemental Questionnaire for the Countervailing Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China,” dated June 7, 2017.

that none of the respondent companies or their foreign buyers had used the export seller's or buyer's credits from the China Ex-Im Bank.¹⁶

What little information the GOC provided indicated an interaction between the China Ex-Im Bank and the borrowers (*i.e.*, the respondents' U.S. customers, who were not participating in the proceeding), with knowledge by the company respondents. Commerce concluded it could not verify non-use of export buyer's credits with the company respondents (*i.e.*, the exporters), and provided a detailed explanation as to why the lack of information concerning the operation of the EBCP prevented an accurate assessment of usage at verification of the respondent exporters:

{E}ven if the {respondent exporter} might have been involved in, or might have received some notification of, its customer's application for receiving such export credits, such information is not the type of information that the Department needs to examine in order to verify that the information is complete and accurate. For verification purposes, the Department must be able to test books and records in order to assess whether the questionnaire responses are complete and accurate, which means that we need to tie information to audited financial statements, as well as to review supporting documentation for individual loans, grants, rebates, *etc.* If all a company received was a notification that its buyers received the export credits, or if it received copies of completed forms and approval letters, we have no way of establishing the completeness of the record because the information cannot be tied to the financial statements. Likewise, if an exporter informs the Department 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.¹⁷

Essentially, Commerce concluded that usage of the EBCP could not be confirmed at the respondent exporters in a manner consistent with its verification methods, which are primarily the methods of an auditor, attempting to confirm usage or claimed non-usage by examining

¹⁶ See GOC's Letter, "GOC's First Supplemental Questionnaire Response Certain New Pneumatic Off-the-Road Tires from the People's Republic of China (C-570-913) (POR 2015)," dated June 26, 2017, at 10-11.

¹⁷ See *Solar Cells Inv* IDM at 61-62.

books and records which can be reconciled to audited financial statements,¹⁸ or other 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.¹⁹

This “completeness” concept is an essential element of Commerce’s verification methodology. If Commerce were attempting to confirm whether a respondent exporter had received any 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 then begin examining subledgers or bank statements providing the details of all individual loans. Because Commerce could tie 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 (*e.g.*, possibly something like “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

¹⁸ As the Court notes, this explanation constituted “detailed reasoning for why documentation from the GOC was necessary” to verify non-use. Slip Op. 18-166 at 9-10.

¹⁹ This Court agreed with Commerce in *RZBC Group v. United States*, 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. *RZBC Group Shareholding Co., Ltd. et al v. United States*, 222 F. Supp. 3d 1196, 1201-02 (CIT 2017).

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

In the investigation of solar cells, however, despite Commerce's repeated requests for information, the GOC failed to offer any guidance as to how Commerce could search for EBCP lending in respondent exporters' books and records that could be tied to financial statements, tax returns, *etc.* Therefore, Commerce concluded in that investigation that it could not verify usage of the EBCP at the respondent exporters and instead attempted verification of usage of the program at the China Ex-Im Bank itself because it "possessed the supporting records needed to verify the accuracy of the reported non-use of the export buyer's credit program {and} would have complete records of all recipients of export buyer's credits." We noted our belief that "{s}uch records could be tested by the Department to check whether the U.S. customers of the company respondents had received export buyer's credits, and such records could then be tied to the {China} Ex-Im Bank's financial statements."²⁰ However, the GOC refused to allow Commerce to query the databases and records of the China Ex-Im Bank.²¹ Furthermore, there was no information on the record of the solar cells investigation from the respondent exporters' customers.

Two years later, in the investigation of chlorinated isocyanurates,²² respondents submitted certified statements from all customers claiming that they had not used the EBCP. This appears to have been the first instance of respondents submitting such customer certifications. At that point in time, as explained in detail above, Commerce, based on the limited information provided by the GOC in earlier investigations, was under the impression that

²⁰ See *Solar Cells Inv* IDM at 62.

²¹ *Id.*

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

the EBCP provided medium and long-term loans and that those loans were provided directly from the China Ex-Im Bank to the borrowers (*i.e.*, the respondent exporters' customers) *only*. Because the respondents' customers were participating in the proceeding, verification of non-usage appeared to be a relatively straightforward matter of examining the financial statements and books and records of the U.S. customers for evidence of loans provided *directly* from the China Ex-Im Bank to the U.S. customer pursuant to verification steps similar to the ones described above. We thought, perhaps incorrectly, that we would see the name "China Ex-Im Bank" in the 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 customers' accounting and financial records that no loans were received under this program."²³

Our understanding of the operation of the EBCP began to change, however, after the chlorinated isocyanurates investigation had been completed. First, during the administrative reviews of citric salts and silica fabric, we learned for the first time that the rules for administering the EBCP had been revised in 2013,²⁴ but the GOC refused to disclose the 2013 revisions to Commerce, stating that "{t}he Export-Import Bank of China has also confirmed to

²³ See *Chloro Isos Inv* IDM at 15.

²⁴ See Memorandum, "Administrative Review of Countervailing Duty Order on Citric and Certain Citrate Salts; Verification of the Questionnaire Responses Submitted by the Government of the People's Republic of China, dated October 7, 2014 (public version); see also GOC's Letter, "Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC 7th Supplemental Response," dated September 6, 2016 (public document). Both documents are placed on the record by Commerce on September 16, 2016.

the GOC that the *Administrative Measures/Internal Guidelines* relating to this program that were revised in 2013 are internal to the bank, non-public, and not available for release.”²⁵

Second, Commerce began questioning the GOC’s earlier indication that loans provided pursuant to the EBCP were between the GOC and the borrower *only*, essentially a *direct* deposit from the China Ex-Im Bank to the foreign buyer. In particular, Commerce reexamined the 2010 rules implementing the EBCP,²⁶ which appeared to indicate that the China Ex-Im Bank’s payment was instead disbursed to U.S. customers via an intermediary Chinese bank, thereby contradicting the GOC’s response otherwise. Thus, referring to the GOC’s questionnaire response provided in the review underlying this litigation and in many other proceedings, Commerce made a series of information requests regarding the method of transferring funds from the China Ex-Im Bank to Chinese exporters on behalf of U.S. customers via the credits at issue:

- {T}he *Implementing Rules for the Export Buyer’s Credit of the Export-Import Bank of China (Implementing Rules)* for this program at (III(4)) appear to indicate that Ex-Im Bank’s payment is disbursed to a domestic bank. Please confirm that the payments relating to this program are made through a domestic settlement bank or correspondent bank, rather than from the Ex-Im Bank directly to the exporter. If not, please provide a clear explanation of how Ex-Im Bank’s payments relating to this program are made.

Explain whether eligible settlement banks or correspondent banks might include certain foreign invested banks operating in the PRC or outside the PRC.

²⁵ See GOC’s Letter, “GOC’s New Subsidy Allegations Second Supplemental Questionnaire Response: Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China (C570-913),” dated on September 26, 2016, at 1-2.

²⁶ See Commerce’s Letter, “Supplemental Questionnaire for the Countervailing Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China,” dated June 7, 2017.

- The *Implementing Rules* for this program at (III), appear to indicate that the borrower is a bank. Please confirm that the credit extended by the Ex-Im Bank to the importer is made through a third-party financial institution, rather than from Ex-Im Bank directly to the importer.
- Please provide a list of all partner banks/correspondent banks involved in the disbursement/settlement of export buyer's credits.²⁷

The GOC provided non-answers to these questions, stating: "Since none of the U.S. customers of the respondents used the Export Buyer's Credit from EX-IM Bank during the POR, this question is not applicable."²⁸

As a result, un rebutted information on the record of this administrative review altered Commerce's understanding of how the EBCP operated (*i.e.*, how funds were disbursed under the program). This change was especially significant because it indicated the credits were *not direct* transactions from the China Ex-Im Bank to U.S. customers of the respondent exporters, but rather, that there were intermediary banks involved, the identities of which were unknown to Commerce. Performing the verification steps outlined above would require knowing the names of the intermediary banks; it would be their names, not the name "China Ex-Im Bank," that would appear in the subledgers of the U.S. customers if they received the credits. As explained recently in the investigation of aluminum sheet: "Record evidence indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank. Specifically, the record information indicates that customers can open loan accounts for disbursements through this program with other banks, whereby the funds are first sent to . . . the

²⁷ *Id.*

²⁸ See GOC's Letter, "GOC's First Supplemental Questionnaire Response Certain New Pneumatic Off-the-Road Tires from the People's Republic of China (C-570-913)(POR 2015)," dated June 26, 2017, at 10-11.

importer's account, which could be at the China Ex-Im Bank or other banks, and that these funds are then sent to the exporter's bank account."²⁹ In other words, there will not necessarily be an account in the name "China Ex-Im Bank" in the books and records (*e.g.*, subledger, tax return, bank statements) of the U.S. customer. Thus, if we cannot verify claims of non-use at the GOC,³⁰ having a list of the correspondent banks is critical.

A careful verification of respondent exporters' non-use of this program without understanding the identity of these correspondent banks would be unreasonably onerous, if not impossible. Because it does not know the identities of these banks, Commerce's second step of its typical non-use verification procedures (*i.e.*, examining the company's subledgers for references to the party making the financial contribution) could not by itself demonstrate that the U.S. customers did not use the program (no correspondent banks in the subledger). Nor could the second step be used to narrow down the company's lending to a sub-set of loans likely to be the export buyer's credits (*i.e.*, loans from the correspondent banks). Thus, verifying non-use of the program without knowledge of the correspondent banks would require Commerce to view the underlying documentation for *all* entries from the subledger *to attempt* to confirm the origin of each loan – *i.e.*, whether the loan was provided from the China Ex-Im Bank via an intermediary bank. This would be an unreasonably onerous undertaking with regard to any company that received more than a small number of loans. We note in this regard that Guizhou

²⁹ 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), and accompanying IDM at 30.

³⁰ Commerce no longer attempts to verify usage with the GOC given the inadequate information provided in its questionnaire responses, in particular, the GOC's refusal to provide the 2013 revisions to the administrative rules. See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017), and accompanying IDM at Comment 1.

Tyre had global sales of OTR Tires of \$587 million in 2015,³¹ and nearly \$800 million in various short-term and long-term borrowings during the POR.³² Guizhou Tyre's only U.S. customer during the POR was its affiliate, GTC North America Inc. (GTCNA),³³ the customer for which its 87 U.S. unaffiliated customers' non-use certifications were provided.³⁴ It would be unreasonably onerous for Commerce to comb through such a substantial amount of business activity without any guidance as to how to simplify the process or any guidance as to which loans or banks to subject to scrutiny.

Furthermore, the third step of Commerce's typical non-use verification procedures (*i.e.*, selecting *specific* entries from the subledger and requesting to see underlying documentation, such as applications and loan agreements) likewise would be of no value. This step might serve merely to confirm whether banks were correctly identified in the subledger – not necessarily whether those banks were correspondent banks participating in the EBCP. This is especially true given the GOC's failure to provide other requested information, such as the 2013 revisions, a sample application, and other documents making up the "paper trail" of a direct or indirect export credit from the China Ex-Im Bank.³⁵ Commerce would simply not know what to look for behind each loan in attempting to identify a loan provided by the China Ex-Im Bank via a correspondent bank.

³¹ See Guizhou Tyre's Letter, "Countervailing Duty Questionnaire Response of Guizhou Tyre Certain New Pneumatic Off-the-Road Tires from the People's Republic of China (C-570-913)(POR 2015)," dated May 3, 2017 (Guizhou Tyre May 3, 2017 IQR) at Exhibit I13.

³² *Id.* at 9 and Exhibit I14.

³³ See Guizhou Tyre's Letter, "Response to Section III Identifying Affiliated Companies Certain New Pneumatic Off-the-Road Tires from China," dated April 3, 2017 at Exhibit A2 and A3.

³⁴ See Guizhou Tyre May 3, 2017 IQR at Exhibit I39.

³⁵ See Commerce's Letter, "Supplemental Questionnaire for the Countervailing Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated June 7, 2017; *see also* GOC's Letter, "GOC's First Supplemental Questionnaire Response Certain New Pneumatic Off-the-Road Tires from the People's Republic of China (C-570-913)(POR 2015)," dated June 26, 2017 at 10-11.

This same sample “paper trail” would be necessary even if the GOC provided the list of correspondent banks. For example, if the record indicated that one of the correspondent banks was HSBC, Commerce would need to know how to differentiate ordinary HSBC loans from loans originating from, facilitated by, or guaranteed by the China Ex-Im Bank. In order to do this, Commerce would need to know what underlying documentation to look for in order to determine whether particular subledger entries for HSBC might actually be Ex-Im Bank financing: specific applications, correspondence, abbreviations, account numbers, or other indicia of Ex-Im Bank involvement. As explained above, the GOC failed to provide Commerce with any of this information. Thus, were Commerce even to attempt to verify respondents’ non-use of the EBCP, notwithstanding its lack of knowledge of which banks are intermediary/correspondent banks, by examining *each* loan received by *each* of the respondents’ U.S. customers, Commerce would still not be able to verify which loans were normal loans versus EBCP loans due to its lack of understanding of what underlying documentation to expect, and whether/how that documentation would indicate China Ex-Im Bank involvement. In effect, companies could provide Commerce with incomplete loan documentation without Commerce understanding that the loan documentation was incomplete. Even if it were complete and identified China Ex-Im Bank involvement, without a thorough understanding of the program, Commerce might not recognize indicia of such involvement.

That is why Commerce requires disclosure of the 2013 administrative rules, as well as other information concerning the operation of the EBCP, in order to verify usage. Understanding the operation of the program is not, therefore, solely a matter of determining whether there is a financial contribution or whether a subsidy is specific. A complete understanding of the program provides a “roadmap” for the verifiers by which they can conduct an effective verification of

usage. By analogy, it would be a futile exercise to attempt to verify whether a company has received a tax break without having an adequate understanding of how the underlying tax returns should be completed or where use of the tax break might be recorded.

Thus, Commerce finds it could not *accurately and effectively* verify usage at the respondent exporters' customers, even were it to attempt the unreasonably onerous examination of each of the respondent exporters' customers' loans. To conduct verification at the respondent exporters' customers without the information requested from the GOC would amount to looking for a needle in a haystack with the added uncertainty that Commerce might not even be able to identify the needle when it was found.

Therefore, Commerce continues to conclude that the U.S. customer certifications of non-use provided in this review are not verifiable (without complete GOC cooperation), that – as a result of the GOC's failure to cooperate – the record is lacking verified information concerning the use of the EBCP program, that the use of facts available is warranted to fill in this missing information, and that the use of adverse inferences is appropriate due to the GOC's failure to cooperate to the best of its ability.

B. Synthetic Rubber Market Distortion Analysis

In the *OTR Tires PRC Final*, we found the synthetic rubber market was not distorted in 2015 based on information on the record that state-owned producers accounted for 23.97 percent of the synthetic rubber consumption³⁶ in the Chinese market and that imports of synthetic rubber

³⁶ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 82 FR 46754 (October 6, 2017), and accompanying Preliminary Decision Memorandum; see also Memorandum, "Analysis of Market Distortion in the Markets for Carbon Black, Nylon Cord, Synthetic and Natural Rubber," dated October 2, 2017, at Attachment.

accounted for 28.60 percent of total consumption.³⁷ We also noted the absence of record information indicating government policies to restrict exports of the input of synthetic rubber.

Guizhou Tyre has argued that the finding of no market distortion in 2015 is inconsistent with the distortion finding in 2014 because “nearly identical” market conditions existed in these two years.³⁸ However, the record in this review demonstrates that the composition of the synthetic rubber market in China showed significant change between 2014 and 2015, as shown in the table below.

Synthetic Rubber Data	2014	2015	Change (from 2014 to 2015)
Total Domestic Consumption (MT)	6,621,417	6,965,671	5.20%
GOC Production (MT)	1,828,541	1,669,505	-8.70%
GOC Share of Total Consumption	27.62%	23.97%	-3.65%
Imports (MT)	1,493,742	1,992,001	33.36%
Import Share of Total Consumption	22.56%	28.60%	6.04%

Contrary to Guizhou Tyre’s assertion that Chinese synthetic rubber market conditions in 2014 and 2015 were virtually identical, the record of this administrative review indicates that market conditions changed significantly in these two years. Specifically, compared to 2014, the GOC’s level of involvement in the Chinese synthetic rubber market decreased while import penetration increased substantially in 2015. Because government involvement in markets tends to distort those markets, lower government involvement (in terms of low and/or decreasing government production as a share of total consumption) and higher import penetration (in terms of high and/or increasing volume of imports as a share of total consumption) suggest a non-

³⁷ *Id.*; see also *OTR Tires PRC Final IDM* at 10-11.

³⁸ See *Remand Order* at 14.

distorted market. In this case, the GOC's production of synthetic rubber accounted for a smaller portion of Chinese total consumption in 2015 than in 2014. As indicated in the table above, the GOC's production as a share of total consumption decreased between 2014 and 2015, from 27.62 percent to 23.97 percent. In contrast, for the same period, import as a share of total Chinese synthetic rubber consumption increased from 22.56 percent to 28.60 percent, thus surpassing the GOC's share.

The GOC's lower share of total consumption coupled with the significantly higher percentage of imports as a share of total consumption in 2015 supports a conclusion that the synthetic rubber market in China was not distorted that year. In addition, there is no evidence on the record that the GOC had policies restricting the export of synthetic rubber during the POR, such as export taxes or quotas, which would have a distorting effect on the market by maintaining an artificially high level of domestic supply, leading to artificially lower prices. Therefore, we continue to conclude that the Chinese synthetic rubber market was not distorted in 2015. As such, pursuant to 19 CFR 351.511, we have continued to use Guizhou Tyre's imports as the Tier 1 benchmark in our calculations.

COMMENTS ON *DRAFT REMAND RESULTS*

A. Export Buyer's Credit Program

Guizhou Tyre Comments

Guizhou Tyre contends that Commerce's revised explanation does not address the Court's concerns regarding the application of AFA to this program. Specifically, Guizhou Tyre pointed out the following:

- Armed with Commerce's nearly 40 years of experience in verifying companies with extremely complicated issues and its long history of using spot checks and viewing

underlying documentation as the methodology to confirm the veracity of voluminous information submitted on the record, Commerce could easily have attempted to verify non-use of this program at the U.S. customers.

- This program has been alleged in over 40 investigation and reviews. Yet, there has never been any evidence presented by either a petitioner or respondent in any CVD case against China that any U.S. company is actually using this EBCP program.
- The EBCP offers no history to suggest that respondent U.S. companies or their customers likely used a program or have the relevant information and are failing to provide it. Moreover, the general non-usage of this program has been further confirmed in the various verifications Commerce has conducted at the China Ex-Im Bank.
- Commerce has never asked the GOC the necessary questions to determine whether a review of China EX-IM Bank's user database could sufficiently demonstrate non-use.
- There is no evidence or indication that the transmission of loans from this program through intermediary banks has any impact on Commerce's ability to verify usage at the China Ex-Im Bank. Since the China Ex-Im Bank operates the program, determines the applicant's creditworthiness, and is the source of the funds, identifying partner or correspondent banks is irrelevant to the usage analysis. Also irrelevant is the missing revised administrative rules.
- Commerce's discussion of the completeness step of verification is irrelevant. For a non-use analysis of the EBCP program at the U.S. customers, why a particular loan was issued is the only relevant inquiry. The only manner in which to verify why a loan was received or if it was received under a particular alleged program is to review the underlying loan documentation.

- Not only is the completeness analysis irrelevant to Commerce’s verification of whether a particular company used the EBCP, but Commerce would not conduct this type of completeness verification at the U.S customer because Commerce never sought principal or interest information from the customers during the course the review. It would be highly unlikely that at verification Commerce would require the U.S. customer to provide complete loan reconciliations as it would for a respondent that was required to report each and every loan and interest payment during a period of investigation or review.
- Verifying non-use by U.S. customers would not be onerous, as Commerce is well versed in verifying difficult-to-verify information and numerous entities. The primary manner by which Commerce conducts such verification is via a spot check. For example, in the antidumping (AD) context, Commerce can often only verify whether control numbers (CONNUMs) are correctly reported by selecting several examples and reviewing the underlying documentation. Many cases have hundreds of CONNUMs and it impossible to review each and every one. Similarly, whether a company uses the program on value added tax/import duty exemptions for imported equipment can only be verified through a review of the import documents. This is because the exemption of duties or value added tax (VAT) is not recorded in a company’s accounting system. Thus, the number of entities involved, the necessity of reviewing underlying records in order to verify a negative fact such as non-use, or the necessity of using a spot check verification methodology simply do not constitute “unreasonably onerous” activities, even cumulatively.
- Commerce could easily accomplish an accurate verification of the U.S. customers. There is no evidence that Commerce’s verification would be ineffective or inaccurate. Even if

GTCNA has many loans, a spot check is an entirely acceptable and often used methodology to review loans. The bottom line is that without actually attempting to verify even one of these customers, Commerce has no idea how difficult or onerous verification would be. Thus, it is entirely unreasonable (and lacks any basis in fact or reality) to assume or speculate that verification cannot be done, particularly because Commerce has verified many difficult and complex issues in the past.

Commerce Position:

Commerce continues to believe that the draft remand results comply with the Court's order and that the customer certifications of non-use are unverifiable without the complete cooperation of the GOC in providing all the information requested by Commerce. The Court remanded the *Final Results* to Commerce to reconsider its decision to apply AFA to the EBCP, given record evidence of non-use provided by the GOC. In so doing, Commerce has provided additional explanation in support of its treatment of the program. In particular, Commerce has explained how the "gap" in the record (a lack of information concerning the operation of the EBCP) prevents the verification of the customers' certifications of non-use, such that the "collateral" effects of the GOC's failure to cooperate on the company respondents is unavoidable.

Besides the new and detailed explanation provided in the draft remand results, Commerce has cited to additional information concerning the scale of Guizhou Tyre's operations and sales in the United States. This information is the best indication on the record of the vast volume of loan information Commerce would have to examine if it were to attempt to verify the customer certifications without an adequate explanation from the GOC of the EBCP's operations. As Commerce detailed in the draft remand results and as further explained below in response to

parties' comments, such an unguided attempt, *i.e.*, without the benefit of a definitive list of correspondent banks and a copy of the 2013 administrative guideline revisions (both absent from the record due to the GOC's refusal to cooperate to the best of its ability), would prove unduly burdensome for Commerce to ensure accurate verification results.

Moreover, Commerce disagrees that it has engaged in inappropriate "speculation" regarding the obstacles it would face in attempting to verify the non-use certifications. Commerce simply infers that it would be unable to examine each and every loan obligation of Guizhou Tyre's U.S. affiliate and its unaffiliated downstream customers and that, even if such an undertaking were possible, that it would be meaningless as Commerce would have no idea what documents to look for or what other indicia there might be within a company's loan documentation for the involvement of the China Ex-Im Bank.

Guizhou Tyre also argues that there has never been any evidence presented by either a petitioner or respondent demonstrating that any U.S. company is actually using the program, nor has Commerce ever uncovered any evidence of usage during its numerous verifications of the program at the China Ex-Im Bank. Commerce is not asserting that it knows with certainty what the facts are when it applies AFA. Rather, given a party's failure to provide requested information and failure to cooperate to the best of its ability, Commerce is making a reasonable inference in selecting from the facts that are available on the record. By design, the Act provides that facts available be applied only when Commerce lacks necessary information or verifiable information, and adverse facts available only when the party has failed to cooperate to the best of its ability. Thus, even if certain respondents did not use the EBCP, Commerce has no means of determining which companies did and did not use the program given the GOC's lack of cooperation and its failure to provide all of the requested information in this proceeding.

Moreover, there can be no doubt that the GOC, through the China Ex-Im Bank, maintains a program that provides export buyer's credits. By definition, these programs involve customers outside of China, such as customers in the United States. This fact has been demonstrated routinely by both the supporting information provided in petitions,³⁹ and by the GOC's responses concerning the program (however incomplete). Moreover, the fact that Commerce has not discovered evidence of a U.S. customer of a respondent benefitting from the EBCP during one of several attempted verifications at the China Ex-Im Bank is not determinative of whether Commerce reasonably determined in this proceeding that the program was used; the China Ex-Im Bank has never adequately cooperated in our verification of this program, and Guizhou Tyre has cited no instances indicating otherwise, notwithstanding Guizhou Tyre's unexplained dismissal of the GOC's failures as "non-substantive."⁴⁰ In the few instances in which Commerce determined the EBCP was not used, it was because of the non-use certifications provided on behalf of the respondents' customers, not because the China Ex-Im Bank demonstrated non-use.⁴¹ Moreover, as detailed in the remand results above, we no longer consider such non-use certifications verifiable.

Guizhou Tyre argues that Commerce has decades of experience verifying complex issues and that the explanation provided in the draft results of remand of why verification of non-use certificates is unduly burdensome is exaggerated and disingenuous. Guizhou Tyre views

³⁹ See Petitioners' Letter, "Administrative Review of the Countervailing Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China – Titan and the USW's New Subsidy Allegations and Uncreditworthiness Allegation for Xugong and Its Affiliates," dated May 9, 2016, at 14-16, 19-21, and Exhibits 12-18.

⁴⁰ See Guizhou Tyre Comments at 6.

⁴¹ See, e.g., *Chlorinated Isocyanurates From the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014), and accompanying IDM at 15 ("{w}hile the Department was unable to conduct a complete verification of non-use of this program at China ExIm, both Jiheng and Kangtai in their questionnaire responses provided statements from each of their U.S. customers in which each customer certified that they did not receive any financing from China ExIm.").

resolution of the issue as simply a matter of “spot-checking” the company’s financial records,⁴² adding that Commerce’s discussion of the completeness aspect of verification is irrelevant.⁴³ Commerce maintains that it would be unduly burdensome to conduct an accurate verification of the non-use certifications, given its incomplete understanding of how the program operates due to the absence in the record of the 2013 administrative guideline revision and, of equal importance, the lack of a definitive list of correspondent banks, both of which the GOC has continued to refuse to provide.⁴⁴ The “spot-checking” suggested by Guizhou Tyre is not realistic with regard to the EBCP. While random sampling of company records is an approach that Commerce may undertake during verification, such an approach is only viable when the record information is substantially complete, and the parameters of a program are reliably known such that Commerce’s verifiers can effectively narrow down the examination to sample records they can reasonably conclude to be representative of the company’s books overall. For example, when Commerce looks for unreported grants, it knows which relatively small offsetting accounts to examine (*e.g.*, “special payables,” “government payables,” “subsidy income”), rather than trying to root through cash accounts that can have thousands of transactions a year.⁴⁵ Or, if Commerce were looking for unreported loans from state-owned banks, it would focus on the subledgers dedicated to the “big four” state-owned banks, instead of randomly sampling from the overall lending detail of multiple subledgers, which might include hundreds of loans from

⁴² In its comments, Guizhou Tyre used the word “spot check” referring to Commerce’s verification practices in both AD and CVD contexts. *See* Guizhou Tyre Comments at 11-12.

⁴³ *See* Guizhou Tyre Comments at 9.

⁴⁴ In determining whether the certifications can be verified, we must take into consideration whether the results of the verification would be meaningful. For the reasons explained in the remand results above, Commerce cannot realistically conduct a verification that amounts to anything more than mere guesswork.

⁴⁵ A grant, like any other transaction, is booked twice into a company balance sheet: once as an asset (*i.e.*, into a cash account), and again as an offsetting entry as a liability (*e.g.*, special payables), which is then written down as the cash is used. The grant would also be booked into the income statement under, possibly, “subsidy income” or “non-operating income.”

foreign banks outside of China. To use one of Guizhou Tyre's own examples, if Commerce were looking to see if imported equipment was exempt from VAT and duties, it would first determine how to reduce the universe of equipment purchases to imports alone, and possibly exclusively to imports that might qualify for such exemptions (based on an understanding of the program's eligibility requirements, as explained by the GOC) before beginning to sample. We would not simply start by choosing equipment or fixed assets entries at random.⁴⁶

At the very least, even when Commerce has no means of limiting the universe of transactions before it begins sampling, Commerce knows what it is looking for when it begins selecting documents or transactions for review. Absent complete information including the list of correspondent banks,⁴⁷ there are no such parameters, or there is no guidance as to what indicia Commerce should look for, it is unreasonable to expect Commerce to hunt for a needle in a haystack, a very large haystack in some instances.⁴⁸ Guizhou Tyre discusses several instances that illustrate this problem, such as verifying VAT and import duty exemptions, which it claims

⁴⁶ These examples demonstrate why completeness is important to Commerce's verification methods. As Commerce explained in the remand results above, we attempt to ensure that we have complete subledgers at the outset of verifying any portion of a questionnaire response (*i.e.*, we ensure that the subledgers tie to the balance sheet or income statement, as the case may be, which, preferably, have been audited). Once we've ensured that the complete universe of subledgers is before us (*e.g.*, there may be a separate subledger for each bank with which the respondent does business, and each of these subledgers dovetail into a single loan account), we then begin to drill down into the details of the relevant subledgers and underlying documentation. Thus, "completeness" allows Commerce to understand the different subledgers, to determine which subledgers might be relevant to the question at issue, and to confirm whether it has the entire subledger to examine.

⁴⁷ The GOC is the only party which could provide the identities of the correspondent banks with whom the China Ex-IM partners in the disbursement of funds under the EBCP, but the GOC has refused to do so. There is no indication on the record that other parties (*e.g.*, Guizhou Tyre or its U.S. customers) had access to the identities of the correspondent banks utilized by the China-Ex-IM bank.

⁴⁸ Guizhou Tyre asserts that it has no idea why Commerce discusses the amount of sales and loans that Guizhou Tyre had in China during the POR. *See* Guizhou Tyre Comments at 10-11. Commerce is citing this information because it is the best information on the record indicating the extent of Guizhou Tyre's operations and the volume of loans Commerce would have to contend with if it employed the random sampling methods that Guizhou Tyre advocates. The information clearly indicates that Guizhou Tyre relies heavily on borrowing, and therefore presumably so does its U.S. affiliate. In any case, as we note in the remand results, Guizhou Tyre's U.S. affiliate has 87 customers of its own, which in turn might be eligible for buyer's credits. We also note that the record indicates that Guizhou Tyre's U.S. affiliate had \$363 million in U.S. sales during the POR. This is a large volume of sales that presumably would require significant financing to facilitate.

can only be verified through a review of import documents randomly selected.⁴⁹ However, Commerce has met with the GOC to discuss how that program works, and in such instances the GOC has been fully cooperative.⁵⁰ Therefore, Commerce knows what documents it should see when VAT and import duties are paid and when they are exempted. It knows, in other words, when it has a complete document trace in front of it. The GOC, in fact, provides sample documents to help Commerce understand the paper flow under the program.⁵¹ Commerce can also simply ask to see a VAT invoice or a payment to the Chinese customs service in order to verify VAT and duties were charged and paid. By contrast, we simply do not know what to look for, or indeed what to ask for, when seeking to examine loans made to Guizhou Tyre's U.S. affiliate or customers to determine whether that loan was made under the EBCP or if the China Ex-Im Bank was involved, without knowing the full universe of correspondent banks⁵² under the program and the full operational parameters of the program. As another example, when Commerce is verifying non-use of an income tax rebate or exemption, it relies on information gathered from the GOC during meetings with the relevant tax authorities at the national and local levels. Commerce would expect the GOC officials to provide blank tax forms indicating where

⁴⁹ See Guizhou Tyre Comments at 11.

⁵⁰ See, e.g., Memorandum, "Verification of the Questionnaire Response Submitted by the Government of China," dated April 24, 2008.

⁵¹ *Id.*

⁵² To clarify, it is not Commerce's view that verification of this program would be challenging unless we had access to the records of these correspondent banks. Rather, Commerce needs to know the identities of those banks in order to conduct verification of this program at Guizhou Tyre or its U.S. customers. Because we do not know the identities of these banks, Commerce's second step of its typical non-use verification procedures (*i.e.*, examining the company's subledgers for references to the party making the financial contribution) could not by itself demonstrate that the U.S. customers did not use the program, as we would not be able to identify whether there are any correspondent banks in the subledger and, more to the point, we would be unable to rule out any banks with outstanding loans to the company. Nor could the second step be used to narrow down the company's lending to a sub-set of loans likely to be the export buyer's credits (*i.e.*, loans from the correspondent banks). Thus, verifying non-use of the program without knowledge of the correspondent banks would require Commerce to view the underlying documentation for all entries from the subledger to attempt to confirm the origin of each loan – *i.e.*, whether the loan was provided from the China Ex-Im Bank via an intermediary bank.

the rebate would be recorded, including the specific line item on the form. Commerce would then know precisely which documentation to ask for when verifying the company respondent and would also know with certainty whether the company should have this document.

Guizhou Tyre discusses Commerce's verification of CONNUMs in AD proceedings as another example of the use of sampling.⁵³ It is relatively easy, however, for Commerce to determine whether CONNUMs have been misreported. Commerce simply compares the reported CONNUM against an invoice, a purchase order, a bill of materials, *etc.*, to determine whether the individual product codes underlying the reported CONNUM are accurate. Thus, although it may be true with certain respondents that Commerce has no choice but to randomly sample the hundreds or thousands of sales to look for misreported CONNUMs, Commerce at least knows what information it is seeking.

Finally, Guizhou Tyre states that there is no indication that the involvement of intermediary banks has any effect on Commerce's ability to verify usage at the China Ex-Im Bank.⁵⁴ There is no dispute that the GOC failed to cooperate to the best of its ability in this review, specifically in terms of answering Commerce's questions concerning the China Ex-Im Bank and the EBCP. The GOC's failure to cooperate is extensive enough that Commerce would not undertake a "partial" verification of the information that the GOC provided. As Commerce has explained above, the GOC has never been fully cooperative during a China Ex-Im Bank verification, as it has provided only limited access to the database of the China Ex-Im Bank. It would be unreasonable for Commerce to attempt verification at the China Ex-Im Bank again absent full GOC cooperation, including complete access to the database and a complete explanation of the program's operations (*i.e.*, which correspondent banks participate under the

⁵³ See Guizhou Tyre Comments at 11.

⁵⁴ *Id.* at 7-8.

program, which party receives or conveys the GOC funds, which party owes the obligation/loan to the GOC, which party is considered the borrower, *etc.*) that would allow Commerce to conduct a meaningful, reliable, search through the company records.

B. Synthetic Rubber Market Distortion Analysis

Guizhou Tyre commented that Commerce failed to address the Court's concerns that the distinction of just "a few percentage points" in market indicia was insufficient to support a change in Commerce's market distortion findings between 2014 and 2015.⁵⁵ Specifically, Guizhou Tyre argued in the following:

- Commerce's conclusion that the combination of a lower GOC share of total consumption and the significantly higher percentage of imports as a share of total consumption supports that the synthetic rubber market in China was not distorted in 2015 is at odds with the Court's conclusion of "small" shifts in market conditions.
- Commerce failed to explain why a circumstance that remained unchanged from 2014 should necessarily alter its conclusion from 2014 that the market was distorted.

Commerce Position:

We disagree with Guizhou Tyre's claim that Commerce failed to address the Court's concerns. Contrary to Guizhou Tyre's assertion, Commerce's finding that the synthetic rubber market was not distorted in 2015 was based on information on the record that state-owned producers accounted for 23.97 percent of the synthetic rubber consumption in Chinese market, with the share of imports significantly surpassing it at 28.6 percent of total consumption.⁵⁶ As explained above, we found the opposite trend in 2015. Specifically, in contrast to 2014, where the GOC production of synthetic rubber accounted for a larger proportion (27.62 percent) of total

⁵⁵ See Slip Op. 19-59 at 14.

⁵⁶ See *OTR Tires PRC Final IDM* at 10-11.

Chinese consumption than imports (22.56 percent), the market trend reversed in 2015, when imports accounted for a larger proportion (28.60 percent) of Chinese consumption than the GOC production of synthetic rubber (23.97 percent). Thus, whereas in 2014 the share of imports trailed the share of GOC production by 5.06 percent, in 2015 the share of imports surpassed the share of GOC production by 4.63 percent, an upward change of nearly 10 percent in the share of imports relative to the share of GOC production of the domestic consumption of synthetic rubber.

Contrary to Guizhou Tyre's assertion that Commerce failed to explain why a higher import penetration number and a lower GOC market share should necessarily alter its conclusion from 2014,⁵⁷ we have further explained that, together, the significantly higher level of imports in 2015 and the correspondingly lower level of the GOC share of consumption indicate a significant loss of government dominance in the market. We also noted the absence of record information indicating government policies to restrict exports of synthetic rubber, which would have the distorting effect of artificially increasing the domestic supply of the input. Therefore, taking all these facts into consideration, we continue to find that the synthetic rubber market was not distorted in 2015.

FINAL RESULTS

In accordance with the *Remand Order*, Commerce has conducted an analysis of the issues Commerce was instructed to reconsider or further explain for this remand redetermination. Commerce has further explained the export buyer's credit program and the synthetic rubber market distortion analysis in 2015. For purposes of these final results of redetermination, Commerce continues to find the application of AFA to the EBCP is warranted. In addition, after

⁵⁷ See Guizhou Tyre Comments at 15.

revealing opposite market conditions and the loss of government dominance, Commerce continues to find no distortion in the Chinese synthetic rubber market in 2015. Consequently, the CVD rate for Guizhou Tyre, 31.48 percent, will remain unchanged for the final results of redetermination. Because the rate for non-selected companies is based on Guizhou Tyre's rate in this review, Tianjin United Tire & Rubber International Co., Ltd. and Weihai Zhongwei Rubber Co., Ltd., the non-selected companies/plaintiffs, will receive the same rate of 31.48 percent.

8/27/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance