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Administrative Review
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E&C Office VII: AH

DATE: April 18, 2019

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

FROM: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Final Results of the Administrative Review of the Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China; 2016

I. SUMMARY

The Department of Commerce (Commerce) has completed this administrative review of the countervailing duty (CVD) order on passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China) for the period of review (POR) January 1, 2016, through December 31, 2016. This administrative review was conducted in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). The mandatory respondents are Cooper (Kunshan) Tire Co., Ltd. (Cooper) and Qingdao Sentury Tire Co. Ltd. (Sentury)¹ (collectively, the respondents). We find that the mandatory respondents received countervailable subsidies during the POR. For the companies for which a review was requested, but which were not selected for individual examination, we are using the mandatory respondents' CVD rates to determine the applicable rate. We have analyzed the case briefs submitted by interested parties following the *Preliminary Results*,² and address the issues raised in the "Analysis of Comments" section below.

¹ See Memorandum, "Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China: Selection of Respondents for Individual Examination," dated December 8, 2017.

² See *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Rescission, in Part; 2016*, 83 FR 45611 (September 10, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).



II. BACKGROUND

On September 10, 2018, Commerce published the *Preliminary Results* of this administrative review in the *Federal Register*, and invited comments from interested parties. On October 31, 2018, we received case briefs from the following interested parties: Cooper; Sentury and the Government of China (GOC).³ No party submitted rebuttal briefs. On December 17, 2018, in accordance with section 751(a)(3)(A) of the Act, Commerce extended the period for issuing the final results of this review by 30 days, to February 7, 2019.⁴ Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.⁵ If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. On March 13, 2019, Commerce extended the period for issuing the final results an additional 30 days, to April 18, 2019.⁶

III. LIST OF COMMENTS FROM INTERESTED PARTIES

- Comment 1: Sentury's Loan Calculation
- Comment 2: Sentury's Export Credit Seller's Program
- Comment 3: Sentury's VAT Exemption
- Comment 4: Alleged Errors in Sentury's Electricity Calculation
- Comment 5: Loan Calculation Handling Fees
- Comment 6: 2015 and 2016 U.S. Dollar Benchmark
- Comment 7: AFA Rate Assigned to Cooper for Export Buyer's Credit Program
- Comment 8: Ocean Freight Benchmark Applied to Cooper
- Comment 9: Cooper's Benefit for Electricity at LTAR
- Comment 10: Benefit to Cooper Under the Special Fund for Energy Saving Technology Reform Program
- Comment 11: Alleged Errors in Grant Calculations
- Comment 12: Grade Specific Benchmarks for Cooper's Purchases of Synthetic Rubber and Butadiene
- Comment 13: Alleged Errors in Cooper's Government Policy Lending Calculation
- Comment 14: Ocean Freight and Import Duties Added to Tier 1 or Tier 2 Benchmarks

³ See Letter from Cooper, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Case Brief of Respondent Cooper (Kunshan) Tire Co., Ltd.," dated October 31, 2018 (Cooper Case Brief); see also Letter from Sentury, "Sentury Administrative Case Brief in the Second Administrative Review of the Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (POR 2: 1/1/16-12/31/16)," dated October 31, 2018 (Sentury Case Brief); and Letter from the GOC, "Case Brief of the Government of China: Certain Passenger Vehicle and Light Truck Tires from China," dated October 31, 2018 (GOC Case Brief).

⁴ See Memorandum, "Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China: Extension of Deadline for Final Results," (December 17, 2018).

⁵ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

⁶ See Commerce Memorandum, "Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China: Second Extension of Deadline for Final Results," (March 13, 2019).

Comment 15: Export Buyer's Credit

Comment 16: Whether the Export Buyer's Credit Program Should be Considered an Export Subsidy

Comment 17: Other Subsidies

Comment 18: Appendix II

IV. SCOPE OF THE ORDER

The scope of this order is passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by this order may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market.

Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have the following prefixes or suffix in their tire size designation, which also appears on the sidewall of the tire:

Prefix designations:

P - Identifies a tire intended primarily for service on passenger cars

LT- Identifies a tire intended primarily for service on light trucks

Suffix letter designations:

LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service.

All tires with a "P" or "LT" prefix, and all tires with an "LT" suffix in their sidewall markings are covered by this order regardless of their intended use.

In addition, all tires that lack a "P" or "LT" prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the passenger car section or light truck section of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set out below.

Passenger vehicle and light truck tires, whether or not attached to wheels or rims, are included in the scope. However, if a subject tire is imported attached to a wheel or rim, only the tire is covered by the scope.

Specifically excluded from the scope are the following types of tires:

- (1) racing car tires; such tires do not bear the symbol “DOT” on the sidewall and may be marked with “ZR” in size designation;
- (2) new pneumatic tires, of rubber, of a size that is not listed in the passenger car section or light truck section of the Tire and Rim Association Year Book;
- (3) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires;
- (4) non-pneumatic tires, such as solid rubber tires;
- (5) tires designed and marketed exclusively as temporary use spare tires for passenger vehicles which, in addition, exhibit each of the following physical characteristics:
 - (a) the size designation and load index combination molded on the tire’s sidewall are listed in Table PCT-1B (“T” Type Spare Tires for Temporary Use on Passenger Vehicles) of the Tire and Rim Association Year Book,
 - (b) the designation “T” is molded into the tire’s sidewall as part of the size designation, and,
 - (c) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed is 81 MPH or a “M” rating;
- (6) tires designed and marketed exclusively for specialty tire (ST) use which, in addition, exhibit each of the following conditions:
 - (a) the size designation molded on the tire’s sidewall is listed in the ST sections of the Tire and Rim Association Year Book,
 - (b) the designation “ST” is molded into the tire’s sidewall as part of the size designation,
 - (c) the tire incorporates a warning, prominently molded on the sidewall, that the tire is “For Trailer Service Only” or “For Trailer Use Only”,
 - (d) the load index molded on the tire’s sidewall meets or exceeds those load indexes listed in the Tire and Rim Association Year Book for the relevant ST tire size, and
 - (e) either
 - (i) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed does not exceed 81 MPH or an “M” rating; or
 - (ii) the tire’s speed rating molded on the sidewall is 87 MPH or an “N” rating, and in either case the tire’s maximum pressure and maximum load limit are molded on the sidewall and either

(1) both exceed the maximum pressure and maximum load limit for any tire of the same size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book; or

(2) if the maximum cold inflation pressure molded on the tire is less than any cold inflation pressure listed for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book, the maximum load limit molded on the tire is higher than the maximum load limit listed at that cold inflation pressure for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book;

(7) tires designed and marketed exclusively for off-road use and which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire's sidewall are listed in the off-the-road, agricultural, industrial or ATV section of the Tire and Rim Association Year Book,

(b) in addition to any size designation markings, the tire incorporates a warning, prominently molded on the sidewall, that the tire is "Not For Highway Service" or "Not for Highway Use",

(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the Tire and Rim Association Year Book, and the rated speed does not exceed 55 MPH or a "G" rating, and

(d) the tire features a recognizable off-road tread design.

The products covered by the order are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.45.10, 4011.99.45.50, 4011.99.85.10, 4011.99.85.50, 8708.70.45.45, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

V. CHANGES SINCE THE PRELIMINARY RESULTS

Based on case briefs, and all supporting documentation, we made certain changes from the *Preliminary Results*, which are discussed in the "Analysis of Comments" section below.

VI. NON-SELECTED COMPANIES UNDER REVIEW

For the companies subject to the review but not selected as mandatory company respondents, for which we did not receive a timely request for withdrawal of review, and which we are not finding to be cross-owned with the mandatory company respondents, we based the subsidy rate on a weighted average of the subsidy rates calculated for Cooper and Sentury, using publicly

ranged sales values for the weighted average. For a list of these companies, please see the Appendix to this Decision Memorandum.

VII. SUBSIDIES VALUATION INFORMATION

1. Allocation Period

Commerce made no changes to the allocation period or the allocation methodology used in the *Preliminary Results*.⁷

2. Attribution of Subsidies

Commerce has made no changes to the attribution of subsidies methodology applied in the *Preliminary Results*.⁸

3. Denominators

In accordance with 19 CFR 351.525(b), Commerce considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Final Analysis Memoranda," prepared for this final determination.⁹ As a result of comments received from interested parties, we have revised certain sales values to calculate the subsidy rates in this final determination. *See* Comments 2 and 3.

4. Benchmarks and Discount Rates

Interested parties submitted comments regarding the interest rate benchmarks and benchmark rates for the inputs carbon black and synthetic rubber. In particular, we revised the ocean freight benchmark for Cooper, and relied on grade-specific rubber benchmarks in certain instances where the record clearly indicated the grade purchased by the respondent. *See* Comments 8 and 12.

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Commerce relied on "facts otherwise available," including adverse facts available (AFA), for several findings in the *Preliminary Results*. Commerce has not made any changes to its

⁷ *See* PDM at 8.

⁸ *See* PDM at 8-10.

⁹ *See* Commerce Memoranda, "Countervailing Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Cooper (Kunshan) Tire Co., Ltd. Final Results Analysis" (Cooper Final Calculation Memorandum) and "Countervailing Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Qingdao Sentury Tire Co. Ltd. Final Results Analysis," (Sentury Final Calculation Memorandum) dated concurrently with this memorandum.

determination to rely on facts otherwise available and AFA, as applied in the *Preliminary Results*.¹⁰

IX. PROGRAMS DETERMINED TO BE COUNTERAVAILABLE

Except where noted, Commerce has made no changes to the methodology used to calculate the subsidy rates for the following programs in its *Preliminary Results*. Additionally, except as discussed under the Analysis of Comments section below, no issues were raised by interested parties in case briefs regarding these programs. The final program rates calculated for Cooper and Sentury are as follows:

1. Government Policy Lending

As discussed in Comments 13 we made changes to the program rate for Cooper. The final subsidy rate for Cooper is 0.18 percent *ad valorem*. As discussed in Comment 1 we made changes to the program rate for Sentury. The final subsidy rate for Sentury is 3.20 percent *ad valorem*.

2. Export Sellers Credits from State-Owned Banks

As discussed in Comment 2, we made changes to the program rate for Sentury. The final subsidy rate for Sentury is 0.22 percent *ad valorem*.

3. Export Buyer's Credits¹¹

As discussed in Comment 7, we made changes to the program rate for both Cooper and Sentury. The rate for both Cooper and Sentury is 3.20 percent *ad valorem*.

4. Provision of Inputs for LTAR

a. Provision of Carbon Black

As discussed in Comment 8, we made changes to the program rate for Cooper. The final subsidy rate for Cooper is 4.89 percent *ad valorem*. The final subsidy rate for Sentury is unchanged at 4.92 percent *ad valorem*.

b. Nylon Cord

As discussed in Comment 8, we made changes to the program rate for Cooper. The final subsidy rate for Cooper is 0.10 percent *ad valorem*. Sentury reported it did not use this program during the POR.

¹⁰ See PDM at 16-24.

¹¹ Although we did not change the AFA methodology used to determine the rate for this program, we clarify that this program is specific under section 771(5A)(B) of the Act, because it is contingent on exportation. See Comment 16 below.

c. Synthetic Rubber and Butadiene

As discussed in Comments 12 we made changes to the program rate for Cooper. The final subsidy rate for Cooper is 0.91 percent *ad valorem*. The final subsidy rate for Sentury remains unchanged at 0.01 percent *ad valorem*.

d. Provision of Electricity for LTAR

As discussed in Comments 9 we made changes to the program rate for Cooper. The final subsidy rate for Cooper is 0.47 percent *ad valorem*. As discussed in Comment 4 we made changes to the program rate for Sentury. The final subsidy rate for Sentury is 0.89 percent *ad valorem*.

e. Provision of Land-Use Rights for FIEs for LTAR

The subsidy rate for Cooper under this program is unchanged at 4.98 percent *ad valorem*

5. Enterprise Income Tax Law, R&D Program

The subsidy rate for Cooper under this program is unchanged at 0.07 percent *ad valorem*

6. Import Tariff and Value-Added Tax (VAT) Exemptions for Use of Imported Equipment

As discussed in Comment 3 we made changes to the program rate for Sentury. The final subsidy rate for Sentury is 0.62 percent *ad valorem*.

7. Income Tax Reductions for High-and-New-Technology Enterprises (HNTEs)

The subsidy rate for Sentury under this program is unchanged at 1.39 percent *ad valorem*

8. Other Subsidy Programs

As discussed in Comment 11 we made changes to the program rate for both Cooper and Sentury. The final subsidy rate for Cooper is 1.57 percent *ad valorem*. The final subsidy rate for Sentury is 1.30 percent *ad valorem*.

X. PROGRAMS DETERMINED NOT TO BE USED OR NOT TO CONFER MEASURABLE BENEFITS DURING THE POR

1. Provision of Natural Rubber for LTAR
2. Export Credit Insurance Subsidies
3. Preferential Loans to State-Owned Enterprises
4. Discounted Loans for Export-Oriented Enterprises
5. Export Credit Guarantees
6. Two Free, Three Half Program for FIE's
7. Provision of Land-Use Rights to Passenger Tire Producers for LTAR

8. Provision of Land-Use Rights for SOEs for Less Than Adequate Remuneration
9. Provision of Land-Use Rights in Industrial and Other Special Economic Zones for Less Than Adequate Remuneration
10. Tax Benefit Programs
 - a. Income Tax Reduction for Advanced-Technology FIEs
 - b. Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs
 - c. Income Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment
11. VAT Refunds for Domestic Firms on Purchases of Chinese-Made Equipment
12. VAT Rebates on FIE Purchases of Chinese-Made Equipment
13. Special Fund for Energy Saving Technology Reform
14. Grant Programs
 - a. State Key Technology Renovation Project Fund Program
 - b. Famous Brands Program
 - c. The Clean Production Technology Fund
 - d. Export Interest Subsidy Funds for Enterprises Located in Guangdong and Zhejiang Provinces
 - e. Funds for “Outward Expansion” of Industries in Guangdong Province
 - f. Provincial International Market Development Fund Grant
 - g. Provincial Import Discount Loan Subsidy
15. Subsidies for Companies Located in the Kunshan Economic and Technological Development Zone
16. Weihai Municipality Subsidies for the Automobile and Tire Industries
17. Subsidies for Companies Located in the Rongcheng Economic Development Zone

XI. ANALYSIS OF COMMENTS

Comment 1: Sentury’s Loan Calculation

Sentury’s Comments

- Contrary to its usual practice, Commerce calculated benchmark interest payments using the initial loan amount and failed to account for principal payments which reduced the principal on which Sentury’s interest was calculated.¹²
- A clerical error in the loan calculation caused the column “Amount(s) of Interest Paid in original currency” not to match correctly with the corresponding loan, and for the column “Actual Payments” to be calculated incorrectly.¹³

We received no other comments on this issue.

¹² See Sentury Case Brief at 4.

¹³ *Id.* at 6.

Commerce Position: We agree with Sentury that Commerce erred in using the “Initial Loan Amount” rather than “Principal Balance to Which Interest Payment Applies” when calculating the benchmark interest payments. We also agree with Sentury that a clerical error caused a mismatch between loans and the correct amount of interest paid. We have corrected these errors for the final results.

Comment 2: Sentury’s Export Credit Seller’s Program

Sentury’s Comments

Commerce incorrectly used Sentury’s export sales to the U.S., rather than all export sales as the denominator for the Export Seller’s Credit Program.¹⁴

We received no other comments on this issue.

Commerce Position: We agree with Sentury, and we have used all export sales as the denominator for the Export Seller’s Credit Program in these final results.

Comment 3: Sentury’s VAT and Import Duty Exemption

Sentury’s Comments

- Commerce calculated Sentury’s VAT exemption as if it had received a full 17 percent VAT exemption on all imported equipment. Commerce failed to take into account instances where Sentury paid VAT. Commerce should revise its benefit calculation to take into account VAT paid by Sentury.¹⁵
- Commerce used Sentury’s sales as the denominator for equipment imported by its affiliate Sentaida for the years 2009, 2010 and 2011 in performing the 0.5 percent test. Commerce should have used Sentaida’s sales for these years as Sentaida and Sentury were not cross-owned during this period.¹⁶

We received no other comments on this issue.

Commerce Position: We agree with Sentury and have revised our calculation of the VAT and Import Duty Exemption for the final results. We have subtracted the reported actual VAT paid from our calculation of the amount of VAT exempted. We have also used Sentaida’s sales as the denominator for 2009, 2010 and 2011 to perform the 0.5 percent test.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 24.

¹⁶ *Id.* at 25.

Comment 4: Alleged Errors in Sentury’s Electricity Calculation

Sentury’s Comments

- Commerce incorrectly applied the “household>1kv” category benchmark rate to certain transactions. Record evidence shows the “large industrial 1-10kv” category is the correct benchmark rate for these transactions.¹⁷
- Commerce did not include the fees and charges Sentury reported in its benefit calculation. In similar situations, Commerce has subtracted these fees from the benefit amount calculated to achieve an “apples-to-apples” comparison.

We received no other comments on this issue.

Commerce Position: We agree with Sentury that we should apply the “large industrial 1-10kv” category to certain Sentury electricity purchases and have made this change for these final results. Further, upon further review of the benchmark information on the record, we find that the benchmark prices we used are inclusive of certain fees and charges. Therefore, we will include these fees in our benefit calculation for Sentury. For these final results we have subtracted the total fees Sentury reported paying from the total benefit calculated.

Comment 5: Loan Calculation Handling Fees

Respondents’ Comments

- Cooper and Sentury reported fees incurred on certain loans, which were not considered in Commerce’s benefit calculation.¹⁸
- Commerce’s practice is to subtract from the benefit amount any fees paid. In keeping with Commerce’s practice, Commerce should offset the calculated benefit amount by the service fees.

Commerce Position: We disagree with Sentury and Cooper that we should deduct fees and other expenses when calculating the benefit received from preferential policy lending. Contrary to the respondents’ comments that deducting fees from the calculated benefit is Commerce’s practice, this is not the methodology Commerce uses in calculating a loan benchmark in a China proceeding. We have concluded in the past that it is not possible to take fees and other expenses into account in this context. As we have noted in other China proceedings:

{T}o convert a nominal (market-based) interest rate to an effective rate, the Department could take into account all relevant loan-related charges and fees. However, where no underlying market-based rate exists (as is the case in China), determining what the necessary adjustments would be in order to form a market-determined interest rate in China, absent the numerous government-imposed

¹⁷ *Id.* at 20.

¹⁸ *Id.* at 22; *see also* Cooper Case Brief at 16.

distortions in the system, would be highly complex, speculative and impracticable exercise.¹⁹

Therefore, because Commerce cannot, in the context of the “external” loan benchmark determined for China, construct a benchmark that reflects all related fees and charges, we also will not consider the fees and charges paid by the respondents. To do so would not result in an “apples-to-apples” comparison.

Comment 6: 2015 and 2016 U.S. Dollar Benchmark

Sentury’s Comments

- In the PDM, Commerce explains that the interest rate benchmarks were calculated by summing the LIBOR benchmark, the difference between the n-year BB bond and the two-year BB bond, and inflation. Commerce calculated all loan benchmarks in this manner except for U.S. dollar (USD) short-term loans. For short-term loans, Commerce used as a benchmark the sum of LIBOR and the average spread between LIBOR and the one-year corporate bond rate for companies with a BB rating.
- Commerce does not provide an adequate explanation for why short-term loans are treated differently than other USD loans, or Renminbi (RMB) loans. Commerce also failed to explain how the average spread between LIBOR and the one-year corporate bond rate for companies with a BB rating is calculated.²⁰
- Commerce should recalculate the 2015 and 2016 one-year USD loan benchmarks consistent with its methodology for RMB and other types of USD loans.

Cooper’s Comments

- Commerce should correct errors in the calculation of its USD interest rates for 2015 and 2016.
- Commerce added a positive difference to the benchmarks for 2015 and 2016. A review of the record shows the difference for these years should be zero. For the final results, Commerce should apply the benchmark without an extraneous difference adjustment.²¹

Commerce Position: Commerce disagrees with respondents that there were errors in our calculation of short-term interest rates, or that the methodology for calculating these rates was not adequately explained. As Sentury noted in its brief, Commerce stated in the PDM that we are “following the methodology developed over a number of successive China investigations.”²² The reasoning and methodology for calculating short-term USD loan rates are explained in *LWTP from China*:

Benchmarks for Short-Term Foreign Currency-Denominated Loans: For foreign currency denominated loans, the Department was unable to locate sufficient data

¹⁹ 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) and accompanying Issues and Decision Memorandum (IDM) at 54.

²⁰ See Sentury Case Brief at 7.

²¹ See Cooper Case Brief at 16.

²² See PDM at 12.

on short-term lending rates for the countries in the basket of ‘lower middle-income countries’ used for its benchmark for RMB loans. Therefore, the Department used as a benchmark the one-year dollar interest rates for the London Interbank Offering Rate (“LIBOR”), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Bloomberg provides data on average corporate bond rates for companies with a range from A-rated to B rated. *See* Bloomberg data, placed on the record of this investigation in the Post-Preliminary Analysis. For this final determination, we have determined that BB-rated bonds, which are the highest non-investment-grade and near the middle of the overall range, are the most appropriate bases for calculating the spread over LIBOR. Several of the countries in the basket report bond rates, but not all of these countries report corporate bond rates and none reports corporate bond rates for firms in the industrial sector. The Department, therefore, relied on corporate bond rates for the industrial sector in the United States and the eurozone, because the market for dollars and euros is international in scope.²³

The benchmark interest rates determined for the *Preliminary Results* in this review are consistent with this long-standing practice. Finally, Commerce added to the record of this review, along with the *Preliminary Results*, the data underlying the interest rate benchmark calculations, including the LIBOR and BB bond rate data used to determine the short-term USD benchmark interest rates, along with the Excel sheet calculating the benchmark rates.²⁴ Accordingly, we have not revised the short-term interest rates for these final results.

Comment 7: AFA Rate Assigned to Cooper for Export Buyer’s Credit Program

Cooper’s Comments

- Commerce assigned AFA to Cooper for the Export Buyer’s Credit program based on the Government Policy Lending rate calculated for Sentury.
- There are obvious errors with respect to Commerce’s calculation of Sentury’s Government Policy Lending rate.
- If Commerce continues to apply AFA to Cooper for the Export Buyer’s Credit program, it should reevaluate the rate after correcting errors in the calculation of Sentury’s Government Policy Lending rate.²⁵

We received no other comments on this issue.

Commerce Position: We agree with Cooper that there were errors in Sentury’s Government Policy Lending rate calculation and have revised this calculation (*see* Comment 1 above). We have applied this revised rate as the AFA rate for the Export Buyer’s Credit program for both Cooper and Sentury.

²³ *See Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*LWTP from China*) and accompanying IDM at 10.

²⁴ *See* Memorandum, “Interest Rate Benchmark Memorandum,” dated August 31, 2018.

²⁵ *See* Cooper Case brief at 4.

Comment 8: Ocean Freight Benchmark Applied to Cooper

Cooper's Comments

- Commerce applied an ocean freight rate of USD 0.03 per kilogram for carbon black and nylon cord.
- A review of Sentury's benchmark submission indicates that a more precise value of USD 0.02578 per kilogram exists for ocean freight. Commerce should apply this more precise figure for ocean freight in the final results.²⁶

We received no other comments on this issue.

Commerce Position: We agree with Cooper that a more precise value for ocean freight is on the record of this proceeding and will apply this in the final results.

Comment 9: Cooper's Benefit for Electricity at LTAR

Cooper's Comments

- Commerce obtained its electricity benchmark rates from the GOC's initial questionnaire response. The electricity rates provided by the GOC include VAT.
- The electricity rates submitted by Cooper, and used by Commerce in the *Preliminary Results*, are exclusive of VAT.²⁷
- Commerce should revise its calculations to make a fair comparison of VAT inclusive rates.

We received no other comments on this issue.

Commerce Position: We agree with Cooper and have revised our calculations to include VAT in the electricity prices paid by Cooper.

Comment 10: Benefit to Cooper Under the Special Fund for Energy Saving Technology Reform Program

Cooper's Comments

- In the *Preliminary Results*, Commerce derived a benefit to Cooper under the Special Fund for Energy Saving Technology Reform program.
- Cooper received funds under this program in January 2017, after the POR.
- Because the funds were received after the POR, there is no basis for deriving a POR benefit. Commerce should remove the benefit derived from this program in the final results.

We received no other comments on this issue.

²⁶ *Id.* at 5.

²⁷ *Id.* at 6.

Commerce Position: We agree with Cooper and have removed the benefit for the Special Fund for Energy Saving Technology Reform program from the calculations of Cooper’s final rate.

Comment 11: Alleged Errors in Grant Calculations

Cooper’s Comments

- Commerce allocated the benefit for the Duty Refund from Customs (Kunshan) program after applying the “0.5 percent test.” Commerce erred in including both the allocated benefit, and the entire grant amount in its grant calculation. Commerce should correct this for the final results.²⁸
- Commerce allocated the benefit for funds received under the Duty Refund from Customs (Huangdao & Yantai) program using the full amount of funds received. As these funds were received in 2015, prior to the POR. Commerce should revise its calculations to use the benefit remaining in 2016.²⁹
- Funds received under the Duty Refund from Customs (Dagang) and Duty Refund from Customs (Tianjin) programs were expensed to 2015 after applying the “0.5 percent test.” Commerce incorrectly included the full amount of funds received prior to the POR in its benefit calculation.³⁰
- The *Preliminary Results* included grants received by Cooper affiliate Cooper Tire (China) Investment Co., Ltd. (CTIC). As CTIC was not a producer of subject merchandise, under Commerce’s attribution rules, these grants should not have been included in the calculations for the benefit rate for grants.³¹

Sentury’s Comments

- In the *Preliminary Results* Commerce used Century’s sales as the denominator to determine where the grant for the New Loan Discount Allowance program should be expensed or allocated.
- This grant was received by Century’s affiliate Sentaida and inured to Century after the asset transfer. Therefore, Sentaida’s sales should be used when conducting the 0.5 percent test.³²

Commerce Position: We agree with Cooper that there were errors in the calculation of the benefit rate to Cooper from grants. To correct these errors we have: removed the entire grant amount of the Duty Refund from Customs (Kunshan) program from our calculations; revised the calculation for the Duty Refund from Customs (Huangdao & Yantai) program to use the benefit remaining in 2016; removed the benefit received from the Duty Refund from Customs (Dagang) and Duty Refund from Customs (Tianjin) from the calculation; and removed grants received by CTIC from the calculation.

²⁸ *Id.* at 10.

²⁹ *Id.* at 11.

³⁰ *Id.*

³¹ *Id.* at 12.

³² *See* Century Case Brief at 25.

We agree with Sentury that Commerce used the incorrect denominator when conducting the 0.5 percent test for grants received by Sentury's affiliate Sentaida. We have revised the grant calculation for Sentury.

Comment 12: Grade Specific Benchmarks for Cooper's Purchases of Synthetic Rubber and Butadiene

Cooper's Comments

- In the *Preliminary Results*, Commerce evaluated synthetic rubber and butadiene on an overall basis, using a single set of monthly benchmark values.
- Synthetic rubber and butadiene encompass multiple grades of material. Cooper had purchases during the POR of polybutadiene rubber (PBR), styrene butadiene rubber (SBR), solution styrene butadiene rubber (SSSBR) and specialized grades of synthetic rubber.³³
- Commerce found in the previous review segment that synthetic rubber and butadiene should be evaluated on a grade-specific basis.³⁴
- The record clearly indicates that Cooper purchased specific grades of synthetic rubber and butadiene. Accordingly, Commerce should perform separate calculations using a comparison to the benchmark values for specific grades of synthetic rubber and butadiene.

We received no other comments on this issue.

Commerce Position: We agree with Cooper that the record indicates that it purchased specific grades of synthetic rubber and butadiene during the POR. Accordingly, consistent with previous reviews where information on the record indicated a respondent purchased a specific material or grade of synthetic rubber and butadiene, we have revised our calculations to apply grade-specific benchmarks to Cooper's purchases of synthetic rubber and butadiene.

Comment 13: Alleged Errors in Cooper's Government Policy Lending Calculation

Cooper's Comments

Commerce incorrectly included in its calculations of the benefit from government policy lending certain interest payments that were made before the POR. These interest payments should be excluded from Commerce's calculations in the final results.

We received no other comments on this issue.

Commerce Position: Commerce agrees with Cooper. Accordingly, we have removed interest payments made before the POR from the calculations of Cooper's government policy lending for the final results.

³³ See Cooper Case Brief at 13.

³⁴ *Id.* at 13 and 14.

Comment 14: Ocean Freight and Import Duties Added to Tier 1 or Tier 2 Benchmarks

GOC Comments

- Adjustments to a benchmark to account for things like ocean freight and import duties should not be made where such adjustments are contrary to “prevailing market conditions.”
- The statute explicitly directs Commerce to consider such in-country conditions as availability and transportation, both of which are relevant to whether ocean freight or import duty adjustments are appropriate.³⁵
- The prominence of domestic supply in the market relative to import supply is an important consideration when determining the generally applicable delivery charges for the good in question in the country of provision.
- The fact that some import purchases happen, or that imports occur in a market, does not justify the wholesale application of ocean freight and import duty adjustments to the benchmark since that does not reflect the market generally.
- For its construction of benchmarks, Commerce must take into account prevailing transportation costs that are generally applicable to all purchasers in China.³⁶
- Ocean freight and import duties must be limited to reflect the prevailing market conditions in China for the specific good in question.

We received no other comments on this issue.

Commerce Position: For the final results, we are continuing to incorporate international freight values in our external benchmark prices. According to 19 CFR 351.511(a)(2)(iv), world market prices must be adjusted to include delivery charges and import duties in order to arrive at a delivered price “to reflect the price that a firm actually paid or would pay if it imported the product.”³⁷ The courts have upheld our application of these adjustments as lawful and in compliance with our regulations.³⁸ Commerce determined that it was appropriate to use world market prices as the benchmarks for the company respondents’ purchases of these inputs and, therefore, we must adjust such prices as required by our regulations. We are calculating a delivered price that includes freight and import duties, which would be the price that companies would pay if they imported the inputs in question. Whether the company respondents actually imported the inputs and paid international freight is not relevant for purposes of determining an appropriate benchmark.³⁹ However, consistent with section 771(5)(E) of the Act, Commerce does consider the prevailing conditions of the country in question in this analysis. Accordingly, we have used Maersk ocean freight charges, actual inland freight charges as reported by the

³⁵ See GOC Case Brief at 3 and 4.

³⁶ *Id.* at 7.

³⁷ See 19 CFR 351.511(a)(2)(iv).

³⁸ See *Beijing Tianhai Indus. Co. v. United States*, 52 F. Supp. 3d 1351, 1372-75 (CIT 2015); see also *Zhaoqing New Zhongya Aluminum Co., Ltd. v. United States*, 929 F. Supp. 2d 1324, 1327 (CIT 2013).

³⁹ See, e.g., *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015) (*Passenger Vehicle and Light Truck Tires from China*) and accompanying IDM at Comment 3.

company respondents, and actual Chinese import duties for the specific inputs we are examining to compute benchmark prices. Thus, these charges reflect prices and rates in, or applicable to, the Chinese market, and thus relate directly to prevailing market conditions in China.⁴⁰

Comment 15: Export Buyer's Credit

GOC Comments

- Sentury and Cooper claimed they did not use this program. Sentury submitted signed affidavits from its U.S. customers and/or importers that showing that none of them utilized this program.
- Commerce has sufficient information from the GOC and respondents to reach a finding that the Export Buyer's Credit program was not used during the POR.⁴¹
- Adverse inferences cannot be applied unless it is appropriate to use facts otherwise available.⁴²
- A prerequisite for the use of facts otherwise available is a gap in the record resulting from missing information. In the context of a CVD proceeding this might include filling gaps among the three statutory elements relating to the existence of a countervailable subsidy (*i.e.*, financial contribution, specificity and benefit).
- Commerce cannot discard all evidence on the record (or lack thereof) of the three elements due to a respondent's failure to cooperate in relation to some, but not all of those elements, because each element has independent legal significance which can be dispositive in determining if a countervailable subsidy exists.⁴³
- In addition to Cooper's and Sentury's claims of non-use of the program, the GOC has provided internal information from China's Import-Export Bank (Ex-Im Bank) that no export buyer's credit was provided to Sentury or Cooper.
- Commerce has the means to determine non-use of the program. Commerce should find the program was not used in the final results.⁴⁴

Sentury's Comments

- Even if the GOC's usage information is lacking in some way, Commerce is required to review the record as a whole. Both the court and Commerce have held that before it can apply AFA in the face of government non-cooperation, Commerce must review record evidence provided by the respondent to determine whether the program has been used.⁴⁵
- Sentury has placed information on the record demonstrating that its U.S. customers did not use this program.⁴⁶

⁴⁰ *Id.*

⁴¹ *See* GOC Case Brief at 8.

⁴² *Id.* at 9-11.

⁴³ *Id.* at 13 and 14.

⁴⁴ *Id.* at 14.

⁴⁵ *See* Sentury Case Brief at 9.

⁴⁶ *Id.* at 12.

- The general policy set forth in *Roasted Pistachios from Iran*,⁴⁷ *Solar POR 2*,⁴⁸ and the recently reaffirmed *Guizhou Tyre*,⁴⁹ require that Commerce consider and accept Sentury's declarations of non-use.⁵⁰
- In the final results, Commerce should find that no subsidies were provided to Sentury pursuant to this program.

Commerce Position: We continue to determine, for the final results, that the record does not support finding non-use of the Export Buyer's Credit program. As explained in the *Preliminary Results*, information on the record indicates that the GOC issued revised administrative measures in 2013 for the Export Buyer's Credit program.⁵¹ In response to our request that it provide the documents pertaining to the 2013 program revisions (2013 Revisions), the GOC refused to provide them, stating that “{t}he Ex-Im Bank has confirmed to the GOC that its 2013 guidelines are internal to the bank, not public, and not available for release” and that “{t}he GOC has no authority or right to force the Ex-Im Bank to provide a copy of the 2013 guidelines, and is therefore unable to provide a copy to the Department.”⁵² Thus, the GOC refused to provide the requested information, which is necessary for Commerce to analyze how the program functions.

Moreover, record information also indicates that the credits and funds associated with the program are not limited to direct disbursements from the Ex-Im Bank.⁵³ Specifically, the record information indicates that customers can open loan accounts for disbursements through other banks.⁵⁴ The funds are first sent from the Ex-Im Bank to the importer's account, which could be at the Ex-Im Bank or a partner bank and then sent to the exporter's bank account.⁵⁵ Given this complicated structure of loan disbursements under the program, a complete understanding of how it operates is necessary. Thus, the GOC's refusal to provide the 2013 Revisions, which provide internal guidelines for how the program is administered, impeded Commerce's ability to conduct its investigation of the program.

Importantly, the GOC also refused to provide a list of all partner/correspondent banks involved in the disbursement of credits and funds under the program, informing Commerce that it had “no authority or right” to force the Ex-Im Bank to provide this information.⁵⁶ Commerce cannot verify claims of non-usage, in terms of any lending to either the respondents or their U.S. customers, if it does not know the names of the intermediary banks that might appear in the books and records of the recipient of the credit (*i.e.*, the loan) or the cash disbursement made pursuant to the credit. Given the participation of partner/correspondent banks, for which the

⁴⁷ See *Countervailing Duty New Shipper Review: Certain In-shell Roasted Pistachios from the Islamic Republic of Iran*, 73 FR 9993 (February 25, 2008) (*Roasted Pistachios from Iran*).

⁴⁸ 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; 2013*, 81 FR 46904 (July 19, 2016) (*Solar POR 2*).

⁴⁹ See *Guizhou Tyre Co. v. United States*, 2018 CIT 160, Slip Op. 18-140 (Oct. 17, 2018) (*Guizhou Tyre*).

⁵⁰ See Sentury Case Brief. at 13.

⁵¹ See Memorandum, “Additional Document Memorandum,” dated August 31, 2018.

⁵² See GOC August 17, 2018 Supplemental Questionnaire Response (GOC August 17, 2018 SQR) at 4.

⁵³ See GOC February 5, 2019 Initial Questionnaire Response (GOC February 5, 2019 IQR) at Exhibit II.B.11 and GOC August 17, 2018 SQR at 5.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ See GOC August 17, 2018 SQR at 6-7.

GOC refused identifying information, even where there is no account in the name “Ex-Im Bank” in the books and records (*e.g.*, subledger, tax return, bank statements) of either the exporter or the U.S. customer, Commerce could not confirm that no loans were provided under the program.

Pursuant to sections 776(a)(2)(A) and (2)(C) of the Act, when an interested party withholds information requested by Commerce and significantly impedes a proceeding, Commerce uses facts otherwise available. We find that the use of facts otherwise available is appropriate in light of the GOC’s refusal to provide the 2013 Revisions. Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding of information and significantly impeding this proceeding, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted.

Specifically, the GOC has not provided complete information concerning the administration and operation of the program, such as how exactly loans are disbursed under the program (*e.g.*, the 2013 Revisions), possibly through intermediate or correspondent banks, the identities of which the GOC has withheld from Commerce, or whether the Ex-Im Bank employs threshold criteria, such as a minimum USD 2 million contract value.⁵⁷ Such information is critical to understanding how the Export Buyer’s Credits program operates, and thereby is also critical to Commerce’s ability to verify and determine usage of this program.

The GOC is the only party that can answer questions about the internal administration of this program, and, thus, its failure to provide the requested information further undermines Commerce’s ability to verify claims of non-use. Commerce cannot verify non-use at the Ex-Im Bank without a complete set of administrative measures on the record that would provide guidance to Commerce in querying the records and electronic databases of the Ex-Im Bank.⁵⁸ Similar to the obstacles we would face in attempting to verify usage at the exporter or U.S. customer, Commerce would not know what indicia to look for in searching for usage or even what records or databases we need to examine in conducting the verification (*i.e.*, without a complete set of laws, regulations, administrative measures, Commerce would not even know what books and records the Ex-Im Bank maintains in the ordinary course of its operations). Essentially, Commerce is unable to verify in a meaningful manner the little information on the record indicating non-usage (*e.g.*, the claims of the GOC and emails and certifications from U.S. customers), with the exporters, U.S. customers, or at the Ex-Im Bank itself given the refusal of the GOC to provide the 2013 Revisions and a complete list of correspondent/partner/intermediate banks. Therefore, we determine that the GOC has not cooperated to the best of its ability and, as AFA, find that the respondents used and benefited from this program.

⁵⁷ The record indicates that the elimination of the USD 2 million threshold is one of the changes effected by the 2013 Revisions. *See* GOC August 17, 2018 SQR at 1-2.

⁵⁸ Commerce also notes the GOC has a history of refusing to provide Commerce with adequate access to its books and records relevant to understanding this program. *See, e.g., 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) and accompanying IDM at 92 (“At verification, the GOC repeatedly denied Department 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 the Department to query the databases and records of the Ex-Im Bank to establish the accuracy of its non-use claim.”).

Comment 16: Whether the Export Buyer's Credit Program Should be Considered an Export Subsidy

Sentury's Comments

- Commerce found the Export Buyer's Credit program to be an export subsidy in the investigation and companion antidumping duty investigation, despite the application of AFA, and provided the statutorily required antidumping offset.
- That the GOC has allegedly not provided sufficient information about the operation of the program does not deny that the program is an export subsidy.
- If Commerce declines to consider this program to be specific based on export contingency, then Commerce must consider this a domestic subsidy. A domestic subsidy requires a different specificity analysis than the one conducted in the original investigation. There is no record basis to find this program to be countervailable as a domestic subsidy.⁵⁹

We received no other comments on this issue.

Commerce Position: Relying on AFA because we do not have complete information, Commerce is finding the Export Buyer's Credit program to be an export subsidy for these final results. Although the record regarding this program suffers from significant deficiencies, we note that the final determination in the investigation in this proceeding describes the program (based on the investigation record, which includes the petitioner's description of the program and supporting materials, as well as the GOC's description of the program and supporting materials (albeit ultimately found to be deficient)) as follows: "Through this program, state-owned banks, such as the China ExIm Bank, provide loans at preferential rates for the purchase of exported goods from the PRC."⁶⁰ In the preliminary determination of the investigation, we noted the program was alleged by the petitioner as an example of a possible export subsidy.⁶¹ Further, Commerce has found this program to be an export subsidy in the past.⁶² Thus, taking all such information into consideration indicates the provision of the credits is contingent on exports within the meaning of section 771(5A)(B) of the Act.

⁵⁹ See *Sentury Case Brief* at 17 and 18.

⁶⁰ See *Passenger Vehicle and Light Truck Tires from China* IDM at 22.

⁶¹ See *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Affirmative Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 79 FR 71093 and accompanying Preliminary Decision Memorandum at 8.

⁶² 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;2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 33.

Comment 17: Other Subsidies

GOC Comments

- Action to countervail “other” subsidies outside the scope of Commerce’s proper investigation is contrary to law and the SCM Agreement.
- Valid CVD investigations and subsequent findings must be grounded in: specific allegations supported by reasonable evidence indicating the existence of a countervailable subsidy; consultations with the government concerned; and notice of initiation of an investigation. Subsidy findings in this proceeding that do not adhere to these requirements are contrary to U.S. WTO obligations and U.S. law.
- These provisions and practices do not preclude Commerce from engaging in additional investigations during the course of a proceeding and incorporating additional subsidy findings into final determinations.
- Given the above requirements, there is no legal basis for Commerce to investigate “other” subsidies, and, thereby, no basis to apply AFA and to countervail such “other” subsidies discovered during a proceeding.⁶³
- “Subsidy” is an inherently subjective term of art and unanswered requests for information pertaining to “other” subsidies cannot be the basis for AFA, merely because Commerce discovers practices that appear in “its mind to constitute subsidies.” Commerce is already in violation of the SCM Agreement and U.S. law simply by including such a request in an initial questionnaire.⁶⁴

We received no other comments on this issue.

Commerce Position: We disagree with the GOC that Commerce unlawfully examined “other subsidies” without first finding that the initiation standard had been satisfied. Commerce has addressed these and similar arguments many times in the past.⁶⁵ Investigations into potentially countervailable subsidies are initiated in one of two ways. First, an investigation can be self-initiated by Commerce.⁶⁶ Second, when a domestic interested party files a petition for the imposition of countervailing duties on behalf of an industry, and the petition: (1) alleges the elements necessary for the imposition of a countervailing duty pursuant to section 701(a) of the Act; and (2) “is accompanied by information reasonably available to the petitioner supporting those allegations {,}” Commerce will initiate an investigation into whether countervailing duties should be imposed.⁶⁷

After an investigation has been initiated through one of the above mechanisms, section 775 of the Act and 19 CFR 351.311(b) provide Commerce with authority, during the course of that investigation and any subsequent review, to examine discovered practices or programs if they

⁶³ See GOC Case Brief at 17 and 18.

⁶⁴ *Id.* at 18.

⁶⁵ See, e.g., *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017) and accompanying IDM at 16-21.

⁶⁶ See section 702(a) of the Act.

⁶⁷ See section 702(b) of the Act.

appear to provide a countervailable subsidy. Indeed, if, after the commencement of an investigation, Commerce “discovers a practice which appears to be a countervailable subsidy”⁶⁸ that was not included in the petition, Commerce “shall include the practice, subsidy, or subsidy program in the proceeding{.}”⁶⁹ Pursuant to section 775 of the Act, Commerce has an affirmative obligation to seek information on, and include in a proceeding, all subsidy practices that might benefit the subject merchandise.⁷⁰

Commerce disagrees with the suggestion by the GOC that our procedures do not conform to section 775 of the Act and 19 CFR 351.311. Contrary to the GOC’s argument, the so-called “other subsidies” question in the questionnaire is Commerce’s means of effectuating the provisions of section 775 of the Act. Commerce need not passively wait to stumble upon other potential subsidies.⁷¹ Instead, seeking out such information more effectively fulfills Congress’s intent to include all potential subsidies within a proceeding. Regarding the notice requirement in 19 CFR 351.311(d), the record contains ample notification of our intent to investigate “other subsidies.” Our initial questionnaire requested details concerning “any other non-recurring benefits to the producer or exporters of the subject merchandise during the 14-year AUL . . . , or recurring benefits during the POR.”⁷²

Moreover, Commerce’s question regarding “all other assistance” is not vague and does not exceed Commerce’s information-collecting authority.⁷³ Commerce has broad discretion to determine which information is relevant to its determination and to request that information.⁷⁴ Commerce pursues information regarding “other assistance” expressly to satisfy the intent of the CVD law, to investigate and catalogue all potentially countervailable subsidies, to consolidate all relevant subsidies into a single investigation.⁷⁵ Consistent with U.S. law, Commerce is not precluded from inquiring about other assistance to make determinations.⁷⁶ Commerce “has independent investigative authority” to ask questions about other governmental assistance, beyond the subsidies alleged by the petitioner.⁷⁷

⁶⁸ See section 775 of the Act.

⁶⁹ See section 775 of the Act.

⁷⁰ See *Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334, 1341 (CIT 2016) (*Changzhou Trina Solar Energy*) (holding that Commerce has “independent authority, pursuant to {section 775 of the Act}, to examine additional subsidization in the production of subject merchandise,” and this “broad investigative discretion” permits Commerce to require respondents to report additional forms of governmental assistance); see also *Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d 1141, 1150, n. 12 (CIT 2000) (*Allegheny I*) and section 775 of the Act.

⁷¹ See *Changzhou Trina Solar Energy*, 195 F. Supp. 3d at 1346.

⁷² See GOC February 5, 2019 IQR at 137.

⁷³ See *Changzhou Trina Solar Energy*, 195 F. Supp. 3d at 1346 (“Commerce’s inquiry concerning the full scope of governmental assistance provided by the {Government of China} and received by the Respondents in the production of subject merchandise was within the agency’s independent investigative authority pursuant to {sections 702}(a) and {775 of the Act}, this inquiry was not contrary to law”).

⁷⁴ See, e.g., *Acciai Speciali Termini S.p.A. v. United States*, 26 CIT. 148, 167 (sustaining Commerce’s application of adverse inferences when respondent engaged in “willful non-compliance” with requests for information); see also *PAM, S.p.A. v. United States*, 495 F. Supp. 2d 1360, 1369 (CIT 2007) (sustaining Commerce’s application of adverse inferences when respondent’s judgement that the information requested was irrelevant).

⁷⁵ See *Changzhou Trina Solar Energy*, 195 F. Supp. 3d at 1342-43.

⁷⁶ *Id.* at 1345-46.

⁷⁷ *Id.* at 1346.

Further, Commerce may determine to use AFA in deciding whether the elements of a countervailable subsidy are met for both categories of subsidies (those alleged in a petition and those “discovered” during an investigation) if Commerce determines that the respondents are being uncooperative. In this case, the GOC hindered Commerce’s efforts to examine the “full scope of governmental assistance,” and to consolidate all relevant subsidies into this review when it withheld information responsive to Commerce’s requests for information. To avoid the application of facts available or AFA, the GOC was required by law to respond to Commerce’s requests for information by conducting a thorough review of its records, regardless of whether it believed that the discovered subsidies fell outside the purview of Commerce’s review. Thus, its failure to report the discovered assistance to Commerce in a timely manner reflects a deliberate and unilateral decision that the discovered subsidies were not relevant to Commerce’s review. A deliberate decision not to cooperate warrants the application of adverse facts available.

The GOC argues that the term “subsidy” is an inherently subjective term and Commerce cannot countervail as AFA “discovered” subsidies merely because it uncovers practices that appear in “its mind to constitute subsidies.” As explained above, however, Commerce has a responsibility to consolidate all practices that appear to be subsidies into a proceeding, and to avoid the deferral of the examination of countervailable subsidies to future administrative reviews to the extent possible. The reasons behind this responsibility are obvious. Deferring action against discovered subsidies until a subsequent review results in delayed relief to the injured domestic industry. Further, it is not necessary for Commerce to determine that a practice that appears to be a subsidy is actually a subsidy before including it in the proceeding, and the GOC’s suggestion to the contrary contradicts the plain language of section 775 of the Act.

For these reasons, we have continued to countervail the other subsidies reported in this review.

Comment 18: Appendix II

Sentury’s Comments

Appendix II of the *Preliminary Results* listed Sentury among the non-selected companies under review. Since Sentury is a mandatory respondent, this is a clear ministerial error that should be corrected in the final results.⁷⁸

We received no other comments on this issue.

Commerce Position: We agree that Sentury was inadvertently included in the list of non-selected companies under review and note that Cooper was also inadvertently included in the list. We have removed the mandatory respondents from the list of non-selected companies under review. (See Appendix below.)

⁷⁸ See Sentury Case Brief at 26.

XII. RECOMMENDATION

We recommend approving all the above positions and adjusting all related countervailable subsidy rates accordingly. If these Commerce positions are accepted, we will publish the final results in the *Federal Register*.

Agree

Disagree

4/18/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

Appendix

Non-Selected Companies Under Review

1. Best Industries Ltd.
2. BC Tyre Group Limited
3. Crown International Corporation
4. Dongying Zhongyi Rubber Co., Ltd.
5. Hankook Tire China Co., Ltd.
6. Hong Kong Tiancheng Investment & Trading Co., Limited
7. Hongtyre Group Co.
8. Jiangsu Hankook Tire Co., Ltd.
9. Jiangsu Sanhe Aluminum
10. Kenda Rubber (China) Co., Ltd.
11. Koryo International Industrial Limited
12. Mayrun Tyre (Hong Kong) Limited
13. Qingdao Jinhao Yang International Co., Ltd.
14. Qingdao Nama Industrial Co., Ltd.
15. Qingdao Odyking Tyre Co., Ltd.
16. Roadclaw Tyre (Hong Kong) Limited
17. Shandong Anchi Tyres Co., Ltd.
18. Shandong Haohua Tire Co., Ltd.
19. Shandong Haolong Rubber Co., Ltd.
20. Shandong Hengyu Science & Technology Co., Ltd.
21. Shandong Linglong Tyre Co., Ltd.
22. Shandong Longyue Rubber Co., Ltd.
23. Shandong New Continent Tire Co., Ltd.
24. Shandong Province Sanli Tire
25. Shandong Province Sanli Tire Manufactured Co., Ltd.
26. Shandong Shuangwang Rubber Co., Ltd.
27. Shandong Wanda Boto Tyre Co., Ltd.
28. Shandong Yongsheng Rubber Group Co., Ltd.
29. Shouguang Firemax Tyre Co., Ltd.
30. The Yokohama Rubber Company, Ltd.
31. Tyrechamp Group Co., Limited
32. Winrun Tyre Co., Ltd.
33. Zhaoqing Junhong Co., Ltd.