



C-570-971
Administrative Review
POR: 01/01/2016 – 12/31/2016
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July 30, 2019

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

FROM: Irene Darzenta Tzafolias
Director, Office VIII
AD/CVD Operations Office VIII

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination of the Countervailing Duty Investigation of
Multilayered Wood Flooring from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty (CVD) order on multilayered wood flooring (MLWF) from the People's Republic of China (China) covering the period of review (POR) January 1, 2016, through December 31, 2016. The mandatory respondents for this administrative review are Jiangsu Senmao Bamboo Wood Industry Co., Ltd. (Jiangsu Senmao) and Riverside Plywood Corporation (Riverside Plywood).

As a result of this analysis, we have made certain changes since the *Preliminary Results*.¹ We recommend that you approve the positions described in the "Analysis of Comments" section of this memorandum.

Below is a complete list of the issues in this review for which we received comments from parties:

- Comment 1: Application of Total Adverse Facts Available (AFA) to the GOC and Riverside Plywood
- Comment 2: Application of Partial AFA with Respect to Riverside's Plywood's Purchases of Veneers for Less than Adequate Remuneration (LTAR)
- Comment 3: Application of AFA with Respect to the Jiangsu Senmao's Receipt of Policy Loans for LTAR

¹ See *Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, in Part, and Intent to Rescind Review, in Part; 2016*, 83 FR 67229 (December 28, 2018) (*Preliminary Results*), and accompanying Decision Memorandum (Preliminary Decision Memorandum).

- Comment 4: Application of AFA with Respect to the Export Buyer's Credit Program
- Comment 5: Selection of the AFA Rate for the Export Buyer's Credit Program
- Comment 6: Countervailability of Other Subsidies
- Comment 7: Whether to Adjust Benchmark Prices to Account for Prevailing Market Conditions
- Comment 8: Applicable Value Added Tax (VAT) Rate for Benchmark Prices
- Comment 9: Applicable Import Duty for Benchmark Prices
- Comment 10: Requirements Necessary to Determine Countervailability of Land Use
- Comment 11: Amount to Use as Benefit for Grants
- Comment 12: Exclusion of Certain Export Data Used to Calculate the Veneers Benchmark

II. BACKGROUND

On December 28, 2018, Commerce published the *Preliminary Results* of this administrative review. 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, 2019.² On May 29, 2019, Commerce postponed the final results of review by 60 days.³ Accordingly, the deadline for these final results was rescheduled to July 30, 2019.

In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on the *Preliminary Results*. On February 19, 2019, the American Manufacturers of Multilayered Wood Flooring (the petitioner) submitted pre-verification comments on the record of this review.⁴ Between March 4, 2019, and March 13, 2019, we conducted verifications of the questionnaire responses submitted by Jiangsu Senmao and Riverside Plywood and its cross-owned affiliate Baroque Timber Industries (Zhongshan) Co., Ltd. (Baroque Timber). We released the verification reports on April 10, 2019.⁵

On April 23, 2019, the Government of China (GOC), Jiangsu Senmao, and Riverside Plywood submitted timely case briefs.⁶ Each also submitted timely rebuttal briefs on May 1, 2019.⁷ The

² See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive 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.

³ See Memorandum, "Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated May 29, 2019.

⁴ See Petitioner's Letter, "Pre-Verification Comments Regarding Riverside Plywood," dated February 19, 2019.

⁵ See Memoranda, "Verification of Questionnaire Responses of Jiangsu Senmao," dated April 9, 2019 (Jiangsu Senmao Verification Report); "Verification of Questionnaire Responses of Riverside Plywood," dated April 9, 2019 (Riverside Plywood Verification Report); and "Verification of Questionnaire Responses of Baroque Timber," dated April 9, 2019 (Baroque Timber Verification Report).

⁶ See GOC's Case Brief, dated April 23, 2019 (GOC Case Brief); see also Jiangsu Senmao's Case Brief, dated April 23, 2019 (Jiangsu Senmao Case Brief); and Riverside Plywood's Case Brief, dated April 23, 2019 (Riverside Plywood Case Brief).

⁷ See GOC's Rebuttal Brief, dated May 1, 2019 (GOC Rebuttal Brief); see also Jiangsu Senmao's Rebuttal Brief, dated May 1, 2019 (Jiangsu Senmao Rebuttal Brief); and Riverside Plywood's Rebuttal Brief, dated May 1, 2019 (Riverside Plywood Rebuttal Brief).

petitioner submitted its case brief on April 23, 2019 and its rebuttal brief on May 1, 2019.⁸

We are conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

III. SCOPE OF THE ORDER⁹

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)¹⁰ in combination with a core.¹¹ The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, *e.g.*, “engineered wood flooring” or “plywood flooring.” Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.*, without a finally finished surface to protect the face veneer from wear and tear) or “prefinished” (*i.e.*, a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, ultra-violet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes). The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard, high-density fiberboard (“HDF”), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.*, circular, hexagonal). All multilayered wood

⁸ See Petitioner’s Case Brief, dated April 24, 2019 (Petitioner Case Brief); *see also* Petitioner’s Rebuttal Brief, dated May 1, 2019 (Petitioner Rebuttal Brief).

⁹ *See Order*; *see also Multilayered Wood Flooring from the People’s Republic of China: Final Clarification of the Scope of the Antidumping and Countervailing Duty Orders*, 82 FR 27799 (June 19, 2017).

¹⁰ A “veneer” is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

¹¹ Commerce Interpretive Note: Commerce interprets this language to refer to wood flooring products with a minimum of three layers.

flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product. Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of HDF, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States¹² (“HTSUS”): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.3175; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4160; 4412.31.4175; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5225; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.0640; 4412.32.0665; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2625; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3225; 4412.32.5600; 4412.32.5700; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; 4418.74.2000; 4418.74.9000; 4418.75.4000; 4418.75.7000; 4418.79.0100; and 9801.00.2500.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

IV. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

Commerce received timely filed no-shipment certifications from eight companies. We submitted a no-shipment inquiry to U.S. Customs and Border Protection (CBP) on September 4, 2018, with regard to these companies.¹³ We received no information from CBP to contradict the claims of

¹² On October 31, 2018, we added the following HTS numbers to update the ACE Case Reference File: 4412.33.0640, 4412.33.0665, 4412.33.0670, 4412.33.2625, 4412.33.2630, 4412.33.3225, 4412.33.3235, 4412.33.3255, 4412.33.3275, 4412.33.3285, 4412.33.5700, 4412.34.2600, 4412.34.3225, 4412.34.3235, 4412.34.3255, 4412.34.3275, 4412.34.3285, 4412.34.5700, 4418.74.2000, 4412.74.9000, 4418.75.4000, and 4418.75.7000. See Memorandum “Multilayered Wood Flooring from the People’s Republic of China (C-570-971): Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File,” dated October 31, 2018.

¹³ See Customs Instructions to CBP re: No shipments inquiry for certain multilayered wood flooring from the People’s Republic of China, Message No. 8247303, dated September 4, 2018.

Anhui Boya Bamboo & Wood Products Co., Ltd., Chinafloors Timber Co., Ltd., Jiangsu Keri Wood Co., Ltd., Jiashan On-Line Lumber Co., Ltd., Kingman Floors Co., Ltd., Linyi Bonn Flooring Manufacturing Co., Ltd., and Zhejiang Shiyou Timber Co., Ltd., that they had no sales, shipments, or entries of subject merchandise to the United States during the POR.¹⁴ We did, however, receive information that contradicted Hunchun Forest Wolf Wooden Industry Co. (Hunchun Forest), Ltd.'s claims of no sales, shipments or entries of subject merchandise to the United States during the POR.¹⁵ After receiving notice of this information, Hunchun Forest withdrew its no-shipment certification.¹⁶ Because the above-listed companies, other than Hunchun Forest, timely filed their no-shipment certifications and CBP has not provided information to contradict the companies' claims, we are rescinding the review of these companies, pursuant to 19 CFR 351.213(d)(3).

V. PERIOD OF REVIEW

The POR is January 1, 2016, through December 31, 2016.

VI. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce made no changes to the allocation period and the allocation methodology used in the *Preliminary Results*. No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the allocation period or the allocation methodology for the respondent companies. For a description of allocation period and the methodology used for these final results, see the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 23.

B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies. For a description of the methodologies used for these final results, see the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 23-24.

C. Benchmarks and Interest Rates

Commerce made changes to certain benchmarks that were used in the *Preliminary Results*. We addressed the comments raised by interested parties regarding benchmarks at Comment 6.

¹⁴ See Memorandum to the File, "No Shipment Inquiry," dated September 13, 2018, stating that the CBP no-shipment data query did not identify any entries of subject merchandise.

¹⁵ See Memorandum to the File, "U.S. Customs and Border Protection No Shipment Inquiry," dated October 8, 2018, stating that Hunchun Forest had shipments of subject merchandise to the U.S. during the POR.

¹⁶ See Letter from Hunchun Forest, "Comments on Hunchun Forest Shipments," dated October 23, 2018.

D. Denominators

Commerce has made no changes to the denominators used for Jiangsu Senmao in the *Preliminary Results*. For a description of Jiangsu Senmao's denominators used for these final results, see the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 24. For Riverside Plywood, and its cross-owned affiliate, Baroque Timber, we made certain changes to the sales denominators based on minor corrections presented at verification.¹⁷ No additional issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the appropriate denominators.

VII. CHANGES FROM THE PRELIMINARY RESULTS

Based on our analysis of the parties' comments in the case briefs and our verification findings, we made certain changes from the *Preliminary Results*, which are discussed in the "Analysis of Comments" section below. In addition, we made certain changes noted in the final calculation memorandum for Riverside Plywood and Jiangsu Senmao.¹⁸

VIII. USE OF FACTS OTHERWISE AVAILABLE

A. Legal Standard

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

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce shall promptly inform the party submitting the response of the nature of the deficiency, and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, Commerce may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that Commerce may use an adverse inference (*i.e.*, AFA) in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, Commerce is not required to

¹⁷ See Memorandum, "Multilayered Wood Flooring from the People's Republic of China: Final Results Calculations for Riverside Plywood Corporation," dated July 30, 2019 (Riverside Plywood Final Calculation Memo) at 3.

¹⁸ *Id.*; see also Memorandum, Multilayered Wood Flooring from the People's Republic of China: Final Results Calculations for Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.," dated July 30, 2019 (Jiangsu Senmao Final Calculation Memo)

determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.¹⁹ Secondary information is defined as information derived from the petition that gave rise to the investigation, the determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.²⁰

Finally, under section 776(d) of the Act,²¹ Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.

B. Application of Facts Otherwise Available

Commerce relied on “facts otherwise available” for the following programs:

1. Provision of Electricity for LTAR
2. Provision of Land-Use Rights to Certain Industrial Zones for LTAR
3. Provision of Veneers for LTAR
4. Provision of Cut Timber for LTAR
5. Export Buyer’s Credit
6. Other Subsidies

For a description of these decisions, *see the Preliminary Results*.²² Commerce continues to use facts available for these final results for Jiangsu Senmao, Riverside Plywood and Riverside Plywood’s cross-owned affiliate Baroque Timber. Also, as described below, Commerce is applying AFA, for certain programs, under sections 776(a) and (b) of the Act. We further explain these decisions in Comments 1, 2, 3 and 4.

IV. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

For the descriptions, analyses, and calculation methodologies regarding these programs, *see the Preliminary Results* or *Post-Preliminary Analysis*. Except where noted below, the parties did not

¹⁹ See 19 CFR 351.308(d).

²⁰ See Statement of Administrative Action, H.R. Doc. No. 316, 103rd Congress, 2d Session (1994) (SAA) at 870.

²¹ Section 776(c) of the Act requires that a rate being used be corroborated, unless the CVD rate was “applied in a separate segment of the same proceeding.”

²² See Preliminary Decision Memorandum at 8-22.

raise any issues regarding these programs in their case briefs. The final program rates are as follows:

1. *Allowance for Attorney's Fees*

Interested parties raised no issues regarding this program and we made no changes to the *Preliminary Results*. For the final results of this review, the rate for Riverside Plywood remains unchanged at .03 percent *ad valorem*.²³ We continue to find the program not to be used by Jiangsu Senmao.

Riverside Plywood: 0.03 percent *ad valorem*

2. *Provision of Electricity for LTAR*

For Riverside Plywood, as discussed in Riverside Plywood's Final Calculation Memo, we made certain changes to the program rate.²⁴ Commerce has made no changes to the *Preliminary Results* regarding Jiangsu Senmao for this program.²⁵

Riverside Plywood: 0.22 percent *ad valorem*
Jiangsu Senmao: 0.13 percent *ad valorem*

3. *Policy Loans to the MLWF Industry*

As discussed in Comment 3, we made changes to the program rate for Jiangsu Senmao and no changes to the program rate for Riverside Plywood.²⁶

Riverside Plywood: 0.34 percent *ad valorem*
Jiangsu Senmao: 0.95 percent *ad valorem*

4. *Provision of Veneers for LTAR*

As discussed in Comments 9, we made changes to the program rate for Jiangsu Senmao and Riverside Plywood.²⁷ In addition, we made certain changes based on findings at verification for Riverside Plywood and its cross-owned affiliate Baroque Timber.²⁸

Riverside Plywood: 0.08 percent *ad valorem*
Jiangsu Senmao: 0.15 percent *ad valorem*

²³ *Id.* at 29-30

²⁴ See Riverside Plywood Final Calculation Memo at 1-2.

²⁵ See Preliminary Decision Memorandum at 30-31

²⁶ *Id.* at 31-33; Jiangsu Senmao Final Calculation Memo at 1-2.

²⁷ See Jiangsu Senmao Final Calculation Memo at 3; see also Riverside Plywood Final Calculation Memo at 2.

²⁸ See Riverside Plywood Final Calculation Memo at 2.

5. *Provision of Cut Timber for LTAR*

As discussed in Comments 8 and 9, we made changes to the program rate for Jiangsu Senmao.²⁹ We continue to find the program not to be used by Riverside Plywood.

Jiangsu Senmao: 0.22 percent *ad valorem*

6. *Provision of Land-Use Rights to Certain Industrial Zones for LTAR*

As discussed in Comment 10, we made no changes to the program rate for Riverside Plywood. We also made no changes to Jiangsu Senmao's program rate; and therefore, for the final results of this review, the rates for Riverside Plywood and Jiangsu Senmao remain unchanged.³⁰

Riverside Plywood: 0.50 percent *ad valorem*
Jiangsu Senmao: 0.56 percent *ad valorem*

7. *Export Buyer's Credit*

As discussed in Comment 5, we made changes to the program rate for Jiangsu Senmao and Riverside Plywood.³¹

Riverside Plywood: 0.95 percent *ad valorem*
Jiangsu Senmao: 0.95 percent *ad valorem*

8. *Other Subsidies*

As discussed in Comment 11, we made changes to the program rate for Riverside Plywood for the Export Credit Insurance and Equipment Upgrade Subsidy programs.

We continue to find that the respondents received the following non-recurring grants during the POR or average useful life (AUL) period.³²

a. Grant Programs

Riverside Plywood

- (1) Technology Innovation Support
- (2) Support for Developing a National Technology Standard
- (3) International Participation Allowance
- (4) Project Appropriation
- (5) Export Credit Insurance

²⁹ See Jiangsu Senmao Final Calculation Memorandum at 2- 3.

³⁰ See Preliminary Decision Memorandum at 12-14.

³¹ See Jiangsu Senmao's Final Calculation Memorandum at 3; see also Riverside Plywood Final Calculation Memorandum at 4.

³² See Riverside Plywood Final Calculation Memorandum at 2.

- (6) Steady Growth Export
- (7) Equipment Upgrade Subsidy
- (8) Central Municipal Project Award

Riverside Plywood: 0.55 percent combined *ad valorem* for the above-listed programs

b. Direct Tax Programs

Riverside Plywood

- (1) Income Tax Reduction for High or New Technology Enterprises
- (2) Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law

Riverside Plywood: 0.53 percent combined *ad valorem* for the above-listed programs

B. Program Determined Not to Confer a Countervailable Benefit for Jiangsu Senmao or Riverside Plywood

- 1. Provision of Water for LTAR³³

C. Programs Determined Not to Be Used by Jiangsu Senmao or Riverside Plywood

- 1. Income Tax Subsidies for FIEs Based on Geographic Location
- 2. International Market Development Fund Grants for Small and Medium Enterprises
- 3. Certification of National Inspection-Free on Products and Reputation of Well Known Firm – Jiashan County
- 4. International Market Development Fund Grants for Small and Medium Enterprises
- 5. Minhang District Little Giant Enterprise Support
- 6. Minhang District Pujiang Town Enterprise Support
- 7. Technology Innovation Support
- 8. Support for Developing a National Technology Standard
- 9. Jinzhou New District 2012 Technology Innovation Award
- 10. Jinzhou District 2013 New and High Technology Research & Development Plan Industrialization Special Fund
- 11. Technical Innovation Fund from Linyi Bureau of Finance
- 12. 2005 Enterprise Development Special Funds Awarded to Penghong Wood
- 13. Local Income Tax Exemption and Reductions for “Productive” FIEs
- 14. Provision of Electricity at LTAR for FIEs and “Technology Advanced” Enterprises by Jiangsu Province
- 15. Program of Loan Interest Discount
- 16. Program of Provincial Famous Brand and New Product

³³ See Preliminary Decision Memorandum at 37.

17. GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of “Famous Brands”
18. Program of VAT Refunds for Production and Processing Comprehensive Utilization Products by Using Three Leftover Materials and Down-Graded Small Woods
19. Party Members’ Activities Fund
20. Patent Application Support
21. Patent Fund
22. Provision of Standing Timber for LTAR
23. Provision of Formaldehyde for LTAR
24. Provision of Urea for LTAR
25. Provision of Land-Use Rights to SOEs for LTAR
26. Provision of Export Credits – Export Sellers’ Credits
27. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment
28. Preferential Loans to SOEs³⁴

V. ANALYSIS OF COMMENTS

Comment 1: Application of Total AFA to the GOC and Riverside Plywood

Petitioner Case Brief

- The U.S. Court of Appeals for the Federal Circuit only requires two findings for Commerce to apply AFA.³⁵ The application of AFA, pursuant to section 776(a) and (b) of the Act, is warranted where an interested party fails to cooperate to the best of its ability, including withholding information requested by Commerce or failing to retain the records that a reasonable respondent should know to retain, if it is called upon to produce such records in a CVD proceeding.
- The GOC was given multiple opportunities to fully respond to Commerce’s questions, but failed to do so, and in many instances directed Commerce to the questionnaire responses of other parties in lieu of providing the information.³⁶
- Commerce instructed the GOC to fully translate its exhibits, but the GOC ignored the request and argued that the untranslated sections are not required by Commerce.³⁷
- The GOC failed to report accurate and timely information regarding the import tariff and VAT exemptions on imported equipment. The GOC sent Commerce untimely corrections to certain VAT and tariff exemption information in which it revised the reported amount of benefits received by Baroque Timber.³⁸
- Commerce requested complete information on Riverside Plywood’s affiliates in the initial questionnaire,³⁹ but Riverside Plywood failed to fully disclose the true nature of its

³⁴ See Preliminary Decision Memorandum at 39-41.

³⁵ See Petitioner Case Brief at 14.

³⁶ *Id.* at 6-7.

³⁷ *Id.* at 8.

³⁸ *Id.* at 9.

³⁹ *Id.* at 12.

relationship with one of its affiliates until a late stage in this review.⁴⁰ Riverside Plywood also stated that it had no business relationship with one of its affiliates and later disclosed a substantial loan transaction with the same affiliate.⁴¹

- Riverside Plywood provided incomplete and inaccurate information regarding its purchases of veneers. Riverside Plywood admits to these errors and identifies them as clerical and inadvertent reporting errors.⁴²
- U.S. law presumes familiarity with Commerce’s CVD laws, and there is no *mens rea* requirement under the AFA standard.⁴³ The GOC and Riverside Plywood failed to cooperate and provide full and accurate information in this review, and Commerce should apply total AFA in accordance with its standard practice.⁴⁴

Riverside Plywood Rebuttal Brief

- Commerce lacks the authority to apply facts otherwise available or any adverse inference under sections 776(a) and (b) of the Act, because the petitioner has not identified any information that is missing from the record.
- Under the statute, as a prerequisite for the use of an adverse inference, Commerce must first find that the use of facts otherwise available is appropriate.⁴⁵ In addition, the use of facts otherwise available is only appropriate to fill gaps to complete CVD calculations.⁴⁶
- In its initial questionnaire response, Riverside Plywood submitted its veneer purchases.⁴⁷ In its fourth supplemental questionnaire response, Riverside Plywood identified certain errors in its earlier reporting and submitted an explanation with corrections for both itself and its affiliate, Baroque Timber’s, veneer purchases.⁴⁸ Baroque Timber’s errors represent approximately 0.3 percent of Baroque Timber’s purchases and the changes in value have no impact on Baroque Timber’s CVD rate for this program.⁴⁹
- One of Riverside Plywood’s clerical errors in its veneer reporting related to a purchase that should have reflected two purchases instead of one, and another was not an error, but an explanation that one of the veneer purchases consisted of a thicker and more costly veneer used for non-subject merchandise stair construction.⁵⁰

⁴⁰ *Id.* at 11-13 (citing Riverside Plywood’s Letter, “Second Supplemental Questionnaire Response,” dated October 12, 2019 (Riverside Plywood Second SQR); *see also* Riverside Plywood’s Letter, “Fourth Supplemental Questionnaire Response,” dated November 13, 2019 (Riverside Plywood Fourth SQR)).

⁴¹ *Id.* at 12-14.

⁴² *Id.* at 18-19.

⁴³ *Id.* at 23.

⁴⁴ *Id.* at 4 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1375 (Fed. Cir. 2003) (*Nippon Steel Corp. v. United States*)).

⁴⁵ *See* Riverside Plywood Rebuttal Brief at 4 (citing *Shandong Huarong Mach. Co. v. United States*, 435 F. Supp. 2d 1261, 1289 (CIT 2006) (*Shandong Huarong Mach. Co. v. United States*)).

⁴⁶ *Id.* at 4.

⁴⁷ *Id.* at 16 (citing Riverside Plywood’s Letter, “Initial Questionnaire Response,” dated July 26, 2018 (Riverside Plywood’s IQR) at 29 – 31, Exhibit 20a and Exhibit 20b).

⁴⁸ *Id.* at 18 (citing Riverside Plywood’s Letter, “Fourth Supplemental Questionnaire Response,” dated July 26, 2018 (Riverside Plywood’s IQR) at 3-4, Exhibit 5S-6 and Exhibit 5S-8).

⁴⁹ *Id.* at 17.

⁵⁰ *Id.*

- Riverside Plywood’s clerical errors on its veneer purchases are not sufficient to conclude that Riverside failed to cooperate.⁵¹ The U.S. Court of International Trade (CIT) has recognized the best of ability standard may include mistakes.⁵² Additionally, the presence of correctable errors does not make the data unverifiable.⁵³ Riverside Plywood and its cross-owned affiliate, Baroque Timber, provided complete and accurate information on its affiliates and veneer purchases that was verified.
- In *Am. Silicon Techs. v. United States*, the CIT stated that Commerce cannot rely on AFA unless it has made, “the necessary finding that {the respondent} failed to respond to the best of its ability.”⁵⁴ Riverside Plywood provided complete and timely information on each of these issues, to the best of its ability, and it is not appropriate for Commerce to apply AFA when relevant information exists on the record.⁵⁵
- The petitioner’s claim that Riverside Plywood did not disclose its relationship with one of its affiliates; however, Riverside Plywood disclosed the nature of its relationship with all of its affiliates in its initial affiliation response.⁵⁶ Additionally, in Riverside Plywood’s second supplemental questionnaire, Riverside Plywood disclosed that the affiliate had no operations and responded specifically to Commerce’s questions on the affiliate’s operations and if its operations were intertwined with Riverside Plywood’s operations.⁵⁷
- Riverside Plywood indicated that this company was a cross-owned company within the meaning of 19 CFR 351.525(b)(6), because it was 100 percent owned by the same 100 percent direct and ultimate owners as Riverside Plywood.⁵⁸ The only way Riverside Plywood’s affiliate could be considered relevant to this review under Commerce’s regulation would be if it (a) produced subject merchandise, (b) provided inputs to Riverside Plywood, or (c) transferred a subsidy to Riverside Plywood. As stated above, Riverside Plywood’s affiliate never had any operations and as evidence, Riverside Plywood provided its affiliate’s financial statements for every year from 2009 (when it was established) through 2016.⁵⁹

GOC Rebuttal Brief:

- The GOC acted in good faith by proactively submitting correct VAT and tariff exemption information.⁶⁰ After discussions with Riverside Plywood, the GOC found inconsistencies between it and Riverside Plywood’s VAT and tariff data. Although the GOC was not

⁵¹ *Id.* at 6 (citing SAA at 869-870).

⁵² *Id.* at 8 (citing *Husteel Co. v. United States*, 98 F. Supp. 3d 1315, 1352 (CIT 2015) (*Husteel Co. v. United States*)).

⁵³ *Id.* at 6 (citing *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 788)(CIT 2001) (*Tung Mung Dev. Co. v. United States*)).

⁵⁴ *Id.* at 6 (citing *Am. Silicon Techs. v. United States*, 24 CIT 612, 625 (CIT 2000) (*Am. Silicon Techs. v. United States*)).

⁵⁵ *Id.* at 5 (citing *Guizhou Tyre Co. v. United States* Court No. 17-00101; Slip Op. 18-140 (CIT 2018) at 9-11 (October 17, 2018) (*Guizhou Tyre Co. v. United States*)).

⁵⁶ *Id.* at 10 (citing Riverside Plywood’s Letter, “Affiliation Questionnaire Response” dated July 2, 2019 (Riverside Plywood’s AQR) at Exhibit 1).

⁵⁷ *Id.* at 10-11 (citing Riverside Plywood’s Second Supplemental Questionnaire Response, dated October 12, 2018 at 2 (Riverside Plywood’s Second SQR)).

⁵⁸ *Id.* at 12 (citing Riverside Plywood’s IQR at Exhibit S1 and Exhibit S2).

⁵⁹ *Id.* at 13 (citing Riverside Second SQR at Exhibit 3S-4 and 3S-5).

⁶⁰ See GOC Rebuttal Brief at 1-2 (citing GOC’s Letter, “GOC’s Correction to Certain VAT and Tariff Exemption Information,” dated November 9, 2018).

prompted by Commerce to clarify this inconsistency, the GOC acted to the best of its ability by investigating this discrepancy and submitting the correct information.⁶¹ Additionally the GOC's correction did not impact Commerce's ability to conduct the review, but instead, provided Commerce with additional and accurate information on its VAT and tariff data.

Commerce's Position

We disagree with the petitioner's assertion that we should apply total AFA with respect to the GOC and Riverside Plywood.

Commerce has previously explained its practice with respect to the application of AFA based on the non-cooperation of governments in the context of CVD proceedings, including in *Ribbons AR 2015*.⁶² In general, Commerce's practice is to find, as AFA, that alleged subsidy programs constitute a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively.⁶³ Therefore, consistent with our practice, where the GOC withheld necessary information and failed to cooperate by not acting to the best of its ability to comply with our requests for information, Commerce applied AFA by finding that: 1) the Chinese land prices are distorted by the significant government role in the market; 2) the MLWF industry is also distorted by the involvement of the GOC; 3) privately-owned input suppliers of MLWF are "authorities"; 4) the export buyer's credit program constitutes a financial contribution and is specific; 5) the provision of electricity constitutes a financial contribution and is specific; and 6) other subsidies reported by Riverside Plywood and its cross-owned affiliate for the first time in this administrative review provide a financial contribution and are specific.

In our *Preliminary Results*, we found that following programs warranted the use of partial AFA because the GOC did not provide adequate responses or supporting documentation concerning specificity and financial contribution:

1. Provision of Electricity for LTAR
2. Provision of Land-Use Rights to Certain Industrial Zones for LTAR
3. Provision of Veneers for LTAR
4. Provision of Cut Timber for LTAR
5. Export Buyers Credit⁶⁴

As discussed below in Comments 2, 3, 4 and 5, we continue to find that the use of partial AFA is appropriate for these programs. However, for certain programs (*i.e.*, Allowance of Attorney's Fees, Policy Loans to the MLWF Industry, and the Provision of Water for LTAR), we found that the GOC provided responses sufficient to determine specificity and financial contribution.⁶⁵ In

⁶¹ *Id.*

⁶² See *Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 11177 (March 14, 2018) (*Ribbons AR 2015*), and accompanying Issues and Decision Memorandum at Comment 3.

⁶³ See *GPX Int'l Tire Corp v. United States*, 942 F. Supp. 2d 1343, 1359-60 (CIT 2013).

⁶⁴ See Preliminary Decision Memorandum at 8-17.

⁶⁵ *Id.* at 29, 31 and 37.

the *Preliminary Results*, we determined that for Policy Loans to the MLWF Industry program, the GOC, through its directives, has policies in place encouraging the use of loans to support the growth of the timber and MLWF industry.⁶⁶ For the Allowance for Attorney's Fees program, Riverside Plywood reported receiving an allowance from the GOC in 2011 for this program. The GOC reported that the program was terminated on January 1, 2014; however, the GOC corroborated Riverside Plywood's reporting that it received assistance under this program during the AUL.⁶⁷ For the Provision of Water for LTAR, the GOC provided the *Water Law of the People's Republic of China and the Regulation on the Administration of the License for Water Drawing and the Levy of Water Resources Fees*, which made no indication that the MLWF industry benefitted from the provision of water for LTAR.⁶⁸ Furthermore, as noted by the GOC, in *Passenger Vehicle and Light Truck Tires from China*,⁶⁹ the GOC provided information demonstrating the revocation of this program in Jiangsu Province.⁷⁰

With respect to Riverside Plywood, in our *Preliminary Results*, we relied on the company's affiliation and supplemental questionnaire responses, which were submitted in a timely manner.⁷¹ Additionally, we successfully verified the accuracy of Riverside Plywood's responses related to its business operations, affiliations, and veneer purchases, using original documentation.⁷² Specifically, for Riverside Plywood's veneer purchases, we verified how the veneer purchases are recorded and reviewed Riverside Plywood's accounting records finding no discrepancies. Additionally, we examined the volume, value, VAT and delivery costs and verified that these were accurately reported in Riverside Plywood's supplemental questionnaire response.⁷³ See Comment 2 for details on Riverside Plywood's purchases of veneers.

For these final results, we do not find it appropriate to rely on total AFA with respect to Riverside Plywood. As an initial matter, we do not find that necessary information is missing from the record, or that Riverside Plywood withheld requested information, failed to provide information in the requisite form and manner, significantly impeded the proceeding, or provided unverifiable information, within the meaning of section 776(a) of the Act. Furthermore, we do not agree with the petitioner that Riverside Plywood failed to act to the best of its ability in

⁶⁶ *Id.* at 31-33 (citing the following GOC Directives: (1) Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation (No. 40 (2005)) (Decision 40), (2) Chapter II "Directions and Key Points of Industrial Structure Adjustment," Article 4, Decision 40, and (3) the Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue)

⁶⁷ See GOC's Initial Questionnaire Response, dated July 31, 2018 (GOC's IQR) at 10.

⁶⁸ *Id.* at 37; see also the GOC's Letter, "Supplemental Questionnaire Response," dated September 17, 2019 (GOC SQR) at Exhibit 19 and 20.

⁶⁹ 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 (December 1, 2014), and accompanying Preliminary Decision Memorandum at 48; unchanged in *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*).

⁷⁰ *Id.*

⁷¹ See Preliminary Decision Memorandum at 2.

⁷² See Riverside Plywood Verification Report at 3-4.

⁷³ See Riverside Plywood Verification Report at 6; see also Riverside Plywood's Fourth Supplemental Questionnaire Response, dated November 13, 2018 (Riverside Plywood's Fourth SQR) at Exhibit 5S-5 and 5S-6.

responding to Commerce's multiple requests for information. As such, we do not find it appropriate to apply total AFA to Riverside Plywood pursuant to section 776(b) of the Act.

Based on the above, we do not agree that total AFA is warranted with respect to either the GOC or Riverside Plywood.

Comment 2: Application of Partial AFA with Respect to Riverside Plywood's Purchases of Veneers for LTAR

Petitioner Case Brief

- If Commerce decides not to apply total AFA regarding Riverside Plywood, then Commerce should apply AFA to Riverside Plywood's purchases of veneers because Riverside Plywood's information was unreliable.
- Riverside Plywood was unable to provide any documentation to support its response that prices vary because of different types of wood although Commerce asked for the information twice.⁷⁴
- Riverside Plywood explained that the variation in veneer prices was because it was experimenting with producing stairs.⁷⁵ However, no supporting documentation for the stair production was provided.
- Riverside Plywood improperly reported the purchase of plywood in its purchases of veneers. The onus of reporting accurate information should fall on the respondent, not on Commerce.
- In addition, Riverside Plywood identified a number of errors in its reported purchases of veneers.⁷⁶ Furthermore, the errors do not appear to be minor and do not appear to be clerical errors as asserted by Riverside Plywood.
- With respect to the AFA standard, inadequate responses to inquiries may suffice and the statute does not contain an intent element.⁷⁷

Riverside Plywood Rebuttal Brief

- Riverside Plywood submitted its veneer purchases in its initial questionnaire response.⁷⁸
- In its fourth supplemental questionnaire response, the company identified errors in its earlier reporting of veneer purchases by Riverside Plywood and Baroque Timber which required correction.
- Regarding purchases made by Baroque Timber, Riverside Plywood explains that Baroque Timber's errors represent 0.3 percent of Baroque Timber's purchases.
- Regarding purchases made by Riverside Plywood, it explains that with or without its corrections, Riverside Plywood's corrections did not result in a countervailable benefit.
- Furthermore, Commerce confirmed at verification that Baroque Timber inadvertently included plywood in its veneer purchase table.⁷⁹

⁷⁴ See Petitioner's Case Brief at 20 (citing Riverside Plywood's Second SQR at 6).

⁷⁵ *Id.* at 21 (citing Riverside Plywood's Fourth SQR at 4).

⁷⁶ *Id.* at 20 (citing Riverside Plywood Fourth SQR at 3-4).

⁷⁷ *Id.* at 23 (citing *Nippon Steel Corp. v. United States* at 1383).

⁷⁸ See Riverside Plywood's Rebuttal Brief at 16 (citing Riverside Plywood's IQR at Exhibit 20b).

⁷⁹ *Id.* at 17 (citing Baroque Timber Verification Report at 6-7).

- Considering the large amount of data and the Riverside companies' unfamiliarity with CVD proceedings, it is understandable that errors were discovered. Furthermore, the companies viewed making the corrections as their duty and obligation in responding to Commerce's supplemental questions.
- In Riverside Plywood's fourth supplemental response, it provided documentation demonstrating its stair veneer and plywood purchases.⁸⁰
- Finally, the petitioner ignores the results of the verification report where Commerce stated that it noted no discrepancies, other than minor corrections, and confirmed that the data submitted reconciled with the companies' accounting systems.⁸¹

Commerce's Position

We disagree with the petitioner's assertion that we should apply partial AFA with respect to Riverside Plywood's purchases of veneers for LTAR. For the preliminary results, we relied on AFA, in part, due to the GOC's lack of response to the initial and supplemental questionnaires.⁸² In particular, we stated,

With the information necessary to determine financial contribution and specificity missing from the record, due to the GOC's refusal to provide the information requested, we find that an adverse inference is warranted in applying facts otherwise available, under sections 776(a) and (b) of the Act, in making a finding that this program provided a financial contribution under section 771(5)(D) of the Act, and is specific under section 771(5A) of the Act.⁸³

Thus, our application of AFA pertained only to financial contribution and specificity. However, with regard to benefit, Riverside Plywood (and its cross-owned affiliate Baroque Timber) had provided the necessary information to preliminarily determine the amount of the benefit to the extent the respondents' veneer purchases were for LTAR. Despite the application of AFA with regard to the government's responses as to financial contribution and specificity, it is Commerce's practice to use the respondent's actual reported (and verified or verifiable) prices and quantities of the purchased good to measure the amount of the benefit.⁸⁴

In Riverside Plywood's initial questionnaire response, Riverside Plywood submitted worksheets for purchases of veneers for itself and Baroque Timber.⁸⁵ In Riverside Plywood's first supplemental questionnaire response, Riverside Plywood submitted a revised veneer purchases worksheet which included two purchases in addition to the five purchases identified in Riverside Plywood's initial questionnaire response.⁸⁶ In Riverside Plywood's second supplemental questionnaire response, Riverside Plywood explained why the average unit value for purchases

⁸⁰ *Id.* at 18 (citing Riverside Plywood Fourth SQR at Exhibits 5S-5 and 5S-7).

⁸¹ *Id.* at 18 (citing Baroque Timber Verification Report at 6-7).

⁸² *See* Preliminary Decision Memorandum at 8.

⁸³ *Id.*

⁸⁴ *See* Preliminary Decision Memorandum at 33.

⁸⁵ *See* Riverside Plywood IQR at Exhibits 20a and 20b.

⁸⁶ *See* Riverside Plywood Second SQR at Exhibit SS10.

of veneer could vary. Specifically, Riverside Plywood explained that prices can vary because veneers are made of different types and qualities of wood and come in different thicknesses.⁸⁷ In response to additional questions from Commerce and after further reviewing the veneer purchase worksheets, Riverside Plywood submitted revised veneer purchase worksheets.⁸⁸ There were no significant changes in the veneer purchase worksheets.⁸⁹

In our verification report, we stated, “{w}e confirmed that the company reported its purchases on the transaction-by-transaction basis that we specified in the original questionnaire.”⁹⁰ We also explained that,

{w}e observed that the volume and value of those purchases, as well as the applicable VAT and delivery costs, were accurately reported in Riverside Plywood’s 4th SQR at Exhibit 5S-6, except for the inclusion of the non-veneer items in purchase number 8. Regarding purchase number 8, company officials explained that they found two non-veneer purchases which were included in the veneer purchases worksheet submitted in their response.⁹¹

Based on our verification, we did not find any errors except for the non-veneer purchases which were presented as minor corrections by Riverside Plywood at the beginning of verification and accepted by Commerce. Furthermore, at our verification of Baroque Timber’s questionnaire responses, the company submitted minor corrections at the beginning of verification relating to only three observations in the veneer purchases worksheet which represent 0.3 percent of the value of its total purchases.⁹² We accepted this correction as minor because the veneer purchases only represented 0.3 percent of Baroque Timber’s total veneer purchases, and we noted no other discrepancies with Baroque Timber’s response.⁹³

Based on the successful verification of respondents’ submitted information, we continue to determine that Riverside Plywood and Baroque Timber’s reported veneer purchases are reliable for the purpose of calculating a benefit under the Provision of Veneers for LTAR program. Therefore, we do not find it appropriate to apply AFA to Riverside Plywood or Baroque Timber for this program and are continuing to use the reported information to calculate a subsidy rate for the purchases of veneer for LTAR for the final results.⁹⁴

⁸⁷ *Id.* at 6.

⁸⁸ *See* Riverside Plywood Fourth SQR at Exhibits 5S-5 and 5S-8.

⁸⁹ *Id.* at 5.

⁹⁰ *See* Riverside Plywood Verification Report at 6.

⁹¹ *Id.*

⁹² *See* Baroque Timber Verification Report at 3.

⁹³ *Id.*

⁹⁴ *See* Riverside Plywood Final Calculation Memo at 2 and Attachment 2.

Comment 3: Application of AFA with Respect to Jiangsu Senmao's Receipt of Policy Loans for LTAR.

Petitioner Case Brief

- At verification, Jiangsu Senmao reported 11 new policy loans in the amount of 106M RMB and Commerce accepted these newly reported loans as minor corrections. Commerce should reject these loans because the number of loans and the total value of the loans are not minor when compared to the loans reported by Jiangsu Senmao prior to the *Preliminary Results*.⁹⁵
- Jiangsu Senmao's policy loans reported at verification are not corrections to previously reported information and constitute new information. At verification, Senmao's company officials stated that, "they inadvertently excluded 11 loans from their questionnaire response."⁹⁶ In doing so, Jiangsu Senmao admits that these loans are new loans and not corrections to information already submitted on the record of this review.
- It is Commerce's practice to apply AFA when corrections that are not minor are first reported at verification.⁹⁷ In *PET Resin from China*, Commerce rejected policy loans that were first reported by the respondent at verification because the loans were extensive and Commerce was not able to verify the Policy Lending or Export Financing Programs for the respondent and its cross-owned affiliates.⁹⁸ As a result, Commerce assigned the respondent a 10.54 percent subsidy rate for each loan program based on the policy lending rate for the CVD investigation of *Certain Coated Paper from China*.⁹⁹
- Jiangsu Senmao did not misunderstand the policy loan questions. Commerce's questionnaire states, "report all financing to your company that was outstanding during the POR." Additionally, a review of Jiangsu Senmao's loans reported prior to the *Preliminary Results* shows loans taken out in 2016 and paid in full in 2016,¹⁰⁰ and it appears Jiangsu Senmao only reported the additional loans at verification to avoid the application of AFA.¹⁰¹

Jiangsu Senmao Rebuttal Brief

- Commerce should continue to accept the loans submitted at verification because this was Jiangsu Senmao's first time reporting these loans, and this is an inadvertent error that Jiangsu Senmao found in preparation for the verification.¹⁰² Jiangsu Senmao voluntarily reported these loans and submitted the corrections on the first day of verification.¹⁰³

⁹⁵ See Petitioner Case Brief at (citing Jiangsu Senmao Verification Report at 2 and 5-6).

⁹⁶ *Id.* at 25 (citing to Jiangsu Senmao's Verification Report at 2).

⁹⁷ *Id.* at 26 (citing *Certain Polyethylene Terephthalate Resin From the People's Republic of China*, 81 FR 13337 (March 14, 2016) and accompanying Issues and Decision Memorandum (PET Resin China IDM) at 57-59).

⁹⁸ *Id.* at 26 (citing PET Resin China IDM at 18)

⁹⁹ *Id.* at 26-27 (citing *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing*, 75 FR 70201 (November 17, 2010) (*Certain Coated Paper from China*)).

¹⁰⁰ *Id.* at 28.

¹⁰¹ *Id.*

¹⁰² See Senmao Rebuttal Brief at 2.

¹⁰³ *Id.*

- Jiangsu Senmao misunderstood the questionnaire and did not report loans that were both taken out in 2016 and paid off in 2016. Contrary to the petitioner’s claim, there is no inconsistency in Jiangsu Senmao’s explanation, and all of the loans originally reported for 2016 were not paid off during the POR. Regardless of the reason for the error, it was still an inadvertent error and the record is now complete.¹⁰⁴
- In *PET Resin from China*, the proposed corrections were so extensive that Commerce rejected them at verification. In this review, Commerce reviewed and assessed the proposed corrections and accepted them as minor corrections. The acceptance of the minor corrections did not interfere with Commerce’s ability to conduct this review or cause any adverse consequences for the investigation.¹⁰⁵
- In *Acciai Speciali Terni S.P.A. v. United States*, the CIT explained that Commerce may exercise its discretion in accepting additional information at verification if the information makes minor revisions to information already on the record or if the information corroborates, supports, or clarifies information already on the record.¹⁰⁶
- The acceptance of corrections is in accordance with Commerce’s practice to calculate the most accurate margins possible. In *Fine Furniture (Shanghai) Ltd. v. United States*, the CIT states, “In addition, when considering correction of an error at the preliminary results stage, the court ‘balance(s) the desire for accuracy ... with the need for finality at the final results stage... When a respondent seeks to correct an error after the preliminary results but before the final results, this court may require Commerce to analyze the new information.’”¹⁰⁷
- There is no gap in the record. Commerce may only apply facts available when there is a gap in the record. In this case, Jiangsu Senmao did not significantly impede the proceeding and the Courts have held that, “Commerce may apply facts available whenever there is a gap in the record.”¹⁰⁸

Commerce’s Position:

We disagree with the petitioner’s claim that we should apply AFA with respect to Jiangsu Senmao’s policy loans. The respondent provided notice to Commerce of these corrections at the beginning of verification. Jiangsu Senmao has explained to Commerce officials that it discovered its error in preparation for verification, and immediately notified Commerce that it misunderstood Commerce’s reporting requirements in the questionnaire.¹⁰⁹ Commerce reviewed the questionnaire and found reasonable Jiangsu Senmao’s explanation that the question is misleading for companies who are reporting loans for the first time. For instance, the Policy and Loan Section in the questionnaire states,

¹⁰⁴ *Id.* at 2-4.

¹⁰⁵ *Id.* (citing *PET Resin China IDM* at 18 and 57-59).

¹⁰⁶ *Id.* at 3 (citing *Speciali Terni S.P.A. v. United States*, 142 F.Supp.2d 969, 1007 (CIT 2001) (*Speciali Terni S.P.A. v. United States*)).

¹⁰⁷ *Id.* at 3 (citing *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254, 1269 (CIT 2012) (*Fine Furniture (Shanghai) Ltd. v. United States*)).

¹⁰⁸ *Id.* at 3 (citing *Huvis Corp. v. United States*, 31 C.I.T. 1803, 1807 (2007)).

¹⁰⁹ See Jiangsu Senmao Verification Report at 2.

“Report all financing to your company that was outstanding during the POR, regardless of whether you consider the financing to have been provided under this program.”¹¹⁰

Jiangsu Senmao explained that it interpreted the question as referring to loans that remained outstanding at both the start and the end of the POR; therefore, it did not report loans which were taken out during the POR and paid back in full during the POR. Additionally, Commerce finds that Jiangsu Senmao’s explanation of its interpretation of the question is consistent with its initial loan reporting. In its initial questionnaire response, Jiangsu Senmao submitted all of its loans that were outstanding at both the start and the end of the POR, and none of the loans reported were taken out during the POR and paid back in full during the POR.¹¹¹

We also disagree with the petitioner’s claim that the corrections were not minor. On February 21, 2019, Commerce sent out verification outlines to Jiangsu Senmao, Riverside Plywood, and Riverside Plywood’s cross-owned affiliate Baroque Timber. In the verification outline we explained,

Information will be accepted at verification only when the information makes minor corrections to information already on the record or when information is requested by the verifiers, in accordance with the agenda below, to corroborate, support, and clarify factual information already on the record.¹¹²

We reviewed, verified and accepted these loans as minor corrections because the information submitted corroborates, supports and clarifies information already on the record. In fact, at verification, we confirmed that Jiangsu Senmao reported all of its loans once the corrections were submitted.¹¹³ Additionally, in *Maui Pineapple Company, Ltd. v. United States*, the Court explained that “Commerce has broad discretion in establishing verification procedures.”¹¹⁴ The Court also found that Commerce properly verified and accepted a company’s data as minor corrections at verification,

{C}ommerce has discretion in determining if a respondent has complied with an information request and if the errors substantially effect the integrity of the response. Commerce had verified the respondent's submissions and determined that

¹¹⁰ See Commerce’s Initial CVD Questionnaire at Section III-12.

¹¹¹ See Jiangsu Senmao’s Letter, “Section III Questionnaire Response,” dated July 26, 2019 (Jiangsu Senmao’s IQR) at 15 and at Exhibit 8.

¹¹² See Letter from Commerce, “Verification of Baroque Timber Questionnaire Responses,” dated February 21, 2019 (Baroque’s Verification Outline) at 2; see also Letter from Commerce, “Verification of Riverside Plywood Questionnaire Responses, dated February 21, 2019 (Riverside Plywood’s Verification Outline) at 2, and Letter from Commerce, and “Verification of Jiangsu Senmao’s Questionnaire Responses,” dated February 21, 2019 (Jiangsu Senmao’s Verification Outline) at 2.

¹¹³ See Jiangsu Senmao Verification Report at 2 and 5-6.

¹¹⁴ See *Maui Pineapple Company, Ltd. v. United States*, 27 C.I.T. 580 (April 16, 2003) 596-597 (*Maui Pineapple Company, Ltd. v. United States*).

the revisions were not unduly extensive, and thus all errors were corrected and Commerce was able to calculate an accurate margin.¹¹⁵

Accordingly, we found no information missing from the record which would justify the application of AFA, and we obtained all necessary information to calculate an accurate CVD margin.¹¹⁶ Therefore, we have revised Jiangsu Senmao's rate for the Policy Loans program by incorporating the additional loan information submitted as minor corrections at verification. As a result, the rate for Jiangsu Senmao changes from 0.44 percent to 0.95 percent for the final results.

Comment 4: Application of AFA with Respect to the Export Buyer's Credit Program

GOC Case Brief

- Commerce should not apply an AFA rate to the respondents in this review for this program because the respondents did not use this program during the POR. In the *Preliminary Results*, Commerce applied AFA to the GOC for the Export Buyer's Credit program, claiming that the GOC provided incomplete responses on the program's operation.¹¹⁷ However, in its initial questionnaire, the GOC explained that none of the respondents' U.S. customers used the Export Buyer's Credit program during the POR, and the respondents claimed non-use for themselves and for their U.S. customers.¹¹⁸ Additionally, Jiangsu Senmao submitted signed affidavits from their U.S. customers and/or importers demonstrating their non-use of the program during the POR.
- AFA cannot be applied unless information is missing from the record,¹¹⁹ and the reliance on facts available is only appropriate to fill gaps in the record necessary for Commerce to complete its calculation.¹²⁰ Commerce cannot discard all the evidence on the record, because the GOC's response lacked program information.¹²¹ In *Roasted Pistachios from Iran*, Commerce and the Court held that when a foreign government fails to participate to the best of its ability, Commerce is required to review the information provided by that respondent to determine whether sufficient information exists, in order to determine if the program has been used:

{i}t is not Commerce's practice to assign an adverse facts available rate to a respondent in CVD proceedings based solely on the fact that the foreign government failed to participate to the best of its ability. Rather, in instances in which the foreign government fails to adequately respond to Commerce's questionnaires, it is Commerce's practice to apply adverse

¹¹⁵ *Id.* at 1259.

¹¹⁶ See The Statement of Administrative Action, Uruguay Round Agreements Act, accompanying H.R.Rep. No. 103-316, at 869 (1994), reprinted in 1994 U.S.C.C .A.N. 4040, 4199 (explaining that 19 U.S.C. § 1677e(a) "...generally will require Commerce to reach a determination by filling in gaps in the record due to deficient submissions or other causes").

¹¹⁷ See GOC Case Brief at 11 (citing the Preliminary Decision Memorandum at 16-17).

¹¹⁸ *Id.* (citing the GOC's Initial Questionnaire Response, dated July 31, 2018 for Suzhou Times at 23).

¹¹⁹ *Id.* at 11-13 (citing sections 776(a) and (b) of the Act).

¹²⁰ *Id.* at 13 (citing *Nippon Steel Corp. v. United States*).

¹²¹ *Id.* at 13.

inferences and assume that the alleged subsidy programs constitute a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. In such instances Commerce calculates the benefit by relying, to the extent possible, on information supplied by the respondent firm...However, if information on the record indicates that the respondent did not use the program Commerce will find the program was not used, regardless of whether the foreign government participated to the best of its ability.¹²²

Jiangsu Senmao Case Brief

- In the *Preliminary Results*, Commerce determined that Jiangsu Senmao received a benefit of 0.44 percent for this program. The determination was based on the GOC's failure to provide requested information on the program, despite Jiangsu Senmao and its customers providing affidavits of non-use.
- Jiangsu Senmao's declarations of non-use is confirmed by the GOC's proclamation that it had no records of those customers using the program and further explanation that the Chinese exporter would be aware if a customer used the program. All the information Commerce needed to conclude that Jiangsu Senmao did not benefit from the program is on the record and the GOC's missing program information is not necessary to determine Jiangsu Senmao's non-use. In *Guizhou Tyre Co. v. United States*, the CIT rejected Commerce's use of adverse facts available because Commerce had record evidence that the respondent did not benefit from the program and that evidence could have been verified, "...Commerce has clear path to find non-use by either accepting the declarations submitted by Plaintiffs and their U.S. customers or by verifying these declarations."¹²³

Petitioner Rebuttal Brief

- The GOC is a "repeat offender" and continues to refuse to provide necessary information or allow verification of the Export Buyer's Credit program, despite Commerce's repeated requests.¹²⁴ In *Solar Cells from China*, the GOC was uncooperative and claimed that Commerce's questions were not applicable and that it was unable to obtain the information, despite acknowledging that the Export-Import Bank of China possesses the requested information.¹²⁵ In this review, Commerce found that,

¹²² *Id.* at 14 (citing *Countervailing Duty New Shipper Review: Certain In-shell Roasted Pistachios from the Islamic Republic of Iran*, 73 FR 9,993 (February 25, 2008), and accompanying Issues and Decisions Memorandum, at Comment 2 (*Roasted Pistachios from Iran*)).

¹²³ See Jiangsu Senmao Case Brief at 2-3 (citing *Guizhou Tyre Co. v. United States*, SLIP OP. 2018-140 (October 17, 2018); (CIT 2018) LEXIS 160 at 9-10 (*Guizhou Tyre Co. v. United States*)).

¹²⁴ See Petitioner Rebuttal Brief at 4-5.

¹²⁵ *Id.* at 3-4 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015) (*Crystalline Silicon Photovoltaic Cells Modules 2012 from China*) and accompanying Issues and Decision Memorandum (*Crystalline Silicon Photovoltaic Cells Modules from China 2012 IDM*) at 15-17 and 91-94; see also *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Cells from China*) and accompanying Issues and Decision Memorandum (*Solar Cells from China IDM*) at 15-16 and 91-94; *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of*

The nature of GOC's responses to those information requests further indicates that any attempt to request information again from the GOC would be futile. Absent the requested information, the GOC's and respondent companies' claims of non-use of this program are not verifiable.¹²⁶

- The GOC's claim that AFA can only be applied when information is missing from the record is incorrect; the statute is clear that using facts available is appropriate if information is missing from the record or a party withholds information.¹²⁷
- The GOC and the respondents statements of non-use are meaningless unless supported by verifiable documentation. In past proceedings, Commerce has found that only the GOC possesses the information necessary to determine non-use.¹²⁸ In this review, the GOC provided certain laws and regulations relating to the administration of this program, but failed to provide upon request the 2013 amendments to those laws.¹²⁹
- The GOC claims that Commerce failed to explain why the non-use evidence was insufficient. However, in the *Preliminary Results*, Commerce stated that we cannot rely on non-use statements from respondents without the corroboration of the GOC, because this program requires a fully cooperative GOC response to determine non-use.¹³⁰
- In *Guizhou Tyre v. United States*, the CIT found that Commerce may apply AFA to this program if there is no ambiguity or uncertainty surrounding the use of the program by the respondents or their U.S. customers.¹³¹ In this review, Riverside Plywood provides no documentation for its claim that its customers did not use this program, and the GOC's insistence that Riverside Plywood did not use this program calls into questions the reliability of GOC's reporting.

Jiangsu Senmao Rebuttal Brief

- In *Guizhou Tyre Co. v. United States*, the CIT rejected Commerce's use of AFA because relevant information existed elsewhere on the record. In that case and in this review, Commerce had the information on the record to determine that a respondent did not

China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 FR 63788 (October 17, 2012) (Crystalline Silicon Photovoltaic Cells Modules from China 2010 Final) at Comment 2; *Chlorinated Isocyanurates From the People's Republic of China*, 83 FR 26,954 (June 11, 2018) (Chlorinated Isocyanurates) and accompanying Issues and Decision Memorandum (Chlorinated Isocyanurates IDM) at Comment 1; and *High Pressure Steel Cylinders From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2016*, 83 FR 31951 (*High Pressure Steel Cylinders from China*) and accompanying Issues and Decision Memorandum (High Pressure Steel Cylinders from China IDM) at section VII-B).

¹²⁶ *Id.* at 5 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent To Rescind, in Part; 2014*, 82 FR 2317 (January 9, 2017) (Crystalline Silicon Photovoltaic Cells Modules from China 2014 Prelim) and accompanying Issues and Decision Memorandum (Crystalline Silicon Photovoltaic Cells Modules from China 2014 Prelim IDM) at 31).

¹²⁷ *Id.* at 6.

¹²⁸ *Id.* at 7 (citing *Crystalline Silicon Photovoltaic Cells Modules 2012 from China IDM* at 41-44; *see also* *Solar Cells from China IDM* at 91-94).

¹²⁹ *Id.* at 7 (citing Preliminary Decision Memorandum at 17).

¹³⁰ *Id.* at 8 (citing Preliminary Decision Memorandum at 17).

¹³¹ *Id.* at 10-11 (citing *Guizhou Tyre v. United States*, 348 F. Supp. 3d at 1271 (*Guizhou Tyre v. United States*)).

receive a benefit from the program and that the evidence could have been verified. Commerce should follow the holdings of the CIT and find that Jiangsu Senmao did not receive a benefit from this program. Any information missing from the record is a result of the GOC's alleged failure to fully cooperate and is not necessary for Commerce to determine non-use.

GOC Rebuttal Brief

- Commerce should apply a zero percent CVD rate for this program because the GOC and the respondents submitted information demonstrating non-use. The GOC's perceived failure to cooperate does not negate the information that is on the record regarding non-use. Riverside Plywood has explained that no customer ever contacted it to provide any information necessary for obtaining an Export Buyer's Credit.
- The GOC disagrees with the petitioner and Commerce's assertions that certifications of non-use are insufficient. The courts have held that "{w}hen Commerce can independently fill in the gaps, without the requested information, the facts otherwise available and adverse inferences are not appropriate."¹³²

Commerce's Position:

We continue to find that the information provided to us by the GOC, or lack thereof, prevented Commerce from fully examining the Export Buyer's Credit Program with respect to usage, and as a result, we are continuing to apply AFA to the Export Buyer's Credit program.

Solar Cells Initial Investigation of Export Buyer's Credit Program

Commerce first investigated and countervailed the Export Buyer's Credit Program in the 2012 investigation of solar cells.¹³³ 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 program are "medium- and long-term loans, and have preferential, low interest rates. Included among the projects that are eligible for such preferential financing are energy projects."¹³⁴ Commerce initially asked the GOC to complete the "standard questions appendix" for the Export Buyer's Credit Program. The appendix requests, among other information, a description of the program and its purpose, a description of the types of relevant records the government maintains, the identification of the relevant laws and regulations, and a description of the application process (along with sample application documents). The standard questions appendix is intended to help Commerce understand the structure, operation, and usage of the program.¹³⁵

¹³² See GOC Rebuttal Brief at 4 (citing *Fine Furniture (Shanghai) Ltd. v. United States* (citing *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011) and *Gerber Food (Yunnan) Co. v. United States*, 387 F. Supp. 2d 1270, 1283 (CIT 2005)).

¹³³ See Crystalline Silicon Photovoltaic Cells Modules from China 2010 Final and accompanying IDM at 9 and Comment 18. Commerce's determination with respect to the Export Buyer's Credit Program was initially challenged but the case was dismissed.

¹³⁴ See *Solar Cells from China* IDM at 59.

¹³⁵ *Id.*

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.”¹³⁶ In response to a request from Commerce for information concerning the operation of the Export Buyer’s Credit Program and how we might verify usage of the program, the GOC stated that none of the respondents’ customers had used the program either. The GOC added: “{t}he GOC understands that this program, including the buyer’s credit cannot be implemented without knowledge of the exporters because the program has a substantial impact on the exporter’s financial and foreign exchange business matters.”¹³⁷ Although asked, the GOC provided no additional information concerning exactly how an exporter’s financial and foreign exchange matters would be affected. Commerce then gave the GOC another opportunity to provide the information requested.¹³⁸ The GOC again refused to provide sample application documents, regulations, or manuals governing the approval process, and instead provided only a short description of the application process which gave no indication of how an exporter might be involved in the provision of export buyer’s credits, how it might have knowledge of such credits, or how such credits might be reflected in a company’s books and records.¹³⁹

Based on the GOC’s responses, Commerce’s understanding was that, under this program, loans were provided directly from the China Ex-Im Bank to the borrowers (*i.e.*, a respondent’s customers), with no involvement of third parties, such as exporters, or third-party banks. Accordingly, Commerce made clear its understanding that the only way to establish non-use of the program was through the GOC and not the respondent companies.¹⁴⁰ Additionally, Commerce concluded that even if the respondent company might have some knowledge of loans provided to its customers through its involvement in the application process, such information is not of the type Commerce would examine to verify that the claim of non-use at issue was complete and accurate:

{E}ven if the {respondent exporter} might have been involved in, or might have received some notification of, its customer’s application for receiving such export credits, such information is not the type of information that 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

¹³⁶ *Id.*

¹³⁷ *Id.* at 60.

¹³⁸ *Id.* at 60-61.

¹³⁹ *Id.* at 61.

¹⁴⁰ *Id.*

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.¹⁴¹

Essentially, Commerce concluded that usage of the program could not be confirmed at the respondent exporters in a manner consistent with its verification methods,¹⁴² which are primarily the methods of an auditor, attempting to confirm usage or claimed non-usage by examining books and records which can be reconciled to audited financial statements, 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.¹⁴³

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

¹⁴¹ *Id.* at 61-62.

¹⁴² Commerce provided a similar explanation in the 2014 investigation of solar products from China. *See Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products*) and accompanying IDM at 93. This was affirmed by the Court in *Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334 (CIT 2016) (*Changzhou I*). In *Changzhou Trina Solar Energy Co. v. United States*, Consol. Court No. 17-00198, Slip Op. 18-166, at 9-10 (CIT November 30, 2018) (*Changzhou II*), the Court noted that the explanation from *Solar Products* constituted "detailed reasoning for why documentation from the GOC was necessary" to verify non-use. However, the Court found that the 2014 review of solar cells from China at issue in *Changzhou II* was distinguishable because the respondents submitted customer certifications of non-use, and Commerce had "failed to show why a full understanding" of the program was necessary to verify non-use. *Id.* at 10 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017), amended by *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 46760 (October 6, 2017), and accompanying IDM). The Court in *Guizhou Tyre Co., Ltd., et al. v. United States*, Consol Ct. No. 17-00101, Slip Op. 18-140 (CIT October 17, 2018) reached a similar conclusion concerning the 2014 review of tires from China. *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 18285 (April 18, 2017), and accompanying IDM.

¹⁴³ The Court agreed with Commerce in *RZBC Group*, following a remand, finding that Commerce could not verify non-use of the program by examining the respondent-exporter's audited financial statements or other books and records because record evidence demonstrated that the program terms were ambiguous. *See RZBC Group Shareholding Co., Ltd. et al. v. United States*, 222 F. Supp. 3d 1196, 1201-02 (CIT 2017) (*RZBC Group*) (concerning *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid 2012*), and accompanying IDM at Comment 6).

entire universe of loan information available for further scrutiny. After examining the subledgers for references to the state-owned banks (for example, “Account 201-02: Short-term lending, Industrial and Commercial Bank of China”), Commerce’s third step would be to select specific entries from the subledger and request to see underlying documentation, such as applications and loan agreements, in order to confirm the accuracy of the subledger details. Thus, confirmation that a complete picture of relevant information is in front of the verification team, by tying relevant books and records to audited financial statements or tax returns, is critical.

In the 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 Export Buyer’s Credit Program 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 program at the respondent exporters and instead attempted verification of usage of the program at the China Ex-Im Bank itself because it “possessed the supporting records needed to verify the accuracy of the reported non-use of the 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.”¹⁴⁴ However, the GOC refused to allow Commerce to query the databases and records of the China Ex-Im Bank.¹⁴⁵ Furthermore, there was no information on the record of the solar cells investigation from the respondent exporters’ customers.

Chlorinated Isos Investigation of Export Buyer’s Credit Program

Two years later, in the investigation of chlorinated isos,¹⁴⁶ respondents submitted certified statements from all customers claiming that they had not used the Export Buyer’s Credit Program. 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 the Export Buyer’s Credit Program provided medium and long-term loans and that those loans were provided directly from the China Ex-Im Bank to the borrowers (*i.e.*, the respondent exporters’ customers) *only*. Because the respondents’ customers were participating in the proceeding, verification of non-usage appeared to be possible through examining the financial statements and books and records of the U.S. customers for evidence of loans provided directly from the China Ex-Im Bank to the U.S. customer pursuant to verification steps similar to the ones described above. Based on the GOC’s explanation of the program, we had expected to be able to verify non-use of this program through review of the participating U.S. customers’ subledgers themselves. Therefore, despite being “unable to conduct a complete verification of non-use of this program at China ExIm, ... {w}e conducted verification . . . in the United States

¹⁴⁴ See *Solar Cells* IDM at 62.

¹⁴⁵ *Id.*

¹⁴⁶ See *Chlorinated Isocyanurates from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*; 2012, 79 FR 56560 (September 22, 2014) and accompanying IDM (*Chloro Isos Investigation*).

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.”¹⁴⁷

2013 Amendments to the Export Buyer's Credit Program

Our understanding of the operation of the Export Buyer's Credit Program began to change after the chlorinated isos investigation had been completed in September 2014. In *Citric Acid 2012*, Commerce began to gain a better understanding of how the Ex-Im Bank issued disbursement of funds and the corresponding timeline, however, Commerce's attempts to verify the program's details and statements from the GOC concerning the operation and use of the program were thwarted by the GOC.¹⁴⁸ In subsequent proceedings, Commerce continued to investigate and evaluate this program.

For example, in the silica fabric investigation conducted in 2016-2017, based on what we had learned in *Citric Acid 2012*, we asked the GOC about certain changes to the Export Buyer's Credit Program, including changes in 2013 that eliminated the USD 2 million minimum business contract requirement.¹⁴⁹ In response, the GOC stated that there were three sets of relevant documents pertaining to the Export Buyer's Credit Program: (1) “Implementing Rules for the Export Buyer's Credit of the Export-Import Bank of China” which were issued by the Export-Import Bank of China on September 11, 2005 (referred to as “1995 Implementation Rules”); (2) “Rules Governing Export Buyer's Credit of the Export-Import Bank of China” which were issued by the Export-Import Bank of China on November 20, 2000 (referred to as “2000 Rules Governing Export Buyers' Credit” or “Administrative Measures”); and (3) 2013 internal guidelines of the Export-Import Bank of China.¹⁵⁰ According to the GOC, “{t}he Export-Import Bank of China has confirmed to the GOC that its 2013 guidelines are internal to the bank, non-public, and not available for release.”¹⁵¹ The GOC further stated that “those internal guidelines do not formally repeal or replace the provisions of the {Administrative Measures} which remain in effect.”¹⁵²

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

Through its response to the Department's supplemental questionnaire, the GOC has refused to provide the requested information or any information concerning the 2013 program revision, which is necessary for the Department to analyze how the program functions.

¹⁴⁷ *Id.* at 15.

¹⁴⁸ See *Citric Acid 2012* IDM at Comment 6 (“{N}otwithstanding the non-use claims of the RZBC Companies and the GOC, we find that the GOC's refusal to allow the verifiers to examine the EXIM Bank database containing the list of foreign buyers that were provided assistance under the program during the POR precluded the Department from verifying the non-use claims made by the RZBC Companies and the GOC.”)

¹⁴⁹ See GOC's IQR at Exhibit 48 (GOC's Letter, “Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC 7th Supplemental Response,” dated September 6, 2016 (GOC's September 6, 2016, Silica Fabric Questionnaire Response)).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

We requested the 2013 *Administrative Measures* revisions (2013 Revisions) because information on the record of this proceeding indicated that the 2013 Revisions affected important program changes. For example, the 2013 Revisions may have eliminated the USD 2 million contract minimum associated with this lending program. By refusing to provide the requested information, and instead asking the Department to rely upon unverifiable assurances that the 2000 Rules Governing Export Buyer's Credit remained in effect, the GOC impeded the Department's understanding of how this program operates and how it can be verified.

Additional information in the GOC's supplemental questionnaire response also indicated that the loans associated with this program are not limited to direct disbursements through the EX-IM Bank. Specifically, the GOC stated that customers can open loan accounts for disbursements through this program with other banks. The funds are first sent from the EX-IM Bank to the importer's account, which could be at the EX-IM Bank or other banks, and that these funds are then sent to the exporter's bank account. Given the complicated structure of loan disbursements for this program, the Department's complete understanding of how this program is administrated is necessary. Thus, the GOC's refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administrated by the EXIM Bank, impeded the Department's ability to conduct its investigation of this program.¹⁵³

Further, we determined that we could not rely on declarations from customers claiming non-use of the program because "we are unable to verify the accuracy of these documents as the primary entity that possesses such supporting records is the Export Import Bank of China."¹⁵⁴ Additionally, we explained that "we now have information on the record that demonstrates the GOC updated certain measures of the program, but the GOC refused to provide the updated measures{,}" and "{b}ecause the GOC withheld critical information regarding this program, we are unable to determine how the program now operates, and, thus, we cannot verify ACIT's declarations as submitted."¹⁵⁵

This 2016 Administrative Review

As stated in the *Preliminary Results*, we requested from the GOC a list of all partner/corresponding banks involved in the disbursement of funds under the Export Buyer's Credit Program.¹⁵⁶ The GOC failed to respond to Commerce's request, and instead continued to state that neither of the mandatory respondents used the program. Additionally, we requested that the GOC provide original and translated copies of any laws, regulations or other governing

¹⁵³ See *Countervailing Duty Investigation of Certain Amorphous Silica Fabric From the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017) (*Silica Fabric Inv*) and accompanying IDM at 12 (internal citations omitted).

¹⁵⁴ *Id.* at 62.

¹⁵⁵ *Id.*

¹⁵⁶ See *Preliminary Results* at 16.

documents regarding an alleged 2013 revision to the Export Buyer's Credit Program.¹⁵⁷ Though the GOC provided some information, it was unresponsive to the request, preventing Commerce from analyzing the function of the program, as discussed below.

Our initial questionnaire requested that the GOC submit any revisions to the program and to identify whether the respondent companies used the program.¹⁵⁸ The GOC reported that “{n}one of the respondents or their cross-owned affiliates applied for, used, or benefited from, export buyers credits from the China Ex-Im or their Buyer Credit Facility during the POR and therefore these questions are not applicable.”¹⁵⁹ We also requested governing documents related to the program.¹⁶⁰ In response, the GOC included in its response a copy of its Administrative Measures of Export Buyers' Credit of the Export-Import Bank of China and Detailed Implementation Rules Governing Export Buyers' Credit of the Export-Import Bank of China.¹⁶¹ However, the 2013 revisions were not included in the response. Jiangsu Senmao and Riverside Plywood reported non-use for themselves and for their U.S. Customers.¹⁶² To support these claims, Jiangsu Senmao submitted signed declarations of non-use from its U.S. customers. Riverside Plywood did not provide documentation to support its claim that its customers did not use the program, and explained that no customer contacted it to provide information needed to obtain export buyer's credit.¹⁶³

We continue to find that the GOC's responses with respect to the Export Buyer's Credit Program are deficient in two key respects.

First, as we found in the silica fabric investigation conducted in 2016-2017, where we asked the GOC about the amendments to the Export Buyer's Credit program,¹⁶⁴ we continue to find that the GOC has refused to provide the requested information or any information concerning the 2013 program revision, which is necessary for Commerce to analyze how the program functions. We requested all documents related to revisions to the program, including the 2013 revisions, because our prior knowledge of this program demonstrates that the 2013 revisions affected important program changes. Specifically, the 2013 revisions (which the GOC refers to as “internal guidelines”) appear to be significant and have impacted a major condition in the provision of loans under the program, *i.e.*, by eliminating the USD 2 million minimum business contract requirement.¹⁶⁵

This information is necessary and critical to our understanding of the program and for any determination of whether the “manufacture, production, or export” of Jiangsu Senmao and Riverside Plywood's merchandise has been subsidized. For instance, if the program continues to be limited to USD 2 million contracts between a mandatory respondent and its customer, this is

¹⁵⁷ *Id.*

¹⁵⁸ *See* GOC's IQR at II-11 and II-12.

¹⁵⁹ *Id.* at 108.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at Exhibit 49 and 50.

¹⁶² *See* Jiangsu Senmao's IQR at Exhibit 15.

¹⁶³ *See* Riverside IQR at 22-23.

¹⁶⁴ *See* GOC's IQR at Exhibit 48 (containing the GOC's September 6, 2016, Silica Fabric Questionnaire Response at 4-5).

¹⁶⁵ *Id.* at 1; and *Silica Fabric Inv* IDM at 12 and 61.

an important limitation to the universe of potential loans under the program and can assist us in targeting our verification of non-use. However, if the program is no longer limited to USD 2 million contracts, this increases the difficulty of verifying loans without any such parameters, as discussed further below. Therefore, by refusing to provide the requested information, and instead providing unverifiable assurances that other rules regarding the program remained in effect, the GOC impeded Commerce's understanding of how this program operates and how it can be verified. Further, to the extent the GOC had concerns regarding the non-public nature of the 2013 revisions, Commerce has well-established rules governing the handling of business proprietary information in its proceedings.

Second, Commerce's understanding of the Export Buyer's Credit Program changed after Commerce began questioning the GOC's earlier indication that loans provided pursuant to the Export Buyer's Credit Program were between the GOC and the borrower *only*, essentially a *direct* deposit from the China Ex-Im Bank to the foreign buyer. In particular, in the silica fabric investigation, Commerce identified that the rules implementing the Export Buyer's Credit Program appeared to indicate that the China Ex-Im Bank's payment was instead disbursed to U.S. customers via an intermediary Chinese bank, thereby contradicting the GOC's response otherwise.¹⁶⁶ Thus, Commerce asked the GOC to provide the same information it provided in the silica fabric investigation regarding the rules implementing the Export Buyer's Credit Program, as well as any other governing documents (discussed above). Commerce also asked a series of questions regarding the method of transferring funds from the China Ex-Im Bank to Chinese exporters on behalf of U.S. customers via the credits at issue:

- Provide a sample buyer's credit application along with the application's approval and the agreement between the respondent's customer and the bank, which establish the terms of the assistance provided under the facility.¹⁶⁷
- Report the interest rate(s) during the POR for the Buyer Credit Facility for all types of financing provided, for all loan terms (*e.g.*, loans ranging from 0 to 180 days and 180 to 270 days, *etc.*), and all denominations (*i.e.*, RMB and foreign currency). Please provide documentation to support your answer.¹⁶⁸
- Provide a list of all partner/correspondent bank involved in disbursement of funds under the Export Buyer's Credit Program.¹⁶⁹

Although the GOC provided certain of the requested implementation rules (discussed above), the GOC provided non-responsive answers to Commerce's specific questions, stating in response to the above questions: "To the best of the GOC's knowledge, none of the respondents or their cross-owned affiliates applied for, used, or benefited from, export buyers credits from the China Ex-Im or their Buyer Credit Facility during the POR and therefore these questions are not

¹⁶⁶ See *Silica Fabric Inv* IDM at 12.

¹⁶⁷ See Commerce's Letter, "2016 Countervailing Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Questionnaire," dated June 8, 2018 (Initial Questionnaire) at II-11 and II-12.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

applicable.”¹⁷⁰ We followed up with a supplemental questionnaire,¹⁷¹ and the GOC again refused to provide the requested information, reiterating non-use of the program by the respondent’s U.S. customers.¹⁷²

We continue to find the GOC’s responses deficient and unresponsive to our request for necessary information with respect to the operation of the program. This information is necessary and critical to our understanding of the program and for any determination of whether the “manufacture, production, or export” of Jiangsu Senmao and Riverside Plywood’s merchandise has been subsidized. As noted above, information on the record of this segment of the proceeding altered Commerce’s understanding of how the Export Buyer’s Credit Program operated (*i.e.*, how funds were disbursed under the program) from Commerce’s understanding of this same program in the chlorinated isos investigation. Specifically, the record indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank.¹⁷³ For instance, it appears that (1) customers can open loan accounts for disbursements through this program with other banks; (2) the funds are first sent from the China Ex-Im Bank to the importer’s account, which could be at the China Ex-Im Bank or other banks; and (3) that these funds are then sent to the exporter’s bank account.¹⁷⁴ Given the complicated structure of loan disbursements which can involve various banks for this program, Commerce’s complete understanding of how this program is administrated is necessary to verify claims of non-use.¹⁷⁵ Thus, the GOC’s refusal to provide the 2013 revisions, which provide internal guidelines for how this program is administrated by the China Ex-Im Bank, as well as other requested information, such as key information and documentation pertaining to the application and approval process, interest rates, and partner/correspondent banks, impeded Commerce’s ability to conduct its investigation of this program and to verify the claims of non-use by Jiangsu Senmao and Riverside Plywood’s customers.

This missing information was especially significant because the available record evidence indicates that 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. As noted above, in the chlorinated isos investigation, based on our understanding of the program at that time, verification of non-usage appeared to be possible through examining the financial statements and books and records of U.S. customers for evidence of loans *provided directly from the China Ex-Im Bank to the U.S. customer*, pursuant to verification steps similar to the ones described above.¹⁷⁶ However, based on our more recent understanding of the program in this segment of the proceeding discussed above, performing the verification steps outlined above to make a determination of whether the “manufacture, production, or export” of Jiangsu Senmao’s and Riverside Plywood’s merchandise has been subsidized would therefore require knowing the names of the intermediary banks; it would be their names, not the name “China Ex-Im Bank,” that would appear in the subledgers of

¹⁷⁰ *Id.* at 108.

¹⁷¹ See Commerce’s Letter, “Multilayered Wood Flooring from the People’s Republic of China: 2016 Countervailing Duty Administrative Review,” dated December 4, 2018 at 3.

¹⁷² See GOC’s Fourth Supplemental Response, dated December 11, 2018 (GOC Fourth SQR) at 1-2.

¹⁷³ See GOC’s IQR at 48 (containing the GOC’s September 6, 2016, Silica Fabric Questionnaire Response at 4-5).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ See *Chloro Isos Investigation* IDM at 15.

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 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.¹⁷⁷

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,¹⁷⁸ having a list of the correspondent banks is critical for us to perform verification at the U.S. customers.

Furthermore, although Jiangsu Senmao and Riverside Plywood reported that its U.S. customers did not use the program,¹⁷⁹ neither company explained in detail the steps it took to determine non-use of the Export Buyer's Credit Program for their customers. Rather, their responses hinged on their assertions with respect to the operation of the program – information which Commerce needed and sought directly from the GOC. The explanation and evidence (or lack thereof) on the record from both the GOC, Jiangsu Senmao and Riverside Plywood has failed to support the claim that the program was not used.

Without such explanation and evidence, it would be unreasonably onerous for Commerce to comb through the business activities of both Jiangsu Senmao's and Riverside Plywood's customers without any guidance as to how to simplify the process or any guidance as to which loans or banks to subject to scrutiny as part of a verification for each company. A careful verification of Jiangsu Senmao's and Riverside Plywood's customers' 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 (*i.e.*, by examining whether there were any correspondent banks in the subledger). Nor could the second step be used to narrow down the company's lending to a 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

¹⁷⁷ 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.

¹⁷⁸ 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. *Id.* at Comment 2.

unreasonably onerous undertaking for any company that received more than a small number of loans.

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 Export Buyer's Credit Program. This is especially true given the GOC's failure to provide other requested information, such as the 2013 revisions, a sample application, and other documents making up the "paper trail" of a direct or indirect export credit from the China Ex-Im Bank, discussed above. Commerce would simply not know what to look for behind each loan in attempting to identify a loan provided by the China Ex-Im Bank via a correspondent bank.

This same sample "paper trail" would be necessary even if the GOC provided the list of correspondent banks. For instance, assuming that one of the correspondent banks is HSBC, Commerce would need to know how to differentiate ordinary HSBC loans from loans originating from, facilitated by, or guaranteed by the China Ex-Im Bank. In order to do this, Commerce would need to know what underlying documentation to look for in order to determine whether 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, even were Commerce to attempt to verify respondents' non-use of the Export Buyer's Credit Program, 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 still would not be able to verify which loans were normal loans versus Export Buyer's Credit Program loans due to its lack of understanding of what underlying documentation to expect to review, and whether/how that documentation would indicate China Ex-Im Bank involvement. In effect, companies could provide Commerce with incomplete loan documentation without Commerce understanding that the loan documentation was incomplete. Even if 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 Export Buyer's Credit Program, in order to verify usage. Understanding the operation of the program is not, therefore, solely a matter 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, consider attempting 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 Jiangsu Senmao's and Riverside Plywood's customers, even were it to attempt the unreasonably onerous examination of each of the customers' loans. To conduct verification of the customers without the information requested from the GOC would amount to looking for a needle in a haystack

with the added uncertainty that Commerce might not even be able to identify the needle when it was found.

The GOC responses in this review essentially mirror the GOC responses in the solar cells and tires¹⁸⁰ from China proceedings. Although Commerce requested information about the amendments to and the current inner workings of the program as it is currently administered, the GOC provided no additional information concerning exactly how an exporter's financial foreign exchange matters would be affected.¹⁸¹ Based on the GOC's responses, Commerce understood that under this program loans were provided either directly from the China Ex-Im Bank to the borrowers (*i.e.*, a respondent's customers), or through an intermediary third party bank, and that a respondent might have knowledge of loans provided to its customers through its involvement in the application process. Commerce gave the GOC another opportunity to provide the information requested.¹⁸² The GOC once again refused to provide the sample application documentation or any regulations or manuals governing the approval process, providing instead its statement that none of the respondent companies or their foreign buyers had used the export buyer's credits from the China Ex-Im Bank.¹⁸³

According to the GOC, "None of the respondents' U.S. customers applied for or used China Ex-Im's Export Buyer's Credits program during the POR."¹⁸⁴ The GOC explained that to make this determination, China Ex-Im searched its records to confirm whether any company on the lists received from the respondents used or benefited from the export buyer's credit.¹⁸⁵ The GOC's response indicated that exporters would know whether there was an interaction between the China Ex-Im Bank and the borrowers (*i.e.*, the respondents' U.S. customers, who were not participating in the proceeding) but neither Jiangsu Senmao nor Riverside Plywood, nor the GOC, provided enough information for Commerce to understand this interaction or how it would be reflected, if at all, in Jiangsu Senmao's, Riverside Plywood's, or their customers' books and records. Additionally, as stated above, the GOC claims that Jiangsu Senmao and Riverside Plywood's U.S. customers did not use the Export Buyer's Credits program. However, Riverside Plywood did not provide a list of its U.S. customers; and therefore, the GOC could not confirm if Riverside Plywood's U.S. customers used this program. As a result, the GOC failed to respond to Commerce's request, and instead continued to merely claim that neither of the mandatory respondents, or their respective customers, used the program based on selectively provided, incomplete information. Accordingly, we find that Commerce could not verify non-use of export buyer's credits by the customers of Jiangsu Senmao and Riverside Plywood. Furthermore, the lack of information concerning the operation of the Export Buyer's Credit Program prevents an accurate assessment of usage at verification:

In prior proceedings in which we have examined this program, before the 2013 amendments, we have found that the China Ex-Im, as the lender, is the primary

¹⁸⁰ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2014, 82 FR 18285 (April 18, 2017) and accompanying Issues and Decision Memorandum.

¹⁸¹ See GOC's IQR at 108-109; see also GOC's Fourth SQR at 2-3.

¹⁸² See First GOC Supplemental Questionnaire at 6-7.

¹⁸³ See GOC First Supplemental Response at 8-11.

¹⁸⁴ See GOC's IQR at 108-19.

¹⁸⁵ See GOC's IQR at 109.

entity that possesses the supporting information and documentation that are necessary for Commerce to fully understand the operation of the program which is prerequisite to Commerce's ability to verify the accuracy of the program. Because the program changed in 2013 and the GOC has not provided details about these changes, Commerce has outstanding questions about how this program currently functions, *e.g.*, whether the EX-IM Bank limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million, and whether it uses third-party banks to disburse/settle Export Buyer's Credits. Such information is critical to understanding how Export Buyer's Credits flow to and from foreign buyers and the EX-IM Bank and forms the basis of determining countervailability. Absent the requested information, the GOC's claims that the respondent companies did not use this program are not verifiable. Moreover, without a full understanding of the involvement of third-party banks, the respondent companies' (and their customers') claims are also not verifiable.¹⁸⁶

We find that usage of the Export Buyer's Credit Program could not be verified at Jiangsu Senmao or Riverside Plywood in a manner consistent with Commerce's verification methods because Commerce could not confirm usage or claimed non-use by examining books and records which can be reconciled to audited financial statements,¹⁸⁷ or other documents, such as tax returns. Without the GOC providing bank disbursement information, Commerce could not tie any loan amounts to banks participating in this program in Jiangsu Senmao's or Riverside Plywood's U.S. customers' books and records, and therefore could not verify the claims of non-use. A review of ancillary documents, such as applications, the interest rates used during the POR, correspondence, emails, *etc.*, are insufficient for Commerce to verify any bank disbursement or loan amount pertaining to Jiangsu Senmao's, Riverside Plywood's, their customers, and/or the GOC's participation in the program.¹⁸⁸ Commerce needed to have a better understanding of the program before it could verify it because it did not know what documents to request to review at verification or what information in the books and records to tie to the respondent's, such as Jiangsu Senmao's, reported information from its questionnaire responses. Additionally, we note that the requested information, such as the interest rates available to Jiangsu Senmao's and Riverside Plywood's customers during the POR is not only necessary for understanding the program during verification but also necessary for calculating a benefit. Therefore, we found it necessary to have had this information prior to verification in order to ensure the information we would have received was complete and accurate to fully analyze and calculate the benefits Jiangsu Senmao and Riverside Plywood received under this program during the course of the POR.

In short, because the GOC failed to provide Commerce with information necessary to identify a paper trail of a direct or indirect export credit from the China Ex-Im Bank, we would not know what to look for behind each loan in attempting to identify which loan was provided by the

¹⁸⁶ See *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*; 2015, 82 FR 57209 (December 4, 2017) and accompanying Preliminary Decision Memorandum (Chloro Isos PDM) at 16-17.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

China Ex-Im Bank via a correspondent bank under the Export Buyer's Credit Program. This necessary information is missing from the record because such disbursement information is only known by the originating bank, the China Ex-Im Bank, which is a government-controlled bank.¹⁸⁹ Without cooperation from the China Ex-Im Bank and/or the GOC, we cannot know the banks that could have disbursed export buyer's credits to Jiangsu Senmao's and Riverside Plywood's customers. Therefore, there are gaps in the record because the GOC refused to provide the requisite disbursement information.

Thus, were Commerce even to attempt to verify respondents' U.S. customers, Commerce would still not be able to verify which loans were normal loans versus Export Buyer's Credit Program loans, due to its lack of understanding of the underlying documentation, and whether/how that documentation would indicate China Ex-Im Bank involvement pertaining to this program. In effect, companies could provide Commerce with incomplete loan documentation with respect to this program without Commerce even understanding that the information provided 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.

Additionally, Commerce finds that it is not possible to determine whether export buyer's credits were received with respect to the export of MLWF, because the potential recipients of export buyer's credit are not limited to the customers of Jiangsu Senmao and Riverside Plywood as they be may be received by other third-party banks and institutions. 2016 Countervailing Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Questionnaire. Again, Commerce would not know what indicia to look for in searching for usage or even what records, databases, or supporting documentation we would need to examine to conduct the verifications (*i.e.*, without a complete set of laws, regulations, application and approval documents, and administrative measures, Commerce would not even know what books and records the China Ex-Im Bank maintains in the ordinary course of its operations). Essentially, Commerce is unable to verify in a meaningful manner what little information there is on the record indicating non-usage (*e.g.*, the claims of the GOC and certifications from U.S. customers), pursuant to section 776(a)(2)(D) with the exporters, U.S. customers, or at the China Ex-Im Bank itself given the refusal of the GOC to provide the 2013 Revision and a complete list of correspondent/partner/intermediate banks.

Commerce finds that required missing information concerning the operation and administration of the Export Buyer's Credit Program is necessary, as it demonstrates why usage information provided by the GOC and the respondents cannot be verified and why there is therefore a gap in the record concerning usage. Commerce has explained how the gap in the record (*i.e.*, missing information concerning the operation of the Export Buyer's Credit Program) prevents complete and effective verification of the customer's certifications of non-use. A very similar rationale

¹⁸⁹ See *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 24, 2014) and accompanying IDM at 31 (confirming that the GOC solely owns the China Ex-Im Bank).

has been accepted by the Court in prior reviews. In particular, in *Changzhou I*,¹⁹⁰ given similar facts, the Court found Commerce reasonably concluded it could not verify usage of the Export Buyer's Credit Program at the exporter's facilities absent an adequate explanation from the GOC of the program's operation; *i.e.*, "absent a well-documented understanding of how an exporter would be involved in the application of its customer for an export buyer credit and what records the exporter might retain, we would have no way of knowing whether the records we review at a company verification necessarily include any applications or compliance records that an exporter might have...".¹⁹¹

Moreover, Commerce disagrees with Jiangsu Senmao's and Riverside Plywood's assertion that Commerce does not need the information requested from the GOC to determine non-use. As an initial matter, we cannot simply rely on the GOC's assurances that it has checked its records. We have no way of verifying such statements without the GOC providing us with the requested documents which would allow us to then properly examine its claims of non-use. Further, given the constraints on Commerce resulting from the GOC's failure to provide all of the necessary information to fully understand the program's operation, Commerce reasonably determined that it would be unable to examine each and every loan obligation of each of Jiangsu Senmao's or Riverside Plywood's customers and that, even if such an undertaking were possible, it would be meaningless, as Commerce would have no idea as to what documents it should look for or what other indicia there might be within a company's loan documentation regarding the involvement of the China Ex-Im Bank.

At the very least, even when Commerce has no means of limiting the universe of transactions before it begins verification, Commerce knows what it is looking for when it begins selecting documents or transactions for review. When, because of the GOC's failure to provide complete information, there are no such parameters, or there is no guidance as to what indicia Commerce should look for, it is unreasonable to expect Commerce to hunt for a needle in a haystack – a very large haystack in some instances. As an illustrative example, regarding the VAT and import duty exemptions, Commerce has met with the GOC to discuss how that program works, and in such instances the GOC has been fully cooperative. Therefore, Commerce knows what documents it should see when VAT and import duties are paid and when they are exempted. It knows, in other words, when it has a complete document trace. The GOC, in fact, provides sample documents to help Commerce understand the paper flow under the program. Commerce can also simply ask to see a VAT invoice or a payment to the Chinese customs service to verify whether VAT and duties were charged and paid. By contrast, we simply do not know what to look for when we look at a loan to determine whether the China EX-IM Bank was involved or whether a given loan was provided under the Export Buyer's Credit Program, for the reasons explained. Another example is 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 the rebate would be recorded, including the specific line item on the form. Commerce would then know precisely which documentation to ask for

¹⁹⁰ See *Changzhou I*, 195 F. Supp. 3d at 1355 (citing *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 91-94).

¹⁹¹ *Id.* at 1355.

when verifying the company respondent and would also know with certainty whether the company should have this document. For the reasons explained above, such documentation is insufficient without being able to tie it to the company's books and records.

Commerce has explained in past proceedings why it cannot verify non-usage at the exporters given similar deficiencies with the GOC's explanation of the operation of the program.¹⁹² Commerce specifically explained how verification methods require examining books and records that can be tied to audited financial statements, tax returns, *etc.* to ensure a complete picture of the company's activities rather than searching through filing cabinets, binders, *etc.* looking for what may or may not be a complete set of application documents.¹⁹³ Moreover, the idea of searching through Jiangsu Senmao's and Riverside Plywood's cash accounts in an effort to find evidence that certain funds may have been deposited pursuant to the Export Buyer's Credit Program is similarly onerous as searching through the details of the customer's borrowings to find such evidence.

With respect to arguments that AFA should not be applied to this program, we continue to find that the GOC withheld necessary information that was requested of it and significantly impeded the proceeding. Accordingly, Commerce must rely on facts otherwise available in issuing these final results, pursuant to sections 776(a)(1), (2)(A) and (C) of the Act. Specifically, necessary information was not the record because the GOC withheld information that we requested that was reasonably available to it which significantly impeded the proceeding. In addition, we find that an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. As AFA, we determine that this program provides a financial contribution, is specific, and provides a benefit to the company respondents within the meaning of sections 771(5)(D), 771(5A), and 771(5)(E), specifically, of the Act.

Commerce has considered all information on the record of this proceeding, including the statement of non-use provided by Riverside Plywood and the declarations of non-use provided by Jiangsu Senmao from its customers; however, as explained above, we are unable to rely on information provided by respondent companies due to Commerce's lack of a complete and reliable understanding of the program, which is a prerequisite to our reliance on information provided by the respondent companies regarding non-use. Thus, without the GOC's necessary information, the information provided by the respondent companies is incomplete for reaching a determination of non-use.

For all reasons explained above, we continue to find that necessary information is missing from the record, the GOC withheld information that was requested, and significantly impeded the proceeding, pursuant to sections 776(a)(1), (2) of the Act, and that the GOC has failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act. Commerce's resort to

¹⁹² See, e.g., *Chlorinated Isocyanurates From the People's Republic of China: Final Affirmative Countervailing Duty Determination*; 2012, 79 FR 56560 (September 22, 2014) (*Isos CVD Final Determination*) and accompanying IDM at 15 ("While 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.")

¹⁹³ "The Department cannot typically look at the contents of a filing cabinet or binder and determine whether it includes everything that it's supposed to include." See *Changzhou I*, 195 F. Supp. 3d at 1355.

the use of an adverse inference when selecting from among the facts otherwise available is reasonable and supported by substantial evidence on the record.

Comment 5: Selection of the AFA Rate for the Export Buyer's Credit Program

Petitioner Case Brief

- The preliminary AFA rate for this program is insufficient to induce cooperation among parties. Commerce has the discretion to select a different AFA rate for the final results and is not bound by the AFA hierarchy.¹⁹⁴ Furthermore, in *ArcelorMittal USA LLC v. United States*, the CIT held that Commerce “has a wide altitude in its selection of an appropriate rate.”¹⁹⁵ The CIT also noted that “a Court cannot uphold an agency’s exercise of administrative discretion if it contravenes statutory objectives.”¹⁹⁶ This demonstrates that Commerce must select an AFA rate that is sufficiently adverse to induce cooperation among parties.
- In *Oil Country Tubular Goods from China*, Commerce used the fourth step of the AFA hierarchy, despite the existence of other available rates. In doing so, Commerce applied the highest calculated subsidy rate for any program analyzed in prior Chinese CVD proceedings, so that the respondent would not achieve a more favorable result by failing to cooperate than if it had fully cooperated.¹⁹⁷
- In reviews, Commerce prioritizes industry relevancy in the CVD AFA hierarchy, and in investigations, Commerce prioritizes program relevancy. However, the petitioner filed new subsidy allegations (NSAs) that included this program and the Policy Loans Program, and neither program had been investigated by Commerce in prior segments of this proceeding. Because the petitioner filed NSAs, Commerce should apply its normal AFA hierarchy for investigations, not for administrative reviews. In past proceedings, Commerce has applied AFA rates as high as 10.54 percent for the Export Buyer’s Credit program. Accordingly, Commerce should move to step three or four of the AFA hierarchy and select the highest non-*de minimis* calculated rate of 10.54 percent for the same or similar program in another proceeding.¹⁹⁸

Jiangsu Senmao Rebuttal Brief

- Commerce should not select a different AFA rate for the Export Buyer’s Credit Program and continue to apply a rate of 0.44 percent. The rate was properly selected in accordance with section 776(d) of the Act using Commerce’s long-established CVD hierarchy.¹⁹⁹ In this review and consistent with prior cases, Commerce used Jiangsu Senmao’s Policy Loan program subsidy rate to determine the AFA rate for the Export

¹⁹⁴ See Petitioner Case Brief at 34 (citing Preliminary Decision Memorandum at 19).

¹⁹⁵ *Id.* at 34 (citing *ArcelorMittal USA LLC v. United States*, 337 F. Supp. 3d 1285 (CIT 2018) (*ArcelorMittal USA LLC v. United States*)).

¹⁹⁶ *Id.* at 35 (citing *ArcelorMittal USA LLC v. United States* at 1301).

¹⁹⁷ *Id.* at 36-37 (citing *Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) (*Oil Country Tubular Goods from China*) and accompanying Issues and Decision Memorandum at 72).

¹⁹⁸ *Id.* at 41 (citing *Crystalline Silicon Photovoltaic Cells Modules from China 2010 Final* at Comment 19; *see also Certain Coated Paper from China* Issues and Decision Memorandum at 70 and 202).

¹⁹⁹ See Jiangsu Senmao Rebuttal Brief at 6.

Buyer's Credit program (step two of the CVD AFA hierarchy).²⁰⁰ The Export Buyer's Credit and the Policy Loan programs are similar because both programs are subsidized loans from the GOC.²⁰¹

- Commerce must consider the relevance of the rate to the industry in the country under review and the relevance of a rate to a particular program. In this case, the Policy Loan program rate in this proceeding is the most relevant rate to then MLWF industry in China and the most relevant rate to the Export Buyer's Credit Program.

Riverside Plywood Rebuttal Brief

- In *Crystalline Silicon Photovoltaic Cells from the People's Republic of China*,²⁰² Commerce rejected arguments for use of the 10.54 percent AFA rate for the Export Buyer's Credit program and continued to use an AFA rate of 5.46 percent using step two of the hierarchy.²⁰³
- In the Administrative Review for *High Pressure Steel Cylinders from China*, Commerce inadvertently relied on the investigation AFA hierarchy and applied the highest calculated rate for any program from the same country that the industry subject to the review could have used (step four of the AFA hierarchy) for the Export Buyer's Credit program. Accordingly, Commerce corrected this error for the final and applied the highest rate calculated for a similar program within any segment of the same proceeding (step two of the hierarchy) for the Export Buyer's program.²⁰⁴
- In *Clearon Corp. v. United States*, the CIT explained that Commerce must consider how the AFA rate compared to the overall rate assigned to the company.²⁰⁵ For this review, Riverside Plywood's current AFA rate is sufficiently adverse and represents a third of its total subsidy rate.²⁰⁶

GOC Rebuttal Brief

- If Commerce continues to apply AFA to this program, it should follow its current practice in administrative reviews and select the policy lending rate from this review as the AFA rate for the Export Buyer's Credit program, rather than using the policy lending rate from another review.

²⁰⁰ *Id.* at 7 (citing Chlorinated Isocyanurates IDM and *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China; 2014-2015*, 83 FR 11694 (March 16, 2018) and accompanying Issues and Decision Memorandum at 26 – 27).

²⁰¹ *Id.* at 7.

²⁰² See Riverside Plywood Rebuttal Brief at 21 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017) (Crystalline Silicon Photovoltaic Cells Modules 2014 Final) and accompanying Issues and Decision Memorandum (Crystalline Silicon Photovoltaic Cells Modules 2014 Final IDM) at Comment 2).

²⁰³ *Id.* (citing Crystalline Silicon Photovoltaic Cells Modules 2014 Final IDM at 18 – 21).

²⁰⁴ *Id.* at 20 (citing *High Pressure Steel Cylinders from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 83 FR 63471 (December 10, 2018) (*High Pressure Steel Cylinders from China*) and accompanying Issues and Decision Memorandum at Comment 9).

²⁰⁵ *Id.* at 22 (citing *Clearon Cor. V. United States*, 359 F.Supp.3d 1344, 1362 (CIT 2019) (*Clearon Corp. v. United States*)).

²⁰⁶ *Id.* at 21-23.

Commerce's Position:

For these final results, as in the *Preliminary Results*, Commerce has applied its CVD AFA hierarchy for administrative reviews to determine an AFA rate for the Export Buyer's Credit program. Because this program has never been investigated previously in this proceeding, we are relying on step two of the AFA hierarchy to find a similar program from a cooperating company within this proceeding (Jiangsu Senmao's Policy Loans program), as we did in the *Preliminary Results*. As stated in our *Preliminary Results*, when selecting a similar program, Commerce looks for a program with the same type of benefit. Consistent with our practice, Commerce selected a loan program (Policy Loans) to establish a rate for another loan program (Export Buyer's Credit), because both programs confer the same type of benefit, as both programs are subsidized loans from the GOC. Therefore, for these final results, pursuant to our AFA hierarchy, Commerce is applying the recalculated above-*de minimis* subsidy rate for Jiangsu Senmao's Policy Loans program (0.95 percent, as discussed in Comment 3) to the Export Buyer's Credit program.

The petitioner argues that the Export Buyer's Credit program subsidy rate is not sufficient to induce cooperation and that Commerce should use step three or four of the CVD hierarchy, because the GOC has demonstrated that it is a "repeat offender" by failing to provide requested information about this program. In *Clearon Corp. v. United States*, the CIT noted that, in developing and applying its hierarchies, Commerce seeks a rate that serves its "dual goals" of relevancy and inducing cooperation from respondents, and that Commerce seeks to achieve relevancy by attempting to select an AFA rate that "best approximates how the non-cooperating respondent likely used the subsidy program."²⁰⁷ Commerce continues to decline to deviate from our CVD AFA review hierarchy in this segment, because selecting a different rate from another proceeding in this segment would upset the balance between relevancy and inducement that Commerce seeks when it applies its CVD AFA hierarchy to non-cooperating respondents. Furthermore, consistently applying our CVD AFA hierarchy provides predictability and administrative transparency to parties involved in administrative proceedings. Accordingly, for these final results, Commerce finds that the recalculated subsidy rate of 0.95 percent for Jiangsu Senmao's Policy Loan program serves the purposes of our AFA practice because it is above *de minimis*, relevant, and sufficiently adverse to induce cooperation. As a result, we made no changes to the criteria used to select the AFA rate for the Export Buyer's Credit program,²⁰⁸ and we will apply to this program the above-*de minimis* subsidy rate calculated in the final results for Jiangsu Senmao's Policy Loan program.²⁰⁹

Comment 6: Countervailability of Other Subsidies

GOC Case Brief:

- No margin should be assigned to other subsidies in this final determination. Commerce requested the respondents to disclose all other programs and subsidies in the initial

²⁰⁷ See *SolarWorld Ams., Inc. v. United States*, 229 F. Supp. 3d 1362, 1362, (CIT 2017) LEXIS 69, *1, 39 Int'l Trade Rep. (BNA) 1460, SLIP OP. 2017 -67

²⁰⁸ See Preliminary Decision Memorandum at 21.

²⁰⁹ *Id.* at 16 – 21.

questionnaire;²¹⁰ however, the petitioner did not raise any allegations of other subsidies and there was no formal initiation of an investigation for other subsidies.

- There is no legal basis for investigating or countervailing other subsidies and the burden is on the respondents to disclose these subsidies without evidence or regulations from Commerce. Section 771(5)(A) explains that an investigation may take place if there is sufficient evidence of financial contribution, specificity and benefit. This is also true for NSAs where Commerce must conduct an allegation-by-allegation review to establish whether each allegation is properly framed and supported by sufficient evidence, and an initiation in response to an allegation does not give Commerce the ability to conduct open-ended inquires.

Petitioner Rebuttal Brief

- Commerce should continue to countervail the other subsidies that were discovered during this review. Commerce acted consistently with its prior practice and the relevant statute in investigating and applying AFA to these subsidies. In this review, Commerce discovered, investigated and preliminarily found certain subsidy programs to be countervailable, and section 775 of the Act explains that if Commerce, “discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition... {Commerce} shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding...”²¹¹
- In the *2010-11 AR of Aluminum Extrusions from China*, Commerce rejected the GOC’s argument on the countervailability of other subsidies, and Commerce found it was well within its authority to examine the programs within the proceeding and asked for additional information under section 775 of the Act and 19 CFR 351.311(b).²¹²
- The GOC notes in its case brief that the discovery of potential subsidy programs does not make them countervailable; however, Commerce discovered the programs in Riverside Plywood’s initial questionnaire response and issued a supplemental questionnaire to the GOC for more information. Because the GOC failed to respond fully to Commerce’s supplemental questionnaire, Commerce applied AFA and found that these programs are *de jure* specific.²¹³
- In the *Preliminary Results*, Commerce applied AFA to the GOC because the GOC did not provide sufficient information on the programs; however, Commerce did find that the GOC’s response was sufficient to determine financial contribution to Riverside Plywood.²¹⁴

²¹⁰ See GOC Case Brief at 20 (citing Preliminary Decision Memorandum at 21-22 and 35-36).

²¹¹ See Petitioner Rebuttal Brief at 24-25 (citing section 775 of the Act).

²¹² *Id.* at 25-26 (citing *Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying Issues and Decision Memorandum at 86-88 (*2010-11 Aluminum Extrusion from China*)).

²¹³ *Id.* at 25 (citing *2010-11 Aluminum Extrusion from China* at 11).

²¹⁴ *Id.* at 26 (citing Preliminary Decision Memorandum at 21-22).

Commerce's Position:

We disagree with the GOC's contention that there is no legal basis for investigating or countervailing other subsidies in this review. Section 775 of the Act states that if, during a proceeding, Commerce discovers "a practice that appears to provide a countervailable subsidy but was not included in the matters alleged in a countervailing duty petition," Commerce "shall include the practice, subsidy, or subsidy program if the practice, subsidy or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding." Additionally, under 19 CFR 351.311(b), Commerce will examine the practice, subsidy or subsidy program if Commerce "concludes that sufficient time remains before the scheduled date for the final determination or final results of review."

As explained in the *Preliminary Results*, Riverside Plywood self-reported receiving "Other Subsidies" in its initial questionnaire response.²¹⁵ On September 12, 2019, Commerce issued a supplemental questionnaire requesting information from the GOC on the "Other Subsidies" that were reported by the respondents. In its September 17, 2018, supplemental questionnaire response, the GOC did not provide any substantive information about the programs but confirmed usage and acknowledged financial contribution. Specifically, the GOC stated that it "confirmed with Riverside that Exhibit 9a includes all of the grants received by Riverside during the AUL period and the POR..."²¹⁶ Accordingly, because the GOC did not provide the requested information regarding the programs such that Commerce could conduct an analysis of the potential financial contribution and specificity, we were forced to select from the facts available to replace missing information. Commerce did so in accordance with section 776(a) and 776(b) of the Act. Specifically, as noted in the *Preliminary Results*, the GOC did not provide information necessary for Commerce to assess specificity within the meaning of sections 771(5)(B) and 771(5A) of the Act.²¹⁷ Accordingly, as discussed above, Commerce will continue to countervail the programs reported as "other subsidies" by Riverside Plywood for these final results.

Comment 7: Whether to Adjust Benchmark Prices to Account for Prevailing Market Conditions

GOC Case Brief

- The statute directs Commerce to consider the prevailing market conditions, such as when measuring the benefit which determines LTAR.²¹⁸ Commerce did not account for the prevailing market conditions, such as price, quality, availability, marketability, transportation, and other conditions of purchase or sale, in its analysis.
- Commerce regulations state that Tier 1 or Tier 2 benchmark prices should include the delivered prices reflecting the price a firm actually paid or would pay if it imported the product.²¹⁹ However, the adjustment should be made while accounting for the prevailing market conditions.

²¹⁵ See Riverside Plywood's IQR at 41.

²¹⁶ See GOC SQR at 3-4.

²¹⁷ See Preliminary Decision Memorandum at 21-22.

²¹⁸ See GOC Case Brief at 3 (citing section 771(5)(E)(iv) of the Act).

²¹⁹ *Id.* at 4 (citing 19 CFR 351.511(a)(2)(iv)).

- The prevailing market conditions do not relate to the benchmark but to the good being provided in the country of investigation.
- The statutory mandate concerning prevailing market conditions is drawn verbatim from language in Article 14 of the Subsidies and Countervailing Measures Agreement.
- The WTO Appellate Body examined the language in United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India. The findings from the proceeding state,

For example, in cases where the incidence of imports of the good in question are minimal in relation to domestic transactions for that good, it may not be appropriate to compare a benchmark price, adjusted to reflect international delivery charges, with the government price, adjusted to reflect local delivery charges.²²⁰

- Therefore, it may not be appropriate in any circumstance to compare a benchmark price, adjusted to reflect international delivery charges, with a government price.
- The investigating authority bears the responsibility to conduct the necessary analysis to determine whether the proposed benchmark prices are reflective of prevailing market conditions.
- Accordingly, Commerce must account for the prevailing transportation cost for the product purchased.
- As an option, Commerce could account for 50.87 percent of ocean freight and import duty, otherwise Commerce would presume that the prevailing market conditions in China is one of 100 percent import supply.²²¹

Petitioner Rebuttal Brief

- The petitioner maintains that Commerce’s normal practice is to adjust the benchmark price for ocean freight and import duty.
- Commerce should continue to rely on world market prices because Jiangsu Senmao’s and Riverside Plywood’s (including Baroque Timber’s) input producers are authorities.
- The GOC’s proposed approach demonstrates a misunderstanding of Commerce’s practice regarding the calculation of benchmarks using world market prices.
- Commerce’s regulations are clear. Commerce regulations states, “{Commerce} will adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product. This adjustment will include delivery charges and import duties.”²²²
- The calculation excludes prices from the country in question because the prices of the market of the country in question have necessarily already been found to be unusable.

²²⁰ *Id.* at 5 (citing *Appellate Body Report, United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R (December 8, 2014) at paras 4.249).

²²¹ According to the GOC, the ratio of the supply of imports of timber relative to the total supply of timber products is 50.87 percent. *See* GOC’s IQR at 21.

²²² *See* Petitioner Rebuttal Brief at 21 (citing 19 CFR 351.511(a)(2)(iv)).

- In fact, Commerce included delivery charges and import duties to account for prevailing market conditions.
- The Court has already upheld Commerce’s inclusion of international freight in constructing a world benchmark price in *Creswell Trading Co. v. United States*.²²³
- Similarly, in *Zhaoqing New Zhongya Aluminum Co. v. United States*, the Court noted, “the world market price by regulation must include import duties”²²⁴

Commerce’s Position:

In the *Preliminary Results*, we decided that we could not use any of respondents’ own purchases as benchmarks because we found, as AFA with regard to the GOC’s responses, that all of their supplying producers were “authorities” within the meaning of section 771(5)(B). We stated the following in the *Preliminary Results*:

For all of the inputs, as discussed in the section entitled “Use of Facts Otherwise Available and Adverse Inferences,” above, we preliminarily determine that each of Jiangsu Senmao’s and Riverside Plywood’s (including Baroque Timber’s) input producers are “authorities.” Therefore, prices from these producers do not constitute market-determined prices.²²⁵

In selecting world market prices as benchmarks, we included the total ocean freight and total import duty in accordance with Commerce’s regulations.²²⁶ Because both of these cost elements apply when a company imports the good, we have taken prevailing market conditions into account; in particular, we have used the applicable import duty rates in China based on the record information. The GOC has otherwise provided no relevant information or compelling argument to detract from the comparability of the benchmark good with the good purchased at LTAR.

Comment 8: Applicable VAT Rate for Benchmark Prices

GOC Case Brief

- For the preliminary results, Commerce used the incorrect VAT rate for Jiangsu Senmao in its preliminary calculations.
- Commerce should apply the VAT rate of 13 percent for products classified under HTSUS codes beginning with 4403 for cut timber.

²²³ *Id.* at 22 (citing *Creswell Trading Co. v. United States*, 141 F.3d 1471, 1478 (Fed. Cir. 1998) (*Creswell Trading Co. v. United States*)).

²²⁴ *Id.* at 23 (citing *Zhaoqing New Zhongya Aluminum Co. v. United States*, 929 F. Supp. 2d 1324, 1326-27 (CIT 2013) (*Zhaoqing New Zhongya Aluminum Co. v. United States*)).

²²⁵ See Preliminary Determination Memorandum at 27.

²²⁶ See 19 CFR 351.511(a)(2)(iv).

Commerce's Position:

We agree with the GOC that there was an error in our application of the VAT rate in the *Preliminary Results*. Specifically, in the *Preliminary Results*, Commerce used the incorrect VAT rate of 17 percent. However, the applicable VAT rate is 13 percent for cut timber which is classified under HTSUS Codes beginning with 4403.²²⁷ Therefore, for the final results, we are applying the correct 13 percent VAT rate to the benchmark price for cut timber.²²⁸

Comment 9: Applicable Import Duty for Benchmark Prices

GOC Case Brief

- Commerce should use the most-favored-nation (MFN) rates instead of the general import duty rates for cut timber and veneers.²²⁹
- The correct MFN rates to use for benchmark prices for cut timber are the average import duty rate of 0.00 percent and the average import duty rate of 2.375 percent for veneers.

Riverside Plywood Case Brief

- Commerce incorrectly included general import duty rates in its benchmark calculation for veneers.
- Commerce has a practice of using MFN rates in Tier 2 benchmark calculations.²³⁰
- Commerce should average the 1-4 percent MFN rates for veneers imported under HTSUS 4408 and apply this to the benchmark for Riverside Plywood's and Baroque Timber's veneer purchases.

Commerce's Position:

We agree with the GOC and Riverside Plywood that Commerce should use the MFN rate in this case. For the preliminary results, we incorrectly used the general import duty rates in our cut timber and veneers benchmark price calculations. However, Commerce's practice is to use MFN rates, because the MFN rate reflects the general tariff rate applicable to world trade.²³¹ Therefore, we have used the MFN rate to calculate the benchmark price for cut timber and veneers. Specifically, for the cut timber benchmark price calculation, we have used the MFN average import duty rate of zero percent for the final results.²³² For the veneer benchmark price calculation, we have used the MFN average import duty rate of 2.375 percent for the final results.²³³

²²⁷ See GOC's IQR at 97-98 and Jiangsu Senmao's Letter, "Multilayered Wood Flooring from the People's Republic of China: Benchmark Information," dated October 23, 2018, at Attachment 1

²²⁸ See Jiangsu Senmao Final Calculation Memo at 2 and Attachment 2.

²²⁹ See GOC Case Brief at 10 (citing, e.g., *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014), and accompanying Issues and Decision Memorandum at Comment 13.F).

²³⁰ Riverside Plywood Case Brief at 7.

²³¹ See *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and accompanying Issues and Decision Memorandum at Comment 20.

²³² See Jiangsu Senmao Final Calculation Memo at 3 and Attachment 2.

²³³ See Riverside Plywood Final Calculation Memo at 2 and Attachment 2.

Comment 10: Requirements Necessary to Determine Countervailability of Land Use

Riverside Plywood Case Brief

- Riverside Plywood purchased land from a private, foreign company. Therefore, the purchase of the land-use rights is not countervailable in accordance with section 771(5)(B) of the Act.
- The purchase was made at a public auction from a foreign company, which is a sino-foreign joint venture (92.5 percent Indonesian and 7.5 percent Chinese). A foreign company cannot be considered a Chinese government authority.
- Commerce appears to have made its decision based on AFA although there is no discussion concerning applying AFA to the treatment of a government authority. Commerce's discussion of AFA was regarding financial contribution and specificity.²³⁴
- Moreover, Commerce did not make a finding that facts available was appropriate because there was a gap in the record.²³⁵
- The facts on the record establish that the land was purchased at a public auction from a private, foreign-owned company. Therefore, Commerce should not countervail Riverside Plywood's purchase of land.

Petitioner Rebuttal Brief

- Riverside Plywood's argument is misplaced because it ignores the reasoning behind the extent of Commerce's use of AFA.
- In particular, Commerce explained why it was necessary to apply AFA regarding the specificity and financial contribution elements of the land-use rights for LTAR program.²³⁶
- The GOC did not provide an explanation of how the price of land-use rights was established. In addition, the GOC did not provide a reconciliation between the prices paid and those dictated by applicable laws.
- Commerce sufficiently explained its decision to apply AFA to the land-use rights for LTAR program and does not need to further explain its decision to apply AFA concerning Riverside Plywood's purchase of land-use rights.
- Consistent with Commerce's practice, Commerce determined that the GOC is the ultimate owner of land in China and that it was appropriate to apply AFA to purchases of land-use rights.²³⁷
- Moreover, the GOC was unable to establish that the land was not partially owned by a government authority.²³⁸ In other words, a government authority could have directed the sale of land-use rights which constitutes a financial contribution.

²³⁴ See Riverside Plywood Case Brief at 2-4.

²³⁵ *Id.* at 4 (citing *Nippon Steel Corp. v. United States*, at 1289).

²³⁶ See Petitioner Rebuttal Brief at 14 (citing Preliminary Decision Memorandum at 12-14).

²³⁷ *Id.* at 17 (citing *Truck and Bus Tires From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Determination*, 81 FR 43577 (July 5, 2016) (Tires PRC Preliminary), and accompanying Issues and Decision Memorandum (Tires PRC Preliminary IDM) at 12-14).

²³⁸ *Id.* at 18 (citing GOC's November 30, 2018 Third Supplemental Questionnaire Response (GOC Third SQR) at 2).

- Finally, the application of AFA is consistent with Commerce’s practice and should be applied to all land purchases.

Commerce’s Position:

We agree with the petitioner’s assertion that Riverside Plywood’s 2002 purchase of land-use rights is countervailable. Based on our analysis of the responses submitted by Riverside Plywood and the GOC, we determined in our preliminary results that a financial contribution and specificity exist based on AFA. In particular, we explained in the “Application of AFA: Provision of Land-Use Rights to Certain Industrial Zones for LTAR” section of the Preliminary Decision Memorandum that the GOC did not act to the best of its ability to comply with our requests for information. Therefore, we determined it was appropriate to draw an adverse inference regarding financial contribution and specificity under sections 771(5)(D) and 771(5A) of the Act.²³⁹

Specifically, as noted in the *Preliminary Results*, regarding financial contribution the GOC did not provide any explanation on how the price of land-use rights was established for Baroque Timber. The GOC simply stated that the land parcels provided to Baroque Timber were provided through public auction.²⁴⁰ In addition, the GOC was unable to explain the basis upon which the land or land-use rights were provided to Baroque Timber.²⁴¹ Therefore, Commerce is unable to determine the nature of the financial contribution associated with Baroque Timber’s purchase of land.

In regards to specificity, we noted the following in the *Preliminary Results*,

{in} its supplemental response, the GOC submitted a public bid notice for Baroque Timber’s parcel of land that states, “the bidder must be a company or enterprise that has the qualification of manufacturing, producing, and processing wooden products.” Additionally, the notice states that the bidder must have a License of National Industry Product Manufacture issued by the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China, and a Timber Business License issued by Guangdong Forestry Bureau and Zhongshan Forestry Bureau.²⁴²

In addition, we noted in the *Preliminary Results* that the GOC did not provide evidence of any other offers. Furthermore, we noted that the bid is restricted to companies in the wood industry with the above qualifications and that the GOC did not provide any supporting evidence that the provision of land or land-use rights is not contingent upon status or activities.²⁴³ Consequently, we applied AFA with regards to the specificity of the provision of land-use rights to certain industrial zones for LTAR.

²³⁹ See Preliminary Decision Memorandum at 12-14.

²⁴⁰ See GOC’s IQR at 40.

²⁴¹ See Preliminary Decision Memorandum at 13.

²⁴² *Id.*

²⁴³ *Id.* at 13-14.

More specifically, with respect to the authority described in section 771(5A) of the Act, we agree that the term authority refers to a government authority. In this proceeding, we were unable to determine the owner of the Chinese company which held the interest of the shares in the company owning the land-use rights sold to Riverside Plywood. In our supplemental questionnaire, we requested information from Riverside Plywood and the GOC. Specifically, on October 3, 2018, Commerce asked Riverside Plywood to provide the ownership interest of the land owner and submit documentation to support the response.²⁴⁴ Riverside Plywood explained that to the best of its knowledge, the company owning the land was a sino-foreign joint venture and that it did not have any documentation regarding the ownership.²⁴⁵ Additionally, Commerce asked the GOC to provide the ownership interest of the land owner as well as supporting documentation.²⁴⁶ In the GOC response, the GOC was able to identify the Chinese company which held an interest of 7.5 percent of the shares of the company owning the land.²⁴⁷ However, the GOC was also unable to identify the owner of the Chinese company that held a minority interest of the shares in the company owning the land which was sold to Riverside Plywood. Therefore, we were unable to determine whether the owner of the Chinese company that held a minority interest of the shares in the company owning the land was a government authority.

For the final results, we continue to base our decision of whether Baroque Timber purchased land-use rights in certain industrial zones for LTAR on AFA. Neither the GOC nor Riverside Plywood provided the necessary information to establish that a government authority did not hold interest in the ownership of the land. In addition, the GOC did not provide the necessary information to support its claim that specificity does not exist. Based on the numerous deficiencies in the GOC response as well as in the information which was provided by Riverside Plywood, the record supports an AFA finding that a financial contribution was made and that the program is specific. Thus, we continue to find that the provision of land-use rights for LTAR for this particular property is countervailable, as we have done in similar cases.²⁴⁸

Comment 11: Amount to Use as Benefit for Grants

Riverside Plywood Case Brief

- Commerce inadvertently used the application amounts, instead of the amounts which were approved and actually received by Baroque Timber, to calculate the benefit for two “Other Subsidy Programs” which include an equipment upgrade subsidy grant and an export credit insurance grant.

Commerce’s Position:

We agree with Riverside Plywood that we should use the amount received as the benefit in our calculations. In the *Preliminary Results*, we incorrectly used the application amounts as the

²⁴⁴ See Commerce Letter’s “Third Supplemental Questionnaire for Riverside Plywood,” dated October 3, 2018.

²⁴⁵ See Riverside Plywood’s Letter, “Third Supplemental Questionnaire Response,” dated October 17, 2018 (Riverside Plywood’s Third SQR) at 3).

²⁴⁶ See Commerce’s Letter, “Third Supplemental Questionnaire for GOC,” dated November 19, 2018.

²⁴⁷ See GOC Third SQR at 1-2.

²⁴⁸ See, e.g., Tires PRC Preliminary IDM at 12-14.

benefit amounts for the above-noted “Other Subsidy Programs.” However, in accordance with 19 CFR 351.504(b), we corrected this error in the final results by using the amount of the grants received as the benefit amount. Therefore, based on our recalculations, we have determined that subsidy rates continue to exist for other subsidies received under the equipment upgrade grant program and the export credit insurance grant program in 2016.²⁴⁹

Comment 12: Exclusion of Certain Export Data Used to Calculate the Veneer Benchmark

Petitioner Case Brief

- Commerce should follow its practice of excluding benchmark data that are aberrational, and it should also exclude the United Nations Comtrade Database (UN Comtrade) world export data from the Netherlands for January 2016 because these data skew the world export data for the entire month.
- In the CVD investigation of *Iron Mechanical Transfer Drive Components from China*, Commerce acknowledged its established practice and excluded portions of its ocean freight rate data that it considered to be aberrational.²⁵⁰ Similarly, in *Aluminum Extrusions from China*, Commerce used UN Comtrade pricing data to calculate the monthly weight-averaged prices using the quantity exported by each country, and found that the export data from Estonia for three months during the POR were aberrational and removed the aberrational data.²⁵¹
- The average unit value (AUV) of worldwide veneer exports under HTS line 4408.90 for January 2016 is 0.885226576 USD/KG. The AUV for veneer exports from the Netherlands for January 2016 is 0.018293797 USD/KG. When the Netherlands’ data are excluded from the January 2016 AUV for veneer exports, the AUV significantly increases to 1.790496888 USD/KG.²⁵²

Jiangsu Senmao Rebuttal Brief

- Commerce’s practice is to include and average high- and low-end range values to correct for any discrepancies or variations in the data.²⁵³ The petitioner offered no other information suggesting why the January 2016 data for the Netherlands are aberrational and the petitioner’s claim that these data are low is not sufficient to conclude that they are aberrational. It would be unreasonable and against regulation for Commerce to omit these data because of their small value.²⁵⁴

²⁴⁹ See Riverside Plywood Final Calculation Memo at 2.

²⁵⁰ See Petitioner Case Brief at 45-46 (citing *Certain Iron Mechanical Transfer Drive Components From the People’s Republic of China Final Determination*, 81 FR 75037 (October 28, 2016) (*Iron Mechanical Transfer Drive Components from China*) and accompanying Issues and Decision Memorandum at 26-27).

²⁵¹ *Id.* at 45 (citing *Aluminum Extrusions From the People’s Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent To Rescind, in Part; 2014*, 81 FR 38137 (June 13, 2016) and accompanying Issues and Decision Memorandum (Aluminum Extrusions from China Administrative Review 2014) at 63).

²⁵² *Id.* at 46-47 (citing Petitioner’s Letter, “Submission of Rebuttal Benchmark Information,” dated November 2, 2016 (Petitioner Rebuttal Benchmark) at Exhibit 1).

²⁵³ See Jiangsu Senmao’s Rebuttal Brief at 9.

²⁵⁴ *Id.* at 9-10.

Commerce's Position:

As explained in the *Preliminary Results*, Commerce's regulations establish the basis for identifying the appropriate market-determined benchmark for measuring the adequacy of remuneration for government-provided goods or services. After concluding that there is no viable Tier 1 benchmark for veneers in China, we used the Tier 2 benchmark and we preliminarily selected the world export data from the UN Comtrade to determine whether the veneers purchased by the respondents were provided at LTAR. We then averaged the export prices provided by the petitioner and the mandatory respondents to represent the average of commercially available world market prices for the inputs that would be available to purchasers in China.

We disagree with the petitioner's claim that the January 2016 Netherlands AUV veneer export data are aberrational. Commerce agrees that the record contains evidence of variations in veneer prices and that the January 2016 Netherlands AUV veneer export data are at the low end of a broad range of worldwide export values; however, the data also contain extremely high values. For example, the average January 2016 AUV for veneer exports from Japan is approximately 20 USD/KG and that from the Netherlands is approximately .0187 USD/KG.²⁵⁵ These values represent the high-end and low-end values within the worldwide export for January 2016, and it is not reasonable for Commerce to exclude low-end values but not also exclude high-end values because such action would arbitrarily skew the data used for benchmarking purposes. Consequently, and consistent with the *Preliminary Results*, Commerce will continue to use all the export prices submitted by the petitioner and the mandatory respondents to calculate the veneer benchmark in the final results.

²⁵⁵ See Riverside Plywood's Letter, "30-Day Benchmark Data Submission," dated November 13, 2018 at Exhibit 2; see also Petitioner's Letter, "Submission of Rebuttal Benchmark Information," dated November 2, 2018 at Exhibit 1.

VII. RECOMMENDATION

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

Agree

Disagree

7/30/2019

X 

Signed by: CHRISTIAN MARSH
Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance