



C-570-096  
Investigation  
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October 18, 2019

**MEMORANDUM TO:** Carole Showers  
Executive Director, Office of Policy  
Policy & Negotiations  
Enforcement and Compliance

**FROM:** Scot T. Fullerton  
Director, Office VI  
Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Determination in  
the Countervailing Duty Investigation of Aluminum Wire and  
Cable from the People's Republic of China

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## I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers of aluminum wire and cable (AWC) from the People's Republic of China (China), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). The petitioners are Encore Wire Corporation (Encore) and Southwire Company, LLC (Southwire) (collectively, the petitioners). The mandatory respondents subject to this investigation are the Government of China (GOC), Changfeng Wire & Cable Co. Ltd. (Changfeng), Shanghai Silin Special Equipment Co., Ltd. (Silin),<sup>1</sup> and Shanghai Yang Pu Qu Gong (Qu Gong). As a result of our analysis, we made changes to the subsidy rate calculations. Below is the complete list of issues in this investigation for which we received comments from interested parties:

### *General Issues*

- Comment 1: Export Buyer's Credits
- Comment 2: Other Subsidies
- Comment 3: Benchmark for Aluminum Rod
- Comment 4: Double Remedies for Aluminum Rod
- Comment 5: Loan Calculations

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<sup>1</sup> Silin is a trading company that exported subject merchandise produced by seven manufacturers during the period of investigation (POI). We also required questionnaire responses from four of Silin's: Mingda Wire and Cable Group Co., Ltd. (Mingda Cable); Qingdao Cable Co., Ltd. (Qingdao Cable); Shandong Zhongzhou Cable Co., Ltd.; and Shanghai Xinqi Cable Technology Co., Ltd. (Xinqi Cable).

*Issues Related to Silin and its Suppliers/Producers*

Comment 6: Whether to Apply Adverse Facts Available (AFA) to Silin

Comment 7: Whether to Apply Partial AFA to Qingdao Cable

Comment 8: Xinqi Cable's Electricity Benefit Calculation

*Issues Related to Changfeng*

Comment 9: Whether to Apply AFA to Changfeng

Comment 10: Whether to Apply Partial AFA to Changfeng's Policy Loans

## **II. BACKGROUND**

### **A. Case History**

On April 8, 2019, Commerce published the *Preliminary Determination* in this proceeding.<sup>2</sup> From April 5 through May 2, 2019, Silin, Changfeng, and the GOC submitted timely responses to Commerce's new subsidy allegation (NSA) questionnaires and NSA supplemental questionnaires.<sup>3</sup> Between May 18 and June 13, 2019, we conducted verifications of the questionnaire responses submitted by Changfeng, the GOC, Mingda Cable, Qingdao Cable, and Silin. On September 11, 2019, we released a Post-Preliminary Analysis on the new subsidy allegations.<sup>4</sup> Interested parties submitted case briefs<sup>5</sup> and rebuttal briefs<sup>6</sup> on September 18 and September 23, 2019, respectively.

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<sup>2</sup> See *Aluminum Wire and Cable from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 13886 (April 8, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>3</sup> See Changfeng's April 5, 2019 NSA Questionnaire Response (Changfeng NSAQR); Silin's April 5, 2019, NSA Questionnaire Response (Silin NSAQR); the GOC's April 5, 2019 NSA Questionnaire Response regarding Aluminum Rod (GOC NSAQR Part B); the GOC's April 10, 2019 NSA Questionnaire Response regarding ocean freight (GOC NSAQR Part A); Changfeng's April 30, 2019 NSA Supplemental Questionnaire Response; Silin's May 2, 2019 NSA Supplemental Questionnaire Response; and the GOC's May 2, 2019 NSA Supplemental Questionnaire Response (GOC SNSAQR).

<sup>4</sup> See Memorandum to the File, "Verification of the Questionnaire Responses of the Government of the People's Republic of China," dated June 19, 2019; Memorandum to the File, "Verification of the Questionnaire Responses of Mingda Wire and Cable Group Co., Ltd.," dated July 17, 2019; Memorandum to the File, "Verification of the Questionnaire Responses of Changfeng Wire & Cable Co., Ltd.," dated July 29, 2019 (Changfeng Verification Report); Memorandum to the File, "Verification of the Countervailing Duty Questionnaire Responses Submitted by Qingdao Cable Co., Ltd.," dated September 9, 2019; and Memorandum to the File "Verification of the Countervailing Duty Questionnaire Responses Submitted by Shanghai Silin Special Equipment Co., Ltd.," dated September 10, 2019 (Silin Verification Report).

<sup>5</sup> See Memorandum, "Post-Preliminary Analysis of Countervailing Duty Investigation: Aluminum Wire and Cable from the People's Republic of China," dated September 18, 2019 (Post-Preliminary Analysis).

<sup>6</sup> See Encore's Letter, "Aluminum Wire and Cable from China: Case Brief on Behalf of Encore Wire Corporation," dated September 18, 2019 (Encore Case Brief); Southwire's Letter, "Aluminum Wire and Cable from the People's Republic of China: Case Brief - Southwire Company, LLC - Changfeng Wire and Cable Co. Ltd.," dated September 18, 2019 (Southwire Case Brief); Silin's Letter, "Aluminum Wire and Cable from the People's Republic of China - Case Brief," dated September 18, 2019 (Silin Case Brief); GOC's Letter, "Government of China's Affirmative Case Brief; Aluminum Wire and Cable from the People's Republic of China," dated September 18, 2019 (GOC Case Brief); Changfeng's Letter, "Aluminum Wire and Cable from the People's Republic of China - Rebuttal Brief," dated September 23, 2019 (Changfeng Rebuttal Brief); Silin's Letter, "Aluminum Wire and Cable from the People's Republic of China - Rebuttal Brief," dated September 23, 2019 (Silin Rebuttal Brief); Southwire's Letter,

## **B. Period of Investigation**

The period of investigation (POI) is January 1, 2017 through December 31, 2017.

## **III. SCOPE COMMENTS**

During the course of this investigation and the concurrent antidumping duty investigation of AWC from China, Commerce received scope comments from interested parties. Commerce addressed these comments in the *Preliminary Determination*. We received no additional scope comments in case and rebuttal briefs. Therefore, for this final determination, we have made no changes to the scope of this investigation, as published in the *Preliminary Determination*.

## **IV. SCOPE OF THE INVESTIGATION**

The products covered by this investigation are aluminum wire and cable. For a complete description of the scope of this investigation, see this memorandum's accompanying *Federal Register* notice at Appendix I.

## **V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES**

In the *Preliminary Determination*, we applied total adverse facts available (AFA) to calculate a subsidy rate for Qu Gong because it failed to respond to our initial questionnaire.<sup>7</sup> Additionally, we applied partial AFA with respect to the GOC to find specificity, benefit, and/or financial contribution for several programs.<sup>8</sup> In the Post-Preliminary Analysis, we preliminarily used facts available (FA) and AFA with respect to certain aspects of specificity, benefit, and/or financial contribution for "Provision of Aluminum Rod for LTAR." We have made no changes to these underlying decisions to apply AFA for this Final Determination. However, we are making modifications to the total AFA calculation, as discussed below. Further, based on the findings at verification, we are applying total AFA to calculate Silin's subsidy rate in this Final Determination.

### **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" (FA) 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)

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"Aluminum Wire and Cable from the People's Republic of China: Rebuttal Brief- Southwire Company, LLC - Changfeng Wire and Cable Co. Ltd.," dated September 23, 2019 (Southwire Rebuttal Brief); Encore's Letter, "Aluminum Wire and Cable from China: Case Brief on Behalf of Encore Wire Corporation," dated September 23, 2019 (Encore Rebuttal Brief); and GOC's Letter, "Government of China's Rebuttal Brief - Aluminum Wire and Cable from the People's Republic of China," dated September 23, 2019 (GOC Rebuttal Brief).

<sup>7</sup> See *Preliminary Determination* PDM at 18-23.

<sup>8</sup> *Id.* at 23-33.

significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide {Commerce} with complete and accurate information in a timely manner."<sup>9</sup> Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>10</sup>

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."<sup>11</sup> It is Commerce's practice to consider information to be corroborated if it has probative value.<sup>12</sup> In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.<sup>13</sup> However, the Statement of Administrative Action emphasizes that Commerce need not prove that the selected facts available are the best alternative information.<sup>14</sup>

Finally, under section 776(d) of the Act, 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. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.<sup>15</sup>

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<sup>9</sup> See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76FR 1971 (January 11, 2011) (*Drill Pipe from China Final*); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63FR 8909, 8932 (February 23, 1998).

<sup>10</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I (1994) (SAA) at 870.

<sup>11</sup> See, e.g., SAA at 870.

<sup>12</sup> See SAA at 870.

<sup>13</sup> See, e.g., SAA at 869.

<sup>14</sup> See SAA at 869-870.

<sup>15</sup> See section 776(d)(3) of the Act.

For purposes of this final determination, we are applying FA or AFA in the circumstances outlined below.

## **B. Application of AFA – Unreported Financing / Policy Loans**

As discussed further in Comment 10 below, Changfeng did not report all of its financing that was outstanding during the POI. At verification, we discovered that Changfeng did not report bank acceptance notes,<sup>16</sup> and thus, necessary information is missing from the record because we cannot accurately calculate benefit conferred under the Policy Loans program without this information. We additionally find that Changfeng withheld this information and failed to provide it by the deadline for the submission of such information. We therefore must rely on “facts otherwise available” in issuing our final determination, pursuant to sections 776(a)(1), (a)(2)(A), and (a)(2)(B) of the Act. Moreover, by failing to provide information that it was otherwise able to provide, we find that Changfeng did not act to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act.

Consistent with section 776(d) of the Act, because there are no above-zero calculated rates for Policy Loans to the Aluminum Wire and Cable Industry from this proceeding, we sought the highest non-*de minimis* rate calculated for a comparable or similar program (based on the treatment of the benefit) in another China proceeding. The highest calculated rate for a similar program in another China proceeding for these programs is 10.54 percent.<sup>17</sup>

Consistent with the *Preliminary Determination*, we find that Policy Loans to the Aluminum Wire and Cable Industry provide a financial contribution within the meaning of sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and are specific within the meaning of section 771(5A)(D)(i) of the Act.<sup>18</sup>

## **C. Application of Total AFA: Silin**

As discussed further in Comment 6, we discovered numerous discrepancies at verification that contradicted significant portions of Silin’s reported information. The totality of the circumstances lead us to conclude that Silin’s reported information is unreliable. Due to Silin’s failure to provide accurate and complete questionnaire responses, critical information required for our subsidy analysis is missing from the record. On this basis, and for the reasons explained in detail below, we find that the application of AFA with respect to Silin is appropriate pursuant to sections 776(a) and 776(b) of the Act.

The verification findings establish that Silin could and should have reported the requested information. Further, these findings suggest an attempt to mislead Commerce regarding the true

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<sup>16</sup> See Changfeng Verification Report at 2-3.

<sup>17</sup> See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet Fed Presses from the People’s Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201, 70202 (November 17, 2010) (*Coated Paper from China*) (revised rate for “Preferential Lending to the Coated Paper Industry” program).

<sup>18</sup> See *Preliminary Determination PDM* at 33-36.

nature of its and its affiliates' operations. Silin's failure to provide complete and accurate information throughout this investigation significantly impeded the proceeding because it deprived Commerce and interested parties from analyzing the full facts of the case. Moreover, in addition to the foregoing, because Silin had an ample opportunity to provide accurate information and request clarification, yet failed to do so, we find that Silin did not act to the best of its ability.

As explained by the Court of Appeals for the Federal Circuit (CAFC) in *Nippon Steel*, the ordinary meaning of "best of its ability" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. As evidenced by Silin's misleading statements, concealment of key facts, repeated contradictions, and inadequate recordkeeping, we find that Silin did not put forth its maximum effort. Accordingly, we determine that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. Because the contradictions and discrepancies are pervasive throughout Silin's responses, and because significant portions of Silin's reported information remains unclear or unverified, we are unable to apply AFA on a program-specific basis. Rather, the totality of the contradictions necessitates the application of total AFA, as we are unable to rely on the majority of Silin's reported information.

#### **D. Application of AFA – Total AFA Rate Calculation for Qu Gong and Silin**

It is Commerce's practice in CVD proceedings to compute an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for a cooperating respondent in the same investigation, or, if not available, rates calculated in prior CVD cases involving the same country.<sup>19</sup> Specifically, Commerce applies the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, Commerce uses the highest non-*de minimis* rate calculated for the identical program in a CVD proceeding involving the same country. If no such rate is available, Commerce will use the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, Commerce applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.<sup>20</sup> Commerce used this methodology in the *Preliminary Determination*, to calculate the AFA rate for Qu Gong. We

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<sup>19</sup> See, e.g., *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009) (*Tow-Behind Groomers from China Final*) and accompanying Issues and Decision Memorandum (IDM) at "Application of Facts Available, Including the Application of Adverse Inferences"); see also *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from China Final*), and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

<sup>20</sup> *Id.*; see also *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying IDM at "Selection of the Adverse Facts Available Rate."

continue to use same general methodology in this final determination to calculate the rates for Qu Gong and Silin. However, as described below, because we are now applying AFA to Silin and not considering subsidies received by its unaffiliated suppliers, some the subsidy rates we used in *Preliminary Determination* as the AFA rate for certain programs have now changed. In applying AFA, we also excluded any program determined not to be specific.

Under Commerce's practice, we begin by selecting, as AFA, the highest calculated program-specific above-zero rates determined for Changfeng in the instant investigation. Accordingly, we are applying the highest applicable subsidy rate calculated for Changfeng for the following programs:

- Government Provision of Electricity for LTAR<sup>21</sup>
- Government Provision of Land Use-Rights for LTAR to Aluminum Wire and Cable Producers
- Government Provision of Aluminum Rod for LTAR<sup>22</sup>
- Certain Other Subsidies<sup>23</sup>

In applying an AFA rate for the following income tax reduction programs on which Commerce initiated an investigation, we are drawing an adverse inference that Qu Gong and Silin paid no Chinese income tax during the POI:

- Income Tax Reductions for High or New Technology Enterprises
- Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law
- Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization
- Tax Incentives for Businesses in China (Shanghai) Pilot Free Trade Zone

The standard income tax rate for corporations in China in effect during the POI was 25 percent.<sup>24</sup> Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the four programs, combined, provide a 25 percent benefit). Consistent with past practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.<sup>25</sup>

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<sup>21</sup> In a change from the *Preliminary Determination*, we are now using Changfeng's calculated rate for this program. In the *Preliminary Determination*, we used the rate calculated for another company.

<sup>22</sup> In a change from the *Preliminary Determination*, we are now including this program in the AFA rate. We first found it countervailable in the Post-Preliminary Analysis.

<sup>23</sup> Changfeng reported several other subsidies. For subsidies for which we calculated a rate for Changfeng, we are using the rate calculated in the AFA rate calculation.

<sup>24</sup> See GOC's March 5, 2019 Questionnaire Response (GOC QR) at 35.

<sup>25</sup> See, e.g., *Aluminum Extrusions from China Final IDM* at "Application of Adverse Inferences: Non-Cooperative Companies."

For all other programs not identified above, we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a CVD investigation or administrative review involving China. For this final determination, we are able to match, based on program names, descriptions, and benefit treatments, the following programs to the same or similar programs from other CVD proceedings involving China:

- Government Provision of Primary Aluminum for LTAR<sup>26</sup>
- Policy Loans to Aluminum Wire and Cable Industry<sup>27</sup>
- Deed Tax Exemption for State-Owned Enterprises (SOEs) Undergoing Mergers or Restructuring<sup>28</sup>
- Exemptions for SOEs from Distributing Dividends<sup>29</sup>
- Export Loans from Chinese State-Owned Banks (SOCBs)<sup>30</sup>
- Export Buyer's Credits<sup>31</sup>
- Export Seller's Credits<sup>32</sup>
- Foreign Trade Development Fund Grants<sup>33</sup>
- GOC and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands<sup>34</sup>
- Grants for Energy Conservation and Emission Reduction<sup>35</sup>
- Grants for the Retirement of Capacity<sup>36</sup>
- Import Tariff and VAT Exemptions on Imported Equipment for Encouraged Industries<sup>37</sup>

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<sup>26</sup> In the *Preliminary Determination*, we used calculated subsidy rates for Silin or its suppliers to value this program. However, we are now using the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a CVD investigation or administrative review involving China for this program. See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from China Investigation Amended Final*), and accompanying Ministerial Error Memorandum (MEM) at "Revised Net Subsidy Rate for the Gold Companies" (regarding "Preferential Lending to the Coated Paper Industry").

<sup>27</sup> In the *Preliminary Determination*, we used calculated subsidy rates for Silin or its suppliers to value this program. However, we are now using the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a CVD investigation or administrative review involving China for this program.

<sup>28</sup> See *New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010), unchanged in the final (see *New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011) (*OTR Tires from China*)).

<sup>29</sup> See *Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos from China*), and accompanying IDM at 13-14 ("Special Fund for Energy Saving Technology").

<sup>30</sup> See *Coated Paper from China Investigation Amended Final*.

<sup>31</sup> *Id.*

<sup>32</sup> See *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011), and accompanying IDM at 12.

<sup>33</sup> See *Chlorinated Isos from China* IDM at 13-14 ("Special Fund for Energy Saving Technology").

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See *OTR Tires from China*.

- Income Tax Deductions/Credit for Purchase of Special Equipment<sup>38</sup>
- Preferential Loans to SOEs<sup>39</sup>
- Provision of Land and Land-Use Rights for LTAR to SOEs<sup>40</sup>
- Provision of Land-Use Rights for LTAR in Nanching Economic Development Zone<sup>41</sup>
- Provision of Steam Coal for LTAR<sup>42</sup>
- Tax Grants, Rebates, and Credits in Yixing Economic Development Zone<sup>43</sup>
- The State Key Technology Project Fund<sup>44</sup>
- VAT Rebates on Domestically-Produced Equipment<sup>45</sup>
- Certain Other Subsidies<sup>46</sup>

Based on the methodology described above, we determine the AFA countervailable subsidy rate for Qu Gong and Silin to be to be 165.63 percent *ad valorem*.<sup>47</sup>

## VI. SUBSIDIES VALUATION

### A. Allocation Period

We made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation methodology used in the *Preliminary Determination*. For a description of the allocation period and the methodology used for this final determination, see the *Preliminary Determination*.<sup>48</sup>

### B. Attribution of Subsidies

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<sup>38</sup> *Id.*

<sup>39</sup> See *Coated Paper from China Investigation Amended Final*.

<sup>40</sup> See *Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 53473 (November 16, 2017) (*Hardwood Plywood*).

<sup>41</sup> *Id.*

<sup>42</sup> 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) (*Alloy Sheet from China*), and accompanying IDM at 17.

<sup>43</sup> See *OTR Tires from China*.

<sup>44</sup> See *Chlorinated Isos from China* IDM at 13–14 (“Special Fund for Energy Saving Technology”).

<sup>45</sup> See *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 75 FR 45472 (August 2, 2010), and accompanying IDM at 10.

<sup>46</sup> These include other subsidies reported by Changfeng, for which we did not calculate a rate, as well as other subsidies reported by Silin or Jiangxi Silin, or discovered at their verification. In a change from the *Preliminary Determination*, we are not including other subsidies reported by Silin's suppliers, but we are including Jiangxi Silin's other subsidies.

<sup>47</sup> See Memorandum, “AFA Calculation Memorandum for the Final Determination in the Investigation of Aluminum Wire and Cable from China,” dated concurrently with this memorandum.

<sup>48</sup> See *Preliminary Determination* PDM at 7.

We made no changes to the methodology underlying our attribution of subsidies in the *Preliminary Determination* with respect to Changfeng. For a description of the methodology used for this final determination for Changfeng, see the *Preliminary Determination*.<sup>49</sup>

### **C. Denominators**

We made no changes to, and interested parties raised no issues in their case briefs regarding, Changfeng's denominator used in the *Preliminary Determination*.<sup>50</sup>

### **D. Benchmarks and Interest Rates**

Interested parties provided comments regarding the benchmark used for aluminum rod, which are addressed in Comment 3 below. We made no changes to any benchmarks for the final determination, and interested parties raised no other issues in their case briefs regarding benchmarks and the denominators used in the Post-Preliminary Analysis and *Preliminary Determination*.<sup>51</sup>

## **VII. ANALYSIS OF PROGRAMS**

### **A. Programs Determined to Be Countervailable**

#### **1. Policy Loans to the Aluminum Wire and Cable Industry**

Interested parties provided comments regarding this program, which are addressed in Comments 5 and 10 below. We are now applying AFA to Changfeng with respect to this program. See Comment 10 below, as well as the "Use of Facts Otherwise Available and Adverse Inferences" section above. Because we are no longer calculating rates for this program, the calculation issues in Comment 5 are now moot.

- 10.54 percent *ad valorem* for Changfeng

#### **2. Export Buyer's Credit**

Interested parties provided comments regarding this program, which are addressed in Comment 1. We have not changed our methodology for calculating subsidy rates for the respondents under this program.

- 10.54 percent *ad valorem* for Changfeng

#### **3. Provision of Aluminum Rod for LTAR**

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<sup>49</sup> *Id.* at 7-12.

<sup>50</sup> See *Preliminary Determination* PDM at 12.

<sup>51</sup> *Id.* at 12-17.

Interested parties provided comments regarding the benchmark for this program, which are addressed in Comment 3. We have not changed our methodology for calculating subsidy rates for Changfeng under this program since the Post-Preliminary Analysis.

- 11.67 percent *ad valorem* for Changfeng

4. **Provision of Land-Use Rights for LTAR to Aluminum Wire and Cable Producers**

We have not changed our general methodology for calculating subsidy rates for Changfeng under this program.

- 0.11 percent *ad valorem* for Changfeng

5. **Provision of Electricity for LTAR**

Silin provided comments regarding this program, which are addressed in Comment 8. We have not changed our general methodology for calculating subsidy rates for Changfeng under this program.

- 0.43 percent *ad valorem* for Changfeng

6. **Subsidy Fund for Foreign Trade Development**

The GOC provided comments regarding this program, which are addressed in Comment 2. We have not changed our methodology for calculating subsidy rates for the respondent under this program.

- 0.02 percent *ad valorem* for Changfeng

7. **Special Fund for Foreign Trade Development**

The GOC provided comments regarding this program, which are addressed in Comment 2. We have not changed our methodology for calculating subsidy rates for the respondent under this program.

- 0.05 percent *ad valorem* for Changfeng

8. **Funds for Foreign Trade Transformation and Upgrading Development in 2016**

The GOC provided comments regarding this program, which are addressed in Comment 2. We have not changed our methodology for calculating subsidy rates for the respondent under this program.

- 0.07 percent *ad valorem* for Changfeng

## **9. Development Fund for Special Industry**

The GOC provided comments regarding this program, which are addressed in Comment 2. We have not changed our methodology for calculating subsidy rates for the respondent under this program.

- 0.01 percent *ad valorem* for Changfeng

### **B. Program Determined to Be Not Specific**

#### **1. Provision of International Ocean Shipping Services for LTAR**

### **C. Programs Determined Not to Be Used by Changfeng**

1. **Provision of Primary Aluminum for LTAR**
2. **Income Tax Reductions for High or New Technology Enterprises**
3. **Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law**
4. **Export Loans from Chinese State-Owned Banks**
5. **Preferential Loans for State-Owned Enterprises**
6. **Export Sellers Credits from Export Import Banks of China (China ExIm)**
7. **Provision of Steam Coal for LTAR**
8. **Provision of Land and Land Use Rights for LTAR to SOEs**
9. **Provision of Land Use Rights for LTAR in Nanching Economic Development Zone**
10. **Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization**
11. **Income Tax Deductions/Credits for Purchase of Special Equipment**
12. **Import Tariff and VAT Exemptions on Imported Equipment for Encouraged Industries**
13. **VAT Rebates on Domestically-Produced Equipment**
14. **Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring**
15. **Tax Grants, Rebates, and Credits in the Yixing Economic Development Zone**
16. **Tax Incentives for Businesses in China (Shanghai) Pilot Free Trade Zone**
17. **Exemptions for SOEs from Distributing Dividends**
18. **The State Key Technology Project Fund**
19. **Foreign Trade Development Fund Grants**
20. **Grants for Energy Conservation and Emission Reduction**
21. **Grants for Retirement of Capacity**
22. **GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands**

## **VIII. ANALYSIS OF COMMENTS**

### **General Issues**

## Comment 1: Export Buyer's Credit

*Changfeng's Case Brief*,<sup>52</sup> *Silin's Case Brief*,<sup>53</sup> and *GOC Case Brief*<sup>54</sup>

- Commerce should conclude that the export buyer's credit was not used by the respondents in this proceeding. By applying AFA subsidy rates to the respondents, Commerce ignored substantial evidence of non-use. The respondents reported that none of the U.S. customers of the company respondents used this program during the POI. Silin further explained it had only one foreign customer and the customer confirmed in an email that it was aware that it never applied for or received any kind of credit from China ExIm. In addition, Silin's affiliates did not export, so none of them could have used the program.
- AFA cannot be applied unless information is missing from the record. The application of adverse inferences cannot be applied unless it is appropriate to use facts otherwise available (*i.e.*, it is only appropriate to fill gaps in the record necessary for Commerce to complete its calculation).
- In the CVD context, gaps might occur with respect to financial contribution, specificity or benefit. Each of these three elements must be satisfied independent of each other. Thus, as AFA, Commerce cannot discard all evidence on the record related to the existence (or lack thereof) of the three elements of a subsidy merely because of a respondents' failure to cooperate in relation to some but not all of those elements.
- Therefore, the GOC's alleged failure to provide certain information on this program does not render its responses to other aspects of the program unusable or unimportant. Specifically, the GOC states unequivocally that the respondents' customers did not use the program. The only information conceivably absent from the record in the GOC responses is information regarding the operation of the program, but non-use information was not discredited in anyway.
- Even assuming the GOC's responses on program non-use fall short, Commerce is still required to review the totality of the evidence, including that which detracts from its determination.<sup>55</sup> Commerce is required to review information provided by the respondent to determine whether sufficient information exists with regard to use, before it can apply AFA.<sup>56</sup>
- Moreover, the CIT held that where relevant information exists elsewhere on the record, Commerce should seek to avoid adversely impacting a cooperating party.<sup>57</sup>
- The GOC provided information which would have enabled Commerce to verify the program. As can be seen under the implementing rules for this program, the exporter is required to obtain export credit insurance, and the buyer is required to open a bank

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<sup>52</sup> See *Changfeng Case Brief* at 5-6.

<sup>53</sup> See *Silin Case Brief* at 14-15.

<sup>54</sup> See *GOC Case Brief* at 2-12.

<sup>55</sup> See *CS Wind Vietnam Co. v. United States*, 832 F. 3d 1367, 1373 (Fed. Cir. 2016).

<sup>56</sup> See *Certain In-Shell Pistachios (C-507-501) and Certain Roasted In-Shell Pistachios (C-507-601) from the Islamic Republic of Iran: Final Results of New Shipper Countervailing Duty Reviews* 73 FR 9993 (Feb. 25, 2008) (*Pistachios*), and accompanying IDM at Comment 2; see also *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) (*Indian Flat Products*), and accompanying IDM at Comment 6.

<sup>57</sup> See *Archer Daniels Midland Co. v. United States*, 917 F. 2d 1331, 1342 (CIT 2013).

account with the Ex-Im Bank. Commerce could have verified whether the exports of subject merchandise obtained credit insurance, and it could have enquired whether the borrowers opened bank accounts with Ex-Im Bank. Commerce did neither.

- There is no uncertainty regarding the statements of non-use of the program by Silin and Changfeng. Silin's only foreign customer expressly confirmed that it never applied for or received any kind of credit from China ExIm. Silin's affiliates reported they did not export their products and could therefore not apply for, use, or benefit from this program. Changfeng provided confirmation from one of its customers that the customer had not used the program, and it provided the names of its other customers. Commerce failed to explain why this unequivocal evidence of non-use was insufficient.
- Commerce's sole justification of its AFA decision was that it was unable to verify in a meaningful manner the little information on the record indicating non-usage. This rationale is without merit and contrary to past practice. How a program operates, and whether it is used are two distinct issues. Regardless of whether Commerce or the U.S. customer have knowledge of exactly how the program operates, the U.S. customers undeniably have knowledge of their own usage of the program.
- Commerce could have inquired further with the customers to the same end. Verifying customers would have hardly been a novel approach, as Commerce has verified this program with U.S. customers in the past. Despite the lack of Commerce's complete understanding, it had a clear path to find non-use by accepting the statement and declaration submitted by the company respondents and verifying customer to the extent necessary.<sup>58</sup> Failing to rely on this evidence when it had done so in the past is contrary to law and must be reversed in any final results.
- The CIT recently expressly found in the exact same factual circumstances as the one present in this proceeding that Commerce cannot apply AFA to usage with regard to the Export Buyer's Credit Program. In that case, the GOC similarly did not provide the document required by the Commerce, the 2013 revised guidelines and did not provide information regarding partner banks. As in this case, Commerce determined AFA was appropriate regarding use of the program because the missing information prohibited it from understanding the operation of the program and how it could be used. The CIT rejected this position.<sup>59</sup> The CIT concluded that Commerce's decision to apply AFA was unreasonable because material information was not missing from the record.
- If Commerce continues to find that respondents benefited from this program, Commerce should affirmatively find that the program is export contingent and therefore must be offset from the antidumping margin.<sup>60</sup> It is Commerce's longstanding practice to treat this program as a prohibited export subsidy.<sup>61</sup>

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<sup>58</sup> See *Chlorinated Isos from China* IDM.

<sup>59</sup> See *Guizhou Tyre Co., Ltd. v. United States* Ct. No. 17-00101, Slip Op. 18-140 (October 17, 2018) (*Guizhou Tyre*).

<sup>60</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 36886 (July 30, 2019), and accompanying IDM at Comment 2.

<sup>61</sup> See *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 47902 (August 10, 2015); see also *Jinko Solar Co. v. United States*, 229 F. Supp. 3d 1333, 1359 (CIT 2017).

*Encore Rebuttal Brief*<sup>62</sup> and *Southwire Rebuttal Brief*<sup>63</sup>

- Commerce properly relied on AFA in quantifying the benefit associated with the Export Buyer's credit program. Commerce correctly concluded that the GOC failed to cooperate to the best of its ability in providing information regarding the administration of this program. Due to the GOC's fundamental failures, Commerce correctly found that it could not even conduct verification of this program.
- The GOC acknowledges information is missing from the record. It repeatedly failed to provide full and complete responses to Commerce's requests regarding this program, most notably by not providing certain ExIm Bank documents and a list of all partner/correspondent banks. The GOC even refused provide a sample redacted application for funds under this program.
- The GOC does not dispute that it withheld information, but instead it tries to diminish the importance of Commerce's requests for information, stating that Commerce should just rely on the response that the respondents' customers did not use the program.
- The facts specific to this investigation establish why Commerce must understand how the Export Buyer's Credits program operates in order to verify non-use.
- In this investigation, verification revealed that Silin and Qingdao Cable withheld information of specific subsidies that Commerce's verification team discovered precisely because it understood how the particular programs under investigation were expected to operate.
- Commerce previously explained that it doubts customer-generated certifications of non-use because without a complete understanding of the program (only achieved through a complete response from the GOC), those certifications cannot be verified against how the program operates.
- Commerce lacks an understanding of this program to be able to fully examine non-use without the potential for the respondent parties to fail to disclose use of the program. Commerce just reiterated this position in *Ceramic Tile from China*.<sup>64</sup>
- Here, the GOC failed to provide a list of all partner/correspondent banks involved in this program. Assuming Commerce conducted verification of the respondents' customers, what banks would Commerce search for in its completeness test?
- The GOC's citations to *Pistachios* and *Indian Flat Products* are inapposite here. In *Pistachios* and *Indian Flat Products*, Commerce did not examine a respondent, like in this case, that attempted to mislead Commerce regarding the true nature of its subsidization. Likewise, *Guizhou Tyre* did not consider the import of discovered programs at verification and how those facts establish a reasoned basis to deny reliance upon certification of non-use.
- Record evidence does not demonstrate that the Export Buyer's Credit was not used because there is insufficient information regarding the program's operation. Commerce's incomplete understanding of the program, based on GOC's decision not to provide

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<sup>62</sup> See *Encore Rebuttal Brief* at 8-14.

<sup>63</sup> See *Southwire Rebuttal Brief* at 8-10.

<sup>64</sup> See *Ceramic Tile from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 48125 (September 12, 2019) (*Ceramic Tile from China*), and accompanying PDM at 28-30.

requested information, has a direct impact on Commerce's ability to analyze the program's countervailability and determine how benefits should be calculated.

**Commerce's Position:** As an initial matter, as described above and below in Comment 6, we find the totality of the circumstances lead us to conclude that Silin's reported information on this record unreliable. Due to Silin's repeated failure to provide accurate and complete questionnaire responses, critical information required for our subsidy analysis is missing from the record.

As stated in the *Preliminary Determination*, we requested a list of all partner/correspondent banks involved in the disbursement of funds under the Export Buyer's Credit Program.<sup>65</sup> Instead of providing the requested information, the GOC stated that our question is not applicable.<sup>66</sup> We also asked the GOC to submit the Administrative Measures that were revised in 2013, but the GOC refused.<sup>67</sup> Though the GOC provided some information, it was unresponsive to the request, preventing Commerce from analyzing the function of the program, as discussed below.

In our initial questionnaire and supplemental questionnaire to the GOC, we requested that the GOC answer all the questions in the Standard Questions Appendix and other specific questions relating to the China Ex-Im Bank's Export Buyer's Credit Program, which are necessary for Commerce to analyze how the program is administered and how it functions.<sup>68</sup> In response, the GOC stated that "{n}one of the respondents applied for, used, or benefited from, this alleged program during the POI. Therefore, this question is not applicable, and as a consequence, the corresponding appendix is not applicable."<sup>69</sup> The GOC did provide the Administrative Measures of Export Buyer's Credit of EIBC (implemented in 2000) (Administrative Measures).<sup>70</sup> The GOC also stated that the exporter itself is the entity that actually receives the money from the China Ex-Im Bank, and that the Chinese exporter can verify usage.<sup>71</sup> However, information on the record indicates that the GOC revised the Administrative Measures regarding this program in 2013. This information provides that the China Ex-Im Bank may disburse export buyer's credits directly or through third-party partner and/or correspondent banks.<sup>72</sup> As noted above, we asked the GOC to submit the Administrative Measures that were revised in 2013, however, the GOC responded that it was unable to provide this document.<sup>73</sup> Additionally, the respondents each reported non-use for themselves and for their U.S. customers, and they each provided correspondence from at least some of their U.S. customers indicating that these customers did not obtain financing through the program.<sup>74</sup>

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<sup>65</sup> See *Preliminary Determination* PDM at 24.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 23-24

<sup>68</sup> See GOC QR; and GOC's March 6, 2019 Supplemental Questionnaire Response (GOC SQR).

<sup>69</sup> See GOC QR at 17.

<sup>70</sup> *Id.* at Exhibit II.B.10.

<sup>71</sup> *Id.* at 20-22

<sup>72</sup> See Encore's Letter, "Aluminum Wire and Cable from China: Encore's Submission to Rebut, Clarify, or Correct the GOC's Questionnaire Response," dated February 19, 2019, at Attachment 1 (Citric Acid Verification Report) at 2.

<sup>73</sup> See GOC SQR at 3.

<sup>74</sup> See, e.g., Changfeng's February 5, 2019 Questionnaire Response at 12-13 and Exhibit 13; and Changfeng's March 5, 2019 Questionnaire Response at 9-10.

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* that was conducted in 2016-2017, where we asked the GOC about the amendments to the Export Buyer's Credit Program,<sup>75</sup> we continue to find that the GOC has refused to provide the requested information concerning the 2013 program revisions, which is necessary for Commerce to analyze how the program functions. We requested information regarding the 2013 revisions to the Administrative Measures, and information on the partner/correspondent banks that are involved in the disbursement of funds under this program, because our prior knowledge of this program demonstrates that the 2013 revisions effected important program changes.<sup>76</sup> 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.<sup>77</sup>

This information is necessary and critical to our understanding of the program and for any determination of whether the "manufacture, production, or export" of the respondents' 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 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.<sup>78</sup> Therefore, by refusing to provide the requested information, and instead providing unverifiable assurances that other rules regarding the program remained in effect, the GOC impeded Commerce's ability to understand how this program operates and how it can be verified. Further, regarding the GOC's concerns regarding the non-public nature of the 2013 revisions, Commerce has well-established rules governing the handling of business proprietary information in its proceedings.

Second, Commerce's understanding of the 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.<sup>79</sup> Thus, Commerce asked the GOC to provide the same information it provided in the

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<sup>75</sup> See GOC QR at Exhibit II.B.11 (containing the GOC's September 6, 2016, Silica Fabric QR at 4-5).

<sup>76</sup> See GOC SQR at 3-4.

<sup>77</sup> 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 and 61.

<sup>78</sup> The GOC is the only party which could provide the identities of the correspondent banks that the China Ex-Im Bank utilizes to disburse funds under the Export Buyer's Credit Program. There is no indication on the record that other parties had access to the correspondent banks utilized by the China Ex-Im Bank.

<sup>79</sup> See *Silica Fabric Inv* IDM at 12.

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:

- Please provide the 2013 amendment and guidelines to the *Administrative Measures of Export Buyers' Credit of the Export-Import Bank of China* (Exhibit II.B.10) and the *Implementing Rules for the Export Buyers' Credit of the Export-Import Bank of China* (Exhibit II.B.12).<sup>80</sup>
- Provide a sample application for each type of financing provided under the Buyer Credit Facility, the application's approval, and the agreement between the respondent's customer and the China ExIm that establish the terms of the assistance provided under the facility.<sup>81</sup>
- Provide a list of all partner/correspondent banks involved in disbursement of funds under the Export Buyer's Credit Program.<sup>82</sup>

Although the GOC provided certain documents,<sup>83</sup> the GOC provided non-responsive answers to Commerce's specific questions, stating in response to our request for the 2013 revised Administrative Measures: "The Export-Import Bank of China (the "Ex-Im Bank") has confirmed to the GOC that its 2013 guidelines are internal to the bank, non-public, and not available for release. Although the GOC has used its best efforts in attempting to obtain a copy of the document requested by the Department, the GOC has no authority or right to force the Ex-Im Bank to provide a copy of the 2013 guidelines, and therefore is unable to provide a copy to the Department."<sup>84</sup> With regard to our request for a list of partner/correspondent banks that are involved in the disbursement of funds through the program, the GOC similarly stated: "the GOC would like to reiterate that, although it has used its best efforts in attempting to obtain this information, the GOC is unable to compel the Ex-Im Bank to disclose, or provide the GOC with, a list of all partner or correspondent banks which may have been involved in disbursement of funds under the Export Buyer's Credit Program—more so because neither of the mandatory respondents, their cross-owned affiliates or their U.S. customers used this program."<sup>85</sup>

We note that in the instant investigation, the GOC has provided requested information for other programs even though it considered this information to be not applicable to the issue under examination. For example, regarding the Provision of Electricity for LTAR Program, we requested that the GOC provide information from the GOC's 2009 questionnaire response in the CVD investigation of kitchen appliance shelving and racks from China:

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<sup>80</sup> See GOC SQR at 3.

<sup>81</sup> See GOC QR at 18; *see also* GOC SQR at 2-3.

<sup>82</sup> See GOC QR at 19; *see also* GOC SQR at 4.

<sup>83</sup> See GOC QR at 19; *id.* at Exhibit II.B.10, "The Administrative Measures of Export Buyer's Credit of EIBC," dated November 20, 2000; *id.* at Exhibit II B.12, "The implementing Rules for the Export Buyer's Credit of the Export-Import Bank of China," dated September 11, 1995.

<sup>84</sup> See GOC SQR at 2.

<sup>85</sup> *Id.* at 3.

Provide the Public Version of the March 11, 2009, Response of the Government of China To The U.S. Department of Commerce’s Supplemental Questionnaire on Electricity filed in Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China including Exhibit S2-1, Exhibit S2-2 and Exhibit S2-6. Furthermore, include an English translation of Exhibit S2-1.<sup>86</sup>

The GOC stated that the requested information was “no longer applicable,” but still provided the information:

The GOC provides the requested document at Exhibit II.E.c.2. However, we note that due to the changes that occurred in the electricity regime in China since that date, the information contained in this old GOC response is no longer applicable.<sup>87</sup>

The GOC also provided requested information in another instance, even though it concluded this information was not applicable to our investigation:

Provide the Public Version of the March 11, 2009, submission of the Government of China titled *Paper on China’s Electricity System: Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China – CVD Investigations* including Exhibits 1-15.<sup>88</sup>

Thus, the GOC provided requested information that it concluded was not applicable to our examination of the Provision of Electricity for LTAR Program, but did not act in the same way regarding our request for the 2013 revised Administrative Measures for the Export Buyer’s Credit Program, thus demonstrating that the GOC is capable of providing information for certain programs even if it deems such information “not applicable” to Commerce’s examination.

Accordingly, we continue to find the GOC’s responses deficient and unresponsive to our request for necessary information with respect to the operation of the Export Buyer’s Credit 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 the company respondents’ 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.<sup>89</sup>

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

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<sup>86</sup> See GOC QR at 95.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> See GOC QR at Exhibit II.B.11 (containing the GOC’s September 6, 2016, Silica Fabric QR at 4-5).

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.<sup>90</sup> 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.<sup>91</sup> Thus, the GOC's refusal to provide the 2013 revisions, which provide internal guidelines for how this program is administrated by the China Ex-Im Bank, as well as other requested information, such as key information and documentation pertaining to the application and approval process, and partner/correspondent banks, impeded Commerce's ability to conduct its investigation of this program and to verify the claims of non-use by the company respondents' customers.

This missing information was especially significant because the available record evidence indicates that under the Export Buyer's Credit Program, credits are not direct transactions from the China Ex-Im Bank to U.S. customers of the respondent exporters, but rather, that there can be intermediary banks involved,<sup>92</sup> the identities of which the GOC has refused to provide to Commerce. 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.<sup>93</sup> However, based on our more recent understanding of the program in this investigation discussed above, performing the verification steps to make a determination of whether the "manufacture, production, or export" of the company respondents' merchandise has been subsidized would therefore require knowing the names of the intermediary banks; it would be their names, not the name "China Ex-Im Bank," that would appear in the subledgers of the U.S. 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.<sup>94</sup>

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,<sup>95</sup> having a list of the correspondent banks is critical for us to perform verification at the U.S. customers.

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> See *Chloro Isos from China* IDM at 15.

<sup>94</sup> See *Alloy Sheet from China* IDM at 30.

<sup>95</sup> 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.

Without such information, it would be unreasonably onerous for Commerce to comb through the business activities of the company respondents' 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 the company respondents' customers' non-use of this program without understanding the identity of these correspondent banks would be extremely difficult, if not impossible. Because Commerce does not know the identities of these banks, Commerce's second step of its typical non-use verification procedures (*i.e.*, examining the company's subledgers for references to the party making the financial contribution) could not by itself demonstrate that the U.S. customers did not use the program (*i.e.*, by examining whether there were any correspondent banks in the subledger). Nor could the second step be used to narrow down the company's lending to a 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 extremely onerous undertaking for any company that received more than a small number of loans.

Furthermore, Commerce's typical non-use verification procedures (*i.e.*, selecting *specific* entries from the subledger and requesting to see underlying documentation, such as applications and loan agreements) would be of no value. This step might serve merely to confirm whether banks were correctly identified in the subledger—not necessarily whether those banks were correspondent banks participating in the 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 Measures, 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 the company respondents' customers, even were it to attempt the unreasonably onerous examination of each of the customers' loans. To conduct verification of the customers without the information requested from the GOC would amount to looking for a needle in a haystack with the added uncertainty that Commerce might not even be able to identify the needle when it was found. Based on the GOC's responses, Commerce understood that under this program loans were provided either directly from the China Ex-Im Bank to the borrowers (*i.e.*, a respondent's customers), or through an intermediary third-party bank, and that a respondent might have knowledge of loans provided to its customers through its involvement in the application process. Commerce gave the GOC an opportunity to provide the 2013 revisions regarding the Administrative Measures, which the GOC refused to provide.<sup>96</sup> The GOC also refused to provide a requested sample application, instead claiming that "none of the respondents applied for, used, or benefited from, this alleged program during the POI. Therefore, no agreements between the respondents and the China Ex-Im Bank or between the U.S. customers and the China Ex-Im Bank exist. A sample credit application is not available because no fixed format for such document exists, which are prepared by the borrowers autonomously."<sup>97</sup>

According to the GOC, none of the respondent companies' U.S. customers used the Export Buyer's Credits from the China Export-Import Bank during the POI.<sup>98</sup> The GOC explained that to make this determination, GOC has obtained the list of U.S. customers from the respondents; the GOC also enquired with the Ex-Im Bank; and the GOC understands that Ex-Im Bank queried its internal system which manages the Export Buyer's Credits and confirmed that none of the respondents used the Export Buyer's Credits during the POI.<sup>99</sup> 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 are not participating in this proceeding), but neither the GOC, nor the respondent companies, provided enough information for Commerce to understand this interaction or how this information would be reflected in the respondent companies' or their U.S. customers' books and records. As a result, the GOC failed to respond to Commerce's request, and instead claimed that neither of the company respondents' U.S. customers used this program based on selectively provided, incomplete information. As

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<sup>96</sup> See GOC SQR at 3.

<sup>97</sup> See GOC QR at 18.

<sup>98</sup> See GOC SQR at 3.

<sup>99</sup> *Id.*

determined in the *Preliminary Determination*, we continue to find that Commerce could not verify non-use of export buyer's credits by the customers of the company respondents. 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 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.<sup>100</sup>

We continue to find that usage of the Export Buyer's Credit Program could not be verified at the company respondents 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<sup>101</sup> 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 the company respondents' U.S. customers' books and records, and therefore could not verify the claims of non-use. A review of ancillary documents, such as applications, correspondence, emails, *etc.*, is insufficient for Commerce to verify any bank disbursement or loan amount pertaining to the company respondents, their customers, and/or the GOC's participation in the program.<sup>102</sup> 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 company respondents' reported information from their questionnaire responses. 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 the company respondents received under this program during the course of the POI.

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

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<sup>100</sup> 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 PDM at 16-17.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

what to look for behind each loan in attempting to identify which loan was provided by the 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.<sup>103</sup> 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 the company respondents' customers. Therefore, there are gaps in the record because the GOC refused to provide the requisite disbursement information.

Additionally, Commerce finds that it is not possible to determine whether export buyer's credits were received with respect to the export of aluminum wire and cable because the potential recipients of export buyer's credit are not limited to the customers of the company respondents as they may be received by other third-party banks and institutions. 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) of the Act, with the exporters, U.S. customers, or at the China Ex-Im Bank itself given the refusal of the GOC to provide the 2013 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 has been accepted by the Court in a review of Solar Cells from China. Specifically, in *Changzhou I*,<sup>104</sup> 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...."<sup>105</sup>

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<sup>103</sup> 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).

<sup>104</sup> 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).

<sup>105</sup> *Id.* at 1355.

Moreover, Commerce disagrees with the respondents 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 the company respondents' 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.<sup>106</sup> 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 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.

The respondents argue that Commerce could have had a clear path to find non-use by either accepting the company respondents' customers' declarations or by verifying the declarations. Commerce, however, has already 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

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<sup>106</sup> See, e.g., *Tow-Behind Groomers from China Final IDM* at 10 (“At the verification of Princeway’s questionnaire responses . . . the GOC presented corrections regarding the reported exempted import duties for imported equipment . . .”).

program.<sup>107</sup> 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.<sup>108</sup> Moreover, the idea of searching through the company respondents' 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 this final determination, pursuant to sections 776(a)(1), (2)(A) and (C) of the Act. Specifically, necessary information was not on the record because the GOC withheld information that we requested that was reasonably available to it which significantly impeded the proceeding. In addition, we find that an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act because the GOC did not act to the best of its ability in providing the necessary to Commerce. As AFA, we determine that this program provides a financial contribution, and provides a benefit to the company respondents within the meaning of sections 771(5)(D), and 771(5)(E), respectively, of the Act.

Commerce has considered all information on the record of this proceeding, including the statements of non-use provided by the respondent companies (*i.e.*, declarations of non-use from respondents' 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 the 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 the use of an adverse inference when selecting from among the facts otherwise available is reasonable and supported by substantial evidence on the record.

With respect to the selection of the AFA rate to apply to this program, we have reviewed comments from interested parties and we are continuing to apply our CVD AFA hierarchy to assign a rate of 10.54 percent *ad valorem* to this program, consistent with the *Preliminary*

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<sup>107</sup> See, e.g., *Chloro Isos from China* 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.").

<sup>108</sup> "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.

*Determination.*<sup>109</sup> We conclude that the Export Buyer's Credit Program provides loan support through export buyer's credits.<sup>110</sup> Based on the description of the Export Buyer's Credit Program, we find that the Preferential Policy Lending program and the Export Buyer's Credit Program are similar/comparable programs as both programs provide access to loans.

Finally, with regard to the respondents' argument that Commerce should find that this program is an export subsidy, we agree. Although the record regarding this program suffers from significant deficiencies, we note that the GOC's description of the program and supporting materials (albeit found to be deficient) demonstrates that through this program, state-owned banks, such as the EX-IM Bank, provide loans at preferential rates for the purchase of exported goods from China.<sup>111</sup> In addition, the program was alleged by the petitioners as a possible export subsidy.<sup>112</sup> Finally, Commerce has found this program to be an export subsidy in the past.<sup>113</sup> Thus, taking all such information into consideration indicates the provision of export buyer's credits is contingent on exports within the meaning of section 771(5A)(B) of the Act.

## **Comment 2: Other Subsidies**

### *GOC Case Brief*<sup>114</sup>

- Commerce's investigation and subsidy finding must focus on properly alleged subsidies for which there is formal initiation of an investigation.
- For more than a decade, Commerce has employed a practice in CVD investigations of requesting respondents to disclose all other subsidies. Such "other" subsidies are not subject of any allegation raised by the petitioner, any formal initiation of an investigation, nor are they defined in any way by Commerce.
- This "other" subsidy request has been used by Commerce as the basis to apply AFA. The practice thus prejudices responding parties by placing undue burdens upon them and distracting from the proper focus of the proceeding.
- In the instant proceeding, Commerce asked about other subsidies in the absence of evidence or other formalities required by law. In the preliminary determination, Commerce assigned margins to the company respondents using utilization information provided by those companies for these reported other subsidies. This is contrary to law and no margin should be assigned.
- Under section 702 of the Act, investigations may only commence after sufficient evidence of financial contribution, specificity, and benefit is found or present. This true for self-initiated investigation or investigations commenced with petitions. Commerce engages in an allegation-by-allegation review to establish whether each allegation is

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<sup>109</sup> See *Preliminary Determination* PDM at 25.

<sup>110</sup> See GOC QR at 17-22.

<sup>111</sup> See GOC QR at Exhibits II.B.10 and II.B.12.

<sup>112</sup> See *Aluminum Wire and Cable from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 83 FR 52805 (October 18, 2018) (*Initiation Notice*), and accompanying CVD Initiation Checklist at 13.

<sup>113</sup> See, e.g., *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 17382 (April 25, 2019), and accompanying IDM at Comment 16.

<sup>114</sup> See GOC Case Brief at 12-16.

properly framed and supported by sufficient evidence. Initiation in response to an allegation is not a doorway to open-ended inquiries.

- These provisions and practices do not preclude Commerce from engaging in additional investigation during the course of a proceeding and incorporating additional subsidy findings in the final determination. Commerce's regulations contemplate this, allowing for new subsidy allegation with 40 days of the scheduled preliminary determination. Commerce's practice is to examine the allegation and determine whether the allegation is supported and warrants initiation consistent with section 702 of the Act.
- Commerce's regulations also set forth the scenarios when Commerce will examine apparent subsidy practices discovered during the course of an investigation. In accordance with 19 CFR 351.301(c)(2)(iv)(A), Commerce will include an investigation of a discovered practice that appears to provide a countervailable subsidy if it concludes that sufficient time remains before the final determination. If Commerce concludes there is insufficient time, it will allow the petitioner to withdraw the petition and resubmit it with regard to the newly discovered program, or it will defer consideration of the newly program to an administrative review.<sup>115</sup> The regulations also specify that Commerce will further notify the parties to proceeding of any practice it discovers and whether or not it will be included in the ongoing proceeding.
- Commerce's regulations reinforce the idea that discovery of an apparent practice is not the means to an end, but there still need to be evidence to give rise to the appearance of a subsidy. Moreover, "discovery" is not a substitute for investigation. Rather discovery must be followed by notice to the parties of Commerce's intent to include the discovered practice in the ongoing proceeding and then proceed to examination and consideration.
- Commerce's formal initiation of the provision of international shipping and aluminum rod for LTAR, lends support to the GOC proposition. In deciding to initiate the NSA investigation, Commerce made an express determination allegedly grounded in fact and law, and then formally initiated an investigation. On the other hand, Commerce's practice of asking the open-ended question into other subsidies results in what is, effectively, an investigation into practices which have neither been alleged as subsidies, nor subject to a formal initiation by Commerce, even when there is no basis to do so.
- No legal basis exists for investigating or countervailing "other" subsidies in this proceeding. Commerce was immediately in error when it made its "other" subsidy request in the initial questionnaire. Such a request represents an investigation in the absence of a properly framed inquiry or other evidence, contrary to the U.S. statute, Commerce's regulations, and its practice.
- It stands to reason that an impermissible investigation into unspecified "other" subsidies, where the term subsidy itself is a term of art and inherently suspect, and therefore cannot be the basis for FA or AFA. It cannot be said that the details of "other subsidies," whatever that may mean, constitutes necessary information within the scope of the Commerce's investigation or the meaning of the facts available statute.
- At most, the statute and Commerce's regulations provides Commerce the authority, upon proper notice to the parties, to investigate such practices upon discovery, or defer consideration to a review, but nothing more. In this proceeding, Commerce made no such discovery, provided no advance notice of the intent to include the discovered

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<sup>115</sup> See 19 CFR 351.311(c).

practice in the ongoing proceedings, and engaged in no investigation once notice was given.

- Commerce should assign no subsidy margin to “other subsidies” reported by company respondents.

#### *Encore Rebuttal Brief*<sup>116</sup>

- Commerce acted lawfully by countervailing a subsidy program it discovered during the course of the proceeding.
- In the initial questionnaire responses, Silin and Changfeng self-reported receiving other subsidies from the GOC or its subdivisions. The GOC, however, failed to provide any requested information in its original or supplemental responses. In fact, the GOC refused to answer the question stating that “the practices and policies employed by the Department eliciting the reported information are contrary to U.S. law and disciplines under the WTO SCM Agreement.”<sup>117</sup> This question is required by the CVD statute<sup>118</sup> and has been found lawful by the CIT in *Trina Solar*.<sup>119</sup>
- It is China that violates the WTO’s Agreement on Subsidies and Countervailing Measures (WTO SCM), annually, when it fails to provide notification of any subsidy programs in a manner that is “sufficiently specific to enable other programs.”<sup>120</sup>
- Commerce lawfully applied AFA and found that the other assistance reported by Silin and Changfeng constitute a financial contribution and specific in accordance with the Act.
- The GOC is mistaken that the Act provides limited authority to investigation whether subsidies have been conferred. Section 775 of Act contains no limiting language as to how Commerce is to discover a practice which appears to be a countervailable subsidy but was not included in the matters alleged in the petition.
- The GOC alleges that the investigation must be supported by an allegation and evidence. The CIT rejected this narrow view of the statute in *Trina Solar* when it held that: “nowhere does the statute contemplate that the Petitioner’s failure to include all known potential subsidies in its petition thereby waives Commerce’s own, independent authority to investigation such programs.”<sup>121</sup> The GOC cannot point to any statutory provision that establishes otherwise. Likewise, the statute and Commerce’s regulations provide wide latitude for Commerce to determine whether to take discovered subsidies into account during the investigation or defer them for consideration in a review.
- While the GOC contends that Commerce failed to make threshold determinations, comparing Commerce’s finding to the initiation of NSAs, Commerce reasonably exercised its own investigative authority, which does not require any formal initiation upon discovery of subsidies.<sup>122</sup>
- Because Commerce reasonably exercised its authority under section 775 of the Act and 19 CFR 351.311 to consider Silin’s and Changfeng’s self-disclosed “other subsidies,”

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<sup>116</sup> See Encore Rebuttal Brief at 14-17.

<sup>117</sup> See GOC’s March 6, 2019, supplemental questionnaire response at 30.

<sup>118</sup> See section 775 of the Act.

<sup>119</sup> See *Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334, 1346 (CIT 2016) (*Trina Solar*).

<sup>120</sup> See WTO SCM at Art. 8.2.

<sup>121</sup> See *Trina Solar*, 195 F. Supp. 3d at 1341-2.

<sup>122</sup> See *Allegheny Ludlum Corp. v. United States*, 25 CIT 816 (July 18, 2001).

and the GOC failed to respond to any questions related to this other assistance, Commerce lawfully applied AFA in the *Preliminary Determination*.

**Commerce’s Position:** We disagree that Commerce’s request that respondent interested parties report “other assistance” received by the respondents from governments is inconsistent with domestic law or the United States’ international obligations. Investigations into potentially countervailable subsidies to a class or kind of merchandise are initiated in one of two ways. First, an investigation can be self-initiated by Commerce.<sup>123</sup> Second, a domestic interested party may file a petition for the imposition of countervailing duties on behalf of an industry.<sup>124</sup> Under the second mechanism, those parties are obligated to support their subsidy allegations with information reasonably available to them, and those allegations must identify the elements of a countervailable subsidy (*i.e.*, specificity, benefit, and financial contribution).<sup>125</sup>

However, once an investigation has been initiated through one of the above mechanisms, then, under section 775 of the Act, Commerce may also investigate potential subsidies it discovers in the course of the proceeding. Specifically, in the course of an investigation, Commerce may “discover{ } a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in the countervailing duty petition.”<sup>126</sup> In such a case, Commerce “*shall* include the practice, subsidy, or subsidy program in the proceeding.”<sup>127</sup> Thus, section 775 of the Act imposes an affirmative obligation on Commerce to “consolidate in one investigation ... all subsidies known by petitioning parties to the investigation or by the {Commerce} relating to {subject} merchandise” to ensure “proper aggregation of subsidization practices.”<sup>128</sup> Commerce’s regulations carve out a limited exception to its obligation to investigate what “appear{ }” to be countervailable subsidies: when Commerce discovers a potential subsidy too late in a proceeding, it may defer its analysis of the program until a subsequent review, if any.<sup>129</sup> Moreover, Commerce has broad discretion to determine which information it deems relevant to its determination, and to request that information.<sup>130</sup>

Thus, consistent with the CIT’s holding in *Trina Solar*,<sup>131</sup> we find that Commerce’s “other assistance” question enables Commerce to effectuate its obligation to investigate subsidies that it

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<sup>123</sup> See section 702(a) of the Act.

<sup>124</sup> See section 702(b) of the Act.

<sup>125</sup> See section 702(b)(1) of the Act.

<sup>126</sup> See section 775 of the Act.

<sup>127</sup> *Id.* (emphasis added).

<sup>128</sup> See S. Rep. No. 96-249, at 98 (1979); see also *Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d at 1141, 1150 n.12 (CIT 2000) (*Allegheny I*) (“Congress ... clearly intended that all potentially countervailable programs be investigated and catalogued, regardless of when evidence on these programs became reasonably available.”).

<sup>129</sup> See 19 CFR 351.311(b).

<sup>130</sup> See *Trina Solar*, 195 F. Supp. 3d at 1341 (holding that Commerce has “independent authority, pursuant to {section 775 of the Act}, to examine additional subsidization in the production of subject merchandise,” and this “broad investigative discretion” permits Commerce to require respondents to report additional forms of governmental assistance); see also, e.g., *Ansaldo Componenti, S.p.A.*, 628 F. Supp. at 205; *Essar Steel Ltd.*, 721 F. Supp. 2d at 1298-1299, revoked in part on other grounds; *Acciai Speciali Terni S.p.A.*, 26 CIT at 167; and *PAM, S.p.A.*, 495 F. Supp. 2d at 1369.

<sup>131</sup> See *Trina Solar*, 195 F. Supp. 3d at 1346 (“Commerce’s inquiry concerning the full scope of governmental assistance provided by the {Government of China} and received by the Respondents in the production of subject

discovers that appear to be countervailable in the course of a proceeding and is consistent with its broad discretion to seek information it deems relevant to its determination.

The GOC contends that Commerce is expected to apply the same threshold standards that apply where a subsidy is alleged by a petitioner under section 702 of the Act whenever Commerce itself “discovers” a potential subsidy under section 775 of the Act. However, such an interpretation is not supported by the statute. We are not precluded from investigating programs or subsidies that appear to be countervailable with respect to subject merchandise and we are not precluded from asking questions that enable us to effectuate this obligation.<sup>132</sup>

Commerce stated in the *Preamble* that its regulations “adequately describe the requirements for the initiation and conduct of a *countervailing duty* investigation,” and thus there was no further need to describe “how the Department would investigate a subsidy practice discovered *during an antidumping investigation*.”<sup>133</sup> Here, Commerce has followed the requirements for the initiation and conduct of a countervailing duty investigation, and that the “other assistance” question is not precluded by those requirements.

Commerce is not precluded from inquiring about other assistance in order to determine whether a program or subsidy is countervailable and attributable to the subject merchandise.<sup>134</sup>

Neither does the “other assistance” question unlawfully shift the burden of production from the petitioners to the respondents. As explained above, the result is consistent with section 775 of the Act and 19 CFR 351.311(b), which require that Commerce investigate potentially countervailable subsidies when sufficient time remains in the proceeding to do so.<sup>135</sup> Here, at the outset of the investigation, sufficient time remained in the investigation for Commerce to inquire about other forms of assistance received by the respondents during the POI, and so Commerce requested that the respondents report such information for Commerce to examine.

### **Comment 3: Benchmark for Aluminum Rod**

*Changfeng’s Case Brief*<sup>136</sup> and *Silin’s Case Brief*<sup>137</sup>

- In its Post-Preliminary Analysis, Commerce used four HTS numbers for benchmark: HTS 7604.10 and 7605.11 for aluminum alloy rod and HTS 7604.29 and 7605.21 for aluminum rod.

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merchandise was within the agency’s independent investigative authority pursuant to {sections 702}(a) and {775 of the Act}, this inquiry was not contrary to law.”).

<sup>132</sup> See S. Rep. No. 96-249, at 98 (1979); see also *Allegheny I*, 112 F. Supp. 2d at 1150 n.12.

<sup>133</sup> See *Countervailing Duties*, 53 FR 52306, 52344 (December 17, 1988) (*1988 CVD Preamble*) (emphasis added).

<sup>134</sup> See *Ansaldo Componenti S.p.A.*, 628 F. Supp. at 205; see also *Essar Steel Ltd.*, 721 F. Supp. 2d at 1298-1299; *Acciai Speciali Terni S.p.A.*, 26 CIT at 167; and *PAM, S.p.A.*, 495 F. Supp. 2d at 1369.

<sup>135</sup> See *Trina Solar*, 195 F. Supp. 3d at 1345 (“{T}he petitioner’s burden is irrelevant when Commerce chooses to exercise its independent investigative authority under {section 775 of the Act} ... {and thus} Commerce did not unlawfully shift any burden from the petitioner” through its request that respondents report any other forms of governmental assistance).

<sup>136</sup> See *Changfeng Case Brief* at 1-2.

<sup>137</sup> See *Silin Case Brief* at 1-2.

- Commerce should only use 7605.11 and 7605.21, respectively, because only these two HTS numbers are specific to the input and, therefore, the most specific benchmark.
- When Commerce uses tier two benchmarks, it considers whether it is getting a world benchmark that would be most comparable to what purchaser in China would obtain.<sup>138</sup> Therefore, Commerce should only rely on a benchmark that is most specific to the aluminum rod that the respondent obtained.
- HTS 7604 includes aluminum bars, rod, and profiles, which includes dissimilar products profiles and barks. In contrast, the HTS 7605 numbers cover aluminum wire with a cross-sectional dimension exceeding 7mm. The aluminum rod consumed by respondents falls into this latter category. The terms “rod” and “wire” are not a determinative difference in products, but, rather, diameter is the key description factor. Larger diameter products are commonly called rods and small diameter products are more commonly called wires.
- In this case, respondents used 9.5mm diameter aluminum rods. Commerce did not request information on the diameters of the rod, but the respondents specifically submitted the two HTS 7605 numbers because they fit the diameter of their inputs.
- At verification of Mingda, Commerce collected documentation on Mingda’s cables which shows it purchased 9.5mm diameter aluminum rods.<sup>139</sup> The other producers consumed the same range of diameter aluminum rods, which is a normal diameter for these products. Thus, the HTS 7605 numbers most closely match the purchased aluminum rod inputs, while the HTS 7604 numbers include dissimilar products, bars and profiles, and rods that presumably are larger in diameter than that used by the respondents.
- Thus, in the final determination, Commerce should solely rely on the HTS 7605 numbers that the respondents submitted.

*Southwire’s Rebuttal Brief*<sup>140</sup> and *Encore Rebuttal Brief*<sup>141</sup>

- Commerce correctly included HTS 7604 data in the benchmark calculation for aluminum rod.
- It is notable that the GOC disagrees with the respondents concerning the correct tariff classification of aluminum rod sold to producers of aluminum wire and cable. Specifically, the GOC reported the production volume of aluminum rod, as well as the VAT and import tariff rates, using HTS codes 7604.10 and 7604.29.10, and no number under HTS subheading 7605. The GOC is the authority providing the goods at issues, so the GOC is well-aware of the HTS subheading governing aluminum rod.
- The contention that HTS 7605.11 and 7605.21 provide the most specific benchmark data relies solely on the assertion, without any record support, that respondent use 9.5 mm diameter rods and the 7605 numbers most closely match the purchased aluminum rod inputs because HTS 7604 include dissimilar products which presumably are larger in diameter than that used by the respondents.

<sup>138</sup> See section 771(5)(E) of the Act.

<sup>139</sup> See Mingda Verification Exhibit 12 at 13 and 61.

<sup>140</sup> See Southwire Rebuttal Brief at 2-3.

<sup>141</sup> See Encore Rebuttal Brief at 3-7.

- The respondents' claims about rods versus wires is also without record evidence. The HTS subheadings are not specific to diameter of the aluminum rod but instead specific to whether the aluminum rod is in coils (HTS 7605) or straight lengths (HTS 7604). Indeed note 1 to Chapter 76 states this difference.<sup>142</sup> The section and chapter notes are not optional interpretive rules but are statutory law codified at 19 USC 1202. In addition, while the respondents focus on denominator which sets forth not distinction in the HTS subheadings.
- The respondents do not claim, and the record does not support, that the aluminum rod they acquire is only acquired in coil form. Therefore, HTS 7604 should be used alongside HTS 7605 as the benchmark.

**Commerce's Position:** We agree with the petitioners, and we are continuing to use the same benchmarks as we did in the Post-Preliminary Analysis. Silin and Changfeng sourced their aluminum rod benchmark data, the HTS 7605 numbers, from UN Comtrade World Export Data. The HTS 7605 description from that source does indeed indicate that it is for dimensions exceeding 7mm. However, no information on the record demonstrates that the HTS 7604 numbers are limited to only certain sizes. Indeed, other information shows that, as the petitioners note, HTS 7605 is for aluminum rod in coils, while HTS 7604 is for aluminum rod in straight lengths. The petitioners gave us data for HTS 7604 and HTS 7605 numbers. Moreover, when asked to provide information on aluminum rod for LTAR, the GOC provided only the HTS 7604 numbers. There is insufficient evidence on the record to demonstrate that the respondents' rod purchases only fall under the HTS 7605 numbers. Given that the respondents have given us different information (the authority, the GOC, relied on the HTS 7604 numbers in reporting wire rod information, while the company respondents suggest the HTS 7605 numbers), it is reasonable for us to use both sets of numbers. Thus, for this final determination, we have continued to calculate two benchmarks: one for aluminum rod (non-alloyed) using HTS 7604.10 and 7605.11; and one for alloyed aluminum rod using HTS 7604.29 and 7605.21.

#### **Comment 4: Double Remedies for Aluminum Rod**

*Changfeng's Case Brief*<sup>143</sup> and *Silin's Case Brief*<sup>144</sup>

- The new subsidy allegation on aluminum rod for LTAR affect the concurrent antidumping margins calculated for respondents. Commerce issued a double remedy questionnaire in the antidumping investigation prior to Commerce's issuance of the new subsidy allegation questionnaire in this countervailing investigation. Likewise, briefing completed in the antidumping investigation prior to the release of the Post-Preliminary Analysis including subsidies relevant to the new subsidy allegations. Therefore, Commerce must consider that there is overlap in remedies and adjust accordingly. Generally, this adjustment occurs in the antidumping investigation. Respondents will request the opportunity to address this in the antidumping investigation. However, it is inappropriate and unlawful to apply a double remedy for this program. Therefore, the countervailing or antidumping team must adjust accordingly.

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<sup>142</sup> See *Harmonized Tariff Schedule of the United States*, Rev. 12, USITC Pub. 4949 at 76-1 (September 2019) (defines bars and rods as not in coils and defines wire as in coils).

<sup>143</sup> See Changfeng Case Brief at 2-3.

<sup>144</sup> See Silin Case Brief at 2-3.

The petitioners did not comment on this issue.

**Commerce’s Position:** Double remedy concerns are properly addressed in the context of the parallel antidumping duty case, not in the CVD investigation. Accordingly, we will address this issue in the concurrent antidumping duty investigation final IDM.

### **Comment 5: Loan Calculations**

*Changfeng’s Case Brief*<sup>145</sup> and *Silin’s Case Brief*<sup>146</sup>

- Commerce used the incorrect principal balance in the loan benefit calculation for Changfeng, Mingda, Mingda Affiliate I, Mingda Affiliate IV, and Qingdao Cable. Commerce used the column “Initial Loan Amount (Principal in RMB)” when it should have used the column “Principal Balance to Which Each Interest Payment Applies.” The loan principal may be paid in part at any time before maturity. Thus, the initial loan amount is not always the principal balance applicable to each single interest payment. In such cases, the interest payment was actually based on the remaining principal rather than the initial principal. Commerce should correct this error for the final.

*Encore Rebuttal Brief*<sup>147</sup>

- Commerce should not alter how it calculates benefits received under GOC policy loans. Policy loans were provided with a favorable interest rate based upon the principal of the loan at the date of approval. The respondents failed to establish that the interest rate changes based on a reduction in principal and thus, Commerce properly calculated the benefit accrued to the respondents from the GOC’s policy loans.

**Commerce’s Position:** As described below, we are applying total AFA to Silin, and we are applying partial AFA to Changfeng’s policy loans. Thus, we are no longer calculating a benefit for this program. Thus, this issue is moot.

### **Issues Related to Silin and its Suppliers/Producers**

#### **Comment 6: Whether to Apply AFA to Silin**

*Encore Case Brief*<sup>148</sup>

#### **Jiangxi Silin Deficiencies**

##### **1) Affiliates/Operations**

- Commerce’s verification report is replete with Silin’s failure to provide complete and accurate information in response to Commerce’s requests.
- Silin misled Commerce by requesting relief from providing a questionnaire response on behalf of its cross-owned affiliate, Jiangxi Silin, and claiming that Jiangxi Silin had

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<sup>145</sup> See Changfeng Case Brief at 3-4.

<sup>146</sup> See Silin Case Brief at 12-13.

<sup>147</sup> See Encore Rebuttal Brief at 27.

<sup>148</sup> See Encore Case Brief at 5-15.

purportedly ceased production in 2016 and that no employees existed to answer Commerce's questionnaire. Silin further intended to obfuscate the issue by repeatedly changing its story regarding Jiangxi Silin's number of employees, operational status and land agreement with the GOC; however, this narrative unraveled at verification.

- Silin failed to provide factual information in the form and manner requested by Commerce and tried to conceal facts by failing to translate Jiangxi Silin's financial statements as requested; however, once Commerce's translator reviewed them, it was evident that Jiangxi Silin recorded various expenses that indicated continued activity and employees well beyond the period it purportedly ceased operations.
- Commerce verifiers discovered that Jiangxi Silin maintained production equipment and a warehouse on its land and had not vacated its land in 2016, as previously stated.
- Commerce discovered that Jiangxi Silin failed to disclose its Chinese State-Owned Enterprise (SOE) parent company, Nanchang Holdings, and two other affiliates.

#### 2) Sales

- Jiangxi Silin's sales data was materially incomplete as it failed to report sales to Nanchang Cable and an unreported affiliate during and after the POI (*i.e.*, beyond the period it purportedly ceased operations).

#### 3) Grants

- Silin failed to report a large grant Jiangxi Silin received from the GOC to relocate from its existing operations, even though it claims it ultimately did not relocate.
- Jiangxi Silin reported receiving one grant in one installment but presented documents at verification indicating that it was received in two installments and was unable to provide bank slips for this grant.

#### 4) Land

- Commerce was unable to verify Jiangxi Silin's land because land-related documents presented at verification differed from the land-related documents on the record.

### **Silin Deficiencies**

#### 1) Affiliates/Operations

- Silin misled Commerce about the nature of its operations by stating that it did not import or purchase equipment because neither it, nor its affiliates, are producers, but reported "production" in its list of activities to the GOC, and its chart of accounts listed accounts for equipment, including imported equipment.
- In its grant application sent to the GOC, Silin stated included "production" in its list of business activities; however, it previously stated to Commerce that it, nor its affiliates, are producers. Upon questioning, Silin stated that it reported this to the GOC for "propaganda" purposes, which demonstrates that Silin will tell any government anything it needs to in order to advance its interests.
- By its own admission, Silin failed to provide Commerce with complete and accurate information for its eight affiliates because it sourced some information from websites which it acknowledged could be outdated.

#### 2) Sales

- Silin admitted to Commerce at verification that its sales revenue figures are not actual sales revenues amounts, but merely estimated revenues. The Chinese CPA at verification confirmed that "Chinese GAAP does not allow a CPA to audit estimated or proforma

revenue.” Because Silin’s total domestic and export sales are estimates and do not comply with Chinese GAAP, they cannot be relied upon.

- Silin failed to report several million RMB in sales from one unaffiliated producer in 2011-2012, and several million RMB in sales from Jiangxi Silin in 2012, until verification. Silin had previously reported no sales from these producers for those years.

### 3) Grants

- Silin did not have *any* grant application documents prepared and could not provide *any* information regarding certain grants; and therefore, failed to provide Commerce with factual information in the form and manner requested by Commerce.
- Silin failed to accurately report its receipt of grants by reporting certain grants under “other subsidies” despite being the same programs Commerce initiated on.
- Silin failed to report its designation as an “export famous brand.” In response to this discovery at verification, Silin officials claimed that they reported this designation to the GOC for “propaganda” purposes to receive the grant.

### 4) Land

- Silin failed to report its ownership of certain land parcels discovered at verification because they allegedly do not use the land to produce subject merchandise.

### 5) Electricity

- Silin reported incorrect figures for its electricity usage for a pre-selected month examined at verification. The sloppiness evident from this spot check bespeaks inattentiveness and carelessness by Silin with respect to all of its reported information.

## **Application of AFA is Warranted**

- Silin’s behavior combined “deliberate concealment or inaccurate reporting” with respect to Jiangxi Silin’s operations and SOE ownership as well as “inattentiveness and carelessness” with respect to all of its information reported to Commerce, evidenced by its failure to report land transactions, grants, sales, and discrepancies during spot checks.
- Due to Silin’s uncooperative behavior, Commerce was unable to verify substantial portions of its questionnaire responses.
- Silin admits that it decided not to provide a full and complete response; however, “it is Commerce, not the respondent, that determines what information is to be provided.”
- Silin’s numerous inaccurate, misleading, incomplete and unverifiable responses warrants the application of AFA to all programs from which Silin and Jiangxi Silin could have benefited.
- Consistent with its established practice, Commerce should apply AFA to all of the programs under investigation and discovered for Silin, Jiangxi Silin, and Jiangxi Silin’s two unreported affiliates. Further, because Commerce discovered at verification that Silin does not record its sales figures in accordance with Chinese GAAP, it should determine that all non-recurring subsidy benefits received during the AUL pass the 0.5 percent test and are allocable to the POI.

*Silin’s Case Brief*<sup>149</sup>

## **Jiangxi Silin Deficiencies**

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<sup>149</sup> See Silin Case Brief at 3-11.

1) Affiliates/Operations

- Commerce did not collapse or attribute subsidies from Jiangxi Silin to Silin in the *Preliminary Determination*, thus issues related to Jiangxi Silin have no bearing on Silin's benefit calculation.
- Commerce found no information at verification to undermine Silin's reporting or contradict the fact that Jiangxi Silin did not sell or export to or through Silin during the POI. As such, Commerce should continue to not attribute any benefits received by Jiangxi Silin to Silin.
- Jiangxi Silin ceased production and dismissed its staff in October 2016. Although there is no document demonstrating a deviation from the agreements with the GOC to re-establish Jiangxi Silin's operations elsewhere, the company's 2017 financial statement demonstrates a lack of necessary costs for production.
- Because Jiangxi Silin is a registered company, it must maintain at least a legal representative and accountant. Nanchang Cable pays for Jiangxi Silin's employee housing costs and Jiangxi Silin reimburses Nanchang Cable for these costs.
- Jiangxi Silin's POI revenue was from sales of products produced by Nanchang Cable.
- Jiangxi Silin's 2017 audited financial statement indicating that Nanchang Cable's ownership in Jiangxi Silin is significantly larger than previously reported "cannot conceivably be correct."
- Jiangxi Silin's articles of association, business license and tax return submitted in questionnaire responses corroborate Nanchang Cable's reported ownership in Jiangxi Silin and Jiangxi Silin's registered capital.
- Jiangxi Silin's 2017 financial statement indicates that Nanchang Industrial Holding, a wholly-SOE, is Nanchang Cable's parent company, *not* Jiangxi Silin's parent company.
- Even assuming Nanchang Cable holds a larger ownership stake in Jiangxi Silin than previously reported, that fact does not provide Nanchang Industrial Holding with a controlling share in Nanchang Cable or Jiangxi Silin because it only directly holds a ten percent share in Nanchang Cable. Therefore, Nanchang Industrial Holding cannot control Jiangxi Silin, nor can Jiangxi Silin be considered a SOE. Thus, any connection between Nanchang Industrial Holding and Jiangxi Silin has no bearing on Commerce's subsidy calculation.
- Regarding the affiliated companies discovered at verification, the affiliation exists between Jiangxi Silin and Nanchang Cable, and these companies are not affiliated with Silin. Accordingly, Silin did not report the companies in its affiliation response, nor did it purchase anything from these companies, thus, the companies have no relevance to Silin's subsidy calculation.

2) Land

- While there is still production equipment, inventory, and a warehouse on Jiangxi Silin's land, the company has legally divested the land to the GOC for an agreed-upon value.

3) Grants

- Jiangxi Silin does not consider the money it received from the GOC for its land as a grant, but rather compensation for the Jiangxi Silin's land and displacement.

**Silin Deficiencies**

- Silin did not maintain copies of application documents for its grants, as is normal practice in China.

- Regardless of the name Silin reported the grants under, Commerce has the full information to analyze any benefit from its grants.

*Encore Rebuttal Brief*<sup>150</sup>

### **Jiangxi Silin**

#### 1) Affiliates/Operations

- Silin’s narrative regarding Jiangxi Silin unraveled at verification. Although Silin attempted to prevent Commerce from reviewing Jiangxi Silin’s financial statements, once they were translated by Commerce’s interpreter, they indicated continued activity well beyond the period Jiangxi Silin purportedly ceased operations and dismissed its employees.
- At verification, Silin purposefully confused the number of employees employed by Jiangxi Silin during the POI to further obfuscate the issue of Jiangxi Silin’s activity.
- Contrary to Silin’s representations that Jiangxi Silin ceased production in 2016, Commerce verifiers discovered that Jiangxi Silin did not actually vacate its land in 2016 and maintained production equipment and a warehouse on the land.
- Silin failed to disclose affiliates, including Jiangxi Silin’s SOE parent company, and attempted to cover it up by failing to translate Jiangxi Silin’s requested financial statements.
- Commerce’s verification conclusions establish that Silin significantly impeded the investigation and withheld essential information by failing to disclose Jiangxi Silin’s affiliates.
- Silin’s argument that none of the inputs produced by Jiangxi Silin’s undisclosed affiliates were primarily dedicated to the production or sale of subject merchandise is incorrect because the courts have upheld that Commerce alone determines what information is necessary, not respondents.
- Silin’s case brief further demonstrates the unreliability of its questionnaire responses because it admits that Jiangxi Silin’s SOE ownership in its audited financial notes “cannot conceivably be correct.”
- Silin argues that Commerce should ignore the reference to Nanchang Cable’s ownership share of Jiangxi Silin indicated in Jiangxi Silin’s financial statements. However, Silin contradicts this argument by stating that Nanchang Cable wanted to include Jiangxi Silin’s financial performance in its own financial statements and in doing so caused Jiangxi Silin to designate Nanchang Cable as its parent company, evidencing Nanchang Cable’s ability to control Jiangxi Silin, and by extension the SOE.
- The fact that the record remains unclear, at this late stage of the proceeding, regarding Jiangxi Silin’s ownership demonstrates that Jiangxi Silin did not cooperate to the best of its ability to provide information to Commerce regarding its ownership structure.

#### 2) Grants

- Silin could and should have reported the large grant Jiangxi Silin received for its land relocation.

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<sup>150</sup> See *Encore Rebuttal Brief* at 18-25.

- Silin cannot excuse its failure to report the grant by claiming that the funding was not reportable assistance because Commerce’s questionnaire requested that Silin report all funding provided by the GOC.
- Silin’s failure to disclose the grant prevented Commerce from making a substantive decision concerning the grant, and it is for Commerce to decide what is and is not a subsidy.

**Silin**

1) **Grants**

- Silin failed to maintain adequate records, failed to make reasonable inquiries prior to responding, and did not review all of its records, and failed to report grant programs that appeared to be identical to programs under investigation; thus, AFA is necessary.

*Silin’s Rebuttal Brief*<sup>151</sup>

**Jiangxi Silin**

1) **Affiliates/Operations**

- Nothing at verification merits alteration of Commerce’s preliminary determination that Jiangxi Silin did not sell merchandise to or through Silin during the POI; therefore, Commerce should not collapse Jiangxi Silin with Silin, nor should it attribute the benefits from any subsidies received by Jiangxi Silin to Silin.
- Silin did not understand that it needed to translate Jiangxi Silin’s financial notes.
- Silin’s statements regarding its employees were not contradictions, rather clarifications from Jiangxi Silin itself and about the term “employee.” Jiangxi Silin acknowledged that it had approximately ten employees in 2017 that were involved in overseeing its production facilities during demolishment.
- The petitioner insinuates that Jiangxi Silin may have not ceased production in 2016 merely because Jiangxi Silin did not vacate its land and maintained production equipment; however, the record demonstrates that Jiangxi Silin has ceased production, has no production staff, and its land belongs to the GOC.
- Although Commerce noted unreported sales from Jiangxi Silin to Nanchang Cable and an unreported affiliate in 2017, these sales were carried over from the previous year and have no bearing on Silin’s benefit calculation. Further, Commerce verified that Jiangxi Silin made no sales to Silin in 2017.
- Nanchang Holdings, the SOE, is not the parent company of Jiangxi Silin; Nanchang Cable is the minority owner of Jiangxi Silin and Silin is the majority shareholder. Nanchang Holdings cannot control Nanchang Cable nor Jiangxi Silin.
- Jiangxi Silin’s unreported affiliates are not affiliates of Silin; therefore, they have no relevance to Commerce’s subsidy calculation for Silin.

2) **Grants**

- Regarding Jiangxi Silin’s grants that was reported as a lump sum, this is a minor issue and the total figure is correct. Further, Silin could not immediately provide the bank slips for the grant because Jiangxi Silin is located at a different location not accessible by Silin.

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<sup>151</sup> See Silin Rebuttal Brief at 1-12.

## Silin

### 1) Affiliates/Operations

- Silin provided information regarding its eight affiliated companies including copies of the business licenses for three of its four affiliates which did not have their business licenses revoked. Even if there is a remote possibility that the shareholder information for one of Silin's affiliates is not up to date, it has no relevance on Silin's subsidy rate calculation because this company is not involved in the sale of subject merchandise and did not make sales to Silin.
- Although Silin included "production" in its listed business activities in a 2017 grant application, Silin's business license only permits Silin to be involved in the import and export business.
- At verification, Silin explained that it has accounts for the purchase and import of equipment because sometimes imports and purchases equipment on behalf of its producers and affiliates. Commerce verified Silin's financial statements and accounts that confirm it has no production facilities or staff.

### 2) Sales

- Silin brought in the CPA because it reasonably believed that the issues in the concurrent antidumping duty investigation could come up in the countervailing duty verification.
- The CPA stated that Silin's accounting is fully in compliance with Chinese GAAP.
- Silin's reported sales revenue is not an estimate, rather based on the VAT invoice value, which is equal to the US dollar value on the Proforma Invoice multiplied by the exchange rate, and thus, represents a realized value.
- Regarding the unreported sales to Jiangxi Silin and another producer in 2011-2012, Silin reported these as minor corrections, which Commerce accepted.
- Commerce verified Silin's sales and noted no discrepancies.

### 3) Grants

- Silin understood certain grants to be separate programs from those of which Commerce initiated on, however, Silin still reported the information under "other subsidies."
- Silin could not provide certain approval or application documents for grants because it does not keep those documents in the normal course of business.

### 4) Land

- Regarding the unreported land, Silin did not report the land because it was not relevant to any production.

### 5) Electricity

- Silin's electricity usage subtotal was incorrect due to a formula mistake, not misreported.

### 6) AFA Request

- Silin cooperated to the best of its ability in this investigation, as evidenced by its eighteen questionnaire responses and three verifications.
- Silin did not withhold any information, no material information is missing from the record, and Commerce has no basis to apply AFA.
- Silin's questionnaire responses were verified and any issues were minor inconsistencies.
- Silin understood that it did not have to prepare answers for detailed questions about Jiangxi Silin because only certain items in the verification agenda were related to Jiangxi Silin. As a result, normal misunderstandings occurred.

- Any decision to apply subsidy rates calculated based on AFA to the company respondents is limited by law and should be consistent with Commerce practice.
- Adverse inferences can only be applied if it is first appropriate to use facts otherwise available and that fact otherwise available could only be relied on by Commerce if there is a gap that needs to be filled regarding any of the three elements necessary for the existence of a subsidy.
- While Encore requested Commerce to select information that is sufficiently adverse as to induce respondent to provide Commerce with complete and accurate information in a timely manner, the CAFC has held that Congress intended the adverse facts available rate to be a reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to non-compliance.<sup>153</sup> Commerce must reject Encore's reading of the statute, and if Commerce decides to rely on AFA rates in calculating a rate for any program in this proceeding, Commerce should continue to recognize that any such AFA rate in the final results must reflect an accurate estimate based on the record.
- While the statute permits Commerce to rely on secondary information when making an adverse inference, it also contains an express requirement that Commerce shall to the extent practicable, "corroborate that information from independent sources."<sup>154</sup> While the statute does not provide a definition of "secondary information," the SAA notes that secondary information is information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.<sup>155</sup> A similar definition is also contained in the regulations at 19 CFR 351.308(c)(1).
- The regulations and the SAA define corroboration as an examination of whether the secondary information has probative value. The corroboration requirement is necessary because secondary information may not be entirely reliable if it is based on unverified allegations or concerns a different time frame than the one issued.
- The CIT noted that in order to comply with the statute and the SAA, corroborated information is probative information, Commerce must assure itself that the margin it applies is relevant, not outdated, or lacking rational relationship to the respondent.<sup>156</sup> Commerce must to the extent practicable demonstrate the rate is reliable and relevant to the particular respondent in light of the whole record before it.<sup>157</sup> The CAFC further explained that Commerce must select a rate using reliable fact with some grounding in commercial reality.<sup>158</sup>

**Commerce's Position:** As noted above in "Use of Facts Otherwise Available and Adverse Inferences," we determine that Silin failed to cooperate to the best of its ability in this

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<sup>152</sup> See GOC Rebuttal Brief at 1-4.

<sup>153</sup> See *F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000).

<sup>154</sup> See section 776 of the Act.

<sup>155</sup> See SAA at 870.

<sup>156</sup> See *Ferro Union Inc. v. United States*, 44 F. Supp. 2d 1310, 1333 (CIT 1999).

<sup>157</sup> See *Yantai Xinke Steel Structure Co. v. United States*, 2012 W.L. 2930182, CIT Slip Op. 12-95 at 27 (July 18, 2012).

<sup>158</sup> See *Gallant Ocean (Thail.) Co. v. United States*, 602 F.3d 1319, 1323-1324 (Fed. Cir. 2010).

investigation. We find that necessary information is missing from the record and that Silin withheld information from Commerce, failed to timely provide certain information, significantly impeded this proceeding, and provided information that could not be verified. Silin's contradictions and discrepancies are so pervasive that they are significant in the totality of the circumstances and render Silin's responses unreliable. As a result, crucial deficiencies exist in Silin's reported information sufficient to warrant the application of total facts available, with an adverse inference (AFA), pursuant to sections 776(a) and (b) of the Act. Accordingly, for the reasons enumerated below, we agree with the petitioner that the application of total AFA is warranted and necessary for this final determination.

### *Jiangxi Silin*

As an initial matter, we disagree with Silin that the numerous, widespread issues related to Jiangxi Silin are irrelevant. In the *Preliminary Determination*, we found Jiangxi Silin, a producer of subject merchandise, cross-owned with Silin due to Silin's majority-ownership of Jiangxi Silin and significant managerial overlap.<sup>159</sup> Accordingly, because Jiangxi Silin is a cross-owned producer of subject merchandise with significant transactions with Silin across the AUL, under 19 CFR 351.525(b), we faced the possibility of having to attribute subsidies received by the cross-owned subject merchandise producer, Jiangxi Silin, to Silin. Further, because Silin is a trading company, under 19 CFR 351.525(c), we were also required to cumulate subsidies received by suppliers of subject merchandise with subsidies received by that trading company. Under both regulations, a full and accurate questionnaire response from Jiangxi Silin was necessary. Thus, we rejected Silin's request for an exemption from providing a questionnaire response on behalf of Jiangxi Silin.<sup>160</sup> The purpose of obtaining a full questionnaire response from Jiangxi Silin was to analyze the full facts of the case and examine the benefits of any subsidies received by Jiangxi Silin that may have been transferred, directly or indirectly, to Silin. As a mandatory respondent in this case, Silin was responsible for providing a complete and accurate response on Jiangxi Silin's behalf.

The burden of building the record rests on the party in possession of necessary information.<sup>161</sup> As such, Jiangxi Silin's extensive discrepancies and deficiencies in its reported information, which Silin gathered, certified as accurate, and transmitted to Commerce, are a direct reflection of Silin's failure to cooperate to the best of its ability. The purpose of verification was to test the accuracy of Silin's reported information to verify that it was reliable; however, the verification findings detailed in the verification report<sup>162</sup> and highlighted below demonstrate the extent of the contradictions in Silin's reporting, which render its reported information unreliable and warrant the application of AFA.

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<sup>159</sup> See *Preliminary Determination* PDM at 9; see also Memorandum, "Preliminary Determination Calculations for Silin," dated April 1, 2019.

<sup>160</sup> See Silin's Letter, "Aluminum Wire and Cable from the People's Republic of China – Silin Request for Partial Relief from CVD Questionnaires for Suppliers," dated November 30, 2018 (Silin's Request for Relief) at 5; see also Commerce's Letter, "Request for Partial Relief from Questionnaires, Extension of Time, and Request for Clarification in the Countervailing Duty Investigation of Aluminum Wire and Cable from the People's Republic of China," dated December 14, 2018 (Partial Relief Letter).

<sup>161</sup> See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F. 3d 1330, 1336 (Fed. Cir. 2002) (quoting *Zenith Elecs. Corp. v. United States*, 988 F. 2d 1573, 1583 (Fed. Cir. 1993)).

<sup>162</sup> See Silin Verification Report.

As noted above, section 776(a) of the Act provides that when necessary information is not on the record, or an interested party: (A) withholds information, (B) fails to provide information in a timely manner, (C) significantly impedes a proceeding, or (D) provides unverifiable information, Commerce is directed to use facts otherwise available. For the reasons described in detail below, we find that Silin withheld information, failed to provide requested information, significantly impeded this proceeding, and provided unverifiable information. As a result, we cannot rely on Silin's reported information, and must resort to facts available pursuant to 776(a)(2)(A),(B),(C), and (D).

At the onset of this investigation, Silin requested an exemption from providing a full questionnaire on behalf of Jiangxi Silin, because Jiangxi Silin "has ceased production since the second half of 2016. Thus, there are no employees at Jiangxi Silin to answer any questionnaires."<sup>163</sup> In its initial questionnaire response, Silin reiterated that Jiangxi Silin's "staff was dismissed in October 2016," and stated that Jiangxi Silin "did not produce or sell any product during the POI."<sup>164</sup> These statements led us to believe that Jiangxi Silin was no longer in operation, which is a core reason as to why we decided not to attribute any subsidies received by Jiangxi Silin to Silin in the *Preliminary Determination*.

Further, as a result, in the verification outline issued 25 days in advance of verification, we only requested limited documentation from Jiangxi Silin to verify that Silin's statements regarding Jiangxi Silin's activity were accurate. Had we known prior to verification that Jiangxi Silin maintained employees, land, production equipment, and was continuing to make sales in the POI, including to a company that made sales of subject merchandise to Silin during the POI, we would have had the opportunity to ask follow-up questions and, possibly, attribute subsidies received by Jiangxi Silin to Silin in the *Preliminary Determination*.<sup>165</sup> Moreover, at Silin's verification, had we known from the beginning that information we would have closely examined its transactions with this company to verify that Silin did not purchase or sell merchandise produced by Jiangxi Silin during the POI, as it claimed.

Accordingly, Silin's misleading statements concerning Jiangxi Silin's operations and its failure to report Jiangxi Silin's sales to its cross-owned company during the POI significantly impeded the proceeding because they prevented Commerce from fully understanding the situation, asking additional questions at the appropriate time concerning the merchandise sold by Jiangxi Silin and its cross-owned company, and from adequately preparing for verification.

As noted above, because Silin's statements led us to believe that Jiangxi Silin was no longer operational, we only intended to verify the claim that Jiangxi Silin "did not produce or sell any product during the POI,"<sup>166</sup> and thus instructed Silin to "have the original financial statements and *accompanying notes, as well as translations* available for Silin and Jiangxi Silin" at

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<sup>163</sup> See Silin's Request for Relief at 5.

<sup>164</sup> See Jiangxi Silin's February 5, 2019 Initial Questionnaire Response (Jiangxi Silin February 5, 2019 IQR) at 3.

<sup>165</sup> The name of the company is Business Proprietary Information. For a full discussion of the issue, see Silin Final Analysis Memorandum.

<sup>166</sup> See Jiangxi Silin February 5, 2019 IQR at 3.

verification.<sup>167</sup> Despite these explicit directions, Silin failed to provide the requested information in the form and manner requested by Commerce. Specifically, Silin did not provide Jiangxi Silin's requested translated financial notes at any point during this investigation. Accurate and full financial records are crucial to our subsidy analysis and serve as the basis of verification, as demonstrated by the fact that the majority of the contradictions found at verification stemmed from these notes. By not complying with Commerce's request for information, Silin impeded this investigation because the interpreter retained by Commerce spent considerable time translating *over 80 pages* of Jiangxi Silin's financial statements and notes on Silin's behalf, which severely delayed verification.<sup>168</sup> Such noncompliance warrants the application of facts available pursuant to section 776(a)(2)(A),(B), and (C), as well as an adverse inference, pursuant to section 776(b), because Silin could and should have complied with Commerce's request to properly prepare for verification.

In its briefs, Silin attempts to minimize its deliberate noncompliance by arguing that it "did not understand that it needed to translate more than what was already translated and placed on the record."<sup>169</sup> However, our instructions were explicit in noting that we intended to examine Silin and Jiangxi Silin's translated financial notes at verification and left no room for misinterpretation.<sup>170</sup> It is far more likely that Silin simply elected not to comply with our instructions. Further, in another attempt to mischaracterize its noncompliance with Commerce's request for Jiangxi Silin's translated financial statements and notes, Silin points to a self-curated sample of financial documents (*i.e.*, Jiangxi Silin's financial statements without the translated financial notes) submitted to the record in its questionnaire responses. In the identified CVD questionnaire, we directed Silin to:

"Provide {Jiangxi Silin's} complete audited financial statements for the last three fiscal years... If they are not available in English, provide translations of the income statement, the balance sheet, the cash flow statement, the statement of change in equity, *all notes thereto*, and the auditor's opinion.)...The financial statements should include the complete set of statements, *e.g.*, income statement, balance sheet, cash flow statement, statement of change in equity, *all notes thereto*, and the auditor's opinion."<sup>171</sup>

However, Silin's questionnaire response referenced in its briefs did not include any of Jiangxi Silin's requested financial notes for any year; thus, the record reflects that Silin did not comply with Commerce's requests for Jiangxi Silin's translated financial notes in the CVD questionnaire, in the verification outline, or during verification.<sup>172</sup> Silin's decision to withhold Jiangxi Silin's requested and complete translated financial statements, inclusive of the notes, and

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<sup>167</sup> See Commerce's Letter, "Verification Agenda for Shanghai Silin Special Equipment Co., Ltd. in the Countervailing Duty Investigation of Aluminum Wire and Cable from China," dated May 15, 2019 (Silin Verification Agenda) at 6 (Emphasis Added).

<sup>168</sup> See Silin Verification Report at 2.

<sup>169</sup> See Silin Rebuttal Brief at 3.

<sup>170</sup> See Silin Verification Agenda at 1-4 and 6.

<sup>171</sup> See Commerce's Letter, "Countervailing Duty Investigation on Aluminum Wire and Cable from the People's Republic of China: Countervailing Duty Questionnaire," dated November 9, 2018 (Initial CVD Questionnaire) at 5 (Emphasis Added).

<sup>172</sup> See Silin IQR at 4.

its repeated failure to comply with Commerce's clear instructions before and during verification exemplifies its disregard for Commerce's requests and procedures, and demonstrates its failure to comply to the best of its ability with Commerce's requests for information.

Despite the challenges presented by Silin's noncompliance, in reviewing Jiangxi Silin's financial notes translated by Commerce, we found myriad discrepancies that contradicted Jiangxi Silin's reported information, which Silin had previously certified as accurate and complete.<sup>173</sup> The most significant of these findings, as provided below, demonstrate that Silin's reported information regarding Jiangxi Silin was at best misleading and at worse categorically false.

As noted above, Silin stated in its responses that Jiangxi Silin's purported cessation of operations is supported by its dismissal of its employees in 2016.<sup>174</sup> However, Jiangxi Silin's financial notes (*i.e.*, the notes Commerce translated at verification) indicated substantial employee and management expenses in 2017 (*i.e.*, the POI), well after Jiangxi Silin allegedly ceased operations and terminated its employees.<sup>175</sup> Upon further *initial* questioning at verification, Silin stated that Jiangxi Silin had one employee in 2017.<sup>176</sup> However, *later* at verification, additional questioning revealed that Jiangxi Silin maintained approximately ten employees in 2017, and currently employs at least two.<sup>177</sup> This finding undermines Silin's claim Jiangxi Silin's had ceased operations in 2016 and, in any event, demonstrates that Silin's prior representations regarding Jiangxi Silin's employee count were false.

Further, by withholding this information and repeatedly indicating that Jiangxi Silin had no employees after 2016, Commerce was misled into believing that Jiangxi Silin was no longer operational during the POI. As a result, Silin significantly impeded this investigation because it prevented Commerce from timely understanding the full extent of Jiangxi Silin's POI operations, which in turn prevented Commerce from asking additional questions concerning Jiangxi Silin's activity, and from analyzing the full facts of this investigation. Had we known that Jiangxi Silin still maintained several employees, we would have inquired further into its operational status and POI activities. Moreover, had we known that Jiangxi Silin was still buying and selling materials and subject merchandise during the POI, we would have inquired further to determine whether attribution of Jiangxi Silin's subsidies to Silin was appropriate. Again, Silin's behavior warrants the application of an adverse inference because it could have accurately reported this information, but instead provided inaccurate information. Further, but for Commerce's efforts at verification to uncover this information, this information would have remained unknown.

In briefs, Silin attempts to dismiss the issue by noting that Jiangxi Silin spent less on employee expenses in 2017 than in 2016.<sup>178</sup> As an initial matter, while Jiangxi Silin's financial notes do indeed demonstrate a decrease in employee expenses from the previous year,<sup>179</sup> that does not excuse Silin's failure to timely report this information to Commerce, nor does it substantiate

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<sup>173</sup> See, e.g., Jiangxi Silin IQR at 4-5.

<sup>174</sup> See Silin's Request for Relief at 5.

<sup>175</sup> See Silin Verification Report.

<sup>176</sup> See Silin Verification Report at 10.

<sup>177</sup> *Id.*

<sup>178</sup> See Silin Case Brief at 5.

<sup>179</sup> See Silin Verification Report and Attachment III at 59.

Silin's claim that Jiangxi Silin "did not produce or sell any product" in 2017.<sup>180</sup> Further though, the financial notes also reveal additional previously undisclosed information that could explain why these expenses decreased. Specifically, while reviewing an account containing previously unreported transactions between Jiangxi Silin and Nanchang Cable, one of Jiangxi Silin's parent companies which also produced and sold subject merchandise, we found that Nanchang Cable paid for certain expenses incurred by Jiangxi Silin during the POI, such as employee housing and employee social security expenses.<sup>181</sup> We also learned that Jiangxi Silin made sales from Nanchang Cable's office and that Jiangxi Silin's records and employees are currently located in Nanchang Cable's office building.<sup>182</sup> These findings suggest that Nanchang Cable may have been conducting operations on Jiangxi Silin's behalf during the POI. In briefs, Silin makes the unsubstantiated claim that Jiangxi Silin reimburses Nanchang Cable for these expenses.<sup>183</sup> Whatever the case may be, because Silin failed to report these additional transactions beyond the sale of goods between Jiangxi Silin and Nanchang Cable, among other things, to Commerce at the appropriate time, we were unable to, for example, substantiate this claim, and the proceeding was thereby impeded. Further, because Jiangxi Silin did not report any transactions with a company which sold subject merchandise to Silin during the POI, we were unable to collect additional information regarding the merchandise Jiangxi Silin sold to this company or the merchandise which was sold by this company to Silin.

At verification, we also learned that Jiangxi Silin's previous statements that it "did not produce or sell any product during the POI"<sup>184</sup> were false.<sup>185</sup> Jiangxi Silin's financial notes, an invoice from Jiangxi Silin provided at verification, and Silin's own admission at verification demonstrated that Jiangxi Silin bought and sold goods, including subject merchandise, during the POI.<sup>186</sup> Not only did Jiangxi Silin make sales during the POI, but we also discovered previously unreported sales of materials and subject merchandise to Jiangxi Silin's cross-owned parent company, Nanchang Cable, as well as to unreported affiliates.<sup>187</sup> These findings were made after noting that Jiangxi Silin's translated financial notes indicated that Jiangxi Silin maintained considerable inventory in 2017 as well as an increase from its beginning and ending balance in its accounts receivables and "other payables" accounts with Nanchang Cable and with its unreported affiliate, and were corroborated by Silin's own admission upon further questioning. At verification, Silin attempted to minimize the severity of the issue by first arguing that it did not report any sales to Nanchang Cable in the POI because they were "mostly carried over from the previous year."<sup>188</sup> This argument, reiterated in its briefs,<sup>189</sup> implies that the failure to report these sales is inconsequential because they do not represent a significant volume of transactions. While the changes reflected in the beginning and ending balances of Jiangxi Silin's POI affiliated transactions do not indicate large increases, the beginning and ending balances

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<sup>180</sup> See Jiangxi Silin February 5, 2019 IQR at 3.

<sup>181</sup> *Id.* at 10.

<sup>182</sup> *Id.* at 3.

<sup>183</sup> See Silin Case Brief at 5-6.

<sup>184</sup> See Jiangxi Silin IQR at 3.

<sup>185</sup> See Silin Verification Report at 3.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.* at 11.

<sup>189</sup> See Silin Rebuttal Brief at 10.

represent only two snapshots of Jiangxi Silin's POI activity. Thus, there is no way of gleaning the full extent of Jiangxi Silin's transactions with Nanchang Cable, nor its unreported affiliate throughout the POI, from this information. The significance of this discovery is that it is yet another indication that Jiangxi Silin's activities continued throughout the POI as well as another example of Silin's failure to cooperate to the best of its ability by withholding this necessary information and misleading Commerce regarding Jiangxi Silin.<sup>190</sup>

In its briefs, Silin then attempts to re-write the verification report by stating that Jiangxi Silin's unreported transactions with Nanchang Cable were "from sales of products produced by Nanchang Cable,"<sup>191</sup> presumably in an attempt to discount the contradictions found at verification that demonstrate Silin's previous claims that Jiangxi Silin "did not produce or sell any product during the POI" were false.<sup>192</sup> However, as noted in the verification report,

"Concerning Jiangxi Silin's production activities, Silin began by stating that Jiangxi Silin did not produce or sell any merchandise during the POI because it vacated its land in 2016. However, after further questioning regarding the equipment and raw material expenses listed in its 2017 financial notes, as well as cash inflows from operating activities, and {large inventory} at the end of 2017, company officials stated that Jiangxi Silin did not actually vacate the land in 2016 because it still maintained some production equipment and a warehouse that had yet to be demolished. Company representatives stated that Jiangxi Silin purchased materials, including subject merchandise, from Nanchang Cable in 2017, and also continued selling to Nanchang Cable as well as older customers in 2017, and exclusively to Nanchang Cable in 2018."<sup>193</sup>

Therefore, Silin's argument in its briefs represents another contradiction with what it reported in its questionnaire responses and at verification because the record reflects that Jiangxi Silin continued to sell raw materials and subject merchandise it produced and kept in inventory during the POI, including sales of merchandise to Nanchang Cable.

Furthermore, Silin's argument ignores the core of the problem: that it withheld information by failing to report Jiangxi Silin's transactions with Nanchang Cable during the POI and mislead Commerce by repeatedly indicating that Jiangxi Silin was non-operational during the POI.<sup>194</sup> Thus, Silin's claim in its briefs is unverified due to its uncooperative behavior evidenced by its failure to provide Jiangxi Silin's translated financial notes in a timely matter, as well as its decision to withhold Jiangxi Silin's POI transactions with Nanchang Cable and its unreported affiliate.

Silin then argues that "{e}ven if Jiangxi Silin had sales to Nanchang Cable in 2017, Nanchang Cable is not affiliated with Silin. The sales between Jiangxi Silin and Nanchang Cable have no bearing on a benefit calculated for Silin."<sup>195</sup> Silin employs the same reasoning in its attempt to

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<sup>190</sup> See Silin Verification Report at 10 and Attachment III at 64.

<sup>191</sup> See Silin Case Brief at 6.

<sup>192</sup> See Silin Verification Report at 3; see also Jiangxi Silin February 5, 2019 IQR at 3.

<sup>193</sup> See Silin Verification Report at 10.

<sup>194</sup> See Jiangxi Silin's IQR at 3, see also Silin's November 30, 2018 Affiliation Response (Silin AFFQR) at 4.

<sup>195</sup> See Silin Rebuttal Brief at 5.

justify its failure to report Jiangxi Silin's POI transactions with its unreported affiliates that are subsidiaries of Nanchang Cable, adding that Silin did not purchase any subject merchandise from Jiangxi Silin's unreported affiliates during the POI.<sup>196</sup> As an initial matter, we disagree that this information has no bearing on a subsidy analysis for Silin. While Silin claims that it did not purchase anything from Jiangxi Silin's unreported affiliates, we are unable to verify this statement due to Silin's uncooperative behavior. Had Silin provided Commerce with Jiangxi Silin's accurate and complete sales information, including its translated financial notes, as requested, we would have had the opportunity to examine the relevant accounts at verification to ensure that Silin did not purchase materials from Jiangxi Silin's unreported affiliates, as it claims, and to inquire into the matter further with company officials. Once more, this is why, in part, compliance with Commerce's instructions in its questionnaires, verification outlines, and other materials is critical, and why the statute provides for the use of FA and AFA as a remedial mechanism in the administration of Commerce's proceedings.

In its briefs, Silin argues that Jiangxi Silin's failures to accurately report its information are irrelevant because Commerce did not attribute Jiangxi Silin's subsidies to Silin in the *Preliminary Determination*.<sup>197</sup> However, this preliminary decision was predicated on Silin's statements that Jiangxi Silin did not make any POI sales to or through Silin, which were subject to verification.<sup>198</sup> In light of the aforementioned evidence that severely undermines the accuracy of Silin's reporting with respect to Jiangxi Silin's POI sales activity, Silin's argument hinges on the single fact that we did not directly observe POI sales from Jiangxi Silin to Silin at verification.<sup>199</sup> However, the discovery of Jiangxi Silin's previously unreported sales is pivotal in this proceeding because we now know that Jiangxi Silin made POI sales of materials and subject merchandise to a company that accounted for a portion of the subject merchandise exported by Silin during the POI.<sup>200</sup> Thus, by withholding Jiangxi Silin's transactions with this company during the POI, Silin significantly impeded this investigation. Had we known that Jiangxi Silin was still selling subject merchandise and materials during the POI to a company which then made POI sales of subject merchandise to Silin, we would have requested additional information and closely examined Silin's transactions with this company at verification to determine whether attribution was warranted. Further, we likely would have attributed Jiangxi Silin's subsidies to Silin under 19 CFR 351.525(b)(6)(iv) because Jiangxi Silin provided inputs and subject merchandise to a cross-owned company which then sold subject merchandise to Silin, which Silin then exported during the POI. However, due to Silin's noncooperation, whether or not Jiangxi Silin made sales of subsidized subject merchandise to Silin through another company during the POI is not known or verified. Accordingly, because verification revealed that our preliminary decision was based on a false, or at the very least unverified, premise, we must resort to facts available.

In this regard, it is also important to understand that 19 CFR 351.525(b) ("Attribution of Subsidies") does not constitute an exclusive list of situations under which Commerce may

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<sup>196</sup> See Silin Case Brief at 9-10.

<sup>197</sup> See Silin Rebuttal Brief at 5.

<sup>198</sup> See *Preliminary Determination* PDM at 8-10; see also Initial CVD Questionnaire at 4, 9, and 35.

<sup>199</sup> See, e.g., Silin Case Brief at 7; see also Silin Rebuttal Brief at 2.

<sup>200</sup> See Silin AFFQR at Exhibit 1.

attribute subsidies received by one company to its cross-owned affiliate. “The underlying rationale for attributing subsidies between two separate corporations is that the interest of those two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same ways it can use its own assets (or subsidy benefits).”<sup>201</sup> The record as described under this comment makes it evident that there was such a confluence of interests between Silin and Jiangxi Silin such that Commerce may well have attributed subsidies received by Jiangxi Silin to Silin if it had had a complete and accurate response regarding Jiangxi Silin’s activities and subsidies, even if Jiangxi Silin had not sold subject merchandise to Silin during the POI. For example, the *Preamble* notes that a subsidy provided to a non-producing subsidiary might be attributable to the parent in circumstances where there are no conditions imposed by the foreign government on the use of the money.<sup>202</sup> As discussed below, Commerce discovered at verification unreported subsidies provided to Jiangxi Silin, such as a grant that may or may not be tied to land dislocation. Such a free grant of money could easily be attributed to Silin, especially given that Jiangxi Silin is supposedly in a wind-down phase and would no longer have need for the funds itself. Section 19 CFR 351.525(b)(v) also provides for the possibility of a subsidy being attributable to a cross-owned affiliate even outside of the specific attribution provisions of 19 CFR 351.525(b)(i)-(iv), and even when the recipient of the subsidy is not a producer. Given the pervasive deficiencies in the information Silin provided regarding Jiangxi Silin, including information regarding its activities and the full extent of its subsidization, Commerce was denied the opportunity to consider the fuller attribution picture.

The verification findings demonstrate that Silin significantly impeded this proceeding by repeatedly providing contradictory, unsubstantiated and false statements, withholding information, refusing to comply with Commerce’s requests for information, and providing unverifiable information; thus, the mere fact that Commerce did not observe POI sales directly from Jiangxi Silin to Silin at verification does not detract from the overwhelming evidence that the extent of Silin’s discrepancies renders the entirety of its questionnaire responses unreliable.

Moreover, as stated in the *Preliminary Determination*, “because Jiangxi Silin did not sell or export any subject merchandise to or through Silin during the POI, we are not attributing the benefit of any subsidies received by Jiangxi Silin to Silin.”<sup>203</sup> However, the discovery of sales from Jiangxi Silin to a company with POI sales to Silin undermines Silin’s argument that Jiangxi Silin did not make any sales to or through Silin during the POI. It is completely plausible that at least a portion of the subject merchandise Jiangxi Silin sold to this company during the POI was then resold to Silin and potentially exported. However, because Silin deliberately withheld crucial information related to Jiangxi Silin’s operations, subsidies, and sales, necessary information for our subsidy and attribution analyses is missing from the record. As such, we must resort to facts available pursuant to 776(a)(2)(A)(B)(C) and (D) of the Act. Further, these issues are significant not only because they epitomize uncooperative behavior that impeded this investigation, but also because they severely undermine the reliability of Silin’s reporting.

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<sup>201</sup> See *Countervailing Duties*, 63 FR 65401 (November 25, 1998) (*CVD Preamble*).

<sup>202</sup> *Id.* at 65402.

<sup>203</sup> See *Preliminary Determination* PDM at 8-10.

Adding to the confusion concerning Jiangxi Silin's relationship with Nanchang Cable, Jiangxi Silin's 2017 financial notes translated at verification indicated that Jiangxi Silin's parent company is Nanchang Industrial Holding Co., Ltd. (Nanchang Holding),<sup>204</sup> which we later learned is a Chinese wholly-state owned enterprise (SOE).<sup>205</sup> We also noted at verification that, in 2016, Jiangxi Silin changed its accounting policy to match that of Nanchang Industrial Holding Group.<sup>206</sup> In briefs, Silin again contradicts its statements made at verification and record evidence<sup>207</sup> by stating that Nanchang Holdings is not Jiangxi Silin's parent company, rather Nanchang Cable's parent company.<sup>208</sup> Silin states that, "Nanchang Cable decided it wanted to include Jiangxi Silin in its consolidated statement. To allow this, Jiangxi Silin then had to indicate Nanchang Cable was its parent company in its own financial statement."<sup>209</sup> This admission is particularly concerning for two reasons. First, because it represents Silin's acknowledgement that it provided knowingly false information in this investigation, again, when it stated in questionnaire responses that Jiangxi Silin's "sales are not consolidated with those of other companies in the financial report of a parent, holding company, or group of companies."<sup>210</sup> Second, this admission evidences Nanchang Cable's control over Jiangxi Silin by its ability to induce Jiangxi Silin to consolidate its financial information with Nanchang Cable and designate Nanchang Cable or Nanchang Holding (the wholly-owned SOE) as its parent company. Silin then argues that neither Nanchang Cable nor Nanchang Holding are able to control Jiangxi Silin due to Nanchang Cable's minority ownership in Jiangxi Silin, and Nanchang Holding's ten percent direct ownership in Nanchang Cable.<sup>211</sup> As an initial matter, Jiangxi Silin provided information indicating that it is cross-owned with Nanchang Cable.<sup>212</sup> Further, while ownership stake is a factor in determining control, it is not the only consideration, and the evidence discovered at verification concerning Jiangxi Silin's relationship with Nanchang Cable are clear indications of Nanchang Cable's ability to exercise control over Jiangxi Silin. Namely, the fact that Jiangxi Silin moved its operations to Nanchang Cable's office in 2017, and that Nanchang Cable pays for certain employee expenses incurred by Jiangxi Silin, along with the unreported transactions between the two companies, as well as Silin's admission at verification that Jiangxi Silin sold "exclusively to Nanchang Cable in 2018."<sup>213</sup> However, because Silin withheld information from Commerce by not reporting the extent of Jiangxi Silin's relationship with Nanchang Holding, we are unable to make a substantive determination on whether or not control exists. Moreover, while Nanchang Holding may directly hold a ten percent ownership in Nanchang Cable, the record shows that Nanchang Cable is an investment company which is also

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<sup>204</sup> See Silin Verification Report at 9.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.* at 10. We note that in its briefs, Silin contends that the verification report incorrectly equates Nanchang Cable and Nanchang Holdings; however, Silin fails to acknowledge that any confusion regarding the companies is entirely due to its own noncooperation. Had Silin provided Jiangxi Silin's translated notes as originally requested, Commerce could have inquired about Nanchang Holdings and Silin could have clarified any issues prior to verification. Silin cannot blame Commerce for any alleged misunderstandings when it had ample opportunity to provide and clarify the requested information prior to and during verification, yet refused to do so.

<sup>207</sup> See Silin Verification Report at 2 and 9.

<sup>208</sup> See Silin Case Brief at 9.

<sup>209</sup> *Id.*

<sup>210</sup> See Jiangxi Silin February 5, 2019 IQR at 8; see also Silin Verification Report at 9-10.

<sup>211</sup> See Silin Rebuttal Brief at 5.

<sup>212</sup> See Jiangxi Silin February 5, 2019 IQR at Exhibit 6.

<sup>213</sup> See Silin Verification Report at 10.

owned by an apparently state-affiliated labor committee (Nanchang Cable Labor Union Committee).<sup>214</sup> Additionally, as noted in the verification report, another discrepancy found in Jiangxi Silin's translated financial notes is that Nanchang Cable's ownership interest in Jiangxi Silin and Jiangxi Silin's total equity are both significantly higher than previously reported.<sup>215</sup> In response to these glaring discrepancies, Silin argues that this information, from its own audited financial reports, "cannot conceivably be correct."<sup>216</sup> Silin attempts to substantiate this statement by citing to unverified record information, including Jiangxi Silin's business license, which listed a different tax number and legal representative than in its land documents examined at verification.<sup>217</sup> Jiangxi Silin's accurate and complete ownership is pertinent to this investigation because it allows us to analyze and determine any state cross-ownership, which is of particular importance in CVD proceedings as they require additional inquiries when state-control exists. Due to Silin's withholding of information and failure to comply with Commerce's requests for information, necessary information remains unverified.

Further, Silin's own admission that Jiangxi Silin's audited financial statements, which were also signed by Jiangxi Silin's board of directors that includes overlap with Silin's executives, are incorrect, is precisely why the application of AFA is necessary. Accurate financial records are crucial to our subsidy analysis and serve as the basis of verification. Silin cannot contend that its financial statements are reliable, while also stating that they are incorrect. Again, due to Silin's withholding of information by not previously disclosing Nanchang Holding's ownership in Jiangxi Silin through Nanchang Cable and its failure to provide verifiable and requested information, Commerce was denied the opportunity of examining the full facts of the case and asking additional questions.

Yet another issue discovered through the examination of Jiangxi Silin's translated financial notes at verification was a previously unreported large grant from the GOC.<sup>218</sup> We also noted that the grant amount matched the figure listed as "other cash received related to investing activities" in Jiangxi Silin's financial statement.<sup>219</sup> Silin stated that it did not report Jiangxi Silin's receipt of this grant because it did not consider it a grant, but rather "money from the government" for Jiangxi Silin's land, which it allegedly vacated in 2016.<sup>220</sup> This statement is another acknowledgement of Silin's decision to withhold information and blatantly ignore Commerce's request for information because in the initial questionnaire response, we asked the following question:

Did the GOC (or entities owned directly, in whole or in part, by the GOC or any provincial or local government) provide, directly or indirectly, any other forms of assistance to your company between January 1, 2006, and the end of the POI? If so,

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<sup>214</sup> *Id.* at 9 and accompanying Verification Exhibit 3 at 10-11.

<sup>215</sup> *See* Silin Verification Report at 10.

<sup>216</sup> *See* Silin Case Brief at 8.

<sup>217</sup> *See* Silin Verification Report at 19.

<sup>218</sup> *See* Silin Verification Report at 3.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

please describe the assistance in detail, including the amounts, date of receipt, purpose and terms, and answer all questions in the appropriate appendices.<sup>221</sup>

Despite these clear instructions to report “any other forms of assistance,” Silin did not report millions of RMB in financial assistance Jiangxi Silin received from the GOC to relocate its operations.<sup>222</sup> At verification and in briefs, Silin attempted to excuse its noncompliance with Commerce’s request for information by claiming that it was merely compensation for Jiangxi Silin’s losses due to its land demolition and displacement.<sup>223</sup> However, the grant documents observed at verification indicated various incentives to induce Jiangxi Silin to relocate.<sup>224</sup> Silin’s argument is again predicated on its claim that Jiangxi Silin ceased operations and vacated its land in 2016, a fact that is unsubstantiated and outright contradicted by the verification findings. Specifically, as noted in the verification report,

Silin began by stating that Jiangxi Silin did not produce or sell any merchandise during the POI because it vacated its land in 2016. However, after further questioning regarding the equipment and raw material expenses listed in its 2017 financial notes, as well as cash inflows from operating activities, and {large inventory} at the end of 2017, company officials stated that Jiangxi Silin did not actually vacate the land in 2016 because it still maintained some production equipment and a warehouse that had yet to be demolished.<sup>225</sup>

Further, the footnote under the large unreported grant in Jiangxi Silin’s financial notes states that Jiangxi Silin reached an agreement with the provincial government authority to relocate in 2015. The 2015 agreement between Jiangxi Silin and the provincial authority indicates that Jiangxi Silin received compensation for lost production, temporary relocation, renovations, operations and relocation rewards.<sup>226</sup> However, as noted in the verification report,

Upon further inquiry, company officials stated that although they signed the demolition and relocation agreement in 2015, and accepted the payment from the government in 2016, Jiangxi Silin’s board of directors ultimately decided in 2018 not to relocate and to cease operations entirely. We requested any and all documentation that would substantiate this claim, specifically relating to the board decision and correspondence/negotiation concerning the decision. Company officials were only able to provide a second “Building on State-Owned Land Demolition Agreement,” signed on July 7, 2018. The second agreement lists an additional {large} compensation amount, which Jiangxi Silin received in September 2018. The compensation amount is based on the third-party evaluation report for 2017 and a {larger} land area {than the one listed in the 2015 agreement} which {matches} the only land area Jiangxi Silin reported in its questionnaire response, {although the reported price was higher}. Commerce officials asked if the agreements were related to two separate land parcels, and company officials

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<sup>221</sup> See Initial CVD Questionnaire at 17.

<sup>222</sup> See Silin Verification Report at 3 and 18.

<sup>223</sup> See Silin Case Brief at 6-7.

<sup>224</sup> See Silin Verification Report at 18.

<sup>225</sup> *Id.* at 10.

<sup>226</sup> *Id.* at 18.

stated that they were not. Although both agreements list Jiangxi Silin as the recipient of the demolition grants, we noted that the business license numbers, legal representatives and land size on the agreements differed.<sup>227</sup>

Accordingly, the record reflects that Jiangxi Silin did not vacate its land in 2016 as previously reported because it did not sign an agreement to relinquish its reported land area to the provincial authority until after the POI. Thus, Silin's argument that Jiangxi Silin's lack of production is corroborated by its relinquishment of its land in 2016 is unsupported by record evidence. Further, Silin's argument ignores the core of the issue: that Silin possessed the information related to Jiangxi Silin's financial assistance from the GOC, did not report it, did not ask any clarification questions and attempted to prevent Commerce and interested parties from discovering this information by failing to translate Jiangxi Silin's financial notes. Silin's decision to deprive Commerce and interested parties the opportunity to adequately analyze the grant significantly impedes the investigative process because it prevents Commerce from determining its countervailability. As the courts have upheld, it is not for respondents to decide what information to report nor what constitutes a subsidy in this proceeding, because that authority rests solely with the United States Department of Commerce.<sup>228</sup>

### Silin

Verifying the completeness and accuracy of a respondent's reported sales information is a crucial component of verification because it serves as the foundation of Commerce's subsidy analysis, *i.e.*, sales denominators for calculation of CVD rate for subsidies programs under investigation. Prior to verification, Silin revised its reported quantity and value.<sup>229</sup> Upon the start of verification, Silin again provided another revision to its quantity and value in its list of minor corrections.<sup>230</sup> Despite the notable revisions, including over 100 million RMB in unreported transactions, we accepted Silin's revised quantity and value for the third time.<sup>231</sup> After several calculations, we were able to confirm that Silin's reported sales information matched the sales figure in its financial statement. However, as noted in the verification report, Silin stated that it "records its sales revenue based on the estimated value of its sales listed on the proforma invoice,"<sup>232</sup> thus, Silin failed to report its actual sales value despite multiple opportunities to do so. Upon additional questioning at verification, we learned the following information:

"Company representatives stated that Silin records revenue based on the estimated amounts because payment could take up to one year. Silin officials also stated that the

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<sup>227</sup> *Id.* at 18-19.

<sup>228</sup> See, e.g., *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986); *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010); see also *Certain Oil Country Tubular Goods from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2011*, 78 FR 9368 (February 8, 2013), and accompanying IDM at Comment 5, unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 49475 (August 14, 2013).

<sup>229</sup> See Silin's March 5, 2019, Supplemental Questionnaire Response (Silin SQR) at Exhibit 2S-II-1.4.

<sup>230</sup> See Silin Verification Report at 5.

<sup>231</sup> *Id.*

<sup>232</sup> See Silin Verification Report at 12.

company does not track the differences between the estimated proforma values, and the actual payment received because it is small over the long-term. Silin reported that it could not substantiate the differences between the estimated and actual values recorded in their accounting system for the POI because its accounts receivable could include other revenue and the only way to compare the values is to review each invoice individually. In the middle of reconciling the remaining sales data, Silin's counsel introduced a CPA from out of town and insisted on having the CPA discuss Chinese accounting practices... We asked the CPA only one question: whether Chinese GAAP allows a CPA to audit estimated or proforma revenue. The CPA stated that Chinese GAAP does not allow a CPA to audit estimated or proforma revenue."<sup>233</sup>

In briefs, Silin again attempts to re-write the verification report by stating that its accounting practices are "fully in compliance with Chinese GAAP" and that its sales revenue and accounting "are not estimates, but are based on the VAT invoice value, which is equal to the US dollar value on the Proforma Invoice multiplied by the exchange rate converting US dollars to Renminbi."<sup>234</sup> Not only are these claims diametrically opposed to the statements made by both Silin and the CPA at verification and recorded in the verification report, but they are also completely unsubstantiated. While Silin's reported sales figures matched its financial statements, Silin's acknowledgement that it could not reconcile its actual and estimated POI revenue in its accounting system, along with the CPA's statement that auditing estimated sales revenue is not in compliance with Chinese GAAP, renders Silin's sales unverifiable. Because an accurate sales denominator is core to the subsidy analysis, and because we are prohibited from relying on unverified information, we must resort to facts available pursuant to 776(a)(2)(A)(B)(C) and (D) of the Act.

In its briefs, the petitioner raises other discrepancies discovered at verification relating to Silin which add to the contradictions. Namely, the fact that Silin reported on its grant application to the GOC that it was involved in "production," as well as previously undisclosed land parcels. In response, Silin argues that "the inclusion of production in its business activities on one grant application cannot be used to establish that Silin is a producer."<sup>235</sup> Regarding the unreported land, Silin argues that it did not report the land because it "was not relevant to any production." While these facts alone do not firmly establish Silin's involvement in production, these findings in conjunction with Silin's unreported purchases of production equipment on its unreported land add to the uncertainty regarding Silin and its affiliates' actual activity, and the accuracy of its reported information. These discrepancies also serve as additional examples of information that Silin withheld, that could have informed Commerce's analysis and preliminary determination. Had Silin reported its land parcels as requested, Commerce and interested parties would have been able to review the land contracts and ask additional questions to ascertain whether the land was being used for production. Further, we directed Silin to report all of its land parcels, thus, regardless of whether Silin believed this land was relevant for production of subject merchandise, it could and should have reported the information. Accordingly, because Silin did not comply with Commerce's request for information, an adverse inference is warranted.

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<sup>233</sup> *Id.*

<sup>234</sup> *See* Silin Rebuttal Brief at 9.

<sup>235</sup> *See* Silin Rebuttal Brief at 7.

For the aforementioned reasons, we must resort to facts available. In selecting from among the facts otherwise available, our regulations permit the use of an adverse inference, in instances where we find a party “has failed to cooperate by not acting to the best of its ability with a request for information.” In *Nippon Steel*, the CAFC noted that while the statute does not provide an express definition of the “failure to act to the best of its ability” standard, the ordinary meaning of “best” is “one’s maximum effort.” Thus, compliance with the “best of its ability” standard requires the respondent to do the maximum that it is able to do. As the CAFC explained in *Nippon Steel*, although the statutory standard for cooperation “does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.”

Despite Silin’s attempts in its briefs to mischaracterize or dismiss the significant issues highlighted above and detailed in the verification report, Silin’s repeated refusals to comply with Commerce’s clear instructions, consistent contradictions with information it previously reported as accurate and complete, and concealment of key facts in this proceeding are well-documented. While some issues during verification were a result of Silin’s inadequate recordkeeping, such as its inability to provide any grant documents or substantiate the differences between its estimated and actual revenue, the majority of the issues resulted from contradictions with Silin’s previously reported information stemming from the discovery of requested information that Silin previously withheld. Because Silin’s behavior at verification exemplifies its noncompliance, the application of an adverse inference is warranted.

In its rebuttal brief, the GOC states that the AFA rate should be a reasonably accurate estimate of the respondent’s actual rate, with some additional increase to deter noncompliance.<sup>236</sup> The GOC also argues that the CAFC has held that an AFA rate should reflect the “commercial reality” of the respondent.<sup>237</sup> The GOC, however, appears unaware that in 2015 Congress overturned that CAFC-created standard through an amendment to the statute. Under current law, Section 776(d)(3) of the Act clearly states that Commerce’s selection of facts available need not be restricted as reflecting alleged commercial reality.<sup>238</sup> Further, as explained above, because the issues with Silin’s reporting are pervasive throughout its response, the totality of the contradictions, lead us to conclude that Silin’s reported information as a whole is unreliable. Thus, due to Silin’s failure to cooperate to the best of its ability, we are unable to reasonably estimate the full extent of Silin’s subsidization. As such, the application of total AFA is necessary.

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<sup>236</sup> See GOC Rebuttal Brief at 2-3.

<sup>237</sup> *Id.* at 4.

<sup>238</sup> On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act. See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (“TPEA”). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. Therefore, the amendments apply to this investigation.

The GOC also argues that Commerce should corroborate, to the extent possible, any adverse inference based on secondary information, while ensuring that the adverse inference is both reliable and relevant to the respondent's use of the programs under investigation.<sup>239</sup> With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. As indicated in the *Initiation Notice* and accompanying CVD Initiation Checklist, Commerce determined that each of the programs subject to verification were relevant to the sale and production of subject merchandise.<sup>240</sup> Further, the other subsidies which were either disclosed by Silin or discovered at verification, demonstrate that they are likewise relevant to the aluminum wire and cable industry.

In determining the AFA rates applicable to Silin, we are guided by Commerce's methodology detailed above. We begin by selecting, as AFA, the highest calculated program-specific above-zero rates determined for the cooperating respondent in the instant investigation. For all other programs not used by the cooperating respondent, we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a CVD investigation or administrative review involving China.

#### **Comment 7: Whether to Apply Partial AFA to Qingdao Cable**

##### *Encore Case Brief*<sup>241</sup>

##### 1) Qingdao Cable Affiliate II

- At verification, Commerce found that Qingdao Cable's affiliate mainly supplies the company with cables and reels, a fact that was previously undisclosed in questionnaire responses. Further, Qingdao Affiliate II manufactures its reels in accordance with Qingdao Cable's wire and cable specifications.
- Because Qingdao Affiliate II produced and sold reels, which are required for its cable sales and certainly primarily dedicated to the production and sale of subject merchandise, Commerce should attribute the any subsidies received by Qingdao Affiliate II to Qingdao Cable.

##### 2) Grants

- Commerce could not verify half of the grants reported by Qingdao Cable because the company failed to provide *any* documentation for these grants.
- Qingdao Cable stated in questionnaire responses and at verification that certain grants were not related to sales of wire and cable or exports; however, documents examined at verification revealed that some grants were, and some grants were the same as those the company reported not using. Thus, Qingdao Cable attempted to mislead Commerce

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<sup>239</sup> See GOC Rebuttal Brief at 4.

<sup>240</sup> See *Initiation Notice* and accompanying CVD Initiation Checklist; see also 776(d) of the Act.

<sup>241</sup> See *Encore Case Brief* at 16-24.

regarding the true purpose of its grants and failed to report grants subject to this investigation.

- Qingdao Cable prevented Commerce from accessing information in its “Subsidy Income” account because when Commerce attempted to open the account at verification, it was in edit or write mode by another user.
- Commerce should apply AFA to all grants because Qingdao Cable failed to provide information, misled Commerce, and Commerce was temporarily unable to access the subsidy income account. On the basis of AFA, Commerce should presume that all grants received during the AUL were received during the POI.

3) Land

- Commerce discovered at verification that Qingdao Cable received additional undisclosed benefits related to its land parcels.
- Commerce’s practice as it relates to programs discovered at verification is to calculate a subsidy based on available information and should do so for the benefits related to Qingdao Cable’s land relocation. Commerce should also apply AFA to the following programs that were associated with Qingdao Cable’s land relocation:
  - Income tax deductions/credits for special equipment,
  - VAT rebates on domestically-produced equipment,
  - Grants for energy conservation and emission reduction,
  - Grants for retirement of capacity, and
  - On a separate land parcel, the provincial government’s waiver of all taxes.

*Silin’s Case Brief*<sup>242</sup>

1) Qingdao Affiliate II

- In its request for exemption, Qingdao Affiliate II reported selling packing materials to Qingdao Cable. Commerce did not inquire as to the nature of the packing materials sold, thus Qingdao Affiliate II did not report them.
- At verification, Commerce “discovered” that Qingdao Affiliate II sold copper cables and reels to Qingdao Cable. Copper cables are not subject merchandise and reels are packing materials, which Commerce does not consider as an input into subject merchandise. Accordingly, Commerce should continue to not attribute any subsidies from Qingdao Affiliate II to Qingdao Cable.

*Encore’s Rebuttal Brief*<sup>243</sup>

1) Qingdao Affiliate II

- Qingdao Cable misled Commerce regarding Qingdao Affiliate II so that its subsidies would not be attributed to Qingdao Cable. This is demonstrated by Qingdao Affiliate II’s statement that it produced and sold products that did not include wire and cable, when at verification Commerce found that the company actually mainly produces and sells reels and cables to Qingdao Cable.
- Qingdao Cable specifically omitted reels when it reported producing and selling the other packing materials, which no reasonable respondent under the *Nippon Steel* standard would not reference even if it considered the reels as packing materials.

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<sup>242</sup> See Silin Case Brief at 11-13.

<sup>243</sup> See Encore Rebuttal Brief at 25-27.

- Commerce’s verification found that the reels are provided with all cables, which makes them primarily dedicated to the production and sale of the subject merchandise.

*Silin’s Rebuttal Brief*<sup>244</sup>

1) Qingdao Affiliate II

- Qingdao Cable reported that Qingdao Affiliate II provided packing materials to Qingdao Cable, and Commerce never inquired about the exact packing materials.
- Commerce preliminarily did not include Qingdao Affiliate II’s benefits in its subsidy calculation because it correctly determined that packing materials are not material inputs.
- Commerce’s discovery that Qingdao Affiliate II sold copper cables and reels corroborates what Silin and Qingdao Cable reported: That this affiliate did not produce or sell any inputs to Qingdao Cable.
- Reels are understood to be a packing material in the industry. The only purpose of reels is to wrap the cables and the cost is built into the price of the cable.

2) Grants

- Qingdao Cable reported all of its grants; however, it could not provide certain approval or application documents for every grant because it does not keep those documents in the normal course of business.
- Qingdao Cable understood certain grants to be separate programs from those of which Commerce initiated on, however, the company still reported the information under “other subsidies.”
- The fact that another employee was using the “Subsidy Income” account, temporarily preventing the verifiers from accessing the account, is not outside the realm of normal operations, and does not mean that the account was being changed. Commerce examined all entries in this account and noted no discrepancies.

**Commerce’s Position:** Because we are applying total AFA to Silin for this final determination, including for programs that are specific to producers, it is no longer necessary to calculate additional subsidy rates for Silin’s unaffiliated producer-suppliers, such as Qingdao Cable. Silin’s unaffiliated suppliers were only examined in this investigation to ensure that the full extent of subsidizations conferred upon Silin’s export of subject merchandise was captured. As described above, we are applying AFA to Silin for all programs in this investigation, excluding programs determined to be not specific. For each of the programs, we would assign a single AFA program rate. In other words, the final CVD rate imposed on export of subject merchandise by Silin would reflect the applied total AFA rate, due to Silin’s failure to cooperate.

Further, because the AFA rate determined by our AFA hierarchy is higher than the total calculated rate for Silin, using the calculated rates for its unaffiliated suppliers from the *Preliminary Determination*, this ensures that Silin does not benefit from its non-cooperation.

Accordingly, it is no longer necessary to calculate additional subsidy rates for Silin’s unaffiliated producer-suppliers. Consequently, for each program to which we are applying AFA, we would only apply a single AFA program rate and would not add to the AFA program rate additional calculated subsidy rate for Silin’s unaffiliated producer-suppliers. This way, we strike a balance

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<sup>244</sup> See Silin Rebuttal Brief at 12-15.

between inducing cooperation and ensuring our AFA rates are not punitive. Arguments concerning Silin's unaffiliated suppliers are moot.

### **Issue 8: Whether Commerce Should Revise its Calculation of Xinqi Cable's Benefit from the Electricity for LTAR Program**

*Silin's Case Brief*<sup>245</sup>

- Xinqi Cable only used a percentage of the electricity that its affiliate purchased from the state grid. Accordingly, Commerce should multiply the calculated benefit under the program by Xinqi Cable's usage and use the adjusted benefit as the numerator.

**Commerce's Position:** As indicated above, we are relying on total AFA in determining Silin's total subsidy rate, and we are not calculating individual subsidy rates for Silin's unaffiliated suppliers. Therefore, issues concerning the calculation of subsidy rates for programs used by Silin and its producer-suppliers are moot.

### **Issues Related to Changfeng**

#### **Comment 9: Whether to Apply AFA to Changfeng**

*Southwire Case Brief*<sup>246</sup>

- The record makes clear that Changfeng failed to report all of its affiliates in a timely manner. In its initial affiliation response, Changfeng failed to identify at least five affiliates, including one referred to herein as Company A, forcing Commerce to issue supplemental affiliation questionnaires. Moreover, Changfeng refused to report the full extent of its affiliation with Company A, despite being given multiple attempts to do so.
- Early in the investigation, the petitioners provided publicly available information indicating Company A's affiliation.<sup>247</sup> Nonetheless, Changfeng submitted a letter refuting this affiliation.<sup>248</sup> Commerce gave Changfeng another opportunity to correct the record, but Changfeng maintained that Company A was not an affiliate for purposes of this investigation.<sup>249</sup>
- As the result of another supplemental questionnaire, Changfeng revealed for the first time that Company A was in fact a cross-owned affiliate during the average useful life period.<sup>250</sup> It also revealed for the first time in this response, received just six days before the Preliminary Determination, that Company A was a subject merchandise producer.<sup>251</sup>

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<sup>245</sup> See Silin Case Brief at 13-14.

<sup>246</sup> See Southwire Case Brief at 1-8.

<sup>247</sup> See Petitioners' Letter, "Petitioners' Response to Changfeng's Response Identifying Affiliates in Section III of the CVD Questionnaire," dated December 14, 2018 (Petitioners' December 14, 2018, Letter).

<sup>248</sup> See Changfeng's Letter, "Rebuttal to Petitioners' Comments on Changfeng Affiliation Response," dated December 18, 2018 (Changfeng's December 18, 2018, Response).

<sup>249</sup> See Changfeng's Supplemental Section II Questionnaire Response, dated February 22, 2019, at 6-7.

<sup>250</sup> See Changfeng's Second Supplemental Affiliation Response, dated March 25, 2019, at 3.

<sup>251</sup> *Id.* at 4-5.

The response contradicted its earlier claims that Company A only sold a small quantity of inputs and non-subject merchandise to Changfeng prior to its deregistration.

- Due to Changfeng’s repeated failure to accurately report its affiliation with Company A, information on that affiliate’s subsidy program usage is missing from the record, which is required to calculate an accurate subsidy margin for Changfeng under Commerce’s attribution rule.
- Commerce has regularly applied AFA in cases where a respondent failed to reveal or fully report an affiliate until late in an investigation.<sup>252</sup> Commerce has made clear that respondents cannot unilaterally withhold information from Commerce that may require further analysis.<sup>253</sup> Commerce has applied AFA in cases where respondents argued that affiliates did not satisfy reporting criteria or were immaterial because of their size.<sup>254</sup>
- In *Plywood from China*, Commerce found that AFA was warranted when a respondent did not disclose the full extent of its affiliations as required by the initial CVD questionnaire, regardless of attempts later in the case to provide required information.<sup>255</sup> Commerce found that the lateness of the respondent’s decision to reveal affiliation significantly impeded Commerce’s ability to complete the investigation and, thus, rendered the company wholly uncooperative.<sup>256</sup>
- Changfeng’s conduct in this investigation mirrors that of the respondent in *Plywood from China*. In that case, Commerce found that complete accurate affiliation information is critical to the examination of subsidy programs, as well as to the attribution of benefits among cross-owned companies, and it concluded that a failure to provide such information seriously impedes the investigation.<sup>257</sup>
- Changfeng hid the cross-ownership with Company A for more than three months, and only admitted the affiliation after multiple questionnaires and after the factual record closed. It twice disputed the affiliation by focusing on non-dispositive or irrelevant facts.
- Commerce should find, like it did in *Plywood from China*, that Changfeng failed the “maximum efforts test” by hiding a critical fact until late in the proceeding, despite having been given multiple opportunities to correct the record.
- Changfeng suggests that its reporting failure is of no significance because its cross-ownership was limited to the short period starting when Company A was established in 2008. However, Changfeng did not provide sufficient documentation to support its claim. Moreover, Changfeng cited no authority to support that the alleged facts exempt Changfeng from its obligation to submit a full CVD questionnaire for Company A. In addition, Changfeng cannot be allowed to hide affiliation information from Commerce for a prolonged period and then claim any omission is harmless based on facts Commerce has not investigated.

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<sup>252</sup> See, e.g., *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016) (*Cold-Rolled Korea*), and accompanying IDM at 64-66; and *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Korea*), and accompanying IDM at 60-66.

<sup>253</sup> See *Cold-Rolled Korea* IDM at 64.

<sup>254</sup> *Id.*; see also *Hot-Rolled Korea* IDM at 56-57.

<sup>255</sup> See *Hardwood Plywood* IDM at 24-26.

<sup>256</sup> *Id.*

<sup>257</sup> *Id.* at 25.

- Commerce has previously explained that it does not take issue with the timeliness of a cross-owned affiliate's questionnaire response, but rather with a respondent's decision to deprive Commerce of the ability to fully investigate the issues of affiliation and cross-ownership.<sup>258</sup>

*Changfeng Rebuttal Brief*<sup>259</sup>

- Changfeng properly reported its affiliates and timely responded to Commerce's affiliation questionnaires. Commerce regularly issues supplemental questionnaires on affiliation in investigations given the short time frame and Commerce's broad definition of affiliation.
- While Southwire claims initially that Changfeng failed to identify at least five affiliates, Southwire later claims that only one company (Company A) was affiliated. However, Changfeng never changed its position that the affiliates listed in the initial affiliation response are the only companies that meet Commerce's definition of affiliation.
- The petitioners submitted unsubstantiated information that Changfeng had other affiliates. Changfeng filed timely rebuttal comments to the petitioners' comments, and in supplemental questionnaires documented that these other companies are not affiliates. Based on these responses, Commerce never asked Changfeng to provide a full questionnaire response from any of its affiliates or perceived affiliates. In the *Preliminary Determination*, Commerce found Changfeng responded on behalf of itself with no affiliates involved or engaged in the sale, purchase, marketing, and production of subject merchandise.
- Changfeng does not agree that Company A is an affiliate. Changfeng provided information throughout the proceeding concerning Company A, establishing that this company does not meet the definition of a company that would be required to provide a full questionnaire response. Thus, Changfeng never withheld information or impeded the investigation.
- In any case, the window of potential affiliation between Changfeng and Company A is very small (starting in 2009), and the purported affiliation ended when certain ownership interest was transferred in 2010. In addition, Company A was deregistered in 2011.
- Southwire attempts to cast doubt on the share transfer claiming Company A's amended Articles of Association are inadequate documentation. However, Southwire provides no reasonable argument why an official legally binding document filed with the GOC is inadequate to document a share transfer. Moreover, the shares were transferred in January 2010, and Changfeng did not begin operations until July 2010.

**Commerce's Position:** We disagree with Southwire, and we are not applying AFA to Changfeng. While Changfeng was not immediately forthcoming with information about Company A, it fully responded to our subsequent requests and provided necessary information.

Changfeng did not initially report Company A as an affiliate.<sup>260</sup> In response to public information placed on the record by the petitioners,<sup>261</sup> Changfeng explained that Company A was

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<sup>258</sup> *Id.* at 26.

<sup>259</sup> See Southwire Case Brief at 1-8.

<sup>260</sup> See Changfeng's November 30, 2018, Affiliation Questionnaire Response.

<sup>261</sup> See Petitioners' December 14, 2018, Letter.

deregistered in 2011.<sup>262</sup> Changfeng noted that prior to deregistration, Company A sold a small quantity of inputs and non-subject merchandise to Changfeng.<sup>263</sup> It noted that no subsidy benefits were transferred to Changfeng in the POI.<sup>264</sup> We then asked Changfeng to provide a full CVD questionnaire or explain why Company A was not cross-owned with Changfeng.<sup>265</sup> Changfeng responded and explained that cross-ownership exists between two company where one company holds, directly or indirectly, a majority interest in the other, and based on this definition, Company A was not cross-owned with Changfeng in the AUL.<sup>266</sup> The company noted that the sole shareholder of Company A became a minority shareholder of Changfeng after the POI.<sup>267</sup> To verify Changfeng's claim, we asked Changfeng to provide a detailed history of Company A and to provide information on Company A's location, facilities, *etc.*<sup>268</sup> It was at this time that Changfeng clarified there was a short period of affiliation (from 2009 to 2010).<sup>269</sup>

As an initial matter, we acknowledge that Changfeng should have accurately explained that there was a short period of affiliation between Company A and Changfeng in its initial questionnaire. The information was necessary because even though Company A and Changfeng were not cross-owned during the POI, we still need to examine whether Company A and Changfeng were cross-owned during the AUL so that we can determine whether any subsidies received by Company A could be transferred to Changfeng. However, based on our questioning, Changfeng was alerted to the need for a more accurate explanation and worked with reasonable care to correct the information previously provided, which ultimately gave us the information we needed to conduct our analysis.

Thus, we disagree with Southwire that the application of AFA is warranted. Changfeng explained that it did not have any operating activities or transactions with other companies during the period of affiliation, and thus, subsidies could not have been transferred from the Company A to Changfeng.<sup>270</sup> We were able to verify this latter claim (*i.e.*, that no subsidies could have been transferred from Company A to Changfeng) at verification through a review of accounting documentation. *See* full discussion of this documentation in the Changfeng Final Calculation Memorandum.<sup>271</sup> Thus, we find we have the necessary information, and we are not applying AFA to Changfeng for this final determination.

## **Issue 10: Whether to Apply Partial AFA to Changfeng's Policy Loans**

*Southwire's Case Brief*<sup>272</sup> and *Rebuttal Brief*<sup>273</sup>

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<sup>262</sup> *See* Changfeng's December 18, 2018, Response.

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *See* Commerce's February 1, 2019, Supplemental Affiliation Questionnaire to Changfeng.

<sup>266</sup> *See* Changfeng's Supplemental Section II Questionnaire Response, dated February 22, 2019, at 6-7.

<sup>267</sup> *Id.*

<sup>268</sup> *See* Commerce's March 15, 2019, Second Supplemental Affiliation Questionnaire to Changfeng.

<sup>269</sup> *See* Changfeng's Second Supplemental Affiliation Response, dated March 25, 2019, at 3.

<sup>270</sup> *Id.* at 3-4.

<sup>271</sup> *See* Memorandum, "Final Determination Analysis for Changfeng Wire & Cable Co., Ltd.," dated concurrently with this memorandum (Changfeng Final Calculation Memorandum).

<sup>272</sup> *See* Southwire Case Brief at 8-11.

<sup>273</sup> *See* Southwire Rebuttal Brief at 5-8.

- Changfeng failed to include certain bank acceptance bills that it redeemed before maturity and hence paid interest to Chinese banks.<sup>274</sup> In a supplemental questionnaire, Commerce asked Changfeng to report “any and all forms of outstanding during the POI, including any invoice and bill discounting, regardless of whether it was from a bank.” Changfeng maintained that it had reported all forms of financing.<sup>275</sup>
- At verification, however, Changfeng presented as minor corrections, omitted bank acceptance notes financed by Chinese banks, alleging that the notes were issued by commercial entities, which is why it neglected the fact they were later financed by Chinese banks to which interest was paid.<sup>276</sup> Commerce appropriately rejected these so-called minor corrections as untimely new factual information.<sup>277</sup>
- Commerce has previously applied AFA when a respondent fails to disclose policy loans that were discovered at verification or reported after the deadline required by Commerce.<sup>278</sup> In particular, Commerce has rejected “missing loans” presented as minor corrections at verification as untimely new factual information.<sup>279</sup> In addition, the CIT has affirmed Commerce’s broad discretion in rejection new factual information tendered as such a late time.<sup>280</sup>
- Thus, applying AFA to Changfeng’s policy loans is consistent with Commerce precedent. Changfeng’s conduct in this investigation is analogous to the respondents in *Resin from China* and *Flanges from India*. In *Resin from China*, the respondent attempted to present missing loans as minor corrections, Commerce rejected the corrections as minor, and finding the error committed by respondent to be methodological in nature.<sup>281</sup> Commerce eventually applied AFA to the respondent’s loan programs, finding the respondent withheld requested information.<sup>282</sup> Commerce likewise applied AFA in *Flanges from India* in similar circumstances.<sup>283</sup>
- Commerce should follow its precedent and find Changfeng has withheld information and, as such, necessary information on the policy loan program is missing from the record. Moreover, because Changfeng withheld necessary information despite multiple requests, it has failed to cooperate to the best of its ability. This warrants the application of AFA to Changfeng’s policy loans. As AFA, Commerce should apply the highest above *de minimis* subsidy rate determined for a lending program in the final determination of this proceeding if such rate is sufficiently adverse to induce further cooperation.

<sup>274</sup> See Changfeng Verification Report at 2-3.

<sup>275</sup> See Changfeng’s March 5, 2019, Supplemental Questionnaire Response at 9.

<sup>276</sup> See Changfeng Verification Report at 2-3.

<sup>277</sup> *Id.*

<sup>278</sup> See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Flanges from India*), and accompanying IDM at Comment 4; *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People’s Republic of China: Final Affirmative Determination*, 81 FR 13337 (March 14, 2016) (*Resin from China*), and accompanying IDM at Comment 5; and *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) (*OCTG from China*), and accompanying IDM at Comment 14.

<sup>279</sup> See, e.g., *Resin from China* IDM at 57-58.

<sup>280</sup> See, e.g., *Reiner Brach GmbH & Co., KG v. United States*, 206 F. Supp. 2d 1323, 1334 (CIT 2002).

<sup>281</sup> See *Resin from China* IDM at 57.

<sup>282</sup> *Id.*

<sup>283</sup> See *Flanges from India* IDM at 27-30.

- Changfeng does not cite any legal authority for its argument that Commerce should apply facts available without adverse inference. Changfeng's argument against AFA is unavailing because it is inconsistent with the AFA statute, as well as judicial and Commerce precedent.
- Changfeng's argument, that the unreported bank financing should have been accepted as minor corrections because Changfeng properly reported hundreds of loan payments and the correction was minor in relation to the universe of its reported loans, has no merit. Changfeng acknowledges that its mistake affects an entire type of financing (bank acceptance notes redeemed before maturity). Thus, Changfeng's error was methodological in nature and was properly rejected as new information.
- Changfeng tries to assert its own judgement concerning the nature of its error over the broad discretion afforded to Commerce to make that determination itself.
- Changfeng claims the amount of interest actually paid on unreported financing represents a small percentage of POI net sales revenue and argues that this would have a small impact on the margin. The alleged impact of Changfeng's error has no relevance to the AFA determination, and even if it did, Changfeng has no evidence to quantify the impact. The relevant figure here is the difference between what Changfeng actually paid and what it should have paid without the preferential government policy.
- Because of missing information, it is impossible for Commerce to know the true margin impact of Changfeng's unreported POI loan benefits.

*Changfeng's Case Brief*<sup>284</sup> and *Rebuttal Brief*<sup>285</sup>

- Changfeng submitted a minor correction that it had inadvertently failed to report interest paid on bank acceptance notes redeemed with banks before maturity. Commerce refused to accept this information, but it should have accepted it.
- Changfeng properly reported hundreds of loan payments. Changfeng inadvertently failed to report interest paid on one particular type of finance, bank acceptance notes redeemed before maturity. The correction was minor in relation to the universe of reported loans.
- Even though it refused the bank acceptance not information, Commerce can nonetheless use fact available to determine the universe of underreported loan interest expenses. Commerce reconciled Changfeng's loans. To reconcile the loan interest to the income statement, the total bill acceptance discount interest was listed at page 47 of Verification Exhibit 9. The interest expense represents only a small portion of POI net sales revenue and demonstrates the small impact of this interest on the margin. Commerce could include the average or highest calculated benefit from a loan and add that benefit as an inference to account for the bill acceptance discount interest. Otherwise, Commerce could use the interest figure and make an inference that the interest applies to the average or largest loan figure on record with a period of 365 days and calculate a benefit.
- Changfeng's minor error did not impede Commerce's ability to analyze and verify its loans, as petitioners assert, and AFA is not warranted under the circumstances.
- Changfeng discovered the error preparing for verification and attempted to submit it as a minor correction. The error was minor in relation to the universe of reported loans.

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<sup>284</sup> See Changfeng Case Brief at 4-5.

<sup>285</sup> See Changfeng Rebuttal Brief at 4-5.

**Commerce’s Position:** We agree with Southwire, and we are applying partial AFA to Changfeng’s policy loans in this final determination because at verification we discovered that Changfeng did not timely report interest paid on bank acceptance notes redeemed with Chinese banks before maturity.

The CVD Questionnaire clearly instructs respondents to report all financing outstanding at any point during the POI, including, but not limited to, interest expenses on bank promissory notes, invoice discounting, and factoring of accounts receivable.<sup>286</sup> We reiterated this request in the first section III supplemental questionnaire, asking Changfeng to “{a}dditionally, please report any and all forms of financing outstanding during the POI, including any invoice and bills discounting, regardless of whether it is from a bank.”<sup>287</sup> Changfeng stated that it “has reported all forms of financing except the money borrowed from individuals in the loans chart. Changfeng understands that the financing from individuals has nothing to do with the GOC.”<sup>288</sup>

At verification, we discovered that Changfeng did not report interest paid on bank acceptance notes redeemed with Chinese banks before maturity. Changfeng officials explained that customers paid Changfeng with bank acceptance bills, and Changfeng cashed in these bills with Chinese bank before maturity. The unreported bills consisted of interest paid by Changfeng to a Chinese bank. We informed the company that we could not accept information related to these bills as this was new information.<sup>289</sup>

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 of if 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. Here, Changfeng did not timely report all of its financing that was outstanding during the POI (regardless of whether it was from a bank) in spite of being provided two opportunities to do so.<sup>290</sup> While Changfeng tried to present the missing financing as a minor correction at verification, Commerce properly rejected this information.<sup>291</sup> The statute does not require Commerce to provide a respondent with limitless opportunities to correct the record, especially in the context of verification.<sup>292</sup> The purpose of verification is to ascertain the accuracy and completeness of information *previously* submitted, not to collect new factual information for which no adequate time remains for analysis or comment.<sup>293</sup>

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<sup>286</sup> See Initial CVD Questionnaire at section III, page 8.

<sup>287</sup> See Commerce’s February 19, 2019, Section III Supplemental Questionnaire at 6.

<sup>288</sup> See Changfeng’s March 5, 2019, Supplemental Questionnaire Response at 9.

<sup>289</sup> See Changfeng Verification Report at 2-3.

<sup>290</sup> See Changfeng’s February 5, 2019, Questionnaire Response at 9; and Changfeng’s March 5, 2019, Supplemental Questionnaire Response at 8-9.

<sup>291</sup> See Changfeng Verification Report at 2-3 (“We informed the company that we could not accept information related to these bills as this was new information.”).

<sup>292</sup> See *Nippon Steel* at 53 (citing *Gerber Food(Yunnan) Co. v. United States*, 491 F. Supp. 2d 1326, 1336 (CIT 2007)).

<sup>293</sup> See, e.g., *Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes from the People’s Republic of China*, 78 FR 70918 (November 27, 2013), and accompanying IDM at Comment 7; see also *Marsan*

The deadlines for providing factual information, as delineated in 19 CFR 351.301, are in place well in advance of verification and thereby serve to provide Commerce sufficient time to review and analyze information provided by interested parties. Therefore, it is critical to Commerce's efficient administration of these proceedings that parties provide the necessary information by the established deadlines or timely request an extension of such deadlines. The CAFC has upheld Commerce's discretion to reject or refuse to consider information that is submitted late in the proceeding.<sup>294</sup> Commerce's enforcement of the AFA provision of the statute under these circumstances is necessary to ensure that "the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>295</sup>

Changfeng did not act to the best of its abilities to comply with Commerce's request for information about its financing. The CAFC in *Nippon Steel* provided an explanation of the "failure to act to the best of its ability," stating that the ordinary meaning of "best" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do.<sup>296</sup> The CAFC acknowledged, however, that while there is no willfulness requirement, "deliberate concealment or inaccurate reporting" would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.<sup>297</sup> Compliance with the "best of its ability" standard is determined by assessing whether a respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation.<sup>298</sup> The CAFC further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.<sup>299</sup> Commerce's enforcement of the AFA provision of the statute under these circumstances is necessary to ensure that "the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>300</sup>

Changfeng asserts we could use facts available to determine the universe of underreported loan interest expenses. In addition, Changfeng asserts that the interest expense represents only a small portion of POI net sales revenue and demonstrates the small impact of this interest on the margin. We disagree. What is important here is the total loan amount, not the amount of interest paid, because the amount of interest paid has no relation to the amount of financing outstanding. For instance, if a company had \$100 million in financing and it paid no interest or interest at a very low rate (well below the benchmark interest rate), then its interest expense would be very small even if its loan amount is large. Without the total loan amount, we are unable to calculate a benchmark interest amount, and we are missing the total loan amount because Changfeng withheld this information prior to verification.

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*Gida Sanayi Ve Ticaret A.S. v. Unites States*, 931 F. Supp. 2d 1258, 1280 (CIT 2013) (agreeing that "{t}he purpose of verification is not to collect new information").

<sup>294</sup> See *Dongtai Peak Honey Industry Co., Ltd. v. United States of America*, 777 F. 3d 1343 (Fed. Cir. 2015).

<sup>295</sup> See SAA at 870.

<sup>296</sup> See *Nippon Steel* at 1373, 1380-1382.

<sup>297</sup> *Id.*

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> See SAA at 870.

As discussed in further detail, in the section “Use of Facts Otherwise Available and Adverse Inferences,” we find that Changfeng failed to provide necessary information regarding its use of Policy Loans to the Aluminum Wire and Cable and that as a result, necessary information with respect to the policy loans is missing. Further, we find that Changfeng withheld this information, failed to provide this information by the deadline for its submission, and significantly impeded the proceeding with respect to this issue. Thus, in accordance with sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act, we determine that the use of FA is warranted in determining the countervailability of Policy Loans received by Changfeng. Moreover, in light of the foregoing, we find that Changfeng failed to act to the best of its abilities in providing requested information that was in its possession, and that the application of AFA is warranted, pursuant to 776(b) of the Act, in determining benefit.

### IX. RECOMMENDATION

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

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

10/18/2019

X



Signed by: Carole Showers

Carole Showers  
Executive Director, Office of Policy  
Policy & Negotiations  
Enforcement and Compliance