



C-570-978  
Administrative Review  
POR: 1/1/2017-12/31/2017  
**Public Document**  
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December 17, 2019

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

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

SUBJECT: Decision Memorandum for the Final Results of the 2017  
Countervailing Duty Administrative Review of High Pressure  
Steel Cylinders from the People's Republic of China

## I. SUMMARY

There is one respondent in the 2017 administrative review of the countervailing duty (CVD) order on high pressure steel cylinders (steel cylinders) from the People's Republic of China (China): Beijing Tianhai Industry Co., Ltd. (BTIC). For the final results, we analyzed the case and rebuttal briefs submitted by interested parties in this administrative review. As a result of our analysis, we made certain changes to the *Preliminary Results*<sup>1</sup> and determine that BTIC received countervailable subsidies at the rate of 28.54 percent *ad valorem* during the period of review (POR). We address the issues raised in the "Analysis of Comments" section below.

## II. BACKGROUND

On August 14, 2019, the Department of Commerce (Commerce) published the *Preliminary Results* for this review. We invited parties to comment on the *Preliminary Results*. On September 20, 2019, we received timely filed case briefs from the Government of China (GOC) and BTIC.<sup>2</sup> We received a rebuttal brief from Norris Cylinder Company (the petitioner) on

<sup>1</sup> See *High Pressure Steel Cylinders from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2017*, 84 FR 40393 (August 14, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> See BTIC's Letter, "BTIC Administrative Case Brief: Sixth Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China (C-570-978)," dated September 20, 2019 (BTIC's Case Brief); see also GOC's Letter, "GOC Administrative Case Brief: Sixth Administrative Review



September 25, 2019.<sup>3</sup> BTIC requested that Commerce conduct a hearing in this review on September 11, 2019.<sup>4</sup> On October 4, 2019, BTIC withdrew its hearing request.<sup>5</sup>

Below is the complete list of the issues raised in this administrative review for which we received comments:

- Comment 1: How to Use the Available Price Data to Calculate the Benchmark for Seamless Tube Steel
- Comment 2: Whether to Recalculate the Ocean Freight Benchmark to Include BTIC's Descartes Ocean Freight Data
- Comment 3: Whether Commerce Should Use BTIC's Consolidated Sales in Attributing Subsidies Received by Tianjin Tianhai and Langfang Tianhai
- Comment 4: Whether Commerce Should Modify its Calculation of the Loan Benchmark
- Comment 5: Whether Commerce Should Modify its Calculation of its Electricity Rates
- Comment 6: Whether Commerce Should Modify its Calculation of the Grant for Production Base Construction for Gas Storage and Transportation Equipment
- Comment 7: Whether Commerce Improperly Rejected BTIC's Customer Declarations as Untimely New Factual Information
- Comment 8: Whether Commerce Should Change Its Determination with Regard to the Export Buyer's Credit Program

### III. SCOPE OF THE ORDER

The merchandise covered by this order is seamless steel cylinders designed for storage or transport of compressed or liquefied gas ("steel cylinders"). High pressure steel cylinders are fabricated of chrome alloy steel including, but not limited to, chromium-molybdenum steel or chromium magnesium steel, and have permanently impressed into the steel, either before or after importation, the symbol of a U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration ("DOT")-approved high pressure steel cylinder manufacturer, as well as an approved DOT type marking of DOT 3A, 3AX, 3AA, 3AAX, 3B, 3E, 3HT, 3T, or DOT-E (followed by a specific exemption number) in accordance with the requirements of sections 178.36 through 178.68 of Title 49 of the Code of Federal Regulations, or any subsequent amendments thereof. High pressure steel cylinders covered by this order have a water capacity up to 450 liters, and a gas capacity ranging from 8 to 702 cubic feet, regardless of corresponding service pressure levels and regardless of physical dimensions, finish or coatings.

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of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China (C-570-978)," dated September 20, 2019 (GOC's Case Brief).

<sup>3</sup> See Petitioner's Letter, "High Pressure Steel Cylinders from the People's Republic of China -Rebuttal Brief of Norris Cylinder Company," dated September 25, 2019 (Petitioner's Rebuttal Brief).

<sup>4</sup> See BTIC's Letter, "BTIC Hearing Request: 2017 Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China (C-570-978)," dated September 13, 2019.

<sup>5</sup> See BTIC's Letter, "BTIC Withdrawal of Hearing Request: 2017 Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China (C-570-978)," dated October 4, 2019.

Excluded from the scope of this order are high pressure steel cylinders manufactured to U-ISO-9809-1 and 2 specifications and permanently impressed with ISO or UN symbols. Also excluded from the order are acetylene cylinders, with or without internal porous mass, and permanently impressed with 8A or 8AL in accordance with DOT regulations.

Merchandise covered by the order is classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under subheading 7311.00.00.30. Subject merchandise may also enter under HTSUS subheadings 7311.00.00.60 or 7311.00.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

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

Commerce relied on “facts otherwise available,” including adverse facts available (AFA) for several findings in the *Preliminary Results*.<sup>6</sup> Commerce made no changes to its use of AFA.

#### **V. SUBSIDIES VALUATION INFORMATION**

##### **A. Allocation Period**

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

##### **B. Attribution of Subsidies**

Commerce made no changes to the attribution methodologies used in the *Preliminary Results*.<sup>8</sup>

##### **C. Denominators**

Commerce made no changes to the sales values used in the calculation of countervailable subsidy rates for the various programs discussed below.<sup>9</sup>

#### **VI. BENCHMARKS AND DISCOUNT RATES**

Interested parties raised issues with respect to the calculation of the loan interest rate benchmarks, the ocean freight component of the benchmark for evaluating the adequacy of remuneration for the provision of seamless tube steel, and the benchmark used in the Provision of Electricity for Less Than Adequate Remuneration (LTAR). In response to the comments received from interested parties, we recalculated these benchmarks; *see* Comments 2, 4, and 5 below.

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<sup>6</sup> *See Preliminary Results* PDM at 10-12.

<sup>7</sup> *Id.* at 3-4.

<sup>8</sup> *Id.* at 4-5.

<sup>9</sup> *Id.* at 5.

## VII. ANALYSIS OF PROGRAMS

We made certain changes to our *Preliminary Results* with respect to the methodology used to calculate the subsidy rates for certain programs. For further details, *see* the specific program section below and the final results calculation memorandum.<sup>10</sup> For descriptions, analyses, and calculation methodologies for these programs, *see* the *Preliminary Results*. Except where noted below, no other issues were raised regarding these programs in the parties' case briefs.

### A. Programs Determined to be Countervailable

#### 1. Pension Fund Grants

We made no changes to this program.<sup>11</sup> BTIC's final subsidy rate for this program is 0.06 percent *ad valorem*.

#### 2. Provision of Hot-Rolled Steel for LTAR

We made no changes to this program.<sup>12</sup> BTIC's final subsidy rate for this program is 0.02 percent *ad valorem*.

#### 3. Provision of Seamless Tube Steel for LTAR

Based on comments from the parties, we modified the ocean freight component of the benchmark used in the calculation of the benefit under this program, which we address below under Comment 2. BTIC's final subsidy rate for this program is 20.46 percent *ad valorem*.

#### 4. Provision of Standard Commodity Steel Billets and Blooms, and High-Quality Chromium Molybdenum Alloy Steel Billets and Blooms for LTAR

Based on comments from the parties, we modified the ocean freight component of the benchmark used in the calculation of the benefit under this program, which we address below under Comment 2. BTIC's final subsidy rate for this program is 0.24 percent *ad valorem*.

#### 5. Provision of Electricity for LTAR

Based on comments from the parties, we modified the benchmark that we used to calculate the benefit under this program, which we address below under Comment 5. BTIC's final subsidy rate for this program is 1.32 percent *ad valorem*.

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<sup>10</sup> *See* Memorandum, "Calculations for the Final Results of Review; Beijing Tianhai Industry Co., Ltd.," dated concurrently with this memorandum (BTIC Calculation Memorandum).

<sup>11</sup> *Id.* at 27.

<sup>12</sup> *Id.* at 27-30.

### 6. Preferential Loans for SOEs

Based on comments from the parties, we modified the benchmark that we used to calculate the benefit under this program, which we address below under Comment 4. BTIC's final subsidy rate for this program is 2.08 percent *ad valorem*.

### 7. Export Credit from Export-Import Bank of China: Export Buyer's Credit

Because we have selected the Preferential Loans from SOEs as the most similar program in this proceeding in accordance with the AFA hierarchy, we are revising the final results for the Export Buyer's program to be consistent with the revised rate for the Preferential Loans to SOEs program. BTIC's final subsidy rate for this program is 2.08 percent *ad valorem*.

### 8. Other Subsidy Programs

We made a change in the calculation of the rate for the grant provided under the program for Production Base Construction for Gas Storage and Transportation, which we discuss under Comment 6. The list of other subsidies below reflects the change resulting from this correction.

	<b>Program Name</b>	<b>Recipient Company</b>	<b>Subsidy Rate</b>
1	Beijing Municipal Commission Promotion Funds	BTIC	0.02%
2	Beijing Environmental Protection Bureau old car phase-out subsidy	BTIC	0.01%
3	70MPa Hydrogen Bottle Development Project	BTIC	0.17%
4	Subsidies for Science and Technology Innovation Team	Jingcheng Holding	0.03%
5	Vocational skill training subsidy	Tianjin Tianhai	0.05%
6	Industrial Enterprise Economic Growth Award Fund	Tianjin Tianhai	0.01%
7	Enterprise Discontinued Subsidy	Langfang Tianhai	0.15%
8	Langfang Development Zone 2016 Excellent Enterprise Contribution Award	Langfang Tianhai	0.02%
9	Funds for the Operation of the State-Owned Capital in 2017	BTIC	0.22%
10	Industry Adjustment Funds transferred by Beijing Switchgear Factory	Jingcheng Holding	0.07%
11	Refund of Land Use Right Assignment Fees from Finance Authority for the Relocation of Jingcheng Heavy Industry Co., Ltd.	Jingcheng Holding	0.09%

12	Refund of Land Use Right Assignment Fees for Beijing Switchgear Factory	Jingcheng Holding	0.08%
13	Refund of Land Use Right Assignment Fees for Factories Located at Chaoyang District	Jingcheng Holding	0.09%
14	Project of Production Base Construction for Gas Storage and Transportation Equipment	BTIC	1.27%

## B. Programs Determined Not to Confer a Measurable Benefit During the POR

For these final results of review, we continue to find that the following programs did not confer a measurable benefit for the mandatory respondent during the POR:

- *Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries*
- *1% VAT reduction for sale of used fixed assets (purchased before 2009)*
- *2016 Beijing Municipal Bureau of Finance Holiday Sympathy to Employees Who Live in Difficult Condition*
- *A One-time Award to Beijing Institute of Technology*
- *Advanced Unit Bonus of Standardization of Production Safety*
- *Award for Beijing industry and trade technician college*
- *Award for National Unity from State-owned Assets Supervision and Administration Commission*
- *Award for Tax Sources of 2012*
- *Awarding for cleaner production*
- *Awards for enterprises ensuring industry growth in Beijing*
- *Bankruptcy Fund transferred by Beijing Insulation Materials Factory*
- *Beijing Science and Technology Star Award*
- *Cleaner production assessment expense allowance*
- *Coal -fired boilers improvement grants allocated by Environmental Sanitation Bureau*
- *College student employment subsidy*
- *Compensation for Enterprise Development Fund*
- *Compensation Fund for Termination Labor Relations for Beijing First Machine Tool Factory*
- *Compensation Funds for Rearranged Workers of Beijing First Machine Tool Factory*
- *Compensation Funds for Rearranged Workers Turned over by Beijing Switchgear Factory*
- *Disabled employment subsidies*
- *Discount Interest from Beijing bureau of promotion*
- *Discount interest payments for production project of automotive aluminum compound cylinders*
- *Employment Stabilization Subsidies*
- *Employment Stabilization Subsidies for subsidiaries*
- *Employment Stabilization subsidies received on behalf of pilot enterprises*

- *Energy audit award of Beijing energy conservation and environmental protection center*
- *Energy-saving subsidies*
- *Enterprise Development Fund*
- *Equipment subsidy*
- *Excellent talents training subsidies from Municipal Organization Department*
- *Finance Grants for Adjustment and Withdrawal of Enterprises in Disadvantages*
- *Finance Grants for Bankruptcy of Subsidiaries*
- *Financial subsidy income*
- *First Secretary living allowance of State-owned Assets Supervision and Administration Commission*
- *Foreign Trading Development Fund*
- *Fund of implementing intellectual property policy*
- *Funds for Bankruptcy*
- *Funds from Labor Bureau*
- *Funds from Social Security Center*
- *Golden Sun Project Subsidies from Ministry of Finance*
- *Golden Sun Project Subsidies from Municipal Finance Bureau*
- *Government subsidies for Beijing's foreign trade and economic cooperation*
- *Government subsidies of Anti-dumping and Anti-subsidy*
- *Government subsidies of Double Independent enterprises*
- *Government subsidies of international market development of small-and-medium-sized enterprises and Double Independent enterprises*
- *Grants for Beijing Insulation Materials Factory*
- *Grants for Chief technician studio of the Trade Technician College from Beijing Human Resources and Social Security Bureau*
- *Hidden dangers rectification fund*
- *Housing allowance allocated by Bureau of Retired Veteran Cadres*
- *Housing allowance for Vacating Houses*
- *Housing Subsidies for Electrical and Mechanical Research Institute Due to its Transformation*
- *Housing subsidies for nonstandard apartments and non-matched houses of difficult municipal enterprise*
- *Implementation reward of intellectual property policy*
- *Incentive for HR department*
- *Incentive funds of eliminating yellow-label vehicles*
- *Incentives for technical innovation*
- *Industrial enterprise economic growth award fund*
- *Industry Adjustment Fund for Beijing Forklift Factory*
- *Industry Adjustment Fund for Beijing Heavy-duty Electric Factory*
- *Industry Adjustment Fund for Beijing Switchgear Factory*
- *Industry Adjustment Fund for Beiren Group*
- *Industry Adjustment Fund for Motor General Factory*
- *Industry Adjustment Fund Transferred by Beiren Group*
- *Industry Adjustment Funds from Beijing Second Machine Tool Factory*

- *Information fees from Personnel Bureau*
- *Information fees of profession price from Labor Bureau*
- *Institute of Chinese Academy of Sciences (Science and Technology Project)*
- *Job Stabilization Subsidy*
- *Municipal-level senior research class funds of Beijing Human Resources and Social Security Bureau (Jingcheng environmental protection cultural and creative industry)*
- *Pacesetter incentive payments of Municipal State-owned Assets Supervision and Administration Commission*
- *Patent funding of Chaoyang District*
- *Production project discount interest payments of aluminum liner*
- *Project special funds from Ministry of Science and Technology*
- *Public Finance Budget Funds*
- *Refund of Land Use Right Assignment Fees for Beijing Electric Mechanical General Factory*
- *Refund of Land Use Right Assignment Fees for Beiren Group*
- *Relocation Funds for Veteran Cadres*
- *Returned Fund from Taxation Administration*
- *Return of Enterprise Income Tax for Purchasing Equities of Beijing Huade Hydraulic Industrial Co., Ltd.*
- *Scientific Research Subsidy for 3D printing project*
- *Special Fund from Finance Authorities*
- *Service Charge for Tax Collection*
- *Service Charge of Tax Collection from 2012-2014*
- *Short-term export credit insurance premium support funds • Short-term export credit insurance premium support funds*
- *Social insurance subsidies for SMEs that recruit graduates in the period of job-hunting*
- *Special fund grants for Energy-saving of Binhai New District*
- *Special funds of Energy-saving and emission reduction*
- *Special personnel and labor supporting funds for Beijing Jingcheng Environment Protection Co. Ltd.*
- *Special subsidies for SMEs development*
- *Special subsidies of energy-saving development*
- *Special-purpose bonus*
- *Subsidies for Electrical and Mechanical Quality Monitoring Center • Subsidies for enterprises that have resolved excess steel capacity*
- *Subsidies for science and technology innovation projects of 2011 from Municipal Finance Bureau*
- *Subsidies for scrapped vehicles*
- *Subsidies of guiding the development of energy saving of Chaoyang District*
- *Subsidy for Beijing Insulation Materials Factory from Organization Department*
- *Supporting Fund for Talent*
- *Supporting Funds for Small-and-Medium-Sized Enterprises*
- *Survey fee from Population and Family Planning Commission*

- *Sympathy money of Beijing Veteran Cadres Bureau for the 70th anniversary of the victory of the Anti-Japanese War*
- *Talent Funds allocated by Beijing municipal committee of the communist party of China*
- *The National Development and Reform Commission, The withdrawal subsidies of the second batch polluting enterprises adjustment*
- *Tianjin 8.12 explosion infrastructure (doors, windows, glass, etc.) subsidies*
- *Tianjin 8.12 explosion interest subsidy*
- *VAT relief for service fees of tax rebate software*
- *VAT subsidy payments of Finance bureau of Langfang Development Zone*
- *Vocational Education and Preschool Education Subsidies for subsidiaries*
- *Vocational skill training and talent training benefit plan*

### **C. Programs Determined to be Not Used During the POR**

Commerce determines that the following programs were not used by BTIC during the POR:

1. *Provision of Land and/or Land Use Rights to SOEs at LTAR*
2. *“Two Free, Three Half” Program for Foreign-Invested Enterprises (FIEs)*
3. *Enterprise Income Tax Rate Reduction in the Tianjin Port Free Trade Zone*
4. *Subsidies Provided in the Tianjin Binhai New Area (TBNA) and the Tianjin Economic and Technological Development Area*
5. *Beijing Industrial Development Fund*
6. *Loan and Interest Forgiveness for SOEs*
7. *The State Key Technology Renovation Project Fund*
8. *Circular on Issuance of Foreign Trade Development Support Fund*
9. *Rebates for Export and Credit Insurance Fees*
10. *GOC and Sub-Central Grants, Loans, and Other Incentives for Development of Famous Brands and China Top World Brands*
11. *Preferential Lending to Steel Product Producers Under the Ninth Five-Year Plan*
12. *Treasury Bond Loans*
13. *Preferential Lending to Steel Cylinders Producers and Exporters Classified as “Honorable Enterprises”*
14. *Income Tax Reductions for Export-Oriented FIEs*
15. *Preferential Tax Programs for FIEs that are Engaged in Research and Development*
16. *Income Tax Reduction for FIEs that Reinvest Profits in Export-Oriented Enterprises*
17. *Local Income Tax Exemption and reduction Programs for “Productive” FIEs*
18. *Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment*
19. *VAT Refunds for FIEs Purchasing Domestically Produced Equipment*
20. *VAT Exemptions for Central Region*
21. *Provision of Welded Tube Steel for LTAR*
22. *Export Credit from Export-Import Bank of China: Export Sellers’s Credit*

## VIII. ANALYSIS OF COMMENTS

### Comment 1: How to Use the Available Price Data to Calculate the Benchmark for Seamless Tube Steel

#### *BTIC Comments*

- Commerce incorrectly calculated the benchmark for seamless tube steel as a simple average of the monthly average export prices of seamless steel tube from Global Trade Atlas (GTA), Trade Data Monitor (TDM), Steel Orbis, CIS Database, Metal Expert and UN Comtrade.<sup>13</sup>
- To ensure that prices from the same original source are not triple-counted, Commerce should calculate the steel tube benchmark by first calculating a weighted average monthly unit price of the combined GTA, UN Comtrade, and TDM data and then simple average these prices with the monthly prices from Steel Orbis, CIS Database, and Metal Expert.<sup>14</sup>
- GTA, UN Comtrade and TDM all obtain HTS export data from the same source in each country.<sup>15</sup>
- While most of the data within TDM, GTA, and UN Comtrade are identical, there are slight differences due to the inclusion or exclusion of certain countries by the different services, which results in a different average unit value (AUV) for each source.<sup>16</sup>

#### *' Petitioner's Rebuttal Comments:*

- Commerce should continue to calculate the benchmark for seamless tube by averaging values from all six sources submitted by parties. Averaging all sources provides a "world market price" in accordance with regulation 19 CFR 351.511(a)(2)(ii).<sup>17</sup>
- BTIC's request that Commerce weight-average the values from the three most comprehensive sources of world data (UN Comtrade, Global Trade Atlas, and Trade Data Monitor) would result in data taken from 40 or more countries receiving only 25 percent of the weight of the benchmark while the data taken from three countries receives 75 percent of the weight in calculating the benchmark.<sup>18</sup>
- BTIC's argument, that using data from UN Comtrade, GTA, and the TDM triple counts price data because the three publications use the same underlying source, overlooks the fact that these sources are broad and comprehensive and are, therefore, a much better proxy for world market prices than the limited sources offered by BTIC.<sup>19</sup>
- Any change in methodology should include country-by-country weight averaging of all available data supplied by parties to arrive at a data point for each reporting country, and those separate data points would then be arithmetically averaged to arrive at a benchmark figure.<sup>20</sup>

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<sup>13</sup> See BTIC's Case Brief at 3-4.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> See Petitioner's Rebuttal Brief at 3.

<sup>18</sup> *Id.* at 3-4.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> *Id.*

**Commerce's Position:** For these final results of review, we continue to use the data from all six benchmark sources submitted by the parties. When there is more than one commercially available world market price, Commerce is directed to average such prices to the extent practicable in accordance with 19 CFR 351.511(a)(2)(ii). Here, we received world price data from six commercial sources and, in accordance with the above regulation, calculated an average of the monthly world export prices from all sources.

When deriving a "market-determined price," Commerce takes into account the source, nature, and completeness of the available data. While BTIC claims that UN Comtrade, GTA, and TDM obtain their benchmark data from the identical source, each country's customs export data, and that treating the data as three separate prices "triple counts" the data, there is nothing in the submissions indicating that the three publications obtain their data from the same source. The petitioner states that it retrieved monthly export data for seamless tube steel using the same HTS code from each of these publications but does not provide evidence indicating that the ultimate source of the data is the same, *i.e.* whether it is from each country's government records or another source. Furthermore, a sizable portion of the country datasets are different between sources. Therefore, we consider the data to be from different sources and are not weight-averaging them together. Secondly, we disagree with BTIC's argument that we should calculate a weighted average monthly price from the combined UN Comtrade, GTA, and TDM data and then simple-average the result with the data from Steel Orbis, Metal Expert, and CIS Database. In this regard, we agree with the petitioner that performing the calculation as BTIC suggests would give undue weight in the calculation to three sources representing significantly fewer data points. We find that this calculation would give data taken from 40 or more countries only 25 percent of the benchmark weight and data taken from three countries 75 percent of the weight. Given the statements above regarding differences in the datasets, we find it would be inappropriate in this instance to first weight-average the data from UN Comtrade, GTA, and TDM, thereby giving them less weight in the overall calculation.

To support its argument that data from these three sources should be weight-averaged together, BTIC cites to *Mechanical Tubing from the PRC*,<sup>21</sup> in which Commerce stated that "{b}y using the weighted-average GTA unit prices in this manner, and by continuing to include the other, non-GTA data on the record, we maintain the most robust world market price possible that reflects the spectrum of prices available under market principles." Here, BTIC's argument is out of context. In *Mechanical Tubing from the PRC*, the GTA benchmark for hot rolled steel was weight-averaged to obtain the monthly average unit value, because GTA data provides transaction volumes, and then simple-averaged with benchmark data provided by the respondent that did not contain transaction volumes. Here, we are doing the same. We are taking individually weight-averaged GTA, UN Comtrade, and Trade Data Monitor unit values and simple-averaging each of these export prices with prices from the remaining sources. BTIC's argument differs from the discussion in *Mechanical Tubing from the PRC* in that BTIC requests that we weight-average data from UN Comtrade, GTA, and TDM across all three sources and simple average the result with data from the three limited sources. Whereas, in

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<sup>21</sup> See *Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 58175 (December 11, 2017), and accompanying Issues and Decision Memorandum (IDM) at Comment 4.

*Mechanical Tubing from the PRC*, we used the weight-averaged GTA data, but did not weight-average across sources.

We also disagree with the petitioner that, if we decide not to simple-average the data from all six sources, we should disaggregate the data and weight average by country using each source for which we have data on the record. Because we do not have transaction volumes for Steel Orbis, Metal Expert, and CIS Database, we cannot accurately weight-average by country.

Therefore, because Commerce is directed to use all commercially available data that are considered to be reliable and comprehensive, and the parties' submissions do not demonstrate that any of the publications acquired their data from the same source or are identical to each other, for these final results of review, we continue to simple-average data from all six sources.

## **Comment 2: Whether to Recalculate the Ocean Freight Benchmark to Include BTIC's Descartes Ocean Freight Data**

### ***BTIC's Comments:***

- Commerce incorrectly used only the data provided by the petitioner for ocean freight from Descartes and did not include the data provided by BTIC from Descartes<sup>22</sup>.
- Commerce should include in the ocean freight component of the benchmarks BTIC's Descartes data from Seattle to Shanghai, Long Beach to Shanghai, and Norfolk to Huagpu.<sup>23</sup>
- Commerce incorrectly assumed that all data reflected shipment of 20-foot containers. However, the prices the petitioner submitted for New York to Qingdao were for 40-foot containers.<sup>24</sup>
- Finally, Commerce incorrectly used the "total charges" figure in the petitioner's Descartes freight data in which some prices include charges for "Bunker Surcharge." In some cases, this surcharge is more than the ocean freight charge. There is no evidence on the record to indicate what this surcharge represents. For this reason, it should not be included in the ocean freight calculation.<sup>25</sup>

**Commerce's Position:** BTIC's freight documentation does not specify the input to which the freight charges apply. Therefore, we are not including this data in the calculation of the freight component of the benchmark calculation and will continue to rely solely on the ocean freight data provided by the petitioner.

However, we agree with BTIC that we erred in calculating ocean freight for shipping seamless tube steel from New York to Qingdao, China. The freight calculation should be based on using a 40-foot container according to documentation submitted by the petitioner.<sup>26</sup> We revised our calculation. Likewise, we agree with BTIC that, in calculating the ocean freight component of

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<sup>22</sup> See BTIC's Case Brief at 8.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

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

<sup>26</sup> See Petitioner's Letter, "Benchmark Data Submission of Petitioner Norris Cylinder Company," dated March 22, 2019 at Exhibit 9.

the benchmark, Commerce mistakenly included the “bunker surcharge.” For these final results of review, we recalculated the ocean freight component of the benchmark exclusive of additional surcharges.

Further, in reviewing the ocean freight calculation for steel billets and blooms, we found that we incorrectly calculated the average per unit ocean freight charge. For these final results of review, we revised this calculation.<sup>27</sup>

**Comment 3: Whether Commerce Should Use BTIC’s Consolidated Sales in Attributing Subsidies Received by Tianjin Tianhai and Langfang Tianhai**

***BTIC’s Comments:***

- In the *Preliminary Results*, Commerce incorrectly calculated the subsidy rate for each program Tianjin Tianhai and Langfang Tianhai used by using the sum of BTIC’s unconsolidated total sales, Tianjin Tianhai’s total sales, and Langfang Tianhai’s total sales as the denominator.<sup>28</sup>
- By using BTIC’s unconsolidated sales, Commerce failed to capture all of the sales to which the subsidies should be attributed and overstated the subsidy rate for these programs.
- For the final results of review, Commerce should use BTIC’s consolidated sales which includes Tianjin Tianhai’s and Langfang Tianhai’s sales and which is already net of intercompany sales.<sup>29</sup>
- Commerce’s regulations, at 19 CFR 351.525(b)(6)(iii), address the attribution of subsidies received by a parent company including parent companies that produce subject merchandise. In these circumstances the regulation states that “the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries.” This is consistent with Commerce’s explanation in the CVD investigation on Coated Paper.<sup>30</sup>

**Commerce’s Position:** With regard to attributing to BTIC subsidies received by Tianjin Tianhai and Langfang Tianhai, cross-owned producers of subject merchandise, we are guided by 19 CFR 351.525(b)(6)(ii) in attributing subsidies received by BTIC’s cross-owned producers of subject merchandise. According to 19 CFR 351.525(b)(6)(ii), if two (or more) corporations with cross-ownership produce the subject merchandise, Commerce will attribute the subsidies received by one or more of the corporations to the products produced by all cross-owned corporations. Therefore, Commerce will continue to attribute the subsidies received by either Tianjin Tianhai or Langfang Tianhai to the sum of the sales of BTIC, Tianjin Tianhai, and Langfang Tianhai, less intercompany sales.

BTIC’s reliance on 19 CFR 351.525(b)(6)(iii) is misplaced, as this regulation addresses the attribution to a respondent of subsidies received by a parent or holding company. Neither Tianjin Tianhai nor Langfang Tianhai is a parent or holding company. As such, it would be

<sup>27</sup> See BTIC Calculation Memorandum.

<sup>28</sup> See BTIC’s Case Brief at 9.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*, citing *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010), and accompanying IDM at Comment 35.

incorrect to attribute to BTIC subsidies received by Tianjin Tianhai and Langfang Tianhai in the manner suggested by BTIC.

#### **Comment 4: Whether Commerce Should Modify its Calculation of the Loan Benchmark**

##### ***BTIC's Comments:***

- Commerce incorrectly calculated the benchmark interest payments for preferential loans using 360 days instead of 365 days.
- There is nothing on the record which states that 360 days should be used, and thus, by default, a 365-day year should be used to calculate interest benchmark payments.<sup>31</sup>

**Commerce's Position:** We agree with BTIC that we should use 365 days rather than 360 days in calculating the benchmark interest payment, as we did in *Aluminum Extrusions*.<sup>32</sup> For the final results, we revised the benefit calculation.

#### **Comment 5: Whether Commerce Used the Appropriate Benchmark for the Calculation of Benefits under the Provision of Electricity for LTAR Program**

##### ***BTIC's Comments:***

- Commerce incorrectly used the “high price” category from Zhejiang as the “normal” category benchmark.<sup>33</sup>
- This same error was made and corrected in the previous review.<sup>34</sup> Consistent with the previous review and other cases, Commerce should use the “Electricity Degree price” from Zhejiang as the normal category.<sup>35</sup>

**Commerce's Position:** We agree with BTIC that we inadvertently used the “High Price” category for the “Normal” price category for Zhejiang Province. For the final results, we are using the “Degree Price” category for Zhejiang Province as the “Normal” category. The GOC's provincial schedules list electricity rates in four categories: “Degree Price,” “Peak Price,” “High Price,” and “Low Price.”<sup>36</sup> Because Zhejiang Province does not identify a price labeled as “Normal,” for the *Preliminary Results* we used the electricity rate that Zhejiang Province labelled “High” as the normal price in our benchmark calculations.

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<sup>31</sup> *Id.* at 11.

<sup>32</sup> See *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 78788 (December 31, 2014) (*Aluminum Extrusions*), and accompanying IDM at Comment 20.

<sup>33</sup> See BTIC's Case Brief at 11.

<sup>34</sup> See *High Pressure Steel Cylinders from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2016, 83 FR 63471 (December 10, 2018) (*HPSC from the PRC, 2016*), and accompanying IDM at Comment 6.

<sup>35</sup> See BTIC's Case Brief at 11.

<sup>36</sup> See GOC's Letter, “GOC Initial CVD Questionnaire Response: Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China, C-570-978,” dated December 6, 2018 (GOC 1QR), at Exhibit II-C-23.

Commerce used the “Degree price” from Zhejiang Province as the normal price in the previous review and in *Aluminum Foil from China*.<sup>37</sup> In most cases, we observed that the Degree price is numerically between the low and high prices, where one would expect the normal price to be located. Therefore, we are using the Degree price as the normal price for Zhejiang Province for these final results in accordance with prior Commerce practice.

In determining the existence and amount of the benefit, Commerce continues to apply AFA to this program in selecting the highest electricity tariff rate for each price category from China’s various electricity schedules.<sup>38</sup> We received no comments on our application of AFA in this regard in the *Preliminary Results*. We agree with BTIC that, after this change, the next highest rate in the normal category for large industrial users is from Hebei North.<sup>39</sup>

**Comment 6: Whether Commerce Should Modify its Calculation of the Grant for Production Base Construction for Gas Storage and Transportation Equipment**

***BTIC’s Comments:***

- Commerce double counted a grant that was received by Jingcheng Holding. The grant was identified twice in the “Other Subsidies-0.5 Test” in the preliminary calculation worksheet as being received by both BTIC and Jingcheng Holding. However, the grant was received only by Jingcheng Holding.<sup>40</sup>

**Commerce’s Position:** In its first supplemental response, BTIC clarified that the grant was initially received by Jingcheng Holding before being transferred to BTIC.<sup>41</sup> Therefore, we have corrected our calculation to ensure that the program is listed only once. In accordance with 19 CFR 351.525(b)(6)(iii), because Jingcheng Holding, a holding company with no plant or export facilities,<sup>42</sup> transferred the grant to BTIC, we are attributing the benefit to BTIC’s consolidated sales.

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<sup>37</sup> See *HSPC from the PRC*, 2016 IDM at Comment 6; see also *Countervailing Duty Investigation of Certain Aluminum Foil from the People’s Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018) (*Aluminum Foil from China*), and accompanying IDM at Comment 22.

<sup>38</sup> See *Preliminary Results* PDM at 12-14.

<sup>39</sup> See GOC 1QR at Exhibit II-C-23.

<sup>40</sup> See BTIC’s Case Brief at 11-12.

<sup>41</sup> See BTIC’s Letter, “BTIC First Supplemental Questionnaire Response: 2017 Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People’s Republic of China (C-570-978),” dated February 19, 2019, at 6.

<sup>42</sup> See BTIC’s Letter, “BTIC Initial CVD Questionnaire Response: 2017 Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People’s Republic of China (C-570-978),” dated December 6, 2018 (BTIC IQR), at 2.

## Comment 7: Whether Commerce Improperly Rejected BTIC's Customer Declarations as Untimely New Factual Information

### **BTIC's Comments:**

- Commerce improperly rejected BTIC's customer declarations as untimely new factual information, explaining that the information was requested in the initial CVD questionnaire. This determination was incorrect for the following three reasons:
  - BTIC submitted similar declarations pursuant to 19 CFR 351.301(c)(5) in the 2016 review. These declarations were not rejected as untimely in the previous review. Commerce's different treatment of the same factual circumstances is arbitrary and capricious and should be reversed. Commerce also accepted similar declarations in the 30-day "benchmark" filing in previous cases, such as *Tool Chests from the PRC*.<sup>43</sup>
  - Commerce's questionnaire does not require BTIC to provide declarations or any documentation from its U.S. customer regarding the non-use of this program. Commerce requests an explanation only of what the respondent did to determine whether its customers used this program; BTIC responded to this question in the questionnaire.
  - Because customer declarations were not specifically required by Commerce, this factual information falls within the category described in 19 CFR 351.301(c)(5) and was timely filed 30 days prior to the *Preliminary Results*.
  - Commerce has accepted similar declarations in the 30-day "benchmark" filings in previous cases, including cases where the petitioners made the same arguments. BTIC points to *Certain Tool Chests and Cabinets from the PRC*, *Certain Aluminum Foil from the PRC*, and *Crystalline Silicon Photovoltaic Cells from the PRC*.<sup>44</sup>

**Commerce's Position:** We find that we correctly rejected the customer declarations submitted with the benchmark submission on July 10, 2019, because they constituted untimely filed factual information. BTIC provided these customer declarations to clarify its response to question M(3) of the initial questionnaire. Question M(3) of Commerce's initial questionnaire, issued on October 16, 2018, states, "{i}f you claim that none of your customers used buyer credits during the POR, please explain in detail the steps you took to determine that no customer used the Buyer Credit Facility."

On December 6, 2018, BTIC responded,

First, the responding companies' affiliated importer, BTIC America Corporation, did not apply for, use or benefit from this program.

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<sup>43</sup> See *Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 56582 (November 29, 2017), and accompanying IDM.

<sup>44</sup> See BTIC's Case Brief at 14 (citing *Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 56582 (November 29, 2017); *Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 37844 (August 14, 2017); and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017)).

Second, to determine whether unaffiliated customers used this program, BTIC Group and BTIC America Corporation contacted all of their customers and each customer confirmed that they did not apply for, use or benefit from this program during the POR.

At no point has BTIC Group or BTIC America Corporation ever been contacted by either China Ex-Im Bank, or other SOCBs, or any other bank, or their customers to assist in obtaining buyer's credits under this program. Since assistance from the Chinese producer/exporter is a requirement of this program, the fact that the responding companies have never been contacted by China Export Import Bank, or any other bank, regarding this program is definitive evidence of its non-use.<sup>45</sup>

No further documentation concerning non-use was submitted at this time.

In accordance with 19 CFR 351.301(c)(1)(i), factual information submitted in response to the initial questionnaire is due 30 days from the date of receipt of such questionnaire. Given that we received the customer declarations on July 10, 2019, and the deadline for submitting a response to question M(3) was December 6, 2018, BTIC's provision of the customer declarations on July 10, 2019 was untimely. Moreover, 19 CFR 351.301(c)(5) does not apply in this situation. This provision of the regulations applies to factual information other than that described in 19 CFR 351.102(b)(21)(i)-(iv). We find that the customer declarations were submitted by BTIC to purportedly bolster their response to the initial questionnaire where they claimed non-use of this program, and this would be considered factual information under 19 CFR 351.102(b)(21)(i). Therefore, this information was submitted considerably past the applicable deadline of December 6, 2018, as contemplated by 19 CFR 351.301(c)(1)(i). Finally, and regardless of the facts of the prior administrative review and *Tool Chests from the PRC*, we find in the instant review that our regulations at 19 CFR 351.301(c)(1)(i) clearly required BTIC's customer affidavits to be submitted with its initial questionnaire response and, thus, were untimely.

### **Comment 8: Whether Commerce Should Change Its Determination with Regard to the Export Buyer's Credit Program**

#### ***GOC's and BTIC's Comments:***

- Commerce should change its Export Buyer's Credit determination.
- In the *Preliminary Results*, Commerce applied adverse facts available (AFA) to the GOC with regard to both the countervailability and usage of the Export Buyer's Credit Program. Commerce applied AFA based on the GOC's refusal to provide: (1) the 2013 Administrative Measures revisions; and (2) a list of all partner/correspondent banks involved in the disbursement of Export Buyer's Credit Program. The CIT has found that Commerce's application of AFA for this program is nothing more than an attempt to manufacture a conclusion that is not supported by record evidence and in violation of the applicable statute, section 776 of the Act.<sup>46</sup>

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<sup>45</sup> See BTIC IQR at 17.

<sup>46</sup> See BTIC's Case Brief at 15 (citing *Guizhou Tyre Co., Ltd. v. United States*, Slip Op. 19-114 (August 21, 2019); and *Guizhou Tyre Co. v. United States*, 348 F. Supp. 3d 126 (Ct. Int'l Trade 2018) (*Guizhou Tyre I*)).

- Commerce is required to limit its application of AFA to essential information that is missing from the record which must affect Commerce’s ability to conduct its analysis.
- In *Pistachios from Iran*, Commerce explained that if information on the record indicates that the respondent did not use the program, Commerce will find the program to be not used, regardless of whether the foreign government participated to the best of its ability.<sup>47</sup>
- In *Changzhou Trina Solar Energy Co.*, the CIT found that “it is inappropriate for Commerce to apply AFA for no reason other than to deter the {government’s} non-cooperation in future proceedings when relevant evidence exists elsewhere on the record.”<sup>48</sup>
- In *Fine Furniture (Shanghai) Ltd. v. United States (Fine Furniture 2012)*,<sup>49</sup> the CIT established that the GOC and Fine Furniture, the respondent, should not be treated as a joint entity in situations where the respondent is cooperative, and the government is non-cooperative. Though permissible, in such situations the use of AFA “is disfavored and should not be employed when facts not collaterally adverse to a cooperative party are available.”
- In order to apply AFA to the government, Commerce must not only identify a gap in the record created by the government’s lack of cooperation, it must also determine whether any other information could fill the gap, thereby making AFA unnecessary and inappropriate. In this review, the GOC established that none of the respondents’ U.S. customers used the Export Buyer’s Credit and that the respondents themselves placed evidence on the record establishing non-use of the program.
- Commerce’s claim that it cannot determine use of this program because the \$2 million contract value threshold for buyers may have been eliminated in light of the revised 2013 Administrative Measures is irrelevant. Commerce has never explored this threshold in its on-site verifications in the past at EX-IM bank as a means to determine non-use. At verification, Commerce has always reviewed the EX-IM Bank database, which- -by listing all loan recipients of EX-IM Bank of any kind-would identify the users of this program.
- It is difficult to understand how the information that the GOC failed to provide was critical to Commerce’s ability to verify the program’s operation and the accuracy of the GOC’s claim, including respondents’ claims of non-use. There is no gap in the record regarding usage because BTIC clearly stated that its customers did not use this program.
- Commerce’s reasoning that it applied AFA to the GOC for its lack of response in providing the names of partner/correspondent banks and intermediary banks which can indirectly disburse EX-IM funds under the Export Buyer’s Credit Program was not necessary because the respondent’s customers did not use this program and was not relevant to the usage determination.

**Commerce’s Position:** We find that the customer declarations submitted by BTIC to demonstrate non-use of the Export Buyer’s Credit program are considered untimely new factual information and have been rejected as stated in Comment 7. Furthermore, we continue to find that the record information provided to us by the GOC, or lack thereof, prevented Commerce from fully examining this program. We disagree with the GOC’s and BTIC’s arguments that

<sup>47</sup> *Id.* at 20 (citing *Countervailing Duty New Shipper Review: Certain In-Shell Roasted Pistachios from the Islamic Republic of Iran*, 73 FR 9993 (February 25, 2008), and accompanying IDM at Comment 2).

<sup>48</sup> *Id.* at 22 (citing *Changzhou Trina Solar Energy Co. v. United States*, Slip Op. 17-106 at 9 (CIT 2017) (*Changzhou Trina Solar Energy Co.*)).

<sup>49</sup> *Id.* at 22 (citing *Fine Furniture Shanghai Ltd. v. United States*, 865 F. Supp. 2d 1254 (CIT 2012)).

their questionnaire responses stating that BTIC's customers did not use the program is sufficient evidence that the program was not used. As outlined in our initial questionnaire, respondents must supplement their questionnaire responses with supporting documentation which is subject to verification. For the reasons detailed below, we continue to find, based on our application of AFA to the GOC, that the Export Buyer's Credit program constitutes a countervailable subsidy.

*Solar Cells Initial Investigation of Export Buyer's Credit program*

Commerce first investigated and countervailed the Export Buyer's Credit program in the 2012 investigation of solar cells.<sup>50</sup> Our initiation was based on, among other information, the EX-IM Bank's 2010 annual report, demonstrating that the credits provided under this program are "medium- and long-term loans, and have preferential, low interest rates. Included among the projects that are eligible for such preferential financing are energy projects."<sup>51</sup> Commerce initially asked the GOC to complete the "standard questions appendix" for the Export Buyer's program. The appendix requests, among other information, a description of the program and its purpose, a description of the types of relevant records the government maintains, the identification of the relevant laws and regulations, and a description of the application process (along with sample application documents). The standard questions appendix is intended to help Commerce understand the structure, operation, and usage of the program.<sup>52</sup>

The GOC provided none of the information requested by Commerce in the ensuing investigation, despite being given multiple opportunities to do so, but simply stated that "{n}one of the respondents or their reported cross-owned companies applied for, used, or benefited from the alleged programs during the POI."<sup>53</sup> In response to a request from Commerce for information concerning the operation of the Export Buyer's Credit program and how we might verify usage of the program, the GOC stated that none of the respondents' customers had used the program either. The GOC added: "{t}he GOC understands that this program, including the buyer's credit cannot be implemented without knowledge of the exporters because the program has a substantial impact on the exporter's financial and foreign exchange business matters."<sup>54</sup> Although asked, the GOC provided no additional information concerning exactly how an exporter's financial and foreign exchange matters would be affected. Commerce then gave the GOC another opportunity to provide the information requested.<sup>55</sup> The GOC again refused to provide sample application documents, regulations, or manuals governing the approval process, and instead provided only a short description of the application process which gave no indication of how an exporter might be involved in the provision of export buyer's credits, how it might

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<sup>50</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules; from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China Investigation*), and accompanying IDM at 9 and Comment 18. Commerce's determination with respect to the Export Buyer's Credit Program was initially challenged but the case was dismissed.

<sup>51</sup> See *Solar Cells from China Investigation* IDM at 59.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 60.

<sup>55</sup> *Id.* at 60-61.

have knowledge of such credits, or how such credits might be reflected in a company's books and records.<sup>56</sup>

Based on the GOC's responses, Commerce's understanding was that, under this program, loans were provided directly from EX-IM Bank to the borrowers (*i.e.*, a respondent's customers), with no involvement of third parties, such as exporters, or third-party banks. Accordingly, Commerce made clear its understanding that the only way to establish non-use of the program was through the GOC and not the respondent companies.<sup>57</sup> Additionally, Commerce concluded that even if the respondent company might have some knowledge of loans provided to its customers through its involvement in the application process, such information is not of the type Commerce would examine to verify that the claim of non-use at issue was complete and accurate:

{E}ven if the {respondent exporter} might have been involved in, or might have received some notification of, its customer's application for receiving such export credits, such information is not the type of information that the Department needs to examine in order to verify that the information is complete and accurate. For verification purposes, the Department must be able to test books and records in order to assess whether the questionnaire responses are complete and accurate, which means that we need to tie information to audited financial statements, as well as to review supporting documentation for individual loans, grants, rebates, *etc.* If all a company received was a notification that its buyers received the export credits, or if it received copies of completed forms and approval letters, we have no way of establishing the completeness of the record because the information cannot be tied to the financial statements. Likewise, if an exporter informs Commerce that it has no binder (because its customers have never applied for export buyer's credits), there is no way of confirming that statement unless the facts are reflected in the books and records of the respondent exporter.<sup>58</sup>

On this basis, Commerce concluded that usage of the program could not be confirmed at the respondent exporters in a manner consistent with its long-standing verification methods.<sup>59</sup> These

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<sup>56</sup> *Id.* at 61.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 61-62.

<sup>59</sup> Commerce provided a similar explanation in the 2014 investigation of solar products from China. See *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products*), and accompanying IDM at 93. This was affirmed by the Court in *Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334 (CIT 2016) (*Changzhou I*). In *Changzhou II*, the Court noted that the explanation from *Solar Products* constituted "detailed reasoning for why documentation from the GOC was necessary" to verify non-use. See *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 255 F. Supp. 3d 1312, 1318 (CIT 2017) (*Changzhou II*). However, the Court found that the 2014 review of solar cells from China at issue in *Changzhou III* was distinguishable because the respondents submitted customer certifications of non-use, and Commerce had "failed to show why a full understanding" of the program was necessary to verify non-use. See *Changzhou Trina Solar Energy Co., v. United States*, 352 F. Supp. 3d 1316 (CIT 2018) (*Changzhou III*); see also *Solar Products* IDM at 10 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017), amended by *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of*

methods are comparable to those of an auditor, attempting to confirm usage or claimed non-usage by examining books and records which can be traced to audited financial statements, or other credible official company documents, such as tax returns, that provide a credible and complete picture of a company's financial activity for the period under examination. A review of ancillary documents, such as applications, correspondence, emails, *etc.*, provides no assurance to Commerce that it has seen all relevant information.<sup>60</sup>

This “completeness” test is an essential element of Commerce’s verification methodology. If Commerce were attempting to confirm whether and to what extent a respondent exporter had received loans from a state-owned bank, for example, its first step would be to examine the company’s balance sheets to derive the exact amount of lending outstanding during the period of examination. Second, once that figure was confirmed, Commerce would examine subledgers or bank statements containing the details of all individual loans. Because Commerce could tie or trace the subledgers or bank statements to the total amount of outstanding lending derived from the balance sheets, it could be assured that the subledgers were complete and that it therefore had the entire universe of loan information available for further scrutiny. After examining the subledgers for references to the state-owned banks (for example, “Account 201-02: Short-term lending, Industrial and Commercial Bank of China”), Commerce’s third step would be to select specific entries from the subledger and request to see underlying documentation, such as applications and loan agreements, in order to confirm the accuracy of the subledger details. Thus, confirmation that a complete picture of relevant information is in front of the verification team, by tying relevant books and records to audited financial statements or tax returns, is critical.

In the investigation of solar cells, however, despite Commerce’s repeated requests for information, the GOC failed to offer any guidance as to how Commerce could search for Export Buyer’s Credit program lending in respondent exporters’ books and records that could be tied to financial statements, tax returns, or other relevant company documents. Therefore, Commerce concluded in that investigation that it could not verify usage of the program at the respondent exporters and instead attempted verification of usage of the program at EX-IM Bank itself because it “possessed the supporting records needed to verify the accuracy of the reported non-use of the EBC Program {and} would have complete records of all recipients of export buyer’s credits.” We noted our belief that “{s}uch records could be tested by {Commerce} to check whether the U.S. customers of the company respondents had received export buyer’s credits, and

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*China: Amended Final Results of Countervailing Duty Administrative Review; 2014, 82 FR 46760 (October 6, 2017), and accompanying IDM). The Court in Guizhou Tyre I reached a similar conclusion concerning the 2014 review of tires from China. See Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2014, 82 FR 18285 (April 18, 2017), and accompanying IDM.*

<sup>60</sup> The Court agreed with Commerce in *RZBC Group Shareholding Co. v. United States*, 222 F. Supp. 1196, 1201-02 (CIT 2017) (*RZBC Group*), following a remand, finding that Commerce could not verify non-use of the program by examining the respondent-exporter’s audited financial statements or other books and records because record evidence demonstrated that the program terms were ambiguous. See *RZBC Group* at 1201-02 (concerning *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012, 79 FR 78799 (December 31, 2014) (Citric Acid 2012)*, and accompanying IDM at Comment 6).

such records could then be tied to the {China} EX-IM Bank's financial statements."<sup>61</sup> However, the GOC refused to allow Commerce to query the databases and records of the EX-IM Bank.<sup>62</sup> Furthermore, there was no information on the record of the solar cells investigation from the respondent exporters' customers.

*Chlorinated Isos Investigation of Export Buyer's Credit Program*

Two years later, in the investigation of chlorinated isos,<sup>63</sup> respondents submitted certified statements from all customers claiming that they had not used the Export Buyer's Credit program. This appears to have been the first instance of respondents submitting such customer certifications. At that point in time, as explained in detail above, Commerce, based on the limited information provided by the GOC in earlier investigations, it was Commerce's understanding that the Export Buyer's Credit program provided medium- and long-term loans and that those loans were provided directly from the China Ex-Im Bank to the borrowers (*i.e.*, the respondent exporters' customers) *only*. Because the respondents' customers were participating in the proceeding, verification of non-use appeared to be possible through examining the financial statements and books and records of the U.S. customers for evidence of loans provided directly from EX-IM Bank to the U.S. customers pursuant to verification steps similar to the ones described above. Based on the GOC's explanation of the program, we had expected to be able to verify non-use of this program through review of the participating U.S. customers' subledgers themselves. Therefore, despite being "unable to conduct a complete verification of non-use of this program at China Ex-Im, ... {w}e conducted verification . . . in the United States of the customers of the respondents, and confirmed through an examination of each selected customer's accounting and financial records that no loans were received under this program."<sup>64</sup>

*2013 Amendments to the Export Buyer's Credit Program*

Our understanding of the operation of the Export Buyer's Credit program began to change after the chlorinated isos investigation had been completed in September 2014. In *Citric Acid 2012*, Commerce began to gain a better understanding of how EX-IM Bank issued the disbursement of funds and the corresponding timeline; however, Commerce's attempts to verify the program's details and statements from the GOC concerning the operation and use of the program were thwarted by the GOC.<sup>65</sup> In subsequent proceedings, Commerce continued to investigate and evaluate this program.

For example, in the silica fabric investigation conducted in 2016-2017, based on what we had learned in *Citric Acid 2012*, we asked the GOC about certain changes to the Export Buyer's Credit program, including changes in 2013 that eliminated the USD 2 million minimum business

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<sup>61</sup> See *Solar Cells from China Investigation* IDM at 62.

<sup>62</sup> *Id.*

<sup>63</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*).

<sup>64</sup> *Id.* at 15.

<sup>65</sup> See *Citric Acid 2012* IDM at Comment 6 ("{N}otwithstanding the non-use claims of the RZBC Companies and the GOC, we find that the GOC's refusal to allow the verifiers to examine the EX-IM Bank database containing the list of foreign buyers that were provided assistance under the program during the POR precluded the Department from verifying the non-use claims made by the RZBC Companies and the GOC.").

contract requirement.<sup>66</sup> According to the GOC, “{t}he Export-Import Bank of China has confirmed to the GOC that its 2013 guidelines are internal to the bank, non-public, and not available for release.”<sup>67</sup> The GOC further stated that “those internal guidelines do not formally repeal or replace the provisions of the *{Administrative Measures}* which remain in effect.”<sup>68</sup>

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

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

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

Additional information in the GOC’s supplemental questionnaire response also indicated that the loans associated with this program are not limited to direct disbursements through the EX-IM Bank. Specifically, the GOC stated that customers can open loan accounts for disbursements through this program with other banks. The funds are first sent from the EX-IM Bank to the importer’s account, which could be at the EX-IM Bank or other banks, and that these funds are then sent to the exporter’s bank account. Given the complicated structure of loan disbursements for this program {Commerce’s} complete understanding of how this program is administrated is necessary. Thus, the GOC’s refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administrated by the EXIM Bank, impeded {Commerce’s} ability to conduct its investigation of this program.<sup>69</sup>

Further, we determined that we could not rely on declarations from customers claiming non-use of the program because “we are unable to verify the accuracy of these documents as the primary entity that possesses such supporting records is the Export Import Bank of China.”<sup>70</sup>

Additionally, we explained that “we now have information on the record that demonstrates the GOC updated certain measures of the program, but the GOC refused to provide the updated measures {,}” and “{b}ecause the GOC withheld critical information regarding this program, we

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<sup>66</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 Comment 17.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> See *Silica Fabric Inv* IDM at 12.

<sup>70</sup> *Id.* at 62.

are unable to determine how the program now operates, and, thus, we cannot verify ACIT's declarations as submitted."<sup>71</sup>

*High Pressure Steel Cylinders from the People's Republic of China, 2017 Administrative Review*

In the current review, we again requested that the GOC provide supporting information on the application process, internal guidelines and rules governing the program, interest rates used during the POR, and a list of partner and correspondent banks involved in the disbursement of funds under this program. This information is necessary to our analysis of the program and to determine whether BTIC's U.S. customers used the program. As explained in the prior review, this information is crucial for Commerce to understand how export buyer's credits flow to and from foreign buyers and the EX-IM Bank.<sup>72</sup> However, the GOC has refused to provide this information. Absent the requested information, the parties' claims regarding non-use are not verifiable, and therefore, we find them to be unreliable.

The GOC and the BTIC cite to *Changzhou Trina Solar Energy Co.*, in which the CIT sustained Commerce's position in not applying AFA to the Export Buyer's Credit program which was based on finding that customer declarations stating non-use of the program were sufficient and because no record evidence contradicted the declarations' accuracy. However, in the subsequent reviews of this order, Commerce applied AFA to the program because there was additional information on the record, including information discussing the involvement of third-party banks in the disbursement of funds for this program and because of the continued refusal of the GOC to provide the requested supporting documentation which would allow us to verify the GOC's and BTIC statements regarding the non-use of the program by BTIC's customers.<sup>73</sup> Similarly, and as discussed above, in this review, information in the GOC's supplemental questionnaire response also indicated that the loans associated with this program are not limited to direct disbursements through the EX-IM Bank.<sup>74</sup> Record information indicates that customers can open loan accounts for disbursements through this program with other banks.

We disagree with respondent's comment that Commerce's claim that it cannot determine use of this program because the \$2 million contract value threshold for buyers may have been eliminated is irrelevant. This information along with the other 2013 Administrative Measures revisions (2013 Revisions) to the Export Buyer's Credit program is necessary in order for us to analyze how the program functions and to determine how to properly and fully understand the program. If Commerce had received from the GOC the requested administrative measures of the program (the necessary laws, regulations, names of intermediary banks) and a list of partner/correspondent banks involved with this program, Commerce would have had ample guidance for how to query the records and electronic databases of the EX-IM Bank to establish customer usage or non-usage of the program. Without the requested information on the record, there is no basis to determine that claims of non-use are actually verifiable. Moreover, we

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<sup>71</sup> *Id.*

<sup>72</sup> See *HPSC from the PRC, 2016 IDM* at Comment 8.

<sup>73</sup> See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014-2015*, 82 FR 42792 (September 12, 2017), and accompanying IDM at 31.

<sup>74</sup> See GOC's Letter, "GOC First Supplemental Questionnaire Response: 2017 Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China (C-579-978)," dated February 14, 2019, at SQ-15 at 4-5.

cannot assume that we would have had access to this information if we had chosen to conduct verification of the GOC; in previous proceedings, the GOC has declined to provide the requested information regarding EX-IM Bank at verification. Understanding the operation of the program is not 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” to understand whether the program was used or not. 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.

Therefore, we continue to find that necessary information from the GOC is missing from the record, and the GOC withheld the requested information described above, which is necessary to determine whether BTIC’s customers actually used the program during the POR. The GOC’s withholding of this necessary information prevents us from fully understanding and analyzing the operation of this program, thereby impeding this proceeding. Accordingly, we must rely on facts otherwise available in issuing these final results, pursuant to sections 776(a)(1), (a)(2)(A) and (a)(2)(C) of the Act.<sup>75</sup> Moreover, for the reasons stated in the *Preliminary Results*, as expounded upon above, we continue to determine that the GOC failed to cooperate to the best of its ability to comply with our request for information.<sup>76</sup> Therefore, we find that an adverse inference is warranted in the selection of facts available, pursuant to section 776(b) of the Act. As AFA, we continue to determine that this program provides a financial contribution and provides a benefit within the meaning of sections 771(5)(D) and 771(5)(E) of the Act, respectively.<sup>77</sup> Further, we continue to find, as AFA, that the provision of export buyer’s credits is contingent on exports within the meaning of section 771(5A)(A) and (B) of the Act.<sup>78</sup>

Finally, respondents cite to the CIT’s opinion in *Fine Furniture 2012*<sup>79</sup> to support their argument for not applying AFA to a program based on a lack of cooperation by the Chinese government when relevant evidence is available elsewhere on the record. However, in *Fine Furniture 2014*,<sup>80</sup> the Court of Appeals for the Federal Circuit (CAFC) affirmed that a countervailing duty rate for a cooperating respondent could be based on adverse inferences drawn against a non-cooperating foreign government. The CAFC affirmed that certain information can be provided only by the government and that Commerce can take an action that adversely affects a respondent if the government fails to provide requested information.<sup>81</sup>

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<sup>75</sup> See *Preliminary Results* PDM at 14-17.

<sup>76</sup> *Id.* at 14-17.

<sup>77</sup> *Id.* at 32.

<sup>78</sup> *Id.* at 17.

<sup>79</sup> See *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254, 1262 n.10 (CIT 2012) (*Fine Furniture 2012*).

<sup>80</sup> See *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1373 (Fed. Cir. 2014) (*Fine Furniture 2014*).

<sup>81</sup> *Id.*

**IX. RECOMMENDATION**

Based on our analysis, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this administrative review in the *Federal Register*.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance