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February 19, 2020

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of
2017 Countervailing Duty Administrative Review: Narrow
Woven Ribbons with Woven Selvedge 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 narrow woven ribbons with woven selvedge (ribbons) from the People's Republic of China (China): Yama Ribbons and Bows Co., Ltd. (Yama). The period of review (POR) is January 1, 2017 through December 31, 2017. For the final results, we analyzed the case and rebuttal briefs submitted by interested parties in this administrative review. We made corrections to our *Preliminary Results* subsidy rate calculations for certain programs. As a result, we determined that Yama received countervailable subsidies at the rate of 31.87 percent *ad valorem*. We address the issues raised in the "Analysis of Comments" section, below.

II. BACKGROUND

On August 23, 2019, Commerce published the *Preliminary Results* of this review.¹ We invited parties to comment on the *Preliminary Results*. In October 2019, we verified Yama's

¹ See *Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2017*, 84 FR 44281 (August 23, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



questionnaire responses.² On November 15, 2019, we received a case brief from Yama.³ On November 20, 2019, we received a rebuttal brief from the petitioner, Berwick Offray LLC.⁴ On December 10, 2019, Commerce extended the deadline for the final results of this administrative review until February 19, 2020.⁵

The “Subsidy Valuation Information” and “Analysis of Programs” sections, below, describe the subsidy programs and the methodologies used to calculate the subsidy rates for these final results. Additionally, the “Analysis of Comments” section, below, contains our analysis of the comments submitted by interested parties in their case and rebuttal briefs. While we made no changes to the *Preliminary Results* as result of our analysis of these comments, we made corrections to our subsidy rate calculations for certain programs.⁶

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

Comment 1: The Application of Adverse Facts Available (AFA) to the Provision of Synthetic Yarn and Caustic Soda for Less-than-Adequate-Remuneration (LTAR) Programs

Comment 2: Export Buyer’s Credit Program

III. USE OF ADVERSE FACTS AVAILABLE

Commerce relied on “facts otherwise available,” including AFA, for several findings in the *Preliminary Results*. Commerce has not made any changes to its use of facts otherwise available and AFA, as applied in the *Preliminary Results*.⁷

IV. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce made no changes to the allocation period or the allocation methodology used in the *Preliminary Results*.⁸

² See Memorandum, “2017 Administrative Review of the Countervailing Duty Order on Narrow Woven Ribbons from the People’s Republic of China: Verification of the Questionnaire Responses of Yama Ribbons and Bows Co., Ltd.,” dated November 6, 2019 (Yama’s Verification Report).

³ See Yama’s Letter, “Narrow Woven Ribbons with Woven Selvedge from the People’s Republic of China, Countervailing Duty: Case Brief,” dated November 15, 2019 (Yama’s Case Brief).

⁴ See Petitioner’s Letter, “Narrow Woven Ribbons with Woven Selvedge from People’s Republic of China: Rebuttal Brief of Petitioner Berwick Offray LLC,” dated November 20, 2019 (Petitioner’s Rebuttal Brief).

⁵ See Memorandum, “Narrow Woven Ribbons from the People’s Republic of China: Extension of Deadline for the Final Results of Countervailing Duty Administrative Review,” dated December 10, 2019.

⁶ See “Programs Determined to be Countervailable” section; see also Memorandum “Final Results Calculation Memorandum for Yama Ribbons,” dated concurrently with this memorandum (Final Calculation Memorandum) for further details.

⁷ See *Preliminary Results* PDM at 6-13.

⁸ *Id.* at 13.

B. Attribution of Subsidies

Commerce made no changes to the attribution methodologies used in the *Preliminary Results*.⁹

C. Denominators

Commerce made no changes to the denominators used in the *Preliminary Results*.¹⁰

D. Benchmarks and Discount Rates

Commerce made no changes to the benchmarks and discount rates used in the *Preliminary Results*.¹¹

V. PROGRAMS DETERMINED TO BE COUNTERAVAILABLE

Commerce made no changes to the methodology used to calculate the subsidy rates for the following programs in its *Preliminary Results*. However, we corrected certain errors in the *Preliminary Results* subsidy rate calculations for the programs marked with an asterisk, below.¹² For descriptions, analyses, and calculation methodologies for these programs, see the *Preliminary Results*. The final program rates for Yama are as follows:

1. *Income Tax Reduction for High and New Technology Enterprises*

0.36 percent *ad valorem*

2. *Preferential Tax Policy for Wages of Disabled Employees*

0.03 percent *ad valorem* *

3. *Preferential Tax Policy for Research and Development*

0.40 percent *ad valorem* *

4. *Provision of Synthetic Yarn for LTAR*

17.76 percent *ad valorem* *

5. *Provision of Caustic Soda for LTAR*

0.17 percent *ad valorem*

6. *Provision of Electricity for LTAR*

1.47 percent *ad valorem*

⁹ *Id.* at 14.

¹⁰ *Id.* at 15.

¹¹ *Id.* at 15 -18.

¹² For further discussion, see Final Calculation Memorandum.

7. *Export Buyer's Credits*
10.54 percent *ad valorem*
8. *Xiamen Municipal Science and Technology Grant Program*
0.17 percent *ad valorem*
9. *International Market Development Fund Grants for Small and Medium-sized Enterprises*
0.05 percent *ad valorem*
10. *Jimei District Tax Bonus Prize*
0.01 percent *ad valorem*
11. *Assistance for Recruiting Rural Labor*
0.03 percent *ad valorem*
12. *Assistance for Recruiting Vocational Institution and/or College Graduates*
0.02 percent *ad valorem*
13. *Insurance Expense Assistance*
0.12 percent *ad valorem*
14. *Assistance of Wages for Over-Recruiting Disabled Employees*
0.02 percent *ad valorem*
15. *Assistance for Industrial Transformation and Upgrading*
0.25 percent *ad valorem*
16. *Assistance for Stable Employment*
0.06 percent *ad valorem*
17. *Assistance for Reconstruction after Typhoon*
0.08 percent *ad valorem*
18. *Assistance for Recruiting Labor in Xiamen*
0.01 percent *ad valorem*

19. *Assistance for Fair Trade*
0.02 percent *ad valorem*
20. *Assistance for ERP Cloud Service*
0.01 percent *ad valorem*
21. *Payment from Xiamen Commerce Bureau for Setting Overseas Contact Location*
0.23 percent *ad valorem*
22. *Payment for Economic and Information Bureau of Jimei District*
0.02 percent *ad valorem*
23. *Three Unknown Payments from Xiamen Commerce Bureau*
0.04 percent *ad valorem*

VI. PROGRAMS DETERMINED NOT TO PROVIDE MEASURABLE BENEFITS DURING THE POR

1. *Assistance for Recruiting Personnel with Difficulties in Employment*
2. *Assistance for Recruiting Immigrating Population*

VII. PROGRAMS DETERMINED NOT TO BE USED DURING THE POR

1. *Policy Loans to Narrow Woven Ribbon Producers from State-owned Commercial Banks*
2. *Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half) Program*
3. *Local Income Tax Exemption and Reduction Programs for “Productive” Foreign-Invested Enterprises*
4. *Xiamen Promotion of Domestic Market Grants*
5. *The State Key Technology Renovation Project Fund*
6. *Bonus for Fujian Province Famous Brands*
7. *Export Assistance Grants*
8. *Export Interest Subsidy Funds for Enterprises Located in Zhejiang Province*
9. *Technology Grants for Enterprises Located in Zhejiang Province*
10. *Xiamen Municipal Cleaner Production*
11. *Interest Assistance for Loans Obtained for Technology Projects*
12. *Assistance for Textile Exhibition*
13. *Rural Labor Training Assistance*
14. *Training Fee Rebate*
15. *High and New Technology Enterprises Local Government Assistance*
16. *Xiamen City Small Medium Enterprises Development Support Fund*
17. *Small Medium Enterprises Assistance*

18. *Finance Bureau of Xiamen City*
19. *Tax Bureau of Jimei District*
20. *Patent Application Supporting Program*
21. *Import Tariff and Value-Added Tax (VAT) Exemptions for Foreign-Invested Enterprises (FIEs) Using Imported Technology and Equipment*
22. *Import Tariff and VAT Exemptions for Certain Domestic Enterprises Using Imported Technology and Equipment*
23. *VAT Rebate for FIE Purchases of Domestically Produced Equipment*
24. *Tax Program for High or New Technology FIEs*
25. *Preferential Tax Policies for Research and Development for FIEs*
26. *Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Equipment*
27. *Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises*
28. *Preferential Tax Policies for Township Enterprises*
29. *Tax Subsidies to FIEs in Specially Designated Areas*
30. *Preferential Tax Policies for Export-Oriented FIEs*
31. *Provision of Land in the Xiamen Jimei (Xingling) Taiwanese Investment Zone for LTAR*

VIII. ANALYSIS OF COMMENTS

Comment 1: The Application of AFA to the Provision of Synthetic Yarn and Caustic Soda for LTAR Programs

Yama's Case Brief

- The Government of China (GOC) gave a full, verifiable response from the prior administrative review that is applicable to the POR. The CVD questionnaire in several instances clearly instructs that, if a program is not used by the respondent during the POR, only basic information about the program is needed; full reporting is limited to those programs which a respondent used. Thus, the questions posed in the questionnaire must be viewed in light of Commerce's general requirements regarding the non-use of programs. To require more information for certain programs which were not used, and less for other programs which were not used, is arbitrary and capricious.¹³
- The GOC in the first supplemental questionnaire response from the prior administrative review stated that there are no government programs regarding synthetic yarn and caustic soda and that effectively all suppliers of synthetic yarn and caustic soda were privately owned.
- Further, Yama stated that: (1) there are no programs regarding synthetic yarn and caustic soda; and (2) all its suppliers of synthetic yarn and caustic soda were privately owned.¹⁴ Thus, there was no government influence over these suppliers, and they could not be considered to be "authorities" under the statute.

¹³ See Yama's Case Brief at 11-12 (citing *Atlantic Sugar, Ltd. v. United States*, 744 F.2d 1556, 1562 (Fed. Cir. 1984); see also *Tung Mung Dev. Co., v. United States*, 354 F.3d 1371, 1378 (Fed. Cir. 2004)).

¹⁴ Yama notes that, where it does not specifically address the provision of caustic soda for LTAR program in its arguments regarding the provision of synthetic yarn for LTAR program, such arguments also apply to the caustic soda for LTAR program.

- Commerce requested information regarding the Chinese Communist Party (CCP) and whether anyone associated with Yama’s suppliers (e.g., owners, managers, employees) were members of the CCP. The GOC stated that it is illegal for any organization outside a company, including the CCP, to make business decisions for any company.¹⁵ Thus, there is no evidence to suggest that Yama’s privately-owned suppliers were under any influence by the GOC.¹⁶
- The GOC cooperated to the best of its ability to comply with Commerce’s questions and the record demonstrates that not only is the application of facts available unwarranted, but the application of AFA is even less so.¹⁷
- Commerce’s determination cannot be based on “isolated tidbits of data which suggest a result contrary to the clear weight of the evidence.”¹⁸ Substantial evidence on the record requires more than mere assertion of “evidence which in and of itself justified {the determination} without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn.”¹⁹ When viewed in its entirety, the record established by the GOC is clear and complete for Commerce to make a determination that no benefit was conferred at LTAR.²⁰
- Furthermore, Commerce may use AFA only in compliance with section 776(b) of the Act when evidence on the record is lacking.²¹ The use of AFA is only appropriate to fill gaps when Commerce must rely on other sources of information to complete the factual record.²² Here, it is not necessary to complete the factual record with any other information, given that certain data does not exist and it is illegal for the CCP to have any influence on the business activities of Yama’s suppliers.²³ Most importantly, the focus of section 776(b) of the Act is a respondent’s failure to cooperate to the best of its ability, not its failure to provide requested information.²⁴
- Commerce may not use AFA against a government when there is no evidence that it maintained the data it refused to give Commerce.²⁵ Here, there is no evidence on the record to contradict the GOC’s claims regarding the synthetic yarn industry in the POR. Accordingly, substantial evidence on the record clearly shows that Yama’s suppliers are neither “authorities” under U.S. law nor “public bodies” within the meaning of the World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM).²⁶
- Moreover, Yama is the respondent in this review and Commerce made no finding that Yama deserves AFA; rather, Commerce only found the GOC to be noncompliant with

¹⁵ See Yama’s Case Brief at 13-14.

¹⁶ *Id.* at 14. (citing *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (*Universal Camera*), quoting *Consolidated Edison Corp. v. Labor Board*, 305 U.S. 197, 229 (1938). See also *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1327 (Fed. Cir. 2009) and *Novosteel SA v. United States*, 284 F.3d 1261, 1276 (Fed. Cir. 2002)).

¹⁷ *Id.* at 17-19.

¹⁸ *Id.* at 19 (citing *USX Corp. v. United States*, 11 CIT 82, 84, 655 F. Supp. 487, 489 (1987)).

¹⁹ *Id.* (citing *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 720 (Fed. Cir. 1997)).

²⁰ *Id.* (citing *Diversified Products Corp. v. United States*, 6 CIT 155, 161 (1983), quoting *Universal Camera*, 340 U.S. at 488).

²¹ *Id.* (citing *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333, 1346 (Fed. Cir. 2011) and *Shandong Huarong Machinery v. United States*, 435 F. Supp. 2d 1261, 1289, (CIT 2006) (*Zhejiang Dunan*)).

²² *Id.* (citing *Nippon Steel Corp. v. United States*, 37 F.3d 1373 (Fed. Cir. 2003)).

²³ *Id.* at 20.

²⁴ *Id.*

²⁵ *Id.* (citing *Maverick Tube Corp. v. United States*, 857 F.3d 1353 (Fed. Cir. 2017)).

²⁶ *Id.* at 20-21 (citing to SCM).

its requests and allegedly deserving of AFA.²⁷ The Courts have ruled that a respondent cannot be penalized for (alleged) transgressions by another party.²⁸

- Commerce may not automatically resort to adverse inferences once it decides that a party has failed to comply with its request.²⁹ The use of facts available is subject to section 782(d) of the Act, and a party must have a chance to remedy deficient submissions.³⁰ Commerce never issued a supplemental questionnaire to the GOC regarding either of these two programs. By not doing so, Commerce implicitly admitted that it did not need any additional information.³¹ The GOC either directly answered Commerce's questions regarding the provision of synthetic yarn and caustic soda at LTAR or stated why such data did not exist or was unavailable to the GOC.³² Thus, the use of AFA regarding these programs was unwarranted and not based on substantial evidence on the record.³³
- In any event, if Commerce continues to find a benefit due to Yama's purchases of synthetic yarn at LTAR, Commerce should revise its benchmark data to include only data for the two harmonized tariff schedule (HTS) numbers actually applicable to Yama's purchases during the POR (*i.e.*, HTS numbers 5402.33.10 and 5402.47.00).³⁴

Petitioner's Rebuttal Brief

- Commerce correctly determined that the provision of synthetic yarn and caustic soda were at LTAR for the following reasons: (1) the GOC withheld necessary information that was requested of it and therefore it must rely on facts available; (2) the GOC failed to cooperate by not acting to the best of its ability to comply with Commerce's request for information, and therefore an adverse inference was warranted in the application of facts available; and (3) as an adverse inference, the domestic prices from actual transactions involving Chinese buyers and sellers were significantly distorted by the involvement of the GOC, and therefore use of an external benchmark was warranted for calculation the benefit for the provision of synthetic yarn and caustic soda. Yama's claims that there is record evidence that is contrary to these findings is misguided.
- As discussed in the *Preliminary Results*, the GOC did not provide a response to Commerce's initial CVD question covering this POR (*i.e.*, January 1, 2017, to December 31, 2017) (AR 2017) but rather, the China Chamber of International Commerce (CCOIC) submitted the GOC's questionnaire responses covering the 2016 POR (AR 2016). The CCOIC also informed Commerce that the GOC would not participate further in the review.³⁵ Yama fails to recognize that Commerce must have the information for the POR

²⁷ *Id.* at 22.

²⁸ *Id.* (citing *Mueller Comercial de Mex., S. de R.L. de C.V. v. United States*, 753 F.3d 1227 (Fed. Cir. 2014) and *Luoyang Bearing and Shantou Red Garden Foodstuff Co. v. United States*, 815 F. Supp. 2d 1311, 1323 (CIT 2012)).

²⁹ *Id.* (citing *Ferro Union, Inc. v. United States*, 23 CIT 178, 44F. Supp. 2d 1310, 1328 (1999) (*Ferro Union*) and *Borden, Inc. v. United States*, 4 F. Supp.2d 1221, 1246 (CIT 1998)).

³⁰ *Id.* (citing *Ferro Union*, 44F. Supp. 2d at 1328).

³¹ *Id.* at 3.

³² *Id.* at 22.

³³ *Id.* (citing *Ferro Union*, 44F. Supp. 2d at 1328).

³⁴ *Id.* at 32-33.

³⁵ *See* Petitioner's Rebuttal Brief at 5.

to analyze whether the GOC's involvement distorts the market to such an extent that Chinese prices cannot be used as benchmarks in the benefit calculation.³⁶

- Furthermore, Yama has no record support for its claim that the data needed for AR 2017 were not available. As Commerce found in *AR 2016*, the GOC maintains databases that contain the information necessary for Commerce to conduct its analysis.³⁷
- Commerce should continue to find that the input suppliers are authorities within the meaning of section 771(5)(b) of the Act. Yama's claim that the CCP cannot control the operations of its domestic input suppliers is not supported by the record. The record demonstrates that the CCP has ultimate control over these entities, and the GOC, as a subordinate to the CCP, must know whether individuals within the corporate structures of the input suppliers are members of the CCP.³⁸ The GOC failed to provide critical information on the CCP and its control over the input suppliers. Therefore, Commerce properly used AFA to find that Yama's suppliers of synthetic yarn and caustic soda are authorities, such that prices from these suppliers are distorted and cannot be used as the benchmark.
- The Courts have long recognized that, in subsidy cases, Commerce seeks different information from the government and the company respondents and that the government's failure to provide information can impact a company respondent.³⁹ Furthermore, in *GPX*, the Court recognized that parties other than the mandatory respondent possess necessary information in CVD investigations and that the application of AFA may indirectly affect the respondent when those parties fail to cooperate.⁴⁰
- Finally, Commerce should not change the tier 2 benchmark calculated for synthetic yarn.⁴¹ Yama's claim that Commerce confirmed that it only purchased synthetic yarn under HTS 5402.33.10 and 5402.47.00 during the POR, is contrary to what Commerce stated in the verification report. Furthermore, the documentation Yama provided at verification did not account for 100 percent of Yama's purchases of synthetic yarn during the POR.⁴² Therefore, it is likely that Yama purchased a percentage of its synthetic yarn under another HTS number during the POR.⁴³ Moreover, Yama has made no claim that the petitioner's data do not include synthetic yarn used in the production of in-scope merchandise.⁴⁴ Therefore, Commerce should not revise its benchmark calculation for synthetic yarn in the final results to exclude data for any of the HTS numbers included in the calculation for the *Preliminary Results*.

³⁶ *Id.* at 5.

³⁷ *Id.* at 6 (citing *Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 11052 (March 25, 2019) (*AR 2016*), and accompanying Issues and Decision Memorandum (IDM) at Comment 1).

³⁸ *Id.* at 8 (citing Memorandum, "2017 Countervailing Duty Administrative Review of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Additional Documents for the Preliminary Results" (Additional Documents Memorandum), at Attachment III, which includes the Public Body Memorandum and its attachment, the CCP Memorandum)).

³⁹ *Id.* at 8-10 (citing *e.g.*, *Essar Steel Limited v. United States*, 721 F. Supp. 2d 1285 (CIT 2010) (internal cites and quotations omitted) (*Essar Steel*)).

⁴⁰ *Id.* at 10 (citing *GPX Int'l Tire Corp. v. United States*, 942 F. Supp. 2d 1343, 1359-60 (CIT 2013) (*GPX*)).

⁴¹ *Id.* at 10-11.

⁴² *Id.* at 11 (citing Yama's Verification Report at 6 and VE-12).

⁴³ *Id.* at 12.

⁴⁴ *Id.*

Commerce’s Position: In these final results, we continue to find that, in the synthetic yarn and caustic soda markets: (1) Chinese prices are significantly distorted by the involvement of the GOC; and (2) privately-owned input suppliers of synthetic yarn and caustic soda are “authorities” within the meaning of section 771(5)(B) of the Act. Regarding market distortion, as we stated in the *Preliminary Results*, we requested that the GOC provide the following information regarding the synthetic yarn and caustic soda industries to determine whether the GOC is the predominant provider of these inputs and whether its significant presence in the market distorts all transaction prices for both inputs:⁴⁵

- a. The total number of producers.
- b. The total volume and value of Chinese domestic consumption of {input} and the total volume and value of Chinese domestic production of {input}.
- c. The percentage of domestic consumption accounted for by domestic production.
- d. The total volume and value of imports of {input}.
- e. The percentage of total volume and (separately) value of domestic production that is accounted for by companies in which the Government maintains an ownership or management interest, either directly or through other Government entities, including a list of the companies that meet these criteria.
- f. A discussion of what laws, plans or policies address the pricing of the input, the levels of production of the input, the importation or exportation of the input, or the development of the input capacity. Please state which, if any, central and sub-central level industrial policies pertain to the input industry.

Commerce requested such information to determine whether the GOC is the predominant provider of these inputs in China and whether its significant presence in the market distorts all transaction prices. As stated in the *Preliminary Results*, the GOC failed to provide this information for the POR, instead providing data submitted in the prior 2016 AR, and informed Commerce that it would not participate further in this review.⁴⁶ Thus, we continue to find that the GOC withheld necessary information that was requested of it and, as a result, we must continue to rely on facts available for the final results.⁴⁷ Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, an adverse inference is warranted in the application of facts available.⁴⁸ In drawing an adverse inference, we continue to find that prices from actual transactions involving Chinese buyers and sellers are significantly distorted by the involvement of the GOC.⁴⁹ Thus, for the final results, we continue to find that the use of an external benchmark is warranted for calculating the benefit for the provision of synthetic yarn and caustic soda for LTAR.

Moreover, consistent with the *Preliminary Results*, we continue to find that each of the private companies which supplied Yama with synthetic yarn and caustic soda is an “authority” within the meaning of section 771(5)(B) of the Act. As discussed in the *Preliminary Results* under “Certain Producers of Synthetic Yarn and Caustic Soda are ‘Authorities,’” we requested information from the GOC regarding the specific companies that produced the input products that Yama purchased

⁴⁵ See *Preliminary Results* PDM at 7.

⁴⁶ *Id.* at 7.

⁴⁷ See section 776(a)(2)(A) of the Act.

⁴⁸ See section 776(b) of the Act.

⁴⁹ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (*Preamble*).

during the POR. Specifically, we sought information from the GOC that would allow us to determine whether the producers are “authorities” within the meaning of section 771(B) of the Act.⁵⁰ Furthermore, we asked the GOC to: (1) provide information about the involvement of the CCP in any input supplier identified by Yama, including whether individuals in management positions are CCP members, in order to evaluate whether the input suppliers which supplied Yama are “authorities” with the meaning of section 771(B) of the Act; and (2) identify any owners, members of the board of directors, or managers of the input suppliers who were government or CCP officials during the POR.⁵¹ By failing to respond to Commerce’s questionnaire in this review, the GOC withheld information requested of it regarding the CCP’s role in the ownership and management of Yama’s input suppliers. As discussed in the *Preliminary Results*, we understand the CCP to exert significant control over economic activities in China.⁵² Thus, Commerce continues to find, as it has in prior CVD proceedings,⁵³ that the information requested regarding the role of CCP officials and CCP committees in the management and operations of Yama’s input suppliers is necessary to our determination of whether these producers are “authorities” within the meaning of section 771(5)(B) of the Act.

Further, as discussed in the *Preliminary Results*, Commerce has previously found these programs to be countervailable, in part because these programs constituted a financial contribution by an authority and were specific.⁵⁴ It is Commerce’s practice not to revisit financial contribution and specificity determinations made in a prior segment of the same proceeding, absent the presentation of new facts or evidence.⁵⁵ The U.S. Court of Appeals for the Federal Circuit (CAFC) has affirmed this practice, under section 751(a)(1)(A) of the Act.⁵⁶ In this administrative review, the GOC withheld information requested of it, including new information regarding the financial contribution and specificity of these programs. Thus, in light of the lack of new information on the record, and consistent with our practice and *Magnolia*, we are continuing to find these programs to be countervailable.

Additionally, we continue to find that the GOC withheld necessary information that was requested of it and that Commerce must rely on facts available in conducting our analysis of the producers that supplied Yama with these inputs during the POR. As a result, as discussed in the *Preliminary Results*, the prices from these suppliers are not usable as benchmarks, as they are prices charged by the very providers of the good at issue. Thus, consistent with the *Preliminary Results*, we selected

⁵⁰ See *Preliminary Results* PDM at 8.

⁵¹ *Id.*

⁵² *Id.* (citing Additional Documents Memorandum).

⁵³ *Id.* (citing e.g., *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 78799 (December 31, 2014), and accompanying IDM at Comment 5).

⁵⁴ 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 Inv. Final*) and accompanying IDM at sections VIII.A and B.1.a; see also *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review, 2014-2015*, 82 FR 42792 (September 12, 2017) (*Solar Products 2014 AR*) and accompanying IDM at section X.A. We are now clarifying that the program, Export Buyer’s Credits from the China Export-Import Bank, is export-contingent, pursuant to section 771(5A)(B) of the Act.

⁵⁵ See *Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, Products from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review, 2012*, 80 FR 41003 (July 14, 2015) and accompanying IDM at 27 n.130 (“In a CVD administrative review, we do not revisit past determination of countervailability made in the proceeding, absent new information.”).

⁵⁶ See *Magnolia Metallurgy, Inc. v United States*, 508 F.3d 1349, 1353-56 (CAFC 2007) (*Magnolia*).

the benchmarks for measuring the adequacy of the remuneration for synthetic yarn and caustic soda in accordance with 19 CFR 351.511(a).⁵⁷

Therefore, as discussed above and in the *Preliminary Results*, because the GOC did not provide us with required information regarding Yama's input producers, we are relying on AFA to determine that Yama's suppliers of synthetic yarn are "authorities" within the meaning of section 771(5)(B) of the Act and that Yama received financial contributions from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act. Furthermore, as discussed above and in the *Preliminary Results*, due to the GOC's failure to respond to the market distortion questions, we are relying on AFA to determine that actual transaction prices for synthetic yarn in China are significantly distorted by the government's involvement in the market.⁵⁸ As such, we continue to find that domestic prices in China cannot serve as viable, tier one benchmark prices. For the same reasons, we continue to find that import prices into China cannot serve as a benchmark. Accordingly, and consistent with the *Preliminary Results*, in order to determine whether the provision of synthetic yarn conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, we applied a tier two benchmark (*i.e.*, world market prices available to purchasers in China).⁵⁹

Finally, we disagree with Yama that we should revise the calculation of the synthetic yarn benchmark to include only HTS numbers 5402.33.10 and 5402.47.00. At verification, we examined documentation that indicated that only a certain percentage of Yama's synthetic yarn purchases during the POR were made under these HTS numbers.⁶⁰ Yama did not identify the HTS numbers for the remaining percentage of its synthetic yarn purchases during the POR.⁶¹ Therefore, Yama may have also purchased synthetic yarn during the POR under the other HTS numbers for which the petitioner provided benchmark data. As a result, we did not modify the synthetic yarn benchmark calculation for the final results.

Comment 2: Export Buyer's Credit Program

Yama's Case Brief

- The record clearly demonstrates that the GOC gave Commerce complete and verifiable information regarding the Export Buyer's Credit (EBC) program. Both the GOC and Yama fully answered the relevant questions about the EBC program during the POR and stated that it was not used.
- The GOC confirmed that the Export-Import Bank of China (China EX-IM Bank) did not provide bank credits to any of Yama's U.S. customers during the POR, and explained that if the program had been used, both the China EX-IM Bank and Yama would have the records. Given the above answers, the additional questions about the involvement of any other commercial banks was moot. It was not necessary for the GOC to respond to the standard questions appendix or program-specific questions regarding this program. Commerce did not need to know how the EBC program worked because Yama did not

⁵⁷ See *Preliminary Results* PDM at 18.

⁵⁸ *Id.* at 20.

⁵⁹ See 19 CFR 351.511(a)(2)(ii).

⁶⁰ See Yama's Verification Report at 6.

⁶¹ *Id.*

use it. If the GOC has responded to the remaining questions, it would have simply stated “not applicable.”⁶²

- The original questionnaire in numerous places instructed the respondent to answer certain questions only if the programs were used. Therefore, reporting that a program was not used absolves any party from having to answer further detailed questions regarding the program. Making the EBC program an exception to this stated requirement is clearly arbitrary and capricious.⁶³
- The GOC’s failure to provide the 2013 EX-IM Bank revisions or a list of banks used by Yama’s customers was moot because, since Yama’s customers did not use this program, there could not be any banks that were distribution points for the funds received under this program.
- Commerce chose not to verify Yama’s and the GOC’s claims of non-use of the EBC program.⁶⁴ However, at verification, Commerce found no evidence of any application or receipt of EBC benefits in the POR. More importantly, Commerce found no unreported subsidies in Yama’s books and records nor did it observe any inconsistencies with the information provided by Yama in its responses.⁶⁵
- Furthermore, Commerce failed to adhere to its policy to use a rate from a similar program as AFA. If Commerce continues to countervail these non-existent EBCs, it should apply a rate from a more similar program, export seller credits, rather than policy loans that are only available to the coated paper industry, for which Yama does not qualify.⁶⁶ The export seller’s rate is not only the most similar rate available, but it also is much closer in time to the POR.⁶⁷ Additionally, the export seller’s credit program confers the same type of benefit as the EBC program, as both are subsidized loans from the China EX-IM Bank and serve the same goal to support the export of Chinese products and improving their competitiveness in international markets.⁶⁸
- Recently in *Chlorinated Isos*, Commerce used the export seller’s program rate of 0.87 percent as the AFA for the EBC program.⁶⁹ For Commerce to do otherwise for Yama here is arbitrary and capricious.
- In *Chlorinated Isos*, Commerce explained that it requires information from both the respondents and the foreign government, and even when the foreign government fails to cooperate fully, Commerce will determine the existence and the amount of the benefit conferred based on the respondent’s books and records.⁷⁰

⁶² See Yama’s Case Brief at 24.

⁶³ *Id.*

⁶⁴ *Id.* at 24.

⁶⁵ *Id.* at 23 (citing Yama’s Verification Report at 8).

⁶⁶ *Id.* at 27.

⁶⁷ *Id.* (citing *Chlorinated Isocyanurates from the People’s Republic of China, Final Results of Countervailing Duty Administrative Review*; 2015, 83 FR 26954 (June 11, 2018) (*Chlorinated Isos*), and accompanying IDM at Comment 1).

⁶⁸ *Id.*

⁶⁹ *Id.* (citing *Chlorinated Isos* IDM at Comment 1).

⁷⁰ *Id.* at 27-28 (citing, e.g., *Chlorinated Isos* IDM at Comment 1; *Hardwood and Decorative Plywood from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*; 2011, 78 FR 58283 (September 23, 2013), and accompanying IDM at “Provision of Electricity for LTAR”; and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent To Rescind, in Part*; 2014, 82 FR 2317 (January 9, 2017), and accompanying PDM at 38)).

- Moreover, the Courts have consistently found that even when a foreign government is found to be uncooperative, Commerce should avoid adversely impacting the cooperating parties.⁷¹
- In *Fine Furniture*, the CAFC found that, although a collateral impact on a cooperating party does not render the application of adverse inferences against the foreign government improper, the adverse inference cannot be used against the cooperating party.⁷² Central to the CAFC’s decision was the fact that the adverse inferences were used to substitute for information the GOC refused to provide and were not used against Fine Furniture.
- In order for Commerce not to be arbitrary and capricious, it must consider additional recent decisions regarding Commerce’s treatment of the EBC program.⁷³

Petitioner’s Rebuttal Brief

- The GOC failed to respond to the initial CVD questionnaire in which Commerce requested responses to the standard questions appendix and other specific questions relating to the EBC program for the POR. The GOC further informed Commerce that it would not participate further in the review. Thus, Commerce properly determined that the use of AFA is warranted in determining the countervailability of the EBC Program.⁷⁴
- Commerce acted reasonably in determining that it could not verify claims of non-use by Yama or its customers because the GOC’s failure to cooperate to the best of its ability prevented Commerce from fully understanding the operation of the program.
- The GOC is in the best position to provide information to determine whether the EBC program conferred a benefit on the individual respondent company through the export buyer’s credit financing being provided to the unrelated customer of that individual respondent company. Because the GOC had that information, application of AFA to the GOC on this factual point necessarily results in the application of AFA to Yama. In certain situations, AFA applied to a foreign government will necessarily negatively impact an individual respondent company.⁷⁵
- Commerce’s selection of the AFA rate is lawful. As explained in the *Preliminary Results*, Commerce followed the applicable statute and its established hierarchy and practice.⁷⁶ Based on the application of this hierarchy, Commerce selected as AFA the rate of 10.54

⁷¹ *Id.* at 28 (citing *Clearon Corp. v. United States*, No. 17-00171, 2019 Ct. Intl. Trade LEXIS 11, Slip Op. 19-13 at 18 (Jan. 25, 2019) (*Clearon*), citing *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1342 (Ct. Int’l Trade 2013)).

⁷² *Id.* at 28-29 (citing *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1372 (Fed. Cir. 2014) (*Fine Furniture*)).

⁷³ *Id.* at 29-30 (citing *Clearon*, Slip Op. 19-13 at 18 (“Commerce must either provide an adequate answer as to why the information it seeks ‘to fully understand the operation of the program’ is necessary to fill a gap as to Heze Huay’s products and their sale, or rely on the information on the record”); *Guizhou Tyre Co. v. United States*, 2018 Ct. Intl. Trade LEXIS 160, Slip Op. 18-140 (Oct. 17, 2018) (*Guizhou Tyre*) (“Although the GOC failed to fully respond to Commerce’s request for information, this failure did not create the requisite gap needed to make an adverse inference.”); and *Changzhou Trina Solar Energy Co. v. United States*, 2018 Ct. Intl. Trade LEXIS 180, Slip Op. 18-166 (Nov. 30, 2018) (*Changzhou Trina 2018*) (“Commerce did not explain how an adverse inference regarding the operation of the EBC program logically leads to a finding that respondents used the program.”)).

⁷⁴ See Petitioner’s Rebuttal Brief at 12.

⁷⁵ *Id.* at 13 (citing *e.g.*, *Fine Furniture* 748 F.3d at 1372-73 (affirming Commerce’s application of adverse inferences when the GOC did not provide requested information despite the respondents’ cooperation); see also *infra* at 8-10 and cases cited therein).

⁷⁶ *Id.* at 14 (citing PDM at 10).

percent, which was the highest rate determined for a subsidy program from a proceeding that Commerce considered reasonable to use.⁷⁷ Section 776(d)(2) of the Act provides that Commerce has the discretion to apply the highest subsidy rate based on its evaluation of the situation that resulted in using an adverse inference. Section 776(d)(1)(A)(ii) of the Act only requires that Commerce consider the AFA subsidy rate reasonable to use.

- Furthermore, pursuant to section 776(d)(3)(B) of the Act, Commerce is not required to demonstrate that the subsidy rate it used as AFA reflects the alleged commercial reality of the interested party (which can be interpreted to refer to either the amount of the subsidy or to whether the interested party could use the subsidy program from which the AFA subsidy rate is selected).⁷⁸ Thus, there is no requirement that Commerce demonstrate that the ribbons industry be able to use the subsidy program.
- Therefore, Commerce properly evaluated the GOC's failure and refusal to cooperate here, and properly concluded that the 10.54 percent rate was an appropriate AFA rate to apply to the EBC program.

Commerce's Position: Consistent with the *Preliminary Results* and Commerce's practice, we continue to find that the record of the instant review does not support a finding of non-use regarding the EBC program for Yama.⁷⁹

Solar Cells from China Initial Investigation of EBC Program

Commerce first investigated and countervailed the EBC program in the 2012 investigation of solar cells.⁸⁰ Our initiation was based on, among other information, the China 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."⁸¹ Commerce initially asked the GOC to complete the "standard questions appendix" for the EBC 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.⁸²

⁷⁷ *Id.*

⁷⁸ *Id.* at 16.

⁷⁹ See *Preliminary Results* PDM at 9-11; see also, e.g., *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products from China*), and accompanying IDM at Comment 16; and *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 6.

⁸⁰ 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. While Commerce's determination with respect to the EBC Program was initially challenged, the case was dismissed.

⁸¹ *Id.* at 59.

⁸² *Id.*

The GOC provided none of the information requested by Commerce in the ensuing investigation, despite being given multiple opportunities to do so, but simply stated that “{n} one of the respondents or their reported cross-owned companies applied for, used, or benefited from the alleged programs during the POI.”⁸³ In response to a request from Commerce for information concerning the operation of the EBC 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.”⁸⁴ 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.⁸⁵ The GOC again refused to provide sample application documents, regulations, or manuals governing the approval process, and instead provided only a short description of the application process which gave no indication of how an exporter might be involved in the provision of export buyer’s credits, how it might have knowledge of such credits, or how such credits might be reflected in a company’s books and records.⁸⁶

Based on the GOC’s responses, Commerce’s understanding was that, under this program, loans were provided directly from the China EX-IM Bank to the borrowers (*i.e.*, a respondent’s customers), with no involvement of third parties, such as exporters, or third-party banks. Accordingly, Commerce made clear its understanding that the only way to establish non-use of the program was through the GOC and not the respondent companies.⁸⁷ 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.⁸⁸

⁸³ *Id.*

⁸⁴ *Id.* at 60.

⁸⁵ *Id.* at 60-61.

⁸⁶ *Id.* at 61.

⁸⁷ *Id.*

⁸⁸ *Id.* at 61-62.

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.⁸⁹ These 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.⁹⁰

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.

⁸⁹ Commerce provided a similar explanation in the 2014 investigation of solar products from China. See *Solar Products from China* IDM at 93. This was affirmed by the Court in *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 195 F. Supp. 3d 1334, 1350 (CIT 2016) (*Changzhou Trina 2016* (*Changzhou Trina 2016*)). In *Changzhou Trina 2017*, 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. v. United States*, 255 F. Supp. 3d at 1318 (CIT 2017) (*Changzhou Trina 2017*). However, the Court found that the 2014 review of solar cells from China at issue in *Changzhou Trina 2018* 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 2018*; and *Solar Products from China* 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 China: Amended Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 46760 (October 6, 2017), and accompanying IDM)). The Court in *Guizhou Tyre* reached a similar conclusion concerning the 2014 review of tires from China. See *Guizhou Tyre*, 348 F. Supp. 3d at 1261; see also *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.

⁹⁰ The Court agreed with Commerce in *RZBC 2017*, following a remand, finding that Commerce could not verify non-use of the program by examining the respondent-exporter’s audited financial statements or other books and records because record evidence demonstrated that the program terms were ambiguous. See *RZBC Group Shareholding Co. v. United States*, 222 F. Supp. 3d 1196, 1201-02 (CIT 2017) (*RZBC 2017*); see also *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid 2012*), and accompanying IDM at Comment 6.

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 EBC 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 the China 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 such records could then be tied to the {China} Ex-Im Bank’s financial statements.”⁹¹ However, the GOC refused to allow Commerce to query the databases and records of the China EX-IM Bank.⁹² Furthermore, there was no information on the record of the solar cells investigation from the respondent exporters’ customers.

Chlorinated Isos Investigation of EBC Program

Two years later, in the *Chlorinated Isos Investigation*,⁹³ respondents submitted certified statements from all customers claiming that they had not used the EBC 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 EBC 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 the China 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.”⁹⁴

2013 Amendments to the EBC Program

Our understanding of the operation of the EBC program began to change after *Chlorinated Isos* was completed in September 2014. In *Citric Acid 2012*, Commerce began to gain a better understanding of how the China EX-IM Bank issued disbursement of funds and the corresponding timeline; however, Commerce’s attempts to verify the program’s details and statements from the

⁹¹ See *Solar Cells from China Investigation* IDM.

⁹² *Id.*

⁹³ See *Chlorinated Isocyanurates from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*; 2012, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos Investigation*).

⁹⁴ *Id.* at 15.

GOC concerning the operation and use of the program were thwarted by the GOC.⁹⁵ 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 EBC program, including changes in 2013 that eliminated the \$2 million minimum business contract requirement.⁹⁶ In response, the GOC stated that there were three relevant documents pertaining to the EBC program: (1) “Implementing Rules for the Export Buyer’s Credit of the {China EX-IM Bank}” which were issued by the China EX-IM Bank on September 11, 1995 (referred to as “1995 *Implementation Rules*”); (2) “Rules Governing Export Buyer’s Credit of the {China EX-IM Bank}” which were issued by the China EX-IM Bank on November 20, 2000 (referred to as “2000 *Rules Governing Export Buyer’s Credit*” or “*Administrative Measures*”); and (3) 2013 internal guidelines of the China EX-IM Bank.⁹⁷ According to the GOC, “{t}he {China EX-IM Bank} has confirmed to the GOC that . . . its 2013 guidelines are internal to the bank, non-public, and not available for release.”⁹⁸ The GOC further stated that “those internal guidelines do not formally repeal or replace the provisions of the {*Administrative Measures*} which remain in effect.”⁹⁹

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 China EX-IM Bank. Specifically, the GOC stated that customers can open loan accounts for disbursements through this program with

⁹⁵ See *Citric Acid 2012* IDM at Comment 6 (“{N}otwithstanding the non-use claims of the RZBC Companies and the GOC, we find that the GOC’s refusal to allow the verifiers to examine the EXIM Bank database containing the list of foreign buyers that were provided assistance under the program during the POR precluded the Department from verifying the non-use claims made by the RZBC Companies and the GOC.”).

⁹⁶ 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 Investigation*), and accompanying IDM at Comment 17.

⁹⁷ *Id.*

⁹⁸ See *Silica Fabric Investigation* IDM at Comment 17.

⁹⁹ *Id.*

other banks. The funds are first sent from the China 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 EX-IM Bank, impeded {Commerce's} ability to conduct its investigation of this program.¹⁰⁰

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."¹⁰¹

Additionally, we explained that "we now have information on the record that demonstrates the GOC updated certain measures of the program, but the GOC refused to provide the updated measures {,}" and "{b}ecause the GOC withheld critical information regarding this program, we are unable to determine how the program now operates, and, thus, we cannot verify ACIT's declarations as submitted."¹⁰²

The Instant Administrative Review

As stated in the *Preliminary Results*, we requested a list of all partner/correspondent banks involved in the disbursement of funds under the EBC program.¹⁰³ We also asked the GOC to provide copies of any laws, regulations, or other governing documents cited by the GOC in the Export Buyer's Credit Supplemental Questionnaire Response.¹⁰⁴ The GOC failed to respond to the questionnaire in this POR and also informed us that it would not participate further in this review.¹⁰⁵ Thus, the GOC prevented Commerce from analyzing the function of the program, as discussed below.

In our initial CVD questionnaire, 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 EBC program, which are necessary for Commerce to analyze how the program is administered and how it functions.¹⁰⁶ But as noted above, the GOC did not respond to the questionnaire for this review period. The GOC's failure to respond to our initial questionnaire and indication that it would not participate further in this review prevented Commerce from analyzing the function of the program or asking further questions regarding the 2013 revisions to the Administrative Measures.

¹⁰⁰ *Id.* at 12.

¹⁰¹ *Id.* at 62.

¹⁰² *Id.*

¹⁰³ See *Preliminary Results* PDM at 9.

¹⁰⁴ See Commerce's Letter, "2017 Administrative Review of the Countervailing Duty Order on Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Countervailing Duty Questionnaire", dated November 26, 2018 (Initial Questionnaire).

¹⁰⁵ See *Preliminary Results* PDM at 2.

¹⁰⁶ See Initial Questionnaire.

Commerce's understanding of the EBC program changed after Commerce began questioning the GOC's earlier indication that loans provided pursuant to the EBC 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 EBC 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.¹⁰⁷ Thus, Commerce asked the GOC to provide the same information it provided in the *Silica Fabric Investigation* regarding the rules implementing the EBC 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 original and translated copies of any laws, regulations or other governing documents cited by the GOC in the Export Buyer's Credit Supplemental Questionnaire Response.¹⁰⁸
- Please explain in detail the steps the GOC took to determine that no customer used the Buyer Credit Facility. In your answer, please identify the documents, databases, accounts, *etc.* that were examined to determine there was no use.¹⁰⁹
- Provide a list of all partner/correspondent banks involved in disbursement of funds under the Export Buyer's Credit Program.¹¹⁰

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 respondent's merchandise has been subsidized. As noted above, based on the information obtained in the *Silica Fabric Investigation*, Commerce altered its understanding of how the EBC program operated (*i.e.*, how funds were disbursed under the program).¹¹¹ Specifically, the record indicates that the loans associated with this program are not limited to direct disbursements through the China EX-IM Bank.¹¹²

For instance, it appears that: (1) customers can open loan accounts for disbursements through this program with other banks; (2) the funds are first sent from the China EX-IM Bank to the importer's account, which could be at the China EX-IM Bank or other banks; and (3) that these funds are then sent to the exporter's bank account.¹¹³ Given the complicated structure of loan disbursements which can involve various banks for this program, Commerce's complete understanding of how this program is administered is necessary to verify claims of non-use.¹¹⁴ Thus, the GOC's refusal to participate in this segment of the proceeding prevented Commerce

¹⁰⁷ See *Silica Fabric Investigation* IDM at 12.

¹⁰⁸ See Initial Questionnaire.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ See Memorandum, "2017 Countervailing Duty Administrative Review of Narrow Woven Ribbons with Woven Selvage from the People's Republic of China: Placing Information on the Record," dated concurrently with this memorandum.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

from requesting 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 respondent’s customers.

This missing information was especially significant because the available record evidence indicates that under the EBC program, credits are not direct transactions from the China EX-IM Bank to the U.S. customers of the respondent exporters; rather, there can be intermediary banks involved,¹¹⁵ the identities of which the GOC has refused to provide to Commerce. In *Chlorinated Isos Investigation*, based on our understanding of the program at that time, verification of non-use 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.¹¹⁶ However, based on our more recent understanding of the program in the *Silica Fabric 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. Commerce recently addressed this issue in *Aluminum Sheet from China*, stating:

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.¹¹⁷

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,¹¹⁸ having a list of the correspondent banks is critical for us to perform verification at the U.S. customers.

Without such information, it would be unreasonably onerous for Commerce to comb through the business activities of the company respondent’s customers without any guidance as to how to simplify the process or any guidance as to which loans or banks should be subject to scrutiny as part of a verification for each company. A careful verification of the company respondent’s 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.*,

¹¹⁵ *Id.*

¹¹⁶ See *Chlorinated Isos Investigation* IDM at 15.

¹¹⁷ 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) (*Aluminum Sheet from China*), and accompanying IDM at 30.

¹¹⁸ Commerce no longer attempts to verify usage with the GOC given the inadequate information provided in its questionnaire responses. See *Aluminum Sheet from China* IDM at Comment 2.

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 subset 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 EBC program. This is especially true given the GOC's failure to provide other requested information, such as 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 China EX-IM Bank financing: specific applications, correspondence, abbreviations, account numbers, or other indicia of China 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 the respondent's non-use of the EBC program, notwithstanding its lack of knowledge of which banks are intermediary/correspondent banks, by examining *each* loan received by the respondent's U.S. customers, Commerce still would not be able to verify which loans were normal loans versus EBC 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 determined that the information contained in the 2013 Administrative Measures, as well as other information concerning the operation of the EBC program, is required in order to verify usage. However, because the GOC stated that it was no longer participating in the review, Commerce did not have an opportunity to ask for the necessary information needed to understand the operation of the program, which is not solely a matter of determining whether there is a financial contribution or whether a subsidy is specific. A complete understanding of the program provides a "roadmap" for the verifiers by which they can conduct an effective verification of

usage.¹¹⁹ Thus, Commerce could not *accurately and effectively* verify usage at the company respondent's customers, even were it to attempt the unreasonably onerous examination of each of the customers' loans. To conduct verification of the customers without the information requested from the GOC would amount to looking for a needle in a haystack with the added uncertainty that Commerce might not even be able to identify the needle when it was found.

Thus, as determined in the *Preliminary Results*, we continue to find that Commerce could not verify non-use of export buyer's credits by the customers of the respondent. Furthermore, the lack of information concerning the operation of the EBC program prevents an accurate assessment of usage at the respondent's verification.

In prior proceedings in which we have examined this program, before the 2013 amendments, we have found that the China EX-IM Bank, 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 {respondents' claimed non-use 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 China EX-IM Bank limits the provision of Export Buyer's Credits to business contracts exceeding \$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 China EX-IM Bank and forms the basis of determining countervailability. Absent the requested information, and without a full understanding of the involvement of third-party banks, Yama's (and its customers') claims of non-use are not verifiable.¹²⁰

We continue to find that usage of the EBC program could not be verified at the company respondent 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 statements¹²¹ 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 respondent's U.S. customers' books and records, and therefore could not verify the claims of non-use. A review of ancillary documents, such as applications, correspondence, emails, *etc.*, is insufficient for Commerce to verify any bank disbursement or loan amount pertaining to the company respondent, its customers, and/or the GOC's participation in the program.¹²² 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 respondent's reported information from its questionnaire response. Therefore, we found it necessary to have had this information prior to verification in order to ensure the information we would have

¹¹⁹ By analogy, consider attempting to verify whether a company has received a tax exemption without having an adequate understanding of how the underlying tax returns should be completed or where use of the tax exemption might be recorded.

¹²⁰ See *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2016*, 83 FR 62841 (December 7, 2018), and accompanying PDM at 16-17, unchanged in *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 37627 (August 1, 2019).

¹²¹ *Id.*

¹²² *Id.*

received was complete and accurate to fully analyze and calculate the benefits the company respondent received under this program during the course of the POR.

In short, because the GOC failed to provide Commerce with information necessary to identify a paper trail of a direct or indirect export credit from the China EX-IM Bank, we would not know what to look for behind each loan in attempting to identify which loan was provided by the China EX-IM Bank via a correspondent bank under the EBC 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.¹²³ 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 respondent's 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 ribbons because the potential recipients of export buyer's credits are not limited to Yama's customers, 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-use, 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 any information regarding this program related to the POR, including, for example, a complete list of correspondent/partner/intermediate banks.

Commerce finds that required missing information concerning the operation and administration of the EBC program is necessary because it demonstrates why usage information provided by the GOC and Yama cannot be verified and, thus, why there is 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 EBC program) prevents complete and effective verification of the customers' certifications of non-use. A very similar rationale has been accepted by the U.S. Court of International Trade (CIT) in a review of *Solar Products from China*. Specifically, in *Changzhou Trina 2016*,¹²⁴ given similar facts, the CIT found Commerce reasonably concluded it could not verify usage of the EBC 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...").¹²⁵

¹²³ 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 20, 2014), and accompanying IDM at 31 (confirming that the GOC solely owns the China EX-IM Bank).

¹²⁴ See *Changzhou Trina 2016*, 195 F. Supp. 3d at 1355 (citing *Solar Products from China* IDM at 91-94).

¹²⁵ *Id.*

Moreover, we disagree Yama that Commerce does not need the information requested from the GOC to determine non-use.¹²⁶ Given the constraints on Commerce resulting from the GOC's failure to provide the necessary information requested for this program, Commerce reasonably determined that it would be unable to examine each and every loan obligation of each of Yama's customers and that, even if such an undertaking were possible, it would be meaningless, because Commerce would have no idea of 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 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 value added tax (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.¹²⁷ 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 EBC program, for the reasons explained above.

Thus, 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 the final results, pursuant to sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act. Specifically, necessary information is 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 information to Commerce. Additionally, we continue to find this program provides a financial contribution, is specific, and provides a benefit to Yama within the meaning of sections 771(5)(D), 771(5A), and 771(5)(E) of the Act, respectively.

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 of it, and significantly impeded the proceeding, pursuant to sections 776(a)(1), (2)(A), and (2)(C) of the Act, respectively, and that the

¹²⁶ See Yama's Case Brief at 24.

¹²⁷ 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), and accompanying IDM at 10 ("At the verification of Princeway's questionnaire responses. . .the GOC presented corrections regarding the reported exempted import duties for imported equipment.").

GOC has failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act. Thus, Commerce’s use of an adverse inference when selecting from among the facts otherwise available is reasonable and supported by substantial evidence on the record. Thus, we continue to find that the EBC program provides loan support through export buyer’s credits.

Finally, with respect to the selection of the AFA rate to apply to this program, we continued to apply our CVD AFA hierarchy to assign a rate of 10.54 percent *ad valorem* to this program. As discussed in the *Preliminary Results*,¹²⁸ under the new section 776(d) of the Act, Commerce may use as AFA a 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, 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 section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.¹²⁹

Consistent with section 776(d) of the Act and our established practice, we select the highest calculated rate for the same or similar program as AFA.¹³⁰ When selecting rates in an administrative review, we first determine if there is an identical program from any segment of the proceeding and use the highest calculated rate for the identical program (excluding *de minimis* rates). If no such identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) within the same proceeding and apply the highest calculated rate for the similar/comparable program, excluding *de minimis* rates. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program in any CVD case involving the same country, but we do not use a rate from a program if the industry in the proceeding cannot use that program.¹³¹

Thus, as discussed in the *Preliminary Results*, because we have not previously calculated an above-*de minimis* rate for the EBC program in this proceeding, and we found no similar/comparable program within this proceeding without a *de minimis* rate, we relied on the rate determined for a comparable program in another CVD proceeding involving China.¹³² As set forth above, where no identical or similar program exists within a proceeding, as is the case here, Commerce’s AFA hierarchy directs it to use a calculated rate for any non-company specific program in any CVD case involving the same country. Consistent with our standard methodology and instructed by section 776(d) of the Act, Commerce may use as AFA a 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, a CVD rate for a subsidy program from a proceeding that the administering

¹²⁸ See *Preliminary Results* PDM at 10.

¹²⁹ See section 776(d)(3) of the Act.

¹³⁰ See, e.g., *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding “hierarchical methodology for selecting an AFA rate”).

¹³¹ See *Shrimp from China* IDM at 13-14.

¹³² See *Preliminary Results* PDM at 11; see also *Narrow Woven Ribbons with Woven Selvedge from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 11052 (March 25, 2019) (*Ribbons AR 2016*), and accompanying IDM at Comment 3.

authority considers reasonable to use, including the highest of such. We therefore determine that the highest calculated rate for a comparable lending program is the 10.54 percent rate calculated for the preferential policy lending program in *Coated Paper from China*.¹³³ We disagree with Yama that the preferential policy lending program in *Coated Paper from China* is not available to it because such a loan is only available to the coated paper industry. Based on the record of *Coated Paper from China*, there is no evidence to support Yama’s argument that preferential lending in China is only provided to the coated paper industry. We further note that Commerce has found this program to be similar to the ECB program and used this same rate in several other reviews or investigations that do not involve the coated paper industry.¹³⁴ Specifically, in *Shrimp from China*, Commerce addressed this same argument, explaining that we determine that a lending program is similar to the program at issue based on the treatment of the benefit because the credits function as short-term or medium-term loans.¹³⁵ We therefore determine that the highest calculated rate for a comparable/similar lending program is the 10.54 percent rate calculated for the preferential policy lending program in *Coated Paper from China*.

Moreover, the CIT in *Changzhou Trina 2018* recognized that section 776(d)(1)(A) of the Act does not require that Commerce select the *most* similar program when selecting among subsidy rates based on facts otherwise available with an adverse inference.¹³⁶ Rather, the plain text of the statute merely requires Commerce to select a *similar* program.¹³⁷ Further, the CIT has recognized that Commerce has broad discretion in determining and applying an AFA rate, as long as it “reasonably balance{s} the objectives of inducing compliance and determining an accurate rate.”¹³⁸

Therefore, consistent with our AFA hierarchy, we continue to find the preferential policy lending program in *Coated Paper from China* to be similar to the export buyer’s credit program based on the treatment of benefit. As a result, we disagree with Yama that we should instead rely on the export seller’s rate calculated in *Chlorinated Isos*. Consequently, and consistent with our practice in *Ribbons AR 2015*, we continued to assign as the AFA rate for this program the 10.54 percent rate calculated for a similar program in *Coated Paper from China*.¹³⁹

¹³³ 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*) (revised rate for “Preferential Lending to the Coated Paper Industry” program).

¹³⁴ See e.g., *Certain Fabricated Structural Steel from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 5384 (January 30, 2020); see also *Truck and Bus Tires from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, In Part*, 82 FR 8606 (January 27, 2017).

¹³⁵ *Shrimp from China* IDM at 13.

¹³⁶ See *Changzhou Trina 2018*, 352 F. Supp. 3d at 1328-29 (upholding Commerce’s selection of an AFA rate from a sufficiently similar program from an earlier administrative review and holding that Commerce needed not use plaintiff’s proffered Export Seller’s Credit Program rate to calculate an AFA rate for the export buyer’s credit program) (emphasis added).

¹³⁷ *Id.* (emphasis added).

¹³⁸ *Id.* (citing *Solarworld Americas, Inc. v. United States*, 229 F. Supp. 3d 1362, 1366 (CIT 2017)).

¹³⁹ See *Coated Paper from China*, 75 FR 70201.

IX. RECOMMENDATION

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

Agree

Disagree

2/19/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance