



C-570-107
Investigation
POI: 1/1/2018 – 12/31/2018
Public Document
E&C/OV: JMN/BB

February 21, 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 Determination of
the Countervailing Duty Investigation of Wooden Cabinets and
Vanities and Components Thereof from the People's Republic of
China

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers of wooden cabinets and vanities and components thereof (cabinets and vanities) from the People's Republic of China (China), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). Below is the complete list of issues in this investigation for which we received comments from interested parties:

General Issues

- Comment 1: Initiation of the Investigation
- Comment 2: Whether Commerce Should Apply Adverse Facts Available (AFA) to the Provision of Electricity for Less than Adequate Remuneration (LTAR) Program
- Comment 3: Whether Commerce Should Apply AFA to Find the Export Buyer's Credit (EBC) Program Countervailable
- Comment 4: Whether the Policy Loans to the Wooden Cabinet and Vanity Industry Program Is Countervailable
- Comment 5: Whether Land Prices in Thailand Provide a Suitable Benchmark for Land Prices in China
- Comment 6: Whether Commerce Should Apply AFA to the Provision of Inputs for LTAR
- Comment 7: Whether Commerce Should Apply AFA to Self-Reported Subsidies
- Comment 8: Whether Commerce Should Adjust Its Plywood Benchmark



Company-Specific Issues

Dalian Meisen Woodworking Co., Ltd. (Meisen)

Comment 9: Whether Commerce Should Apply AFA to Meisen

Comment 10: Whether Commerce Should Continue to Find that Meisen Was Uncreditworthy

Rizhao Foremost Woodwork Manufacturing Co., Ltd. (Foremost)

Comment 11: Whether Commerce Should Countervail Subsidies Received by Foremost's Tolling Companies

Comment 12: Whether Commerce Should Continue to Find that Foremost Was Uncreditworthy

II. BACKGROUND

Case History

The mandatory company respondents in this investigation are The Ancientree Cabinet Co., Ltd. (Ancientree), Foremost, and Meisen.¹ On August 12, 2019, Commerce published the *Preliminary Determination* in this investigation and aligned this final countervailing duty (CVD) determination with the final antidumping duty (AD) determination, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i).²

On October 9, 2019, Commerce postponed the deadline for the final determination until February 21, 2020.³ From October 29, 2019 through November 15, 2019, Commerce conducted verifications of the questionnaire responses submitted by Ancientree, Foremost, and Meisen, in accordance with section 782(i) of the Act.⁴

¹ As discussed in the *Preliminary Determination*, Commerce found Ancientree to be cross-owned with Jiangsu Hongjia Wood Co., Ltd. (Jiangsu Hongjia), Jiangsu Hongjia Wood Co., Ltd. Shanghai Branch (Shanghai Branch), and Shanghai Hongjia Wood Co., Ltd. (Shanghai Hongjia), Foremost to be cross-owned with Foremost Worldwide Co., Ltd. (FWW) and Rizhao Foremost Landbridge Wood Industries Co., Ltd. (FLB), and Meisen to be cross-owned with Dalian Hechang Technology Development Co., Ltd. (Dalian Hechang). See *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 39798 (August 12, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

² *Id.*

³ See *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 84 FR 54106 (October 9, 2020).

⁴ See Memorandum, "Verification of the Questionnaire Responses of Dalian Meisen Woodworking Co., Ltd.," dated January 3, 2020 (Meisen's Verification Report); Memorandum, "Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Verification of the Questionnaire Responses of The Ancientree Cabinet Co., Ltd.," dated January 7, 2020; and Memorandum, "Verification of the Questionnaire Responses of Rizhao Foremost Woodwork Manufacturing Co., Ltd.," dated January 7, 2020 (Foremost's Verification Report).

On January 9, 2020, we issued the Post-Preliminary Analysis.⁵ We invited parties to comment on the *Preliminary Determination*.⁶ Between January 21, 2020 and January 27, 2020, we received timely filed case briefs and rebuttal briefs from the American Kitchen Cabinet Alliance (the petitioner), the Government of China (GOC), Ancientree, Foremost, Meisen, and Fabuwood Cabinetry Corp. (Fabuwood).⁷

On February 3, 2020, we invited interested parties to comment on the Default Rates Memorandum.⁸ On February 6, 2020, Commerce conducted a hearing on scope related issues in this investigation, as well as issues relating to the concurrent AD investigation.⁹ On February 7, 2020, Meisen submitted comments on the Default Rates Memorandum.¹⁰

Period of Investigation

The period of investigation (POI) is January 1, 2018 through December 31, 2018.

⁵ See Memorandum, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Post-Preliminary Analysis,” dated January 9, 2020 (Post-Preliminary Analysis).

⁶ See Memorandum, “Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Case Briefs Schedule,” dated January 8, 2020.

⁷ See Petitioner’s Case Brief, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Petitioner’s Case Brief,” dated January 21, 2020 (Petitioner’s Case Brief); GOC’s Case Brief, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China, Case No. C-570-107: Case Brief,” dated January 21, 2020 (GOC’s Case Brief); Ancientree’s Case Brief, “Wooden Cabinets and Vanities from the People’s Republic of China: Case Brief,” dated January 21, 2020 (Ancientree’s Case Brief); Meisen’s Case Brief, “Wooden Cabinets and Vanities from the People’s Republic of China: Case Brief,” dated January 21, 2020 (Meisen’s Case Brief); Foremost’s Case Brief, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Foremost’s Case Brief,” dated January 21, 2020 (Foremost’s Case Brief); and Fabuwood’s Case Brief, “Countervailing Duty Investigation of Wooden Cabinets and Vanities from the People’s Republic of China: Case Brief of Fabuwood,” dated January 21, 2020 (Fabuwood’s Case Brief); see also Petitioner’s Rebuttal Brief, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Rebuttal Brief,” dated January 27, 2020 (Petitioner’s Rebuttal); GOC’s Rebuttal Brief, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China, Case No. C-570-107: Rebuttal Brief,” dated January 27, 2020 (GOC’s Rebuttal); Meisen’s Rebuttal Brief, “Wooden Cabinets and Vanities from the People’s Republic of China: Rebuttal Case Brief,” dated January 27, 2020 (Meisen’s Rebuttal); and Foremost’s Rebuttal Brief, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Rebuttal Brief of Foremost,” dated January 27, 2020 (Foremost’s Rebuttal).

⁸ See Memorandum, “Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Moody’s Corporate Default and Recovery Rates,” dated February 3, 2020 (Default Rates Memorandum).

⁹ See Transcript, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Public Hearing,” dated February 6, 2020.

¹⁰ See Meisen’s Letter, “Wooden Cabinets and Vanities from the People’s Republic of China: Comments on Default Rates Memorandum,” dated February 7, 2020 (Meisen’s Default Rates Comments).

III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are cabinets and vanities from China. For a complete description of the scope of this investigation, *see* Appendix I of the accompanying *Federal Register* notice.

IV. SCOPE COMMENTS

During the course of this investigation, and the concurrent AD investigation of cabinets and vanities from China, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Memorandum to address these comments and set aside a period of time for parties to address scope issues in case and rebuttal briefs.¹¹ We received comments from interested parties on the Preliminary Scope Memorandum, which we addressed in the Final Scope Memorandum.¹² For this final determination, we have made no changes to the scope of this investigation, as published in the *Preliminary Determination*.

V. USE OF ADVERSE FACTS AVAILABLE

Commerce relied on “facts otherwise available,” including AFA, for several findings in the *Preliminary Determination*¹³ and the Post-Preliminary Analysis.¹⁴ Commerce made no changes to its use of AFA for this final determination.

VI. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation period or the allocation methodology used in the *Preliminary Determination* and the Post-Preliminary Analysis. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination*.¹⁵

B. Attribution of Subsidies

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the attribution of subsidies as described in the *Preliminary Determination* and the

¹¹ *See* Memorandum, “Certain Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated October 2, 2019 (Preliminary Scope Memorandum).

¹² *See* Memorandum, “Certain Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Final Scope Comments Decision Memorandum,” dated concurrently with this memorandum (Final Scope Memorandum).

¹³ *See Preliminary Determination* PDM at 8-34.

¹⁴ *See Post-Preliminary Analysis* at 3-14.

¹⁵ *See Preliminary Determination* PDM at 34.

Post-Preliminary Analysis. For a description of the methodologies used for this final determination, *see the Preliminary Determination*.¹⁶

C. Denominators

Other than the changes we made to the denominators used in calculating the *ad valorem* subsidy rate for Ancientree,¹⁷ Commerce made no additional changes to, and interested parties raised no issues in their case briefs regarding, the denominators used in the *Preliminary Determination* and the Post-Preliminary Analysis.¹⁸

D. Benchmarks

Interested parties raised issues in their case briefs regarding the land and plywood benchmarks we used in the *Preliminary Determination*.¹⁹ However, we made no changes to the benchmarks for land or plywood. For further discussion of the benchmarks used in the final determination, *see* Comments 5 and 8, respectively.

VII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

Except where noted,²⁰ we made no changes to the methodology used to calculate the subsidy rates for the following programs in the *Preliminary Determination*. Additionally, except as discussed under the Analysis of Comments section, no issues were raised by interested parties in case briefs regarding these programs. The final program rates are as follows:

1. Policy Loans to the Wooden Cabinets Industry

0.10 percent *ad valorem* for Ancientree

6.28 percent *ad valorem* for Foremost

1.78 percent *ad valorem* for Meisen

¹⁶ *Id.* at 34-37; *see also* Post-Preliminary Analysis.

¹⁷ *See* Memorandum, “Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Ancientree Final Determination Calculation Memorandum,” dated concurrently with this memorandum (Ancientree’s Final Calculation Memorandum) at 1-2.

¹⁸ *See Preliminary Determination PDM* at 37-38.

¹⁹ *Id.* at 38-44.

²⁰ *See* Ancientree’s Final Calculation Memorandum; Memorandum, “Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Foremost Final Determination Calculation Memorandum,” dated concurrently with this memorandum; and Memorandum, “Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Meisen Final Determination Calculation Memorandum,” dated concurrently with this memorandum (Meisen’s Final Calculation Memorandum).

2. *Provision of Plywood for LTAR*

0.01 percent *ad valorem* for Ancientree
0.28 percent *ad valorem* for Foremost
3.66 percent *ad valorem* for Meisen

3. *Provision of Sawn Wood and Continuously Shaped Wood for LTAR*

0.01 percent *ad valorem* for Ancientree
0.17 percent *ad valorem* for Foremost

4. *Provision of Particleboard for LTAR*

1.15 percent *ad valorem* for Ancientree
0.54 percent *ad valorem* for Foremost

5. *Provision of Fiberboard for LTAR*

1.20 percent *ad valorem* for Ancientree
3.70 percent *ad valorem* for Foremost

6. *Provision of Electricity for LTAR*

0.26 percent *ad valorem* for Ancientree
1.55 percent *ad valorem* for Foremost
0.94 percent *ad valorem* for Meisen

7. *Provision of Water for LTAR*

0.05 percent *ad valorem* for Foremost

8. *Provision of Land Use Rights by the GOC to Encouraged Industries for LTAR*

6.73 percent *ad valorem* for Foremost
0.58 percent *ad valorem* for Meisen

9. *Tax Offsets for Research & Development Under the Enterprise Income Tax Law*

0.26 percent *ad valorem* for Meisen

10. *Income Tax Reductions under Article 28 of the Enterprise Income Tax*

0.48 percent *ad valorem* for Meisen

11. EBC Program

10.54 percent *ad valorem* for Ancientree
10.54 percent *ad valorem* for Foremost
10.54 percent *ad valorem* for Meisen

12. Other Subsidies

0.06 percent *ad valorem* for Ancientree²¹
1.34 percent *ad valorem* for Foremost²²
0.03 percent *ad valorem* for Meisen²³

B. Programs Determined Not to be Used or Not to Confer a Measurable Benefit During the POI

The following programs: (1) were not used; (2) were fully expensed prior to the POI; or (3) are less than 0.005 percent *ad valorem* when attributed to the respondent's applicable sales, as discussed in the "Attribution of Subsidies" section in the *Preliminary Determination*.²⁴ Consistent with Commerce's practice,²⁵ we have not included programs which provided no measurable benefit in our final subsidy rate calculations. Moreover, we determine that it is unnecessary for Commerce to make a determination as to the countervailability of these programs.

1. Provision of Standing Timber for LTAR
2. Provision of Cut Timber for LTAR
3. Provision of Veneers for LTAR
4. Provision of Formaldehyde for LTAR
5. Provision of Urea for LTAR
6. Provision of Urea-Formaldehyde for LTAR
7. Provision of Land to SOE's by the GOC for LTAR
8. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Plan
9. Preferential Loans for State Owned Enterprises
10. Foreign Trade Development Fund Grants
11. Export Assistance Grants
12. Export Interest Subsidies
13. Interest Loan Subsidies for the Forestry Industry

²¹ See *Preliminary Determination* PDM at 52 (Prize and Supporting Fund for Model Enterprises (0.06 percent)).

²² *Id.* (Article 30 Income Tax Deduction (0.03 percent) and Equipment Grant (1.31 percent)).

²³ *Id.* (Subsidy for High-Tech Enterprise Application 2018 (0.03 percent)).

²⁴ See *Preliminary Determination* PDM at 34-37.

²⁵ See, e.g., *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and accompanying Issues and Decision Memorandum (IDM) at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District"; and *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016), and accompanying IDM at "Tax Deduction for Research and Development (R&D) Expenses."

14. Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands
15. Funds for Outward Expansion of Industries in Guangdong Province
16. Provincial Fund for Fiscal and Technological Innovation
17. State Key Technology Renovation Fund
18. Shandong Province's Special Fund for the Establishment of Key Enterprise Technology Centers
19. Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
20. Waste Water Treatment Subsidies
21. Technology to Improve Trade Research and Development Fund
22. Preferential Income Tax Policy for Enterprises in the Northeast Region
23. Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
24. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment
25. Value-Added Tax and Import Duty Exemptions for Use of Imported Equipment
26. Value-Added Tax Rebate Exemptions on FIE Purchases of Chinese-Made Equipment
27. Export Seller's Credit
28. Land-use Rights for LTAR and Other Incentives in Rizhao Development Zone (Rizhao High-Tech Industry Park)
29. Huai'an Hongze Economic Development Zone - Preferential Policy Programs

Additionally, certain subsidies self-reported by Ancientree, Foremost, and Meisen did not confer a measurable benefit. Based on the record evidence, we determine that the benefits from these programs were fully expensed prior to the POI or are less than 0.005 percent *ad valorem* when attributed to the respondents' applicable sales, as discussed in the "Attribution of Subsidies" section of the *Preliminary Determination*.²⁶ Full lists of these programs are contained in the associated calculation memoranda.

VIII. ANALYSIS OF COMMENTS

Comment 1: Initiation of the Investigation

Fabuwood's Comments

- Commerce initiated this investigation based on an improper finding that the Petition has adequate industry support.
- The petitioner's estimated U.S. market size fails to adequately capture all U.S. shipments of residential and non-residential wooden cabinets and vanities that are covered by the scope of the investigation. Commerce relied on the petitioner's faulty methodology and underestimated the size of the U.S. market, while improperly rejecting Fabuwood's proposed alternative market size. The petitioner's numbers distorted the measure of industry support required to initiate an investigation.²⁷

²⁶ See *Preliminary Determination* PDM at 34-37.

²⁷ See Fabuwood's Case Brief at 1.

- The shipment numbers provided by the petitioner included shipments of non-subject merchandise and imported cabinets or parts resold by domestic producers; thus, the shipment numbers were overvalued. This further distorted the industry support calculation.²⁸
- Although the petitioner adjusted its U.S. domestic market measurement to exclude subject merchandise and imports, it performed no such adjustment for the shipment numbers of its members, thereby dramatically inflating the shipments that were supportive of the Petition.²⁹
- Because of the distortion, Commerce was required under the Act to conduct its own analysis of industry support. However, Commerce neglected its statutory duty and initiated an investigation based on a legally insufficient petition. Thus, the investigation was initiated under improper circumstances and should be terminated.³⁰

The Petitioner's Rebuttal:

- Commerce already found that the petitioner has standing as an interested party, and it met the required domestic industry support threshold to file the petition.³¹ Many of Fabuwood's arguments are the same arguments Commerce rejected in its decision to initiate this investigation.³²
- Fabuwood entirely ignores section 702(c)(4)(E) of the Act, which provides that, once Commerce makes a decision regarding industry support, the agency's determination cannot be reconsidered.³³
- Commerce is prohibited from reconsidering industry support after the initiation of an investigation.³⁴ Commerce maintains significant discretion in determining industry support, and it exercised this discretion based on substantial record evidence in this case.³⁵
- The International Trade Commission (ITC) determined in its parallel investigation a total value of U.S. shipments of subject merchandise which was closer to the petitioner's estimate than Fabuwood's, and, thus, the petitioner's market estimate was reasonable.³⁶

Commerce's Position: Section 702(c)(4) of the Act directs Commerce as follows regarding the consideration of comments with respect to industry support:

²⁸ *Id.*

²⁹ *Id.* at 1-2.

³⁰ *Id.* at 2.

³¹ See Petitioner's Rebuttal at 54-55 (citing Commerce's Notice, "Enforcement and Compliance Office of AD/CVD Operations Countervailing Duty Investigation Initiation Checklist: Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China," dated March 26, 2019 (Initiation Checklist) at Attachment II, 6-20).

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 56 (citing *PT Pindo Deli Pulp v. United States*, 825 F. Supp. 2d 1310, 1323 (CIT 2012)).

³⁵ *Id.* (citing Initiation Checklist at Attachment II).

³⁶ *Id.* at 62 (citing *Wooden Cabinets and Vanities from China*, Inv. Nos 701-TA-620 and 731-TA-1445, USITC Pub 4891 (April 2019) at I-3 (USITC Pub 4891)).

Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. *After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.*³⁷

Therefore, Commerce is statutorily precluded from reconsidering its industry support determination at this stage of the investigation. As a result, we continue to rely on our determination of industry support, as provided in the Initiation Checklist.³⁸

Based on information provided in the Petition, the share of total estimated U.S. production of the domestic like product in calendar year 2018 represented by the petitioner was more than 50 percent of the production of the domestic like product.³⁹ Pursuant to section 702(c)(4)(D)(i) of the Act, if the petition does not establish the support of domestic producers accounting for more than 50 percent of the total production of the domestic like product, Commerce is required to poll the industry or rely on other information to determine industry support. However, because at the time of the filing of the Petition, we determined that the Petition did establish the support of domestic producers accounting for more than 50 percent of the total production of the domestic like product, we found no need to poll the U.S. industry to establish industry support.⁴⁰ Thus, we reiterate below our analysis from the Initiation Checklist.

The petitioner has provided, with extensive supporting documentation, a reasonable estimate of total 2018 production of wooden cabinets and vanities in the United States, starting with U.S. demand and making adjustments for annual U.S. market segment and overall market growth, U.S. demand in non-residential/commercial applications, imports and exports. We further note that the petitioner provided a detailed explanation of the methodology used to estimate total U.S. production in 2018 and provided supporting declarations from an individual ...{producer of} wooden cabinets and vanities in the United States. ...In addition, we note that the petitioner's methodology considers annual growth in the replace and remodel market segment and new construction segment, demand for nonresidential/commercial applications, U.S. imports of wooden cabinets and vanities, U.S. exports of wooden cabinets and vanities and components thereof, and annual growth for the overall U.S. cabinet market. ...Accordingly, we conclude that the petitioner's estimate using data on U.S. cabinet demand {from a business proprietary source} as the starting point is reasonable.

While Fabuwood contends that the NKBA data it provided on the U.S. market for residential kitchen and bathroom cabinetry for the new residential and remodeling segments should be used as the denominator, we agree with the petitioner that the

³⁷ Section 702(c)(4)(E) (emphasis added).

³⁸ See Initiation Checklist at Attachment II; see also Petition for the Imposition of Countervailing Duties, *Wooden Cabinets and Vanities from the People's Republic of China* (Petition), Volume I (March 6, 2019).

³⁹ See Initiation Checklist, Attachment II at 9.

⁴⁰ *Id.* at 18.

NKBA data on the record do not represent the value of production or shipments of wooden cabinets and vanities. Based on information on the record, the NKBA data reflect retail values and installed values of kitchen and bathroom cabinets, which include built-in costs for commissions, delivery fees, {...certain other fees}, and customized treatments, and which have been sold once or twice before being sold.... Accordingly, we find that the petitioner has provided a reasonable estimate of total U.S. production that accounts for all production of the domestic like product. As a result, the petitioner has demonstrated that it has adequate industry support for initiating the investigations; therefore, it is unnecessary to poll the industry to determine support for the Petitions.⁴¹ While Fabuwood contends that the NKBA data it provided on the U.S. market for residential kitchen and bathroom cabinetry for the new residential and remodeling segments should be used as the denominator, we agree with the petitioner that the NKBA data on the record do not represent the value of production or shipments of wooden cabinets and vanities. Based on information on the record, the NKBA data reflect retail values and installed values of kitchen and bathroom cabinets, which include built-in costs for commissions, delivery fees, {...certain other fees}, and customized treatments, and which have been sold once or twice before being sold.... Accordingly, we find that the petitioner has provided a reasonable estimate of total U.S. production that accounts for all production of the domestic like product. As a result, the petitioner has demonstrated that it has adequate industry support for initiating the investigations; therefore, it is unnecessary to poll the industry to determine support for the Petitions.⁴²

Comment 2: Whether Commerce Should Apply AFA to the Provision of Electricity for LTAR Program

The GOC's Comments:

- The GOC acted to the best of its ability in responding to Commerce's questionnaire with respect to the electricity for LTAR program. Additionally, Commerce, in its AFA finding, did not attempt to provide factual support for its conclusion that electricity provided by the GOC was specific; nor did it properly take into account record information contradicting this conclusion. Thus, Commerce's application of AFA with respect to the electricity for LTAR program is unlawful.
- The GOC has consistently explained that electricity prices are determined by provincial governments and that the role of the National Development and Reform Commission (NDRC) is to review the electricity pricing schedules submitted by the provincial governments.
- To demonstrate its best efforts to cooperate with Commerce's requests for information in this investigation, the GOC answered every question in the Electricity Appendix in the initial questionnaire.
- In a supplemental questionnaire Commerce asked the GOC to explain the relationship between the NDRC, provincial pricing, and provincial price proposals. However, as the GOC explained, there are no provincial price proposals. Thus, the GOC applied its best

⁴¹ See Initiation Checklist at Attachment II at 17-18 (footnotes omitted).

⁴² *Id.*

efforts to answer Commerce's questions and provided verifiable information sufficient for Commerce to determine that the GOC's provision of electricity is not a countervailable subsidy.

- The record demonstrates that the GOC acted to the best of its ability to cooperate in this investigation. Thus, Commerce should reverse its decision to apply AFA to this program in the final determination.
- Commerce has provided no factual support for its conclusion that the GOC's provision of electricity was specific under section 771(5A) of the Act. Specifically, Commerce's decision was based entirely on AFA, which ignored record evidence that directly contradicted its finding that electricity was provided for LTAR and that any benefit received was specific.
- The GOC explained that electricity prices are classified by end user categories, *e.g.*, residential use, agricultural use, large industries use, *etc.*, and that the applicable prices are equally applied to all designated end users regardless of the specific industry or province.
- The GOC further explained that, since 2016, under the *Notice of the National Development and Reform Commission on Lowering Coal-Fired Electricity On-Grid Price and General Industrial and Commercial Electricity Price*, all provincial governments have been given authority to prepare and publish the schedules of electricity tariff rates for their own jurisdictions under the notices published and enforced by the NDRC.
- The GOC also provided information about the electricity rates in the Shandong, Liaoning, Jiangsu, and Henan provinces, and other information about electricity pricing.
- Although Commerce points to government documents, *e.g.*, Notice 748, as indicative of the NDRC's involvement in local price adjustments, the GOC reiterates that, during the POI, there was no NDRC review of the provincial price proposals. Rather, the provincial agencies were only required to provide their final adjustment price schedules to the NDRC for its records.
- There are no "facts otherwise available" on the record that Commerce can rely on that suggest the GOC's provision of electricity is specific. As the record makes clear, retail prices of electricity are set according to purchasing cost, transmission prices, transmission losses and government surcharges, regardless of a particular firm's participation in a specific industry or location within a particular region. Thus, Commerce should reverse its finding that the GOC provided electricity for LTAR in the final determination.⁴³

The Petitioner's Rebuttal:

- Commerce should continue to find, as AFA, that the GOC provided electricity for LTAR, that respondents benefitted from this program, and that the program is specific. The GOC's explanations regarding the electricity for LTAR program have offered no new information, when considered in light of the numerous past examinations of this program, that would justify a departure from Commerce's established practice of applying AFA to this program.⁴⁴

⁴³ *Id.*

⁴⁴ See Petitioner's Rebuttal at 36.

- The GOC’s response in this investigation was similar to the GOC’s response in *Steel Propane Cylinders from China*, where Commerce continued its practice of applying AFA for this program in the final determination in that case. In particular, as in *Steel Propane Cylinders from China*, Commerce requested that the GOC provide information regarding the respective roles of the provinces and the NDRC, and cooperation between these entities, in making electricity price adjustments.⁴⁵
- The GOC claims, as it has in the past, that the NDRC has nothing to do with the price setting mechanism. However, Commerce found in the *Preliminary Determination*, as it has in past cases, that official directives from the GOC state that the NDRC ultimately controls the pricing mechanisms, regardless of the GOC’s explanations to the contrary.⁴⁶
- The NDRC can direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Several directives outline additional measures that provinces and municipalities can take to reduce industrial and commercial electricity prices. However, the NDRC continues to play a seminal role in setting and adjusting electricity prices by mandating average price adjustment targets, with which the provinces are obligated to comply in setting their own specific prices.
- The GOC has offered no new information in this investigation that warrants a change in Commerce’s practice regarding the role of the NDRC in setting electricity prices. Therefore, the continued application of AFA for this program is justified. Such a finding would be consistent with Commerce’s practice, including its recent decision in *Steel Propane Cylinders from China*.

Commerce’s Position: We continue to find that the GOC did not act to the best of its ability to provide requested information relating to the electricity for LTAR program. Accordingly, we find that application of AFA is warranted.

As explained in the *Preliminary Determination*, the GOC did not provide complete responses to Commerce’s questions regarding the alleged provision of electricity for LTAR.⁴⁷ In the original questionnaire, Commerce requested information from the GOC that was needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act and whether such a provision was specific within the meaning of section 771(5A) of the Act. The GOC did not provide this information. Consequently, in the *Preliminary Determination*, we relied on facts available pursuant to sections 776(a)(1) and (2)(A) and (C) of the Act because necessary information was missing from the record and because the GOC withheld information that was requested of it for our analysis and significantly impeded the proceeding. Furthermore, we applied AFA pursuant to section 776(b) of the Act because the GOC failed to cooperate by not acting to the best of its ability to comply with our

⁴⁵ *Id.* (citing *Steel Propane Cylinders from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 29159 (June 21, 2019) (*Steel Propane Cylinders from China*), and accompanying IDM at Comment 14).

⁴⁶ *Id.* at 38-39.

⁴⁷ See *Preliminary Determination PDM* at 23-26.

requests for information.⁴⁸ Consistent with the Act and our practice, Commerce is continuing to apply AFA with respect to the provision of electricity for LTAR for this final determination.

Commerce requested information regarding the derivation of electricity prices at the provincial level, the procedure for adjusting retail electricity tariffs, and the role of the NDRC and the provincial governments in this process.⁴⁹ Specifically, we asked how increases in cost elements led to retail price increases, the derivations of those cost increases, how cost increases were calculated, and how cost increases impacted final prices.⁵⁰ Additionally, we requested that the GOC explain, for each province in which a respondent or cross-owned company is located, how increases in labor costs, capital expenses, and transmission and distribution costs are factored into provincial price proposals, and how cost element increases and final price increases were allocated across the province and tariff end-user categories.⁵¹

As explained in detail in the *Preliminary Determination*, the GOC failed to fully explain the respective roles and nature of the cooperation between the NDRC and the provincial governments in implementing electricity price adjustments. The GOC's refusal to answer Commerce's questions completely with respect to the relationship between the NDRC and the provinces in deriving electricity price adjustments, and its failure to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves, leaves Commerce unable to carry out a complete specificity and financial contribution analysis.

While the GOC argues that its electricity tariffs are not specific because the same price is charged to each type of end user within a province, Commerce's analysis and its specificity determination are not based on the conclusion that different end users receive different rates within a province. Rather, given the GOC's failure to act to the best of its ability in providing the requested information, Commerce must rely on the facts available on the record, with appropriate adverse inferences, in making our specificity determination. The Court of International Trade (CIT) has recently upheld Commerce's analysis of this program in similar circumstances.⁵²

Moreover, because the GOC failed to provide the above-referenced information regarding the relationship (if any) between provincial tariff schedules and cost, as well as the requested information regarding cooperation in price setting practices between the NDRC and provincial governments, Commerce was also unable to evaluate whether the electricity rates included in the

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See *Jiangsu Zhongji Lamination Materials Co. v. United States*, 405 F. Supp. 3d 1317, 1337-39 (CIT 2019) (*Jiangsu Zhongji*) (“{T}he GOC's failure to provide information regarding the provinces' control over electricity pricing inhibited Commerce from determining specificity. . . . Given that record evidence suggests that the GOC controls electricity pricing, the GOC's failure to provide information regarding how electricity pricing is set prevented Commerce from determining specificity. Accordingly, Commerce's use of AFA to find specificity is supported by substantial evidence.”) (emphasis added).

electricity schedules submitted by the GOC were calculated based on market principles.⁵³ We attempted to obtain information on how Chinese provincial electricity rate schedules are determined and why they differ; this information could have contributed to Commerce's analysis of an appropriate benchmark for the benefit calculation for this program.⁵⁴ The GOC has failed to explain the reason for these differences in this case, and in numerous previous cases, claiming without support that the provincial governments set the rates for each province in accordance with market principles. Further, the GOC provides no argument for why Commerce's selection of the highest rate from various provinces is less reflective of the market rate for electricity absent government interference, and the CIT in past cases has found Commerce's selection of such a benchmark reasonable.⁵⁵ Accordingly, Commerce also applied facts available with an adverse inference to determine the appropriate benchmark.⁵⁶ Specifically, because the GOC provided the provincial electricity tariff schedules, Commerce relied on this information for the application of facts available and, in making an adverse inference, Commerce identified the highest rates amongst these schedules for each reported electricity category and used those rates as the benchmarks in the benefit calculations.

Thus, for the reasons stated above, and consistent with the *Preliminary Determination*, we continue to find this program countervailable and determine that the GOC's provision of electricity confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. We also continue to apply facts available with an adverse inference with regard to our selection of the benchmark for determining the existence and amount of the benefit.⁵⁷

Comment 3: Whether Commerce Should Apply AFA to Find the EBC Program Countervailable

A. Application of AFA with Respect to the EBC Program

Ancientree's Comments:

- Record evidence demonstrates that Ancientree did not use or benefit from the EBC program. Ancientree explained, in its section III response, that it has never applied for any EBC loans for itself or its customers, and it provided declarations of non-use from every single customer sold to during the POI. The GOC corroborated Ancientree's statements of non-use by submitting printouts of searches in China Export-Import (Ex-

⁵³ See *Preliminary Determination* PDM at 23-26.

⁵⁴ *Id.*

⁵⁵ *Id.*; and *Jiangsu Zhongji*, 405 F. Supp. 3d at 1339 (“Defendant-Intervenors argue that because the GOC failed to provide information regarding ‘price differences between the provinces, how the provinces derive electricity price adjustments, and how they cooperate with the NDRC,’ Commerce could not assess whether the price was consistent with market principles under a tier three benchmark analysis. ... *Commerce's decision to select the highest rate was within its lawful discretion and Zhongji provides no argument for why Commerce's selection of the highest rate from various provinces is less reflective of the market rate for electricity absent government interference.*”) (emphasis added).

⁵⁶ *Id.*

⁵⁷ See sections 776(a)-(b) of the Act.

Im) Bank’s database of Ancientree’s customers’ names. Thus, all parties, *i.e.*, the GOC, Ancientree, and Ancientree’s customers, have responded regarding the non-use of this program.⁵⁸

- Not only was Commerce’s preliminary finding unsupported by the record, it was also in violation of the statute and case law precedent that prohibit the application of AFA against cooperating respondents when no necessary information is missing from the record. Pursuant to section 776(b) of the Act, for use of AFA, Commerce must find that there is gap in the record caused by a respondent’s failure to cooperate to the best of its ability.⁵⁹
- The only “missing information” that Commerce can point to is the identity of foreign banks to whom the China Ex-Im Bank could potentially disburse loans to, which the CIT has repeatedly found to be irrelevant information.⁶⁰
- In *Guizhou Tyre I*, the CIT explicitly found that the GOC’s failure to fully respond to Commerce’s request for information simply did not create the kind of gap needed to apply facts available or AFA.⁶¹ Similarly, here, Commerce has not identified any “gap” in the record which would trigger the lawful use of facts available or AFA.⁶²
- Commerce has failed to explain its purported need to thoroughly understand every single detail of the EBC program’s operation. Similarly, Commerce does not explain, beyond a conclusory sentence, why such an understanding is necessary for Commerce to properly verify Ancientree’s response.⁶³
- Commerce did not notify Ancientree that it found any of Ancientree’s responses deficient or unsatisfactory. Thus, the record provides Commerce with no basis upon which to use adverse inferences against Ancientree to find, as AFA, that it benefitted from the EBC program.⁶⁴
- Commerce should find non-use of the EBC program by Ancientree in the final determination.⁶⁵

Meisen’s Comments:

- Commerce improperly applied AFA with respect to the EBC program. Commerce entirely ignored the fact that Meisen submitted declarations from its U.S. importers stating that they did not receive any benefits under the program. Thus, record evidence does not support Commerce’s finding that Meisen benefitted from the program, and, accordingly, Commerce’s finding is not supported by substantial evidence and is not in accordance with law.

⁵⁸ See Ancientree’s Case Brief at 1 (citing Ancientree’s Section III response at 27-28; and Exhibit II-12).

⁵⁹ *Id.* (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon*)).

⁶⁰ *Id.* at 2-3 (citing *e.g.*, *Guizhou Tyre Co. v. United States*, 348 F. Supp. 3d 1261 (CIT 2018) (*Guizhou Tyre I*)).

⁶¹ *Id.* at 3 (citing *Guizhou Tyre I*).

⁶² *Id.* at 3-4

⁶³ *Id.* at 4.

⁶⁴ *Id.* (citing section 782(d) of the Act).

⁶⁵ *Id.* at 5.

- Most recently in *Guizhou Tyre I*, the CIT rejected Commerce’s position on the EBC program, and noted eleven decisions from the CIT urging Commerce to correct the repeated blatant deficiencies in its AFA analysis of the EBC program.⁶⁶
- The CIT has held that “{u}nder the plain language of the statute, Commerce must resort to facts available only when ‘necessary information is not available on the record,’ or an interested party withholds information or significantly impedes a proceeding.”⁶⁷
- In this case, the application of AFA was not justified because there were no gaps in the record that needed to be filled, which is a prerequisite to the application of facts available and, by extension, adverse inferences.
- In light of the declarations from Meisen’s U.S. importers stating that they did not use the program, Commerce should conclude that Meisen did not benefit from the program. Commerce should follow the holdings of the CIT in this regard. Additionally, any information missing from the record as a result of the GOC’s alleged failure to fully cooperate is not necessary to Commerce’s determination.

The GOC’s Comments:

- Because the EBC program was not used by the respondents or their U.S. customers, it could not have provided a financial contribution and, thus, relying on the application of AFA to find a benefit from this program was unlawful.
- The CIT has held that AFA may only be applied after the requirements of countervailability have been met, and that when Commerce invokes its authority to use AFA, “the agency must still make the necessary factual findings to satisfy the requirements for countervailability.”⁶⁸
- The GOC confirmed with the Ex-Im Bank that the program was not used by the respondents. Likewise, Ancientree, Foremost, and Meisen reported that they contacted each of their U.S. customers and confirmed non-use. However, Commerce appears to have lost sight of the issue, which is not whether it has a complete understanding of the program, but rather, as the CIT stated in *Yama Ribbons*, whether the respondent did or did not use, or benefit from, the program.⁶⁹
- Commerce ignores the fact that the CIT has reversed Commerce’s affirmative EBC determinations in multiple prior China CVD proceedings (including two cases in December 2019). These reversals dealt with administrative records that were nearly identical to the records this case, holding that when the evidence on the record indicates that the EBC program was not used, Commerce cannot apply AFA to determine it was used.⁷⁰
- As explained above, and on the record of this investigation, the GOC acted to the best of its ability to demonstrate that this program was not used. There is no factual basis for Commerce to find that the GOC “failed to cooperate by not acting to the best of its

⁶⁶ See Meisen’s Case Brief at 4.

⁶⁷ *Id.*

⁶⁸ See GOC’s Case Brief at 6 (citing section 776(a)-(c) of the Act).

⁶⁹ *Id.* at 9 (citing *Yama Ribbons and Bows Co. v. United States*, No. 18-00054 (CIT December 30, 2019) (*Yama Ribbons*)).

⁷⁰ *Id.* (citing *Yama Ribbons*; *Guizhou Tyre I*; *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 352 F. Supp. 3d 1316, 1326 (CIT 2018) (*Changzhou Trina 2018*); and *Clearon Corp. v. United States*, 359 F. Supp. 3d 1344, 1357 (CIT 2019) (*Clearon Corp.*)).

ability,” and, thus, Commerce should reverse its decision to apply AFA for this program in the final determination.

The Petitioner’s Rebuttal:

- The record of this investigation does not contain complete information regarding the EBC program and does not adequately demonstrate that the company respondents did not use the program during the POI.
- The respondents misconstrue the record of this investigation and Commerce’s prior practice in arguing that AFA should not be applied with respect to the EBC program.
- Commerce should continue to find that the record of this investigation lacks critical information regarding the EBC program and ignore the respondents’ attempts to reframe Commerce’s analysis of this program.
- The company respondents do not contest that the GOC failed to provide information that Commerce has repeatedly found to be necessary to determine the extent to which the EBC program was used.
- The company respondents’ arguments that the information requested by Commerce was not “necessary” should be disregarded. Ancientree and Meisen have inappropriately taken it upon themselves to decide what information is required for Commerce to make its determination regarding the EBC program. It is Commerce’s role, as the finder of fact, to decide what information is necessary to assess the extent to which a subsidy program is used.
- The GOC’s assertion that there are no gaps in this record to fill with facts available regarding the EBC program runs counter to the GOC’s failure to provide critical information. Declarations of non-use by the respondents cannot overcome the absence of critical information on the record.
- As in other proceedings, Commerce correctly found in the *Preliminary Determination* that it is not possible to determine the full extent to which the EBC program was, or was not, used without additional information from the GOC.
- Even with complete, accurate, and verifiable non-use certifications from every U.S. customer, it is not possible, based on the information that the GOC has provided, for Commerce to assess whether a respondent did, or did not, use the program.
- Commerce should reject the company respondents’ arguments that this investigation contains complete information regarding the EBC program, given that the GOC failed to provide all the information requested by Commerce. Additionally, respondents cannot credibly claim that there are no gaps in the record based on the information they provided, given that it is likely that additional information would have been requested of the company respondents had the GOC provided all the information requested of it.
- While, in the past, Commerce waited for the GOC to refuse verification of the EBC program before applying AFA, Commerce has now properly determined that the GOC’s failure to provide requested information warrants the application of AFA in preliminary determinations.
- Commerce has appropriately determined that AFA must be applied to the EBC program until the GOC provides the information necessary to allow Commerce to comprehensively determine whether the program was used during the relevant period.

- In this investigation, as in prior proceedings, the GOC has refused to provide critical information on the EBC program, and, as a result, has impeded this investigation such that the continued use of AFA is warranted.
- The GOC also errs in arguing that AFA can only be applied where information is missing from the record, as the statute is clear that using facts available is also warranted when a party withholds information, fails to provide information in the manner requested, or otherwise impedes the investigation.
- The company respondents' statements of non-use regarding the EBC program are meaningless unless supported with complete and verifiable documentation. Information regarding this program is not verifiable unless and until the GOC cooperates fully.
- The GOC failed, multiple times, to provide the 2013 amendments to the laws and regulations pertaining to the administration of the EBC program, as well as a list of all partner and correspondent banks involved in the disbursement of funds, as requested by Commerce. The GOC's failure to provide requested information makes the company respondents' claims of non-use of this program unverifiable.
- As such, Commerce appropriately explained in the *Preliminary Determination* that its findings with respect to the application of AFA to the EBC program was warranted.
- Contrary to the company respondents' claims, Commerce fully explained in the *Preliminary Determination* why non-use statements were unavailing and insufficient to find non-use of the program. In the *Preliminary Determination*, Commerce explained that, without the missing information requested of the GOC, the company respondents' claims of non-use were not verifiable, and that the record was therefore incomplete. The statute is clear that Commerce is not required to rely on information that cannot be verified.⁷¹
- Moreover, the non-use certifications provided by Ancientree and Meisen are deficient in several respects and are therefore not definitive evidence of non-use of the EBC program. Discrepancies in the information provided by Ancientree and Meisen call into question whether they actually provided a valid non-use certification for all of their U.S. customers.
- Even if Commerce were to change its practice and rely on customer certifications to determine non-use for the EBC program, doing so would not affect Commerce's decision to apply AFA to Foremost, as the company did not submit any such customer certifications of non-use. It is not enough that Foremost itself claims non-use of the program; rather, a respondent must provide supporting documentation that can be verified.
- Contrary to the respondents' arguments, *Guizhou Tyre I* and *Changzhou Trina 2018* are not applicable to this case. The CIT has not found that Commerce cannot apply AFA to the EBC program under circumstances such as those present in this investigation. The CIT held in *Guizhou Tyre I* and *Changzhou Trina 2018* that Commerce need only explain in sufficient detail its reasoning behind its application of AFA.⁷² In this case, Commerce has ample grounds to explain why the application of AFA is warranted in this case.

⁷¹ See section 776(a)(2)(D) of the Act.

⁷² *Id.* at 18-21 (citing *Guizhou Tyre I*; and *Changzhou Trina 2018*).

- Unlike in *Guizhou Tyre I*, Commerce has not conflated the EBC program’s operation with its use. Commerce specifically explained that it was unable to verify information purporting to show non-use, and further explained why it required the information that it requested.⁷³ The record of this investigation makes clear why the information requested of the GOC, which it failed to provide, renders the information provided by the respondents unverifiable.
- Without the most up-to-date version of all administrative measures and implementation rules pertaining to the EBC program, it is not possible for the agency to determine the mechanism by which assistance under this program is provided.
- Even if the company respondents’ customers claim non-use, Commerce cannot know that the company respondents and their customers are the appropriate parties to make that representation, unless and until the GOC provides the information requested by Commerce. The GOC possesses such information, yet the GOC has still failed to provide it. The GOC’s failure to provide a list of partner and correspondent banks makes it impossible for Commerce to determine whether respondents used the program.
- The additional cases cited by the company respondents are factually distinguishable from the current investigation, and largely stand for the proposition that Commerce need only adequately explain its reasoning for applying AFA to the EBC program.⁷⁴
- Even if the decisions cited by the respondents were binding on Commerce’s final determination, this is an issue that is still being litigated in the courts, and as such Commerce should continue to follow its prior practice and apply AFA to the EBC program in the final determination.⁷⁵

Commerce’s Position: Consistent with the *Preliminary Determination* and Commerce’s practice, we continue to find that the record of the instant investigation does not support a finding of non-use of the EBC program for Ancientree, Foremost, or Meisen.⁷⁶ We next describe the evolution of Commerce’s treatment of this program.

Solar Cells from China Initial Investigation of the EBC Program

Commerce first investigated and countervailed the EBC program in the 2012 investigation of *Solar Cells from China*.⁷⁷ Our initiation was based on, among other information, the China

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See *Preliminary Determination* PDM at 16-23; 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) (*Certain 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.

⁷⁷ 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*), and accompanying IDM at 9 and

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."⁷⁸ 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.⁷⁹

The GOC provided none of the information requested by Commerce in the ensuing investigation, despite being given multiple opportunities to do so, and instead 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."⁸⁰ 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."⁸¹ 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.⁸² 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.⁸³

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.⁸⁴ 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 the type Commerce would examine to verify that the claim of non-use at issue was complete and accurate:

Comment 18. While Commerce's determination with respect to the EBC program was initially challenged, the case was dismissed.

⁷⁸ *Solar Cells from China* IDM at 59.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 60.

⁸² *Id.* at 60-61.

⁸³ *Id.* at 61.

⁸⁴ *Id.*

{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.⁸⁵

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.⁸⁶ 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.⁸⁷

⁸⁵ *Id.* at 61-62.

⁸⁶ Commerce provided a similar explanation in the 2014 investigation of solar products from China. *See Certain 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*). 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 1312, 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; Certain 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 2018* reached a similar conclusion concerning the 2014 review of tires from China. *See Guizhou Tyre 2018*, 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.

⁸⁷ 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).

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

In the *Solar Cells from China* investigation, 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 the 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.”⁸⁸ 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.”⁸⁹ However, the GOC refused to allow Commerce to query the databases and records of the China Ex-Im Bank.⁹⁰ Furthermore, there was no information on the record of *Solar Cells from China* from the respondent exporters’ customers.

Chlorinated Isos Investigation of the EBC Program

Two years later, in the investigation of *Chlorinated Isos*,⁹¹ respondents submitted certified statements from all customers claiming that they had not used the EBC program. This was the first instance of respondents submitting such customer certifications. At that point in time, as explained in detail above, 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

⁸⁸ See *Solar Cells from China* IDM at 62.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ See *Chlorinated Isocyanurates from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*; 2012, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos*), and accompanying IDM at 15.

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."⁹²

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 Ex-Im Bank disbursed funds under the program and the corresponding timeline; however, Commerce's attempts to verify the program's details, and to obtain accurate statements concerning the operation and use of the program, were thwarted by the GOC.⁹³ 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 USD 2 million minimum business contract requirement.⁹⁴ 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.⁹⁵ 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."⁹⁶ The GOC further stated that "those internal guidelines do not formally repeal or replace the provisions of the {Administrative Measures} which remain in effect."⁹⁷

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

⁹² *Id.*

⁹³ 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.").

⁹⁴ 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*) IDM at Comment 17.

⁹⁵ *Id.*; see also GOC's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China, Case No. C-570-107: Initial Questionnaire Response," dated July 12, 2019 (GOC's IQR) at Exhibit EXPORT-2.

⁹⁶ See *Silica Fabric Investigation* IDM at Comment 17.

⁹⁷ *Id.*

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

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

Additional information in the GOC's supplemental questionnaire response also indicated that the loans associated with this program are not limited to direct disbursements through the EX-IM Bank. Specifically, the GOC stated that customers can open loan accounts for disbursements through this program with other banks. The funds are first sent from the EX-IM Bank to the importer's account, which could be at the EX-IM Bank or other banks, and that these funds are then sent to the exporter's bank account. Given the complicated structure of loan disbursements for this program {Commerce's} complete understanding of how this program is administrated is necessary. Thus, the GOC's refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administrated by the EX-IM Bank, impeded {Commerce's} ability to conduct its investigation of this program.⁹⁸

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."⁹⁹

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."¹⁰⁰

⁹⁸ *Id.* at 12.

⁹⁹ *Id.* at 62.

¹⁰⁰ *Id.*

The Instant Investigation

As stated in the *Preliminary Determination*, we requested a list of all partner/correspondent banks involved in the disbursement of funds under the EBC program.¹⁰¹ Instead of providing the requested information, the GOC stated that our question was not applicable.¹⁰² We also asked the GOC to submit the *Administrative Measures* that were revised in 2013, but the GOC refused.¹⁰³ Though the GOC provided some information, it was unresponsive to a majority of our requests, preventing Commerce from analyzing the function of the program, as discussed below.

In our Initial Questionnaire, we requested that the GOC provide the information requested in the Standard Questions Appendix “with regard to all types of financing provided by the China Ex-Im under the Buyer Credit Facility.”¹⁰⁴ The Standard Questions Appendix requested various information that Commerce requires in order to analyze the specificity and financial contribution of this program, including the following: translated copies of the laws and regulations pertaining to the program; a description of the agencies and types of records maintained for administration of the program; a description of the program and the application process; program eligibility criteria; and program usage data. Rather than respond to the questions in the Standard Questions Appendix, the GOC stated it had confirmed that “none of the U.S. customers of the mandatory respondents has been provided with loans under this program, thus, GOC believes the answer to a Standard Questions Appendix is not required.”¹⁰⁵

In its initial CVD questionnaire response, the GOC provided the 2000 *Administrative Measures*, which confirmed that the Ex-Im Bank strictly limits the provision of Export Buyer’s Credits to business contracts exceeding USD 2 million.¹⁰⁶ In that same response, the GOC provided a copy of its *7th Supplemental Response in the Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China*.¹⁰⁷ Information in that document indicates that the GOC revised this program in 2013 to eliminate this minimum requirement.¹⁰⁸ Thus, we requested in our Initial CVD Questionnaire that the GOC also 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. This request included the 2013 *Administrative Measures* revisions to the EBC program. In its response, the GOC failed to

¹⁰¹ See *Preliminary Determination* PDM at 16-22.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See Commerce’s Letter, “Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Countervailing Duty Questionnaire,” dated May 31, 2019 (Initial Questionnaire), Section II at 33-34.

¹⁰⁵ See GOC’s IQR at 70.

¹⁰⁶ *Id.* at Exhibit EXPORT-2.

¹⁰⁷ *Id.* at Exhibit EXPORT-1 (Export Buyer’s Credit Supplemental Questionnaire Response); see also *Silica Fabric Investigation* IDM at Comment 17.

¹⁰⁸ *Id.* at EXPORT-1.; see also Memorandum, “Placement of Additional Information on the Record,” dated August 5, 2019 (Additional Documents Memorandum), at Attachment 2 (Citric Acid Verification Report at 2).

provide the 2013 Revisions.¹⁰⁹ We, therefore, again requested that the GOC provide the 2013 Revisions.¹¹⁰ In response, the GOC stated that the 2013 guidelines are internal to the Ex-Im Bank, non-public, and not available for release; the GOC further claimed to have no authority to force the Ex-Im Bank to provide a copy of the 2013 guidelines, and indicated that they would therefore not be provided.¹¹¹ Through its response to Commerce’s initial and supplemental questionnaires, the GOC twice refused to provide the requested information concerning the 2013 program revision, which is necessary for Commerce to analyze how the program functions.

We continue to find that the GOC’s responses with respect to the EBC program are deficient in two key respects. First, as we found in the *Silica Fabric Investigation*,¹¹² where we asked the GOC about the amendments to the EBC program,¹¹³ we continue to find that the GOC has refused to provide the requested information concerning the 2013 program revisions, which is necessary for Commerce to analyze how the program functions. We requested information regarding the 2013 revisions to the *Administrative Measures*, and information on the partner/correspondent banks that are involved in the disbursement of funds under this program, because our prior knowledge of this program demonstrates that the 2013 revisions effected important program changes.¹¹⁴ Specifically, the 2013 revisions (which the GOC refers to as “internal guidelines”) appear to be significant and have impacted a major condition in the provision of loans under the program, *i.e.*, by eliminating the \$2 million minimum business contract requirement identified in the 2000 *Administrative Measures*.¹¹⁵

This information is necessary and critical to our understanding of the program and for any determination of whether the “manufacture, production, or export” of the respondents’ merchandise has been subsidized. For instance, if the program continues to be limited to \$2 million contracts between a mandatory respondent and its customer, this is an important limitation to the universe of potential loans under the program and can assist us in targeting our verification of non-use. However, if the program is no longer limited to \$2 million contracts, this increases the difficulty of verifying loans without any such parameters, as discussed further below.¹¹⁶ Therefore, by refusing to provide the requested information, and instead providing unverifiable assurances that other rules regarding the program remained in effect, the GOC impeded Commerce’s ability to understand how this program operates and how it can be verified. Further, as to the GOC’s concerns regarding the non-public nature of the 2013

¹⁰⁹ See GOC’s IQR at 71.

¹¹⁰ See GOC’s Letter, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China, Case No. C-570-107: First Supplemental Questionnaire Response,” dated July 23, 2019 (GOC’s SQR), at 8.

¹¹¹ *Id.*

¹¹² See *Silica Fabric Investigation* IDM at Comment 17.

¹¹³ See GOC’s IQR at Exhibit EXPORT-1 (containing the GOC’s September 6, 2016 7th SQR in the *Silica Fabric Investigation*).

¹¹⁴ See GOC’s SQR at 8.

¹¹⁵ See *Silica Fabric Investigation* IDM at 12 and 61.

¹¹⁶ The GOC is the only party which could provide the identities of the correspondent banks that the China Ex-Im Bank utilizes to disburse funds under the EBC program. There is no indication on the record that other parties had access to information regarding the correspondent banks utilized by the China Ex-Im Bank.

revisions, Commerce has well-established rules governing the handling of business proprietary information in its proceedings.

Second, 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 to the contrary.¹¹⁷ 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:

- Notwithstanding the GOC's statement in its IQR that the respondents did not use the Export Buyer's Credit program, please respond to all items in the Standard Questions Appendix as they pertain to this program.¹¹⁸
- Exhibit EXPORT-1 of the GOC's IQR contains the GOC's 7th Supplemental Questionnaire Response from the CVD investigation of Certain Amorphous Silica Fabric from China. The information in that exhibit references "certain internal guidelines" that "the Export-Import Bank adopted in 2013." Please provide an English and Chinese version of these internal guidelines.¹¹⁹
- Please provide a list of all partner banks/correspondent banks involved in the disbursement/settlement of export buyer's credits.¹²⁰

Although the GOC provided certain documents,¹²¹ the GOC provided non-responsive answers to Commerce's specific questions, stating in response to our request for the 2013 revised Administrative Measures:

The {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. Although the GOC has used its best efforts in attempting to obtain a copy of the document requested by the Department, the GOC has no authority or right to force the Ex-Im Bank to provide a copy of the 2013 guidelines, and therefore is unable to provide a copy to the Department.¹²²

¹¹⁷ See *Silica Fabric Investigation* IDM at 12.

¹¹⁸ See Commerce's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Request for Additional Information," dated July 17, 2019.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See GOC's IQR at Exhibit EXPORT-2 and Exhibit EXPORT-3.

¹²² See GOC's SQR at 8.

With regard to our request for a list of partner/correspondent banks that are involved in the disbursement of funds through the program, the GOC similarly stated:

The GOC again asserts that to the best of the GOC's knowledge, neither the mandatory respondents nor their U.S. customers applied for, used, or benefited from this program during the POI. Therefore, the GOC understands that this question is not applicable. Nevertheless, the GOC has used its best efforts in attempting to obtain this information but the GOC is unable to compel the Ex-Im Bank to disclose, or provide the GOC with, a list of all partner or correspondent banks which may have been involved in disbursement of funds under the {EBC} program.¹²³

We note that in the instant investigation, the GOC provided related information for other programs even though it considered this information to be not applicable to the issue under examination. For example, regarding the Provision of Electricity for LTAR program, we requested that the GOC provide original Provincial Price Proposals:

Provide the original Provincial Price Proposals with English translation for each province in which a mandatory respondent or any reported "cross-owned" company is located for applicable tariff schedules that were in effect during the POI.¹²⁴

The GOC stated that the requested information was "no longer applicable," but nonetheless provided relevant information:

Since January 1, 2016, all the provincial governments, including Jiangsu, have been given authority to prepare and publish the schedules of electricity tariff rates for their own jurisdictions under the Notices published and enforced by the NDRC, while providing for NDRC's records notices of their price schedules. Thus, after January 1, 2016, there are no "Provincial Price Proposals" as requested, and therefore, this question is no longer applicable. The GOC provides the relevant notice at Exhibit ELEC-4.¹²⁵

No such information was provided with respect to this program. Thus, the GOC failed to provide the requested information and instead concluded that such information was not applicable to our examination of the EBC program. However, it is for Commerce, not the GOC, to determine whether the information provided is sufficient for Commerce to make its determinations.¹²⁶

¹²³ *Id.* at 9.

¹²⁴ *See* GOC's IQR at Exhibit ELEC-1.

¹²⁵ *Id.*

¹²⁶ *See ABB Inc. v. United States*, 355 F. Supp. 3d 1206, 1222 (CIT 2018) (*ABB*) ("Commerce prepares its questionnaires to elicit information that it deems necessary to conduct a review, and the respondent bears the burden to respond with all of the requested information and create an adequate record.").

Accordingly, we continue to find the GOC's responses deficient and unresponsive to our request for necessary information with respect to the operation of the EBC program. This information is necessary to our understanding of the program and for any determination of whether the "manufacture, production, or export" of the company respondents' merchandise has been subsidized. As noted above, based on the information obtained in the *Silica Fabric Investigation*, Commerce's understanding of how the EBC program operated (*i.e.*, how funds were disbursed under the program) has changed.¹²⁷ Specifically, the record indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank.¹²⁸

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) these funds are then sent to the exporter's bank account.¹²⁹ Given the complicated structure of loan disbursements which can involve various banks for this program, Commerce's complete understanding of how this program is administrated is necessary to verify claims of non-use.¹³⁰ Thus, the GOC's refusal to provide the 2013 revisions, which provide internal guidelines for how this program is administrated by the China Ex-Im Bank, as well as other requested information, such as key information and documentation pertaining to the application and approval process, and partner/correspondent banks, impeded Commerce's ability to conduct its investigation of this program and to verify the claims of non-use by the company respondents' customers.

This missing information was especially significant because the available record evidence indicates that, under the 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,¹³¹ the identities of which the GOC has refused to provide to Commerce. In *Chlorinated Isos from China*, 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.¹³² 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*,¹³³ stating:

¹²⁷ See GOC's IQR at Exhibit EXPORT-1 (containing the GOC's September 6, 2016 7th SQR in the *Silica Fabric Investigation*).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² See *Chlorinated Isos* IDM at 15.

¹³³ 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

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.¹³⁴

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,¹³⁵ 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 respondents’ 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 respondents’ customers’ non-use of this program without understanding the identity of these correspondent banks would be extremely difficult, if not impossible. Because Commerce does not know the identities of these banks, Commerce’s second step of its typical non-use verification procedures (*i.e.*, examining the company’s subledgers for references to the party making the financial contribution) could not by itself demonstrate that the U.S. customers did not use the program (*i.e.*, by examining whether there were any correspondent banks in the subledger). Nor could the second step be used to narrow down the company’s lending to a 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 the 2013 revisions, a sample application, and other documents making up the “paper trail” of a direct or indirect export credit from the China Ex-Im Bank, discussed above. Commerce would simply not know what to look for behind each loan in attempting to identify a loan provided by the China Ex-Im Bank via a correspondent bank.

accompanying IDM.

¹³⁴ See *Aluminum Sheet from China* IDM at 30.

¹³⁵ *Id.* at Comment 2 (noting that Commerce no longer attempts to verify usage with the GOC given the inadequate information provided in its questionnaire responses such as, in particular, the GOC’s refusal to provide the 2013 revisions to the administrative rules).

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 respondents’ non-use of the EBC program, notwithstanding its lack of knowledge of which banks are intermediary/correspondent banks, by examining *each* loan received by *each* of the respondents’ U.S. customers, Commerce still would not be able to verify which loans were normal loans versus 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 such documentation were complete, and identified China Ex-Im Bank involvement, without a thorough understanding of the program, Commerce might not recognize indicia of such involvement. That is why Commerce requires disclosure of the 2013 *Administrative Measures*, as well as other information concerning the operation of the EBC program, in order to verify usage. Understanding the operation of the program is not, therefore, 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.¹³⁶ Thus, Commerce could not *accurately and effectively* verify usage at the company respondents’ customers, even were it to attempt the unreasonably onerous examination of each of the customers’ loans. To conduct verification of the customers without the information requested from the GOC would amount to looking for a needle in a haystack with the added uncertainty that Commerce might not even be able to identify the needle when it was found.

Based on the GOC’s responses, Commerce understood that under this program loans were provided either directly from the China Ex-Im Bank to the borrowers (*i.e.*, a respondent’s customers), or through an intermediary third-party bank, and that a respondent might have knowledge of loans provided to its customers through its involvement in the application process. Commerce gave the GOC an opportunity to provide the 2013 revisions regarding the *Administrative Measures*, which the GOC refused to provide.¹³⁷ The GOC also refused to provide a requested sample application, instead claiming that “none of the U.S. customers of the

¹³⁶ 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.

¹³⁷ See GOC’s IQR at 70-71.

respondents applied used the alleged program during the POI. Therefore, this question is not applicable.”¹³⁸

According to the GOC, none of the respondent companies’ U.S. customers used the export buyer’s credits from the China Ex-Im Bank during the POI.¹³⁹ The GOC explained that to make this determination, it: (1) obtained the list of U.S. customers from the respondents; and (2) inquired with the Ex-Im Bank. The GOC understands that the Ex-Im Bank searched its records and confirmed that none of the respondents used the export buyer’s credits during the POI.¹⁴⁰ The GOC’s response indicated that exporters would know whether there was an interaction between the China Ex-Im Bank and the borrowers (*i.e.*, the respondents’ U.S. customers, who are not participating in this proceeding), but neither the GOC, nor the respondent companies, provided enough information for Commerce to understand this interaction or how this information would be reflected in the respondent companies’ (or their U.S. customers’) books and records. As a result, the GOC failed to respond to Commerce’s request, and instead claimed that the company respondents’ U.S. customers did not use this program based on selectively provided, incomplete information. As determined in the *Preliminary Determination*, we continue to find that Commerce could not verify non-use of export buyer’s credits by the customers of the respondents. Furthermore, the lack of information concerning the operation of the EBC program prevents an accurate assessment of usage at verification:

In prior proceedings in which we have examined this program, before the 2013 amendments, we have found that the China Ex-Im, as the lender, is the primary entity that possesses the supporting information and documentation that are necessary for Commerce to fully understand the operation of the program which is prerequisite to Commerce’s ability to verify the accuracy of the {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 EX-IM Bank limits the provision of Export Buyer’s Credits to business contracts exceeding USD 2 million, and whether it uses third-party banks to disburse/settle Export Buyer’s Credits. Such information is critical to understanding how Export Buyer’s Credits flow to and from foreign buyers and the EX-IM Bank and forms the basis of determining countervailability. Absent the requested information, the GOC’s claims that the respondent companies did not use this program are not verifiable. Moreover, without a full understanding of the involvement of third-party banks, the respondent companies’ (and their customers’) claims are also not verifiable.¹⁴¹

¹³⁸ *Id.*

¹³⁹ *Id.* at 72.

¹⁴⁰ *Id.*

¹⁴¹ 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).

We continue to find that usage of the EBC program could not be verified at the company respondents in a manner consistent with Commerce's verification methods because Commerce could not confirm usage or claimed non-use by examining books and records which can be reconciled to audited financial statements¹⁴² or other documents, such as tax returns. Without the GOC providing bank disbursement information, Commerce could not tie any loan amounts to banks participating in this program in the company respondents' U.S. customers' books and records, and therefore could not verify the claims of non-use. A review of ancillary documents, such as applications, correspondence, emails, *etc.*, is insufficient for Commerce to verify any bank disbursement or loan amount pertaining to the company respondents, their customers, and/or the GOC's participation in the program.¹⁴³ Commerce needed to have a better understanding of the program before it could verify it because it did not know what documents to request to review at verification or what information in the books and records to tie to the company respondents' reported information from their questionnaire responses. Therefore, we found it necessary to have had this information prior to verification in order to ensure the information we would have received was complete and accurate to fully analyze and calculate the benefits the company respondents received under this program during the course of the POI.

In short, because the GOC failed to provide Commerce with information necessary to identify a paper trail of a direct or indirect export credits 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.¹⁴⁴ Without cooperation from the China Ex-Im Bank and/or the GOC, we cannot know the banks that could have disbursed export buyer's credits to the company respondents' customers. Therefore, there are gaps in the record because the GOC refused to provide the requisite disbursement information.

Additionally, Commerce finds that it is not possible to determine whether export buyer's credits were received with respect to the export of cabinets and vanities because the potential recipients of export buyer's credits are not limited to the customers of the company respondents, as they may be received by other third-party banks and institutions. Again, Commerce would not know what indicia to look for in searching for usage or even what records, databases, or supporting documentation we would need to examine to effectively 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 the 2013 revision and a complete list of correspondent/partner/intermediate banks.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ 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) (*Tetra from China*) IDM at 31 (confirming that the GOC solely owns the China Ex-Im Bank).

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 the respondents 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 customer's certifications of non-use. A very similar rationale has been accepted by the CIT in a review of *Certain Solar Products from China*. Specifically, in *Changzhou Trina 2016*,¹⁴⁵ 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....").¹⁴⁶

Moreover, we disagree with Ancientree and Meisen that Commerce has not identified any gap in the record resulting from missing information.¹⁴⁷ As an initial matter, we cannot simply rely on the GOC's assurances that it has checked its records. We have no way of verifying such statements without the GOC providing us with the requested documents which would allow us to then properly examine its claims of non-use. Further, given the constraints on Commerce resulting from the GOC's failure to provide all of the necessary information to fully understand the program's operation, Commerce reasonably determined that it would be unable to examine each and every loan obligation of each of the company respondents' customers and that, even if such an undertaking were possible, it would be meaningless, as Commerce would have no idea as to what documents it should look for, or what other indicia there might be within a company's loan documentation, regarding the involvement of the China Ex-Im Bank.

At the very least, even when Commerce has no means of limiting the universe of transactions before it begins verification, Commerce knows what it is looking for when it begins selecting documents or transactions for review. When, because of the GOC's failure to provide complete information, there are no such parameters, or there is no guidance as to what indicia Commerce should look for, it is unreasonable to expect Commerce to hunt for a needle in a haystack – a very large haystack in some instances. As an illustrative example, in the context of a value added tax (VAT) and import duty exemption, Commerce has met with the GOC to discuss how that program works, and in such instances the GOC has been fully cooperative.¹⁴⁸ Therefore, Commerce knows what documents it should see when VAT and import duties are paid and when

¹⁴⁵ See *Changzhou Trina 2016*, 195 F. Supp. 3d at 1350) (citing *Certain Solar Products from China* IDM at 91-94).

¹⁴⁶ *Id.*

¹⁴⁷ See Ancientree's Case Brief at 2; Meisen's Case Brief at 5.

¹⁴⁸ 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.").

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 pursuant to 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 examine a loan to determine whether the China Ex-Im Bank was involved, or whether the given loan was provided under the EBC program, for the reasons explained above.

We continue to find that the GOC withheld necessary information that was requested of it and significantly impeded this proceeding. Accordingly, Commerce must rely on facts otherwise available in issuing this final determination, pursuant to sections 776(a)(1), (2)(A) and (C) of the Act. Specifically, necessary information 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 that under this program the GOC bestowed a financial contribution and provided a benefit to Ancientree, Foremost, and Meisen within the meaning of sections 771(5)(D) and 771(5)(E) of the Act, respectively. Regarding specificity, although the record regarding this program suffers from significant deficiencies, we note that the GOC's description of the program and supporting materials (albeit found to be deficient) demonstrates that through this program, state-owned banks, such as the China Ex-Im Bank, provide loans at preferential rates for the purchase of exported goods from China.¹⁴⁹ In addition, the program was alleged by the petitioner as an example of a possible export subsidy.¹⁵⁰ Finally, Commerce has found this program to be an export subsidy in the past.¹⁵¹ Thus, we continue to find that, taking all such information into consideration, the provision of export buyer's credits is contingent on exports within the meaning of sections 771(5A)(A) and (B) of the Act.

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

B. The Appropriate AFA Rate for the EBC Program

Ancientree's Comments:

- Should Commerce continue to find that the GOC failed to respond adequately to questions concerning the EBC program, and that Commerce should apply AFA to find

¹⁴⁹ See GOC's IQR at Exhibits EXPORT-1, EXPORT-2, and EXPORT-3.

¹⁵⁰ See Petition, Volume III at 111-16, and Exhibit III-153.

¹⁵¹ See, e.g., *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 17382 (April 25, 2019) and accompanying IDM at Comment 16.

that Ancientree benefited from the program, then Commerce should select a different rate for the program. Specifically, Commerce should apply the 0.10 percent rate calculated for Ancientree's policy lending program in this investigation.

- The most "similar/comparable program" would be preferential loans to the wooden cabinets industry. Therefore, Commerce should follow its AFA selection methodology and find that the preferential loan rate calculated in this investigation is the most similar rate to the EBC program, and not the preferential loan rate calculated for a different product from an investigation ten years prior (*i.e.*, the wooden cabinet industry cannot use preferential loans to the coated paper industry).

The Petitioner's Comments:

- Commerce should continue to follow its established practice and use the rate of 10.54 percent for the EBC program in the final determination.
- Ancientree's arguments ignore Commerce's established AFA rate selection hierarchy provide no justification warranting a deviation from Commerce's recognized methodology.
- Given the GOC's refusal to provide complete information regarding the EBC program, Commerce must continue to apply an AFA rate that is sufficiently adverse, *i.e.*, the 10.54 percent rate.

Commerce's Position: As explained in the section "Use of Facts Otherwise Available And Adverse Inferences" in the *Preliminary Determination*,¹⁵² in selecting an AFA rate, Commerce applies the highest calculated rate for the identical program in the investigation if a respondent company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, Commerce uses the highest non-*de minimis* rate calculated for the identical program in another CVD proceeding involving the same country. If no such rate is available, Commerce will use the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, Commerce applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.¹⁵³

In this investigation, there is no identical program for which we calculated a subsidy rate. Ancientree's suggestion that we use a policy lending rate from the instant investigation as the AFA rate for the EBC program does not follow the AFA hierarchy for an investigation, because the policy lending program, while similar in terms of the treatment of the subsidy (*i.e.*, related to loans), is not identical to the EBC program. Thus, we have examined other Chinese CVD proceedings and selected the 10.54 percent *ad valorem* rate calculated in *Coated Paper from China* for "Government Policy Lending," a program that provides assistance in the form of a preferential interest rate on various types of loans sourced from Chinese-owned financial

¹⁵² See *Preliminary Determination* PDM at 11-12.

¹⁵³ See *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) and accompanying IDM at 2-5.

institutions.¹⁵⁴ Consistent with Commerce’s practice and AFA hierarchy, this is the highest non-*de minimis* rate for a similar program in a Chinese CVD proceeding.

Ancientree argues that the AFA rate selected for the EBC program is not the same or similar, because it relates to preferential lending to another industry, *i.e.*, the coated paper industry, and there is no evidence that the policy lending program is similar to the EBC program, based on the information submitted regarding the EBC program. Recently, Commerce rejected this argument in *Aluminum Sheet from China* and *Polyester Textured Yarn from China*, noting that, due to the GOC’s failure to cooperate, there was no evidence on the record from the GOC that indicates that the government policy lending program from *Coated Paper from China* is dissimilar to the EBC program.¹⁵⁵ Similar to *Aluminum Sheet from China* and *Polyester Textured Yarn from China*, here, there is similarly no evidence on the record of this investigation demonstrating the government policy lending program from *Coated Paper from China* is dissimilar to the EBC program.

Additionally, we disagree with Ancientree’s argument that the rate from *Coated Paper from China* is outdated. We note that the statute does not require contemporaneity when selecting AFA rates.¹⁵⁶ Rather, Commerce has the discretion to apply the highest calculated rate and is not required “to demonstrate that the countervailable subsidy rate... reflects an alleged commercial reality of the interested party” when adverse inferences are warranted.¹⁵⁷ Thus, in this investigation, we followed our investigation hierarchy to, absent a calculated rate for an identical program, select the highest calculated subsidy rate for a similar/comparable program otherwise identified in a CVD proceeding involving the same country.

Moreover, the CIT has affirmed the 10.54 percent AFA rate applied for the EBC program in past instances.¹⁵⁸ Therefore, in accordance with our practice, we made no changes to the criteria used to select the AFA rate for the EBC program. Thus, with respect to the selection of the AFA rate to apply to this program, we are continuing to apply our CVD AFA hierarchy to assign a rate of 10.54 percent *ad valorem* for this program, consistent with the *Preliminary Determination*.¹⁵⁹

¹⁵⁴ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201, 70202 (November 17, 2010) (*Coated Paper from China*).

¹⁵⁵ See *Aluminum Sheet from China* IDM at 33; see also *Polyester Textured Yarn from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 84 FR 63845 (November 19, 2019) (*Polyester Textured Yarn from China*) and accompanying IDM at Comment 4.b.

¹⁵⁶ See generally section 776(d) of the Act.

¹⁵⁷ See section 776(d)(3)(B) of the Act.

¹⁵⁸ See, e.g., *RZBC 2017*, 222 F. Supp. 3d at 1208.

¹⁵⁹ See *Preliminary Determination* PDM at 22-23.

Comment 4: Whether the Policy Loans to the Wooden Cabinet and Vanity Industry Program Is Countervailable

The GOC's Comments:

- In the *Preliminary Determination*, Commerce relied on several government directives to find that loans from state-owned commercial banks (SOCBs) were made to the mandatory respondents “to encourage and support the growth of favored industries, including those using timber, which would include the wooden cabinet industry.”¹⁶⁰ However, Commerce did not tie these general and vague directives to any specific lending program used by the mandatory respondents.
- While these directives provide for aspirational general policy planning, they do not provide for any particular government lending program through which SOCBs extend preferential loans to the wooden cabinets industry and from which the mandatory respondents could have benefitted.
- As the GOC explained in its initial questionnaire response, there is no policy directive that applies to SOCBs that provides for preferential treatment of the wooden cabinets and vanities industry. Rather, the issuance and approval of all loans negotiated between SOCBs and the mandatory respondents were “purely based on market principles and business sustainability.”¹⁶¹ This point is corroborated by the mandatory respondents, which reported that they did not receive any policy loans from SOCBs and that there is no connection between the companies’ financing and governmental policy.
- There is no evidence on the record that loans issued by SOCBs to the wooden cabinets and vanities industry are specific, as the two directives Commerce cites never make any specific reference to the wooden cabinets and vanities industry. Therefore, even if Commerce were to find that SOCBs participated in preferential lending, such preferential lending is not limited to the wooden cabinets and vanities industry or even to the larger building materials industry, and thus is not *de jure* specific under the plain meaning of the Act.

The Petitioner's Comments:

- The GOC has provided no reason for Commerce to depart from its findings in the *Preliminary Determination* regarding policy loans, and Commerce should reject the GOC’s arguments.
- Government directives in China demonstrate that the GOC has policies in place that encourage the use of loans to support and encourage the growth of favored industries. In *Hardwood Plywood from China*, Commerce explained that “commercial banks in {China} follow the ‘guidance’ of central planning authorities” and that “Article 34 of the Law of the People’s Republic of China on Commercial Banks (Banking Law) states that banks should carry out their loan business ‘under the guidance of the state industrial policies...’ {and, therefore,} the Banking Law, in some measure, stipulates that lending

¹⁶⁰ See GOC’s Case Brief at 14.

¹⁶¹ *Id.* (citing the GOC’s IQR at 16).

procedures be based on the guidance of government industrial policy.”¹⁶² Similarly, in *Drive Components from China*, Commerce explained that, in analyzing policy lending programs, it looks for a “link between the GOC’s industrial policies and lending.”¹⁶³

- Commerce has repeatedly confirmed that SOCBs are authorities within the meaning of the statute, and the GOC has provided no information to cause Commerce to revise its similar finding in the *Preliminary Determination*.¹⁶⁴
- Commerce should continue to dismiss the GOC’s arguments that loans in China are made on a commercial basis in accordance with the Capital Rules for Commercial Banks, and should continue to find that China’s banking sector does not operate on a commercial basis and is subject to significant distortions, as it has in other proceedings.¹⁶⁵
- Commerce should continue to find that the policy lending program is *de jure* specific. The GOC acknowledges that the government directives relied on by Commerce in the *Preliminary Determination* state that the GOC should work to “raise the rate of the comprehensive utilization of timbers” and that provincial governments “should support the building material industry.”¹⁶⁶ Such directives support a finding of *de jure* specificity.
- Furthermore, subsidies need not be limited to a single industry to be specific within the meaning of the statute. Subsidies are specific if limited to an enterprise or industry, or a group of enterprises or industries. If a subsidy is provided to multiple industries, Commerce has found such programs to be specific so long as the group of industries is limited.¹⁶⁷

Commerce’s Position: For the reasons detailed below, we disagree with the GOC’s position that it did not provide countervailable policy loans to the wooden cabinets and vanities industry during the POI. Therefore, we continue to find such loans countervailable for this final determination.

Evidence on the record of this investigation indicates that GOC policy considerations are a significant factor in lending decisions. The Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation (No. 40 (2005)) (*i.e.*, “Decision 40”) states in its preamble that “{a}ll relevant administrative departments shall speed up the formulation and amendment of policies on public finance, taxation, credit, land, import and export, etc., effectively intensify the coordination and cooperation with

¹⁶² See *Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 53473 (November 16, 2017) (*Hardwood Plywood from China*) and accompanying IDM at 40.

¹⁶³ See *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People’s Republic of China: Final Affirmative Determination*, 81 FR 75037 (October 28, 2016) (*Drive Components from China*) and accompanying IDM at 48.

¹⁶⁴ See *Polyester Textured Yarn from China* IDM at 53; see also *Aluminum Foil from China* IDM at 16.

¹⁶⁵ See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) (*CORE from China*), and accompanying IDM at 26.

¹⁶⁶ See Petitioner’s Rebuttal at 32 (citing GOC’s Case Brief at 16-17).

¹⁶⁷ See *CORE from China* IDM at 26.

industrial policies, and further improve and promote the policy system on industrial structure adjustment” with respect to the listed industrial categories.¹⁶⁸ In Chapter 2 “Directions and Key Points of Industrial Structure Adjustment,” at Article 4, Decision 40 additionally states that “{w}e shall develop materials forests, timber forest bases in light of local circumstances, and raise the rate of comprehensive utilization of timbers.”¹⁶⁹ Additionally, Chapter 8 (Industrial Optimization) of the “National Economic and Social Development Twelfth Five Year Plan of Shandong Province” indicates that the industry under consideration falls within “Section I Upgrading and Development of Traditional Industries” category.¹⁷⁰ Section I includes the building materials industry, and plywood, a key input in the production of cabinets and vanities, is a building material.¹⁷¹

Commerce has previously found, and continues to find, that commercial banks in China follow the “guidance” of central planning authorities. Specifically, “Article 34 of Law of the People’s Republic of China on Commercial Banks (Banking Law) states that banks should carry out their loan business ‘under the guidance of the state industrial policies.’ ... {and, therefore,} the Banking Law, in some measure, stipulates that lending procedures be based on the guidance of government industrial policy.”¹⁷² A clear and documented connection exists between the GOC’s industrial policies and lending practices.

Contrary to the GOC’s arguments, Commerce’s findings are not solely based on government ownership. The *Coated Paper from China* investigation clearly explains why SOCBs have been treated as “authorities” within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act.¹⁷³ Commerce has repeatedly found that “{China}’s banking system remains under State control and continues to suffer from the legacies associated with the longstanding pursuit of government policy objectives. These factors undermine the SOCBs ability to act on a commercial basis and allow for continued government control resulting in the allocation of credit in accordance with government policies. The banking system continues to be affected by the legacy of government policy objectives, which undermine the ability of the domestic banking sector to act on a commercial basis, and allows continued government involvement in the allocation of credit in pursuit of those objectives.”¹⁷⁴ The GOC has presented no new evidence in this investigation that warrants reconsideration of our well-established precedent.

Therefore, we continue to find that SOCBs provide a direct financial contribution to the respondents. Given our finding that SOCBs are authorities within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act, and the clear and documented connection between the

¹⁶⁸ See GOC’s IQR at Exhibit LOAN-10.

¹⁶⁹ *Id.* (emphasis added).

¹⁷⁰ *Id.* at Exhibit LOAN-7.

¹⁷¹ See Petition, Volume III, at Exhibits 13-15 (containing government plans relating to the wood processing industry).

¹⁷² See *Drive Components from China* IDM at Comment 16; and *Certain Oil Country Tubular Goods From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009), and accompanying IDM at Comment 21.

¹⁷³ See *Coated Paper from China*.

¹⁷⁴ See *Drive Components from China* IDM at Comment 7 (citing *Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) and accompanying IDM at Comment 7)); see also Memorandum, “Review of China’s Financial System Memorandum,” dated August 5, 2019, at Attachment 1.

GOC's industrial policies and lending practices, we continue to find that loans provided to the respondents under this program are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Thus, we have made no changes to our findings for this program since the *Preliminary Determination*.

Comment 5: Whether Land Prices in Thailand Provide a Suitable Benchmark for Land Prices in China

The GOC's Comments:

- In the *Preliminary Determination*, Commerce relied on data from Thailand, and not China, to calculate a benchmark for its analysis of the provision of land for LTAR. However, this approach is unlawful and is inconsistent with the economic reality of land value, which is based on the particular land's location and its ability to be used for the purchaser's purposes.
- Commerce's use of an "out-of-country" benchmark is inconsistent with the statute, which requires that a LTAR assessment be made in relation to prevailing market conditions in the country subject to investigation.¹⁷⁵ The demand for land is based on its geographic location, including its access to roads and public transportation, and its relative proximity to suppliers, workers, inputs, and utilities. The presence and/or absence of these factors in Thailand cannot possibly be equal to the prevailing market conditions in China and, thus, an external benchmark for land is not permissible under the statute.
- Commerce's benchmark methodology is not "grounded in the reality of prevailing market conditions for the good or service being provided," which the CIT has determined is required of an LTAR analysis.¹⁷⁶ Thus, Commerce's use of an "out-of-country" benchmark is not economically logical and is in conflict with the statute.

The Petitioner's Comments:

- Commerce should continue to use land prices in Thailand as a benchmark for this program, as it has done for many years.¹⁷⁷
- The GOC and the company respondents were provided an opportunity to provide an alternative benchmark for land purchases but failed to do so. The GOC cannot credibly argue that the only benchmark information on the record is unreasonable when it did not attempt to provide an alternative.

¹⁷⁵ See GOC's Case Brief at 18 (citing section 771(5)(E)(iv) of the Act).

¹⁷⁶ *Id.* (citing *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 61 F. Supp. 3d 1306, 1335 (CIT 2015)).

¹⁷⁷ See Petitioner's Rebuttal at 43-45 (citing *Preliminary Determination PDM* at 42-44; see also *Laminated Woven Sacks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007), unchanged in *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Sacks from China*)).

- Commerce should not search for a new benchmark, or place new information on the record, at this stage of the investigation.

Commerce’s Position: In the *Preliminary Determination*, for valuing land use rights to encouraged industries for LTAR, we relied on land prices from the “Asian Marketview Report” for all quarters of 2010, which we inflated to derive the 2018 benchmark.¹⁷⁸ In the *Preliminary Determination*,¹⁷⁹ we stated that:

In this investigation, no party submitted benchmark information for land prices. Therefore, we are placing on the record benchmark information to value land from “Asian Marketview Reports” by CB Richard Ellis (CBRE) for Thailand for 2010. We used this benchmark in the CVD investigations of *Solar Cells from China* and *Plywood from China*, and more recently in *Steel Racks {from China}*. We initially selected this information in the *Sacks from China* investigation after considering a number of factors, including national income levels, population density, and producers’ perceptions that Thailand is a reasonable alternative to China as a location for Asian production. We find that these benchmarks are suitable for this preliminary determination, adjusted accordingly for inflation, and we relied on it for our calculation of benefits relating to purchases of land-use rights by the company respondents.¹⁸⁰

We further stated that:

We will continue to examine benchmark prices on a case-by-case basis and will consider the extent to which proposed benchmarks represent prices in a comparable setting (*e.g.*, a country proximate to China, the country’s level of economic development, etc.). Therefore, we invite parties to submit alternative benchmark data that is consistent with the guidance provided in *Sacks from China* and the Land Analysis Memorandum. Parties will have seven days after the publication of this memorandum to provide information to rebut, clarify, or correct information in the Land Analysis Memorandum or the Land Benchmark Data Memorandum.¹⁸¹

No party in the instant investigation filed, or requested an extension to file, information to rebut, clarify, or correct the land benchmark used in the *Preliminary Determination*. Therefore, given that we have no other timely land benchmark information on the record of the instant investigation, we are continuing to use land prices from the “Asian Marketview Report” to measure the adequacy of remuneration for the respondents’ land purchases for the final determination.

¹⁷⁸ See Memorandum, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Asian Marketview Report,” dated August 5, 2019 (Land Benchmark Data Memorandum) (containing “Asian Marketview Report” pricing data).

¹⁷⁹ See *Preliminary Determination* PDM at 42-44.

¹⁸⁰ *Id.* (internal citations omitted).

¹⁸¹ *Id.* (internal citations omitted); see also Memorandum, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Land Analysis Memorandum,” dated August 5, 2019 (Land Analysis Memorandum) at Attachment 1.

Comment 6: Whether Commerce Should Apply AFA to the Provision of Inputs for LTAR

A. Financial Contribution

The GOC's Comments:

- Commerce's application of AFA is unlawful because the GOC cooperated to the best of its ability to provide Commerce with all requested information.
- There is no central government database to search for the requested information concerning whether any individual owner, member of the board of directors, or senior manager of a company is a government or Chinese Communist Party (CCP) official. Thus, the GOC could not have obtained the information requested by Commerce and cannot be required to provide information that it does not possess.
- The GOC submitted complete responses to the relevant questions and the Input Producer Appendices for plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard input suppliers.¹⁸² Thus, no information is missing from the record.
- The GOC demonstrated that, contrary to the statements contained in Commerce's Public Bodies Memorandum,¹⁸³ the presence of CCP primary party organizations inside private companies does not make the private companies government authorities. The GOC does not agree with the analysis and conclusions in the Public Bodies Memorandum, and notes, in particular, that the memorandum does not state that the CCP exerts control over private companies through primary party organizations. The Public Bodies Memorandum, at most, expresses uncertainty over the role of primary party organizations in private companies. The Public Bodies Memorandum plainly states that "the role of this party presence {in private companies} is unclear; it may exert varying degrees of control in different circumstances."¹⁸⁴
- The Economist article referenced in the Public Bodies Memorandum focused on the presence of primary party organizations in state-owned enterprises (SOEs) and their effect on such entities, not private companies.¹⁸⁵ Thus, there is no support for the proposition that primary party organizations in private companies "hold meetings that shadow formal board meetings and often trump their meetings."¹⁸⁶
- There is no other indication that CCP primary party organizations exert control over private businesses. The facts presented in the Input Producer Appendices directly refute this claim. The facts on the record make clear that the GOC is prohibited by law from interfering in the ordinary business operations and management of a company.
- Commerce's finding that plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard producers are government authorities on the basis of AFA alone is unlawful. Commerce must first make the necessary finding regarding all elements of countervailability and, thus, cannot simply rely on a respondent's lack of cooperation in applying AFA.

¹⁸² See GOC's Case Brief at 22 (citing GOC's IQR at Exhibit PLY-1, and GOC's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China, Case No. C-570-107: New Subsidy Allegations Questionnaire Response," dated October 18, 2019 (GOC's NSA Response), at Exhibit Wood-2, FB-2, and PB-2).

¹⁸³ *Id.* (citing Public Bodies Memorandum at 36).

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 25-26.

¹⁸⁶ *Id.* at 26.

- The record supports the conclusion that the input producers in question are not government authorities under that Act, and Commerce improperly failed to address this evidence. The GOC presented evidence that most, if not all, input producers are privately-owned, including information about ownership structure and business registration for the respondents' input producers and their ultimate owners, where these owners are registered in mainland China. The GOC also explained that, in accordance with the Company Law, private companies are governed by the directors, officers, and shareholders, and not by the government.
- Commerce did not address the above-referenced evidence in finding that input producers are government authorities and, thus, improperly relied on AFA alone to reach its conclusions. That determination was unlawful and should be reversed in the final determination.

The Petitioner's Comments:

- Commerce has considered and rejected the GOC's current arguments regarding inputs for LTAR in several past cases. For instance, in *Soil Pipe from China*, Commerce applied AFA when the GOC provided business registration data and basic shareholder information for input producers, but did not provide detailed company information (*e.g.*, company by-laws, articles of incorporation, licenses, capital verification reports, *etc.*) that Commerce specifically requested.¹⁸⁷
- Further, Commerce has previously rejected the GOC's assertion that its registration system provides authoritative evidence of the ownership structure of enterprises in China, finding that such responses lacked the information necessary to determine whether the producers were "authorities."
- Commerce has also considered and rejected the GOC's arguments regarding the significance of the presence and role of CCP officials/organizations within the input producers at issue in *Steel Propane Cylinders from China*.¹⁸⁸ Specifically, Commerce explained in *Steel Propane Cylinders from China* that it is Commerce's role, not the GOC's, to determine what information is necessary in order to manage its proceedings and conduct an LTAR analysis.¹⁸⁹
- Here, the GOC has simply repeated arguments regarding the CCP that, as Commerce explained in *Soil Pipe from China*, it has rejected many times before.¹⁹⁰
- It is Commerce's practice to treat producers that are majority-owned by the GOC as authorities; Commerce has explained this practice in great detail, with voluminous evidentiary support, in its Public Bodies Memorandum.
- Additionally, enterprises in which the GOC maintains less than a controlling ownership interest, or even no ownership interest, may be found to be authorities where additional evidence such as industrial policy plans or GOC/CCP presence suggests that the government exercises meaningful control over the company, or that the enterprise is being used to carry out government functions.

¹⁸⁷ See *Cast Iron Soil Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 6770 (February 28, 2019) (*Soil Pipe from China*) and accompanying IDM at 10.

¹⁸⁸ See Petitioner's Rebuttal at 47.

¹⁸⁹ *Id.* at 48 (citing *Soil Pipe from China* IDM at 11-13).

¹⁹⁰ See *Soil Pipe from China* IDM at 13.

Commerce’s Position: For the reasons detailed below, for this final determination, we continue to find, based on AFA, that the producers of the plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard utilized by the company respondents are “authorities” within the meaning of section 771(5)(B) of the Act and, thus, that such producers provided a financial contribution in supplying these inputs to the respondents within the meaning of section 771(5)(D)(i) of the Act.¹⁹¹

As discussed in the *Preliminary Determination* under “GOC – Whether Plywood, Veneers, and Urea Producers are ‘Authorities,’” and the Post-Preliminary Analysis under “GOC – Whether Suppliers of Inputs Are Authorities,” in order to analyze whether the domestic producers that supplied plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard to the respondents are “authorities” within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act, we sought information regarding the ownership of the input producers identified by the company respondents. Such information included articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, articles of association, business group registrations, business licenses, and tax registration documents. Moreover, we requested information concerning whether any individual owners, board members, or senior managers involved with these producers were government or CCP officials and the role of any CCP primary organization within the producers.¹⁹² Specifically, to the extent that the owners, managers, or directors of a producer are CCP officials or are otherwise influenced by certain CCP-related entities, Commerce requested information regarding the means by which the GOC may exercise control over company operations and other CCP-related information.¹⁹³ Commerce explained its understanding of the CCP’s involvement in China’s economic and political structure in current and past China CVD proceedings,¹⁹⁴ including why it considers the requested information regarding the CCP’s involvement in China’s economic and political structure to be relevant.

The GOC’s response to our requests for information, or lack thereof, is fully described in the *Preliminary Determination* and Post-Preliminary Analysis. Regarding the input producers identified by the company respondents, we asked the GOC to provide information about the involvement of the CCP in each of these companies, including whether individuals in management positions are CCP members, in order to evaluate whether the privately-owned input producers are “authorities” within the meaning of section 771(5)(B) of the Act. While the GOC provided a long narrative explanation of the role of the CCP, when asked to identify any owners, members of the boards of directors, or managers of the input producers who were government or CCP officials during the POI, the GOC explained that there is “no central governmental database

¹⁹¹ We note that no party challenged the *Preliminary Determination* regarding veneers and urea.

¹⁹² See *Preliminary Determination* PDM at 26-28; and Post-Preliminary Analysis at 7-10.

¹⁹³ See Commerce’s Letter, “Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Countervailing Duty Questionnaire,” dated May 31, 2019 (Initial CVD Questionnaire), at Input Producer Appendix.

¹⁹⁴ See *Citric Acid 2012* IDM at Comment 5; and Additional Documents Memorandum at Attachment I.

to search for the requested information.”¹⁹⁵ However, in prior CVD proceedings, we found that the GOC was able to obtain the information requested independently from the companies involved, and that statements from company respondents, rather than from the GOC, were not sufficient.¹⁹⁶

As explained in the *Preliminary Determination*, we understand that the CCP exerts significant control over economic activities in China.¹⁹⁷ Thus, Commerce continues to find, as it has in prior CVD proceedings,¹⁹⁸ that the information requested regarding the role of CCP officials and CCP committees in the management and operations of the respondents’ privately-owned input producers is necessary to our determination of whether these producers are “authorities” within the meaning of section 771(5)(B) of the Act. As explained above, however, the GOC failed to respond to Commerce’s questions requesting information regarding the CCP’s role in the ownership and management of the respondents’ input producers. Therefore, Commerce continues to determine, in accordance with sections 776(a)(1), 776(a)(2)(A), and 776(a)(2)(C) of the Act, that necessary information is not available on the record, that the GOC has withheld information that was requested of it, and that the GOC significantly impeded this proceeding. Thus, we are continuing to rely on “facts available” in making our final determination. Moreover, we continue to determine, in accordance with section 776(b) of the Act, that the GOC failed to cooperate to the best of its ability to provide us with requested information regarding the CCP’s role in the ownership and management of the respondents’ input producers. Consequently, an adverse inference in selecting from among the facts otherwise available is warranted.

In addition, we disagree with the GOC that it provided Commerce with sufficient information to determine whether any of the company respondents’ input producers are privately-owned entities. We explained in the *Preliminary Determination* and Post-Preliminary Analysis that the GOC’s responses to the Input Producer Appendix for the inputs being investigated were deficient, and that the information supplied from its Enterprise Credit Information Publicity System (ECIPS) was not sufficient for our analysis of whether the input producers identified by the company respondents are authorities under the Act. While the GOC asserted that the information provided from ECIPS was sufficient for our analysis, it is for Commerce, not the GOC, to determine what information is necessary in order for Commerce to complete its analysis.¹⁹⁹ For the reasons described above, we find that the GOC failed to provide information necessary for us to analyze whether the respondents’ input producers are authorities.

¹⁹⁵ See, e.g., GOC’s NSA Response at 18 with respect to the Input Producer Appendix for sawn wood and continuously shaped wood. The GOC provided identical responses to the relevant question in its responses to the Input Producer Appendix for other inputs.

¹⁹⁶ See *Citric Acid* IDM at Comment 5.

¹⁹⁷ See, e.g., *Cast Iron Soil Pipe* IDM at Comment 1.

¹⁹⁸ See, e.g., *Citric Acid* IDM at Comment 5.

¹⁹⁹ See *ABB*, 355 F. Supp. 3d at 1222 (“Commerce prepares its questionnaires to elicit information that it deems necessary to conduct a review, and the respondent bears the burden to respond with all of the requested information and create an adequate record.”).

Therefore, we find that the GOC withheld necessary information that was requested of it and that we must rely on facts available in conducting our analysis of the respondents' input producers.²⁰⁰ As a result of incomplete responses to Commerce's questionnaires, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, we determine that the GOC withheld information, and that an adverse inference is warranted in selecting from the facts available.²⁰¹ As AFA, we find that CCP officials are present in each of the respondents' privately-owned input producers as individual owners, managers and members of the boards of directors, and that this gives the CCP, as the government, meaningful control over the companies and their resources. As explained in the Public Bodies Memorandum, an entity with significant CCP presence on its board, or in management, or in party committees, may be controlled such that it possesses, exercises, or is vested with governmental authority.²⁰² Thus, for the final determination, we continue to find that the input producers of plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard which supplied the respondents are "authorities" within the meaning of section 771(5)(B) of the Act.

B. Specificity

The GOC's Comments:

- There are many uses for these inputs and the GOC does not impose any limitation on the consumption of the inputs, by law or policy. Sales and purchases of such inputs are dictated by the market and driven by the forces of supply and demand. Thus, it was impossible to provide the information requested by Commerce for a specificity analysis.
- It is unreasonable for Commerce to conclude that the GOC did not act to the best of its ability in responding to Commerce's specificity questions, as the GOC cannot provide data that it does not have. Thus, Commerce cannot apply AFA here, where it has asked for responses that are impossible to provide, as doing so would be punitive and would contravene the purpose of AFA, which is "remedial, and not punitive."²⁰³
- Although the GOC could not provide the information in the form requested, it supplied the information that it could and, thus, acted to the best of its ability with respect to providing information on specificity.
- Commerce must rely on facts on the record and cannot apply an adverse inference. Because there are no facts on the record with respect to specificity, Commerce cannot make an adverse inference that these input for LTAR programs are specific.²⁰⁴

*The Petitioner's Rebuttal:*²⁰⁵

²⁰⁰ See section 776(a)(2)(A) of the Act.

²⁰¹ See section 776(b) of the Act.

²⁰² See, e.g., Public Bodies Memorandum at 33-36, and 38.

²⁰³ See GOC's Case Brief at 32 (citing *Grobtest & I-Mei Indus. (Vietnam) Co. v. United States*, 815 F. Supp. 2d 1342, 1365-66 (CIT 2012)).

²⁰⁴ *Id.* (citing section 776(a) and (b) of the Act).

²⁰⁵ See Petitioner's Rebuttal at 49-51.

- The GOC provided essentially the same deficient responses to Commerce’s questionnaires that it has provided in prior proceedings in which Commerce found the application of AFA to be appropriate to find specificity. The GOC has provided no basis on which Commerce should find that, here, it has cooperated to the best of its ability.
- For instance, in *Steel Propane Cylinders from China*, Commerce applied AFA to the provision of steel inputs for LTAR based on nearly identical responses from the GOC.²⁰⁶
- The GOC’s list of industries that may or may not use wood product inputs is not responsive to Commerce’s requests for information. The GOC did not provide data on the volume and value of purchases by industry, including the industry in which the company respondents operate, or the total purchases by all other industries, as requested by Commerce. The GOC’s mere assertion that “there are a vast number of uses for” some of the inputs in question is not sufficient information for Commerce to conduct its specificity analysis.
- The record, therefore, supports an inference that the recipients of the subsidies are limited in number or that the GOC has exercised its discretion in a manner that favors certain industries over others. Accordingly, Commerce should continue to find that the provision of wood product inputs for LTAR is specific for the final determination.

Commerce’s Position: For the final determination, we continue to find that the provision of plywood, veneers, urea, sawn wood and continuously shaped wood, fiberboard, and particleboard for LTAR programs are *de facto* specific based on AFA.²⁰⁷

As we described in the *Preliminary Determination* and Post-Preliminary Analysis, Commerce asked the GOC to provide a list of industries in China that purchase plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard directly, and to provide the amounts (volume and value) purchased by each of the industries.²⁰⁸ Commerce requests such information for purposes of its *de facto* specificity analysis. Specifically, our questionnaire asks the GOC to:

Provide a list of the industries in China that purchase {inputs} directly, using a consistent level of industrial classification. Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use whatever resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.²⁰⁹

²⁰⁶ *Id.* (citing *Steel Propane Cylinders from China* IDM at 30).

²⁰⁷ We note that no parties challenged the *Preliminary Determination* regarding our findings with respect to veneers and urea. Therefore, we have not made changes to our analysis for the final determination.

²⁰⁸ See *Preliminary Determination* PDM at 29-30; see also Post-Preliminary Analysis at 10-11.

²⁰⁹ See Initial CVD Questionnaire at 24; and NSA Questionnaire at 3,7, and 10.

The GOC provided information indicating the types of companies and industries that may purchase and use plywood, as well as the national industry classification that the GOC normally relies upon to define industries and classify companies within an industry, as follows:²¹⁰ (1) an excerpt from the national standard on “Industrial Classification in National Economy;”²¹¹ and (2) an excerpt from the general categorization of all economic activities under the United Nations’ ISIC.²¹² With regard to sawn wood and continuously shaped wood, fiberboard, and particleboard, the GOC simply stated that there are a vast number of uses for these inputs, and that the type of consumers that may purchase sawn wood and continuously shaped wood, fiberboard, and/or particleboard are highly varied within the economy.²¹³

We find this response to be insufficient because it does not provide information for all Chinese industries that purchased plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard, during the POI, as we requested in the questionnaire. Therefore, given that the GOC failed to provide requested information, there is a gap in the record regarding the industries that use plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard and, thus, we find the application of facts available appropriate in determining whether the plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard for LTAR programs are specific. Moreover, because the GOC did not cooperate to the best of its ability when it failed to provide us with requested information regarding the industries that purchase plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard, an adverse inference in selecting from among the facts otherwise available is warranted.²¹⁴

We disagree with the GOC’s claim that Commerce erred in applying AFA, because we continue to find that the GOC failed to act to the best of its ability to respond to Commerce’s inquiries regarding whether the plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard for LTAR programs are specific. As an initial matter, we note that the GOC has previously provided, and Commerce has verified, information from GOC-maintained databases concerning the value and volume of production by enterprises producing inputs.²¹⁵ Moreover, Commerce has verified the operation of the ECIPS database, through which the administrative authorities release detailed information on enterprises and other entities, and which is intended to provide details on companies registered in China.²¹⁶ Based on this experience, we are aware that

²¹⁰ See GOC’s IQR at 44-46.

²¹¹ *Id.* at Exhibit GEN-7.

²¹² *Id.* at Exhibit GEN-8.

²¹³ See GOC’s NSA Response at 7, 18-19, and 30-31.

²¹⁴ See, e.g., *RZBC Grp. Shareholding Co. Ltd. v. United States*, 100 F. Supp. 3d 1288, 1296-97 (CIT 2015) (upholding Commerce’s finding that the GOC was “unresponsive” to specificity-related questions in the context of an input for LTAR program, and that “the GOC had not worked to the best of its ability to provide data,” thus warranting application of AFA).

²¹⁵ See, e.g., *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review*; 2013, 80 FR 77318 (December 14, 2015), and accompanying IDM at Comment 1.

²¹⁶ See *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016), and accompanying PDM at 21-22, unchanged in *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China: Final Affirmative*

this database is a national-level internal portal that holds certain information regarding any Chinese-registered company. Among other information, each company must upload its annual report, make public whether it is still operating, and update any changes in ownership. The GOC has stated that, “[p]ursuant to Article 3.1 of {the Circular of the State Council on Printing and Issuing the Reform Proposals for the Registered Capital Registration System (Guo Fa (2014) No.7)}, the {ECIPS} was established requiring the authorities of administration for industry and commerce to publish details regarding the registration, filings, supervision, and administration of enterprises and other entities.”²¹⁷ In a previous investigation, when Commerce requested that the GOC provide information related to the specificity of an input for LTAR program, the GOC provided information from a GOC-maintained database concerning the industries that consumed this input.²¹⁸ Accordingly, it is clear that the GOC maintains information related to industries that use inputs, but did not provide such information for the purposes of this investigation. Therefore, we find that the GOC did not cooperate to the best of its ability in responding to Commerce’s inquiries related to the specificity of the plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard for LTAR programs.

Moreover, we disagree with the GOC that it submitted sufficient information on the record to determine that the plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard for LTAR programs are not specific. It is for Commerce, not the GOC, to determine whether the information provided is sufficient for Commerce to make its determinations with regard to specificity.²¹⁹ For the reasons described above, we continue to find that the GOC failed to provide information necessary for us to analyze whether the plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard for LTAR programs are specific.

Therefore, consistent with past proceedings,²²⁰ Commerce continues to determine, in accordance with sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, that necessary information is not available on the record, that the GOC has withheld information that was requested of it, and that the GOC significantly impeded this proceeding. Thus, we are continuing to rely on facts available in making our final determination. Moreover, we continue to determine, in accordance with section 776(b) of the Act, that the GOC failed to cooperate to the best of its ability to comply by failing to provide us with requested information regarding the industries that purchase plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard. Consequently, an adverse inference in selecting from among the facts otherwise available is warranted. Applying an adverse inference to these facts, we continue to find that the GOC’s provision of plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Determination, and Final Affirmative Critical Circumstances Determination, in Part, 82 FR 9714 (February 8, 2017).

²¹⁷ See GOC’s IQR at Exhibits PLY-1; and GOC’s NSA Response at Exhibit WOOD-1, PB-1, and FB-1.

²¹⁸ See *Soil Pipe from China* IDM at 15.

²¹⁹ See *ABB*, 355 F. Supp. 3d at 1222 (“Commerce prepares its questionnaires to elicit information that it deems necessary to conduct a review, and the respondent bears the burden to respond with all of the requested information and create an adequate record.”).

²²⁰ See, e.g., *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 44562 (September 25, 2017), and accompanying PDM at 22-24.

C. Distortion

The GOC's Comments:

- Commerce found, as AFA, that the markets for each of the inputs used by the respondents were distorted, such that they could not be used as tier one benchmarks. Thus, Commerce resorted to a tier two benchmark to calculate the benefit for each program, where applicable. However, Commerce's use of AFA was unlawful because the GOC specifically reported in its response that it did not maintain statistics specific to these inputs, and therefore cooperated to the best of its ability. Thus, the record demonstrates that the input markets are not distorted, and Commerce had no reason to resort to AFA.
- Commerce requested the total volume and value of Chinese domestic consumption and production of plywood, sawn wood and continuously shaped wood, particleboard, and fiberboard, as well as other information relating to these inputs. The GOC provided this information for plywood, particleboard, and fiberboard. For sawn wood and continuously shaped wood, the GOC stated that the State Statistical Bureau does not collect such information and, therefore, it was unable to provide a full response for the input.
- The GOC explained that it does not maintain information regarding companies producing these inputs for instances in which the GOC maintains less than a controlling ownership or management interest, and thus, was unable to provide the information. However, Commerce relied on a previous case for its finding, stating that the GOC has previously used a nationally available electronic system to gather the same information, as its basis to apply AFA to find that the GOC did not cooperate to the best of its ability. However, this approach represents a misunderstanding of the AFA framework.²²¹
- The percentage of plywood, particleboard, and fiberboard produced by state-owned suppliers in China is 0.78, 10.12, and 6.19 percent, respectively. Thus, the record is clear that the markets for these inputs are not distorted, as the government's participation in the market does not evince a distortion of markets.²²²
- In addition, there were no export tariffs or other restraints on sales or pricing of plywood, fiberboard, or particleboard and, therefore, Commerce was incorrect to resort to AFA to find the markets for these inputs to be distorted.²²³

²²¹ See GOC's Case Brief at 35 (citing sections 776(a) and (b) of the Act).

²²² *Id.* at 36.

²²³ *Id.* at 36-37.

The Petitioner's Comments:

- Commerce has previously considered, and rejected, similar arguments from the GOC regarding the distortion of input markets in previous proceedings. For instance, in *Soil Pipe from China*, Commerce rejected the GOC's argument "that it is not reasonable to conclude that less than full cooperation was shown by the GOC because it reported that it did not maintain statistics" on the industry under consideration.²²⁴ Similarly, in *Steel Propane Cylinders from China*, Commerce rejected the GOC's argument that AFA was unlawful "because the GOC specifically reported in its response that it does not maintain statistics on {the industry} as requested and therefore cooperated to the best of its ability."²²⁵
- Commerce also rejected the GOC's argument in *Steel Propane Cylinders from China* "that what it has been able to provide in other cases about different inputs is irrelevant and does not demonstrate that it failed to cooperate to the best of its ability in this investigation."²²⁶ Accordingly, Commerce should reject these same arguments here.
- The GOC's failure to explain in detail how it determined which inputs suppliers are government enterprises, and which are not, is fatal to the reliability of the market share calculations that the GOC provided. Because the government market share numbers calculated by the GOC are unexplained, and therefore unreliable, it is reasonable to conclude based on the record as a whole that actual transaction prices for the inputs under consideration are significantly distorted as a result of the government's involvement in the market. Therefore, Commerce should use a tier-two world benchmark price to measure the adequacy of remuneration.

Commerce's Position: For the reasons detailed below, we determine that, because the GOC withheld necessary information that was requested of it, Commerce will continue to rely on facts available for this final determination.²²⁷ Specifically, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information.²²⁸ Consequently, an adverse inference is warranted in the application of facts available.

In particular, we look to the limited available information regarding the GOC's involvement in the producers of plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard industries during the POI.²²⁹ While the GOC has argued that the production information it provided for state-owned companies demonstrates that the markets for plywood, particleboard, and fiberboard are not distorted, this argument ignores the basis for our findings regarding these inputs in the *Preliminary Determination* and the Post-Preliminary Analysis. For instance, as discussed in the *Preliminary Determination*, we requested information regarding companies in which the GOC claims it maintains less than a controlling ownership or

²²⁴ See Petitioner's Rebuttal at 51 (citing *Soil Pipe from China* IDM at 19).

²²⁵ *Id.* (citing *Steel Propane Cylinders from China* IDM at 53).

²²⁶ *Id.* at 52 (citing *Steel Propane Cylinders from China* IDM at 53-54).

²²⁷ See section 776(a)(2)(A) of the Act.

²²⁸ See section 776(b) of the Act.

²²⁹ See GOC's IQR at 42; and GOC's NSA Response at 15-16 and 27-28.

management interest.²³⁰ Specifically, we requested information on the percentages of total volume and value of domestic production, separately, that is accounted for by these companies, a list of the names of companies producing these inputs, and a detailed explanation of how it was determined that the GOC has less than a controlling ownership or management interest in such companies, including identification of the information sources relied upon to analyze the GOC's calculation of the market-share percentages.²³¹ However, the GOC failed to completely identify and provide information regarding these companies. We identified similar deficiencies in the Post-Preliminary Analysis with respect to particleboard and fiberboard, noting that while the GOC provided some information with respect to input producers that are majority-owned by the government, it failed to provide information related to the volume of particleboard and fiberboard produced by companies in which the government holds a minority share, or a list of such companies, as requested.²³² We find that the necessary information detailing the GOC's minority ownership interests is accessible to the GOC; nonetheless, the GOC failed to provide that information here. As such, we concluded that the GOC failed to cooperate to the best of its ability, and consistent with past practice,²³³ find that this warrants the application of AFA here.

Therefore, we conclude, as AFA, that the extent to which the GOC is involved in the operations of the producers of plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard is such that prices for domestic (Chinese) transactions involving these inputs are significantly distorted.²³⁴ As a result, we continue to find that the use of an external benchmark (*i.e.*, “tier two” (world market) prices as described under 19 CFR 351.511(a)(2)(ii)) is warranted for calculating the benefit for the provision of plywood, sawn wood and continuously shaped wood, fiberboard, and particleboard for LTAR.

Comment 7: Whether Commerce Should Apply AFA to Self-Reported Subsidies

The GOC's Comments:

- With regard to the respondents' self-reported subsidies, Commerce concluded that each of the programs conferred a financial contribution and was specific within the meaning of section 771(5A) of the Act. However, this application of AFA was without a proper legal foundation.

²³⁰ See *Preliminary Determination* PDM at 31.

²³¹ See *Preliminary Determination* PDM at 30-32; and *Post-Preliminary Analysis* at 12-14.

²³² See *Post-Preliminary Analysis* at 13.

²³³ See *Soil Pipe from China* IDM at 15 (“Although the GOC responded to the question regarding {the GOC's} majority ownership interests, the GOC did not respond to the question on minority interest, stating that it did not collect this information. However, the GOC stated that the ECIP System is authoritative evidence of the ownership structure of enterprises in China. Furthermore, the GOC has stated that all companies operating within China have a profile in the ECIP System, regardless of whether they are private or an SOE. Accordingly, based on this information, in the *Post-Preliminary Analysis* Memo we concluded that the necessary information detailing the GOC's minority ownership interests in iron ore producers is accessible to the GOC and is apparently subject to public disclosure - notwithstanding their claim to the contrary. As such, we concluded that the GOC failed to cooperate to the best of its ability, and that the application of AFA pursuant to section 776(b) of the Act is warranted. As AFA, we preliminarily found that the GOC's involvement in the iron ore industry through enterprises in which it owns an interest is significant.”) (internal citations omitted).

²³⁴ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (*CVD Preamble*).

- Commerce’s application of AFA ignores its obligation to examine, first, whether the program appears to be countervailable, and second, if so, whether there is sufficient time to include the practice in the investigation and issue a finding backed by substantial evidence and not based entirely on AFA.²³⁵
- Under Article 11.2 of the SCM Agreement,²³⁶ investigating authorities may not initiate investigations of alleged subsidies on the basis of a “simple assertion, unsubstantiated by relevant evidence.” Specifically, under Article 11.2(iii), sufficient evidence with regard to the “existence, amount, and nature of the subsidy” must be present to initiate the investigation of a program.²³⁷
- Commerce’s practice of concluding that a respondent has failed to cooperate when providing a full response to this open-ended inquiry is premature absent a more direct inquiry supported by credible evidence and the initiation of a discrete investigation. Thus, Commerce should reverse its determination regarding the self-reported subsidies reported by the mandatory respondents.

The Petitioner’s Comments:

- Commerce recently addressed similar arguments from the GOC and continued to find self-reported subsidies to be countervailable.²³⁸
- Commerce has previously found that section 775 of the Act stands for the proposition that, if, during a proceeding, Commerce discovers a practice that appears to provide a countervailable subsidy, but was not included in the CVD petition, Commerce *shall* include the practice, subsidy, or subsidy program in the investigation, if the practice, subsidy or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding.²³⁹
- Section 775 of the Act imposes an affirmative obligation on Commerce to “consolidate in one investigation ... all subsidies known by petitioning parties to the investigation or by {Commerce} relating to {subject} merchandise” to ensure “proper aggregation of subsidization practices.”²⁴⁰
- The GOC refused to coordinate with the company respondents and provide the requested information regarding self-reported programs, as Commerce requested.
- Commerce should continue to countervail these programs consistent with section 775 of the Act.

Commerce’s Position: Commerce disagrees with the GOC’s interpretation of the statute and regulations regarding the lawful initiation of investigation of other subsidies and the scope of Commerce’s authority. For the reasons detailed below, we continue to find that the subsidies self-reported by the respondents are countervailable.

²³⁵ See GOC’s Case Brief at 37 (citing section 705 of the Act; and 19 CFR 351.311(a)-(c)).

²³⁶ See Agreement on Subsidies and Countervailing Measures, art. 11.2, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 UNTS 14 (SCM Agreement).

²³⁷ *Id.*

²³⁸ See Petitioner’s Rebuttal at 53 (citing *Polyester Textured Yarn from China* IDM at 9).

²³⁹ *Id.*

²⁴⁰ *Id.*

Section 775 of the Act states that, if, during a proceeding, Commerce discovers “a practice that appears to provide a countervailable subsidy, but was not included in the matters alleged in the underlying CVD petition,” Commerce “shall include the practice, subsidy, or subsidy program if the practice, subsidy or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding” (emphasis added). Thus, section 775 of the Act imposes an affirmative obligation on Commerce to “consolidate in one investigation ... all subsidies known by petitioning parties to the investigation or by {Commerce} relating to {subject} merchandise” to ensure “proper aggregation of subsidization practices.”²⁴¹ Commerce’s regulations carve out a limited exception to its obligation to investigate what “appear” to be countervailable subsidies: when Commerce discovers a potential subsidy too late in a proceeding, it may defer its analysis of the program until a subsequent review, if any.²⁴² Moreover, Commerce has broad discretion to determine which information it deems relevant to its determination, and to request that information.²⁴³

Thus, consistent with the CIT’s holding in *Changzhou Trina 2016*,²⁴⁴ we find that Commerce’s “other assistance” question enables Commerce to effectuate its obligation to investigate subsidies that it discovers in the course of a proceeding. We further find that this practice is consistent with Commerce’s broad discretion to seek information it deems relevant to its determination.

Further, under 19 CFR 351.311(b), Commerce will examine the practice, subsidy, or subsidy program “if during a countervailing duty investigation... {Commerce} discovers a practice that appears to provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding... {and} will examine that practice, subsidy, or subsidy program if the Secretary concludes that sufficient time remains before the scheduled date for the final determination or final results of review.” Therefore, the regulation clearly provides for the investigation of subsidy programs during an ongoing investigation, which thereby permits a determination of whether the subsidy in question is countervailable.

As is common practice in every CVD questionnaire, Commerce requested that the GOC detail “any other forms of assistance to producers or exporters” and “coordinate with the respondent

²⁴¹ See S. Rep. No. 96-249, at 98 (1979); see also *Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d 1141, 1105 n.12 (CIT 2000) (“Congress... clearly intended that all potentially countervailable programs be investigated and catalogued, regardless of when evidence on these programs became reasonably available.”).

²⁴² See 19 CFR 351.311(a) and (c).

²⁴³ See *Changzhou Trina 2016*, 195 F. Supp. 3d at 1342 (holding that Commerce has “independent authority, pursuant to {section 775 of the Act}, to examine additional subsidization in the production of subject merchandise,” and this “broad investigative discretion” permits Commerce to require respondents to report additional forms of governmental assistance); see also, e.g., *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986); and *Acciai Speciali Terni S.p.A.*, 26 CIT 148, 167 (Feb. 1, 2002).

²⁴⁴ See *Changzhou Trina 2016*, 195 F. Supp. 3d at 1342 (“Commerce’s inquiry concerning the full scope of governmental assistance provided by the {Government of China} and received by the Respondents in the production of subject merchandise was within the agency’s independent investigative authority pursuant to {section 702}(a) and {775 of the Act}, this inquiry was not contrary to law.”).

companies to determine if they are reporting usage of any subsidy program(s).”²⁴⁵ In response to Commerce’s Initial Questionnaire, the respondents stated that they received other forms of assistance and provided a variety of documents, including financial statements and tax returns, substantiating the receipt of benefits under the programs. However, the GOC did not provide the requested information regarding any of these programs in response to the Initial CVD Questionnaire. Following the issuance of supplemental questionnaires to the respondents and the GOC, in which we sought additional information on these self-reported programs, Commerce preliminarily determined that these programs constituted countervailable subsidies based, in part, on AFA because of the GOC’s failure to respond to questions concerning financial contribution and specificity with respect to these programs.²⁴⁶ Our decision to countervail these programs is consistent with the guidelines established under section 775 of the Act and 19 CFR 351.311(b).

We also disagree with the contention that our examination of these programs is inconsistent with the SCM Agreement. We conducted this proceeding pursuant to U.S. CVD law, specifically the Act and Commerce’s regulations. To the extent that the GOC is raising arguments concerning certain provisions of the SCM Agreement in this proceeding, the U.S. CVD law fully implements the United States’ obligations under the SCM Agreement. Indeed, as we have previously explained:

{O}ur CVD laws are consistent with our WTO obligations. Moreover, it is the Act and {Commerce’s} regulations that have direct legal effect under U.S. law, and not the WTO Agreements or WTO reports. In this regard, WTO reports “do not have any power to change U.S. law or to order such a change.”²⁴⁷

Additionally, as stated in 19 CFR 351.311(d), Commerce must notify the parties of any subsidy discovered in the course of the ongoing proceeding and state whether it will be included in the proceeding. The respondents here clearly had notice of Commerce’s investigation of these programs, as they self-reported the programs in their initial CVD questionnaire responses.²⁴⁸ Moreover, the GOC was notified of Commerce’s investigation of these programs by Commerce’s issuance of a supplemental questionnaire concerning the program.²⁴⁹

²⁴⁵ See Initial CVD Questionnaire at “Program-Specific Questions.”

²⁴⁶ See *Preliminary Determination PDM* at 52.

²⁴⁷ See *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) and accompanying IDM at Comment 1 (internal citations omitted); see also *Oil Country Tubular Goods from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 11504 (March 27, 2019) and accompanying IDM at Comment 1.

²⁴⁸ See Ancientree’s Letter, “Wooden Cabinets and Vanities from the People’s Republic of China: Section III Questionnaire Response,” dated July 11, 2019 at Exhibit II-13; see also Jiangsu Hongjia’s Letter, “Wooden Cabinets and Vanities from the People’s Republic of China: Jiangsu Hongjia Section III Questionnaire Response,” dated July 11, 2019 at Exhibit II-9; Shanghai Hongjia’s Letter, “Wooden Cabinets and Vanities from the People’s Republic of China: Shanghai Hongjia Section III Questionnaire Response,” dated July 11, 2019 at Exhibit II-5; Meisen’s Letter, “Wooden Cabinets and Vanities from the People’s Republic of China: Section III Questionnaire Response,” dated July 11, 2019 at Exhibit 15; and Foremost’s Letter, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Foremost’s CVD Questionnaire Response,” dated July 12, 2019 (Foremost IQR) at Exhibit OTH-2.

²⁴⁹ See Commerce’s Letter, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of

For the reasons discussed above, Commerce acted consistently with its statutory authority, and its practice, in investigating subsidy programs that came to light during the course of the investigation. Thus, we have made no changes to the *Preliminary Determination* with respect to our treatment of respondents' self-reported subsidies.

Comment 8: Whether Commerce Should Adjust Its Plywood Benchmark

Meisen's Comments:

- Commerce offers no explanation for using different plywood benchmarks for plywood purchases, in which Ancientree and Meisen purchased the same plywood type.²⁵⁰
- Ancientree claimed that such plywood “would be properly classified under Harmonized Tariff Schedule (HTS) 4412.32 or 4412.33” admitting that both subheadings described the plywood at issue. However, Ancientree then explained that the difference between HTS headings 4412.32 and 4412.33 “appears to be whether {the merchandise} contained an outer ply of tropical wood” and stated that Ancientree did not purchase plywood containing an outer ply of tropical wood.²⁵¹
- Plywood purchased by Meisen also did not contain an outer ply of tropical wood and, thus, should Commerce continue to accept Ancientree's reading of the provision, it should apply the Ancientree benchmark to Meisen as well.²⁵²

The Petitioner's Comments:

- While HTS heading 4412.32 was previously included in the HTS, it apparently was removed prior to 2018. As part of its new subsidy allegations, the petitioner placed China's 2018 HTS on the record, which demonstrates that the heading was discontinued by 2018.²⁵³
- Given that HTS heading 4412.32 was eliminated prior to 2018, and because the record does not contain any information that explains why small amounts of exports continued to be recorded in this heading, Commerce should select a different HTS number to establish a benchmark for plywood purchases during the POI.

Commerce's Position: We disagree with Meisen that HTS heading 4412.32 should be used as the benchmark for measuring the adequacy of remuneration with respect to the company's purchases of plywood. In Meisen's Benchmark Submission,²⁵⁴ Meisen provided benchmark data for plywood, stating that “Attachment 1 contains data from UN Comtrade for use in the valuation of plywood using *the HTS code applicable to the plywood purchased by {} Meisen* which has a

China: Request for Additional Information,” dated July 17, 2019 at 6.

²⁵⁰ See Meisen's Case Brief at 2.

²⁵¹ *Id.* at 3.

²⁵² *Id.*

²⁵³ See Petitioner's Letter, “Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: New Subsidy Allegations,” dated July 18, 2019 (New Subsidy Allegations) at Exhibit 4.

²⁵⁴ See Meisen's Letter, “Wooden Cabinets and Vanities from the People's Republic of China: Benchmark Information,” dated July 18, 2019 (Meisen's Benchmark Submission).

face and back of birch.”²⁵⁵ In Attachment 1 of Meisen’s Benchmark Submission, Meisen used UN Comtrade data to calculate a benchmark using HTS heading 4412.33 (Plywood with sheets of wood only not bamboo each ply 6mm or less, with at least one outer ply of alder, ash, beech, birch, cherry, chestnut, elm, eucalyptus, hickory, horse chestnut, lime, maple, oak, plane, poplar, aspen, robinia, tulipwood or walnut), the very HTS number that Meisen now argues should not be used to calculate a benchmark. In the *Preliminary Determination*, Commerce used data from this HTS heading to calculate Meisen’s plywood benchmark, using data provided by the petitioner from the same source (*i.e.*, UN Comtrade) and same HTS number, with adjustments made to exclude double-counted exports.²⁵⁶

Further, we disagree with Meisen that the plywood benchmarks used for both it and Ancientree should be identical. Meisen states that we have not explained why the two companies had different benchmarks in the *Preliminary Determination*. On the contrary, the proprietary version of Meisen’s preliminary calculation memorandum stated which HTS heading we were using for that company and why,²⁵⁷ while Ancientree’s preliminary calculation memorandum stated that we were using the import duty rate for HTS heading 4412.33 *in lieu* of HTS heading 4412.32.²⁵⁸ Therefore, the benchmarks used in the actual calculations reflect the benchmarks intentionally selected by Commerce.

We disagree with the petitioner that it would be appropriate to revise the HTS heading used to calculate the benchmark used for measuring the adequacy of remuneration of Ancientree’s purchases from 4412.32 to 4412.33. The record does not support such a finding. While it is correct that the 2018 “Custom Import and Export Tariff of the People’s Republic of China,” contains no reference to HTS 4412.32,²⁵⁹ there is no information on the record that would lead us to conclude that this HTS category has been discontinued worldwide, particularly when export volume information for this HTS category was placed on the record in the petitioner’s own benchmark submission.²⁶⁰ The petitioner did not, at the time it placed such information on the record, indicate that the data should be discounted or otherwise excluded from our analysis. Moreover, the only record information we have with respect to the type of plywood purchased by Ancientree is its statement that it did not purchase plywood containing an outer ply of tropical wood, *i.e.*, plywood categorized under HTS subheading 4412.33, and that it therefore categorized its purchases under HTS subheading 4412.32.²⁶¹ As such we find that it is appropriate to use

²⁵⁵ *Id.* (emphasis added).

²⁵⁶ See *Preliminary Determination* PDM at 42.

²⁵⁷ See Memorandum, “Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Dalian Meisen Preliminary Determination Calculations,” dated August 5, 2019 at 3.

²⁵⁸ See Memorandum, “Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Ancientree Preliminary Determination Calculations,” dated August 5, 2019 at 4.

²⁵⁹ See GOC’s IQR at Exhibit Gen-17.

²⁶⁰ See Petitioner’s Letter, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Submission of Benchmark Information,” dated July 18, 2019. We note that Ancientree’s benchmark submission also contains UN Comtrade data for exports under HTS subheading 4412.32 during the POI. See Ancientree’s Letter, “Wooden Cabinets and Vanities from the People’s Republic of China: Benchmark Submission,” dated July 18, 2019.

²⁶¹ See Ancientree’s Letter, “Wooden Cabinets and Vanities from the People’s Republic of China: Supplemental Questionnaire Response,” dated July 21, 2019 at 3.

HTS subheading 4412.32 to measure the adequacy of remuneration for Ancienttree's plywood purchases.

Comment 9: Whether Commerce Should Apply AFA to Meisen

The Petitioner's Comments:

- Commerce should apply total AFA to Meisen, as the record establishes major discrepancies with respect to Meisen's reporting of its wood inputs, as well as a pattern of untruthfulness from Meisen.
- Commerce verified information regarding the species of wood purchased by Meisen and used in the production of subject merchandise as being birch. However, Meisen and its affiliated U.S. importer market the cabinets sold in the United States as being produced from an entirely different species of wood.
- At verification, Commerce directly addressed the discrepancy between Meisen's use of birch wood in producing subject merchandise, and the fact that its products are marketed and sold as made of maple wood. Meisen officials explained this discrepancy by making an unsubstantiated claim that it is an "unspoken rule" in the cabinets industry that companies will use birch but market their products as maple.
- By failing to affirmatively offer an explanation for the incongruity between the species of wood actually purchased and the species actually used in the production of subject merchandise, Meisen significantly impeded the investigation and failed to put forth its maximum effort to cooperate to the best of its ability with Commerce.
- Meisen's untruthful and deceptive business practices not only call into question its reported wood input purchases, but the overall veracity of its questionnaire responses in this investigation. If Meisen and its affiliated U.S. importer routinely deceive their U.S. customers, as Meisen effectively admits, the accuracy of Meisen's responses are called into question. Commerce should not accept the responses as truthful and should apply AFA to Meisen.
- If Commerce does not apply total AFA to Meisen, it should at a minimum apply partial AFA to Meisen's wood purchases to ensure that Meisen does not obtain a more favorable result by failing to cooperate to the best of its ability. Commerce should apply partial AFA to Meisen's wood purchases by applying the highest calculated rate for any respondent in this investigation for calculations relating to purchases of sawn wood for LTAR.
- Commerce cannot rely on Meisen's financial statements to support the loans recorded in its books and records, as Meisen's financial statements do not reliably represent the operations and finances of the company.
- Prior to the *Preliminary Determination*, the petitioner noted that the outstanding lending reported in Meisen's 2018 financial statements differed from that reported in its loan database.
- Meisen later explained that the note in its 2018 financial statement identifying the source of its outstanding loans was a mistake by the auditor and stated that a portion of the loans listed in the financial statements were, in fact, from its U.S. affiliates. Meisen provided an "auditor's correction" in a supplemental questionnaire response, but its failure to initially report these transactions with its affiliates indicates that Meisen failed to respond to the best of its ability and impeded this investigation.

- Meisen’s correction to its financial statements does not constitute a minor error, as it relates to significant portions of its debt and capital structure. It is not clear from the financial statements that the debts were properly recorded, and it appears as though Meisen has been recategorizing debts.
- Commerce should not accept the correction from Meisen’s auditors. Meisen’s existing financial statements are unreliable and were insufficiently reviewed by its auditors at the time of preparation, and Commerce did not collect any information at verification to support Meisen’s explanations.
- By belatedly claiming in its September 18, 2019, supplemental response that it received loans from affiliated parties, Meisen acknowledges its failure to reveal the existence of these loans in its initial questionnaire response. Moreover, Meisen failed to proffer this correction in response to the petitioner’s pre-preliminary comments, or in response to Commerce’s creditworthiness supplemental questionnaire.
- Given the discrepancies and omissions in Meisen’s submissions, and its failure to explain and correct these issues in a timely fashion, Commerce should apply total AFA to Meisen in the final determination. If Commerce does not apply total AFA to Meisen, it should apply partial AFA to Meisen’s loans by applying the highest calculated rate for any respondent in this investigation for the receipt of policy loans.
- Meisen did not accurately report the value of its land purchases. Given Meisen’s failure to provide requested information in a timely and accurate manner, Commerce should apply total AFA to Meisen in the final determination.
- If Commerce does not apply total AFA to Meisen, it should apply partial AFA to Meisen’s land purchases by applying the highest calculated rate for any respondent in this investigation for the receipt of land for LTAR.
- If Commerce does not apply total or partial AFA with respect to Meisen’s reporting of its land purchases, it should adjust the reported purchase prices paid for the company’s land by the amounts refunded by the GOC when calculating the benefit received under this program.
- Moreover, Commerce incorrectly identified the year of one of Meisen’s land purchases.. Commerce should correct this error in the final determination.
- As Commerce found that Meisen was uncreditworthy in its Post-Preliminary Analysis, it should apply the uncreditworthiness discount rate to Meisen’s land purchases.
- Meisen failed to accurately report the amount paid for its land purchases in 2010 and 2017 in a timely manner, because it did not identify refunds received for these land purchases until verification. The amounts refunded do not constitute “minor” corrections, given the magnitude of these revisions. Therefore, Commerce should reverse its acceptance of these refunds, and find that they are not “minor” corrections. Meisen’s explanation that these refunds were simply overlooked by the accounting department and, thus, not reported, is inadequate.

Meisen’s Rebuttal:

- There is no basis to apply total or partial AFA to Meisen in this proceeding. Meisen fully responded to the questionnaires by the deadlines and Commerce was able to verify the information submitted. Thus, Meisen did not significantly impede the investigation in any manner.

- The CIT has held that “Commerce may apply facts available whenever there is a gap in the record,”²⁶² and has further stated that “{w}hen a respondent in an administrative review ‘significantly impedes’ the proceeding, Commerce is permitted to ‘fill {} gaps in the record’ using facts otherwise available.”²⁶³ However, none of these threshold requirements are met in this case, as Meisen fully responded to Commerce’s questionnaires, which Commerce verified and, thus, there are no gaps in the record.
- There is no information missing from the record, as Meisen actually reported the type of wood it purchased to produce subject merchandise. Meisen reported only purchasing birch wood, which Commerce extensively verified. Thus, the petitioner’s allegations do not trump Commerce’s own findings.
- Commerce is investigating any subsidies received by Meisen related to its purchases of wood and, as the record has established, Meisen only purchased birch wood. Therefore, any subsidy allegation received by Meisen could only relate to the subsidization of birch wood, which impacted Meisen’s purchase price. Thus, Commerce should reject the petitioner’s arguments relating to maple wood for the final determination.
- Commerce should also reject the petitioner’s unsubstantiated allegations that Meisen failed to report outstanding loans. As Meisen explained, and Commerce has verified, certain loans from its U.S. affiliates were mistakenly included in the short-term loan balance in its 2018 financial statements, which Meisen timely reported.
- At verification, Commerce reviewed the original loan contracts between Meisen and its U.S. affiliates, Meisen’s accounting records, and receipts from the bank, and then interviewed the actual auditors that prepared the financial statements and the correction to these statements.²⁶⁴
- Commerce also performed verification steps to ensure that Meisen reported all of its loans and found no inconsistencies with the figures reported in the questionnaire response.²⁶⁵
- There is no information missing from the record which would justify the application of facts available, let alone total or partial AFA.²⁶⁶
- Commerce should reject the petitioner’s request to reverse its acceptance of the minor corrections related to Meisen’s refunds on land purchases and the petitioner’s request to apply AFA.
- While the petitioner chooses to describe the changes accepted as minor corrections in terms of percentages, in order to exaggerate the extent of the corrections, the petitioner admits that the absolute changes are minor.
- There is no information missing from the record that would justify the application facts available, let alone AFA, given that the acceptance of minor corrections is within Commerce’s discretion.
- At verification, Commerce reviewed and accepted Meisen’s refunds as minor corrections and found no instances of unreported land-use, or any inconsistencies with the information reported in the questionnaire responses.

²⁶² Meisen’s Rebuttal at 2 (citing *Huvis Corp. v. United States*, 525 F. Supp. 2d 1370 (CIT 2007)).

²⁶³ *Id.* at 3 (citing *Since Hardware (Guangzhou) Co. v. United States*, 34 CIT 1262, 1268 (Sept. 27, 2010)).

²⁶⁴ *Id.* (citing Meisen’s Verification Report at 13-14).

²⁶⁵ *Id.* (citing Meisen’s Verification Report at 8-9).

²⁶⁶ *Id.*

The GOC's Rebuttal:

- The petitioner's allegations are without merit and do not support the application of total AFA in the final determination.
- Commerce conducted a thorough verification of Meisen's questionnaire responses and found no discrepancies.
- There is no basis for Commerce to rely on facts otherwise available in this proceeding with respect to Meisen, much less to find that Meisen has failed to cooperate by not acting to the best of its ability such that it warrants the application of AFA. Thus, the petitioner's arguments on this point should be rejected in their entirety.

Commerce's Position: For the reasons detailed below, we disagree with the petitioner that Meisen's reporting of its sawn wood purchases, loans and financial statements, and land purchases, merit the application of AFA. However, we do find that an adjustment to the purchase price of Meisen's land purchases is appropriate.

Section 776(a) of the Act provides that Commerce shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information in the form and manner requested by Commerce; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified. Section 776(b) of the Act provides that Commerce may apply an adverse inference when selecting from among the facts otherwise available if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The issues raised by the petitioner concerning Meisen's reporting of its sawn wood purchases, loans and financial statements, and land purchases do not meet these criteria for facts available as defined in section 776(a) of the Act, and do not demonstrate that Meisen failed to comply to the best of its ability as defined by 776(b) of the Act.

With respect to its sawn wood purchases, Meisen reported that all of its purchases were of birch wood.²⁶⁷ However, the petitioner alleged that Meisen's reporting of its sawn wood purchases was unreliable and incomplete.²⁶⁸ Therefore, we issued Meisen a supplemental questionnaire, requesting purchase contracts and other documentation maintained in the normal course of business that identifies the species of sawn wood purchased during the POI.²⁶⁹ Meisen provided the information requested, including, *e.g.*, purchase orders, purchase invoices, proof of payment, and a reconciliation to the monthly summary of raw material receipt, shipment, and inventory during the POI, which all indicated it had only purchased birch wood.²⁷⁰ At verification, our review of Meisen's records, and the communications it had with its suppliers, indicated that

²⁶⁷ See Meisen's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: New Subsidy Allegations Excel Template," dated October 16, 2019, at Exhibit 1.

²⁶⁸ See Petitioner's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Comments on Meisen's New Subsidy Allegations Questionnaire Response," dated October 25, 2019.

²⁶⁹ See Commerce's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Supplemental Questionnaire for New Subsidy Allegations," dated October 29, 2019.

²⁷⁰ See Meisen's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: New Subsidy Allegations Supplemental Questionnaire Response," dated November 4, 2019.

Meisen purchased only birch sawn wood.²⁷¹ In our review, we examined the purchase manager's e-mail and WeChat message history, and found no discrepancies.²⁷² Thus, the information provided was fully verified and, as such, there is no missing information from the record. Regardless of Meisen's representations to its customers, we obtained verifiable data for the purpose of conducting our LTAR analysis with respect to the company's sawn wood purchases. Moreover, we relied on a birch-specific benchmark to measure the adequacy of remuneration for this program. Therefore, Meisen's representations regarding the type of wood used in its production could not impact our subsidy rate analysis. Moreover, we also note that Meisen's marketing of wood products does not result in otherwise subject merchandise being re-classified as non-subject; hence this issue does not raise any concerns regarding the potential circumvention of any future order.

With respect to its loans and financial statements, Meisen relied on its auditor's report in its initial reporting.²⁷³ In response to our supplemental questionnaire,²⁷⁴ Meisen explained that the representation in the financial statements was a mistake by the auditor,²⁷⁵ and it provided amended financial statements.²⁷⁶ At verification, to ensure that all loans were properly reported in the response, we tied the outstanding balance of loans and/or interest payments from the company's loan accounts to the company's financial statements. To ensure the accuracy of the loan terms and principal and interest payments, we tied selected entries in the loan chart provided in the response to loan contracts, entries in the company's loan and payment accounts, and invoices and payment receipts.²⁷⁷ The total value of lending from commercial banks matched the amount initially reported, and we found no inconsistencies with the figures reported in Meisen's questionnaire responses.²⁷⁸ We note that the remaining loan balance in the initial financial statements reflected loans from Meisen's affiliates, which had no bearing on our policy loan analysis. Thus, the information provided was fully verified, and as such, there is no missing information from the record.

With respect to the refund for Meisen's land purchases, Meisen submitted corrections to its questionnaire responses at the commencement of verification.²⁷⁹ We accepted these corrections as minor because they had a very small impact on the subsidy rate for the provision of land for LTAR program, pursuant to our long-standing practice.²⁸⁰ The petitioner has not provided a

²⁷¹ See Meisen's Verification Report at 7.

²⁷² *Id.*

²⁷³ See Meisen's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: Section III Questionnaire Response," dated July 11, 2019.

²⁷⁴ See Commerce's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Request for Additional Information," dated September 9, 2019.

²⁷⁵ See Meisen's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: Supplemental Loans and Subsidy Questionnaire Response," dated September 18, 2019.

²⁷⁶ *Id.* at Exhibit 1.

²⁷⁷ See Meisen's Verification Report at 8.

²⁷⁸ *Id.* at 9.

²⁷⁹ See Meisen's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: Minor Corrections," dated November 13, 2019.

²⁸⁰ See Meisen's Verification Report at 2; *see also Husteel Co. v. United States*, 98 F. Supp. 3d 1315, 1356 (CIT 2015) (quoting *Nippon*, 337 F.3d at 1382 (Fed. Cir. 2003)).

compelling reason for Commerce to depart from this long-standing practice; therefore, in order to calculate the most accurate subsidy rate, Commerce will make an adjustment to Meisen's purchase price to account for such corrections for this final determination.²⁸¹

Further, we agree with the petitioner that we inadvertently calculated the benefit for certain of Meisen's land purchases beginning in a different year than when the land was actually purchased and, therefore, for the final determination, we will correct this calculation using the correct year of purchase.²⁸²

We have not identified necessary information that is missing from the record. Meisen has not withheld information that was requested by Commerce, Meisen has not failed to provide information in a timely manner or in the form or manner requested, and Meisen has not significantly impeded this proceeding. Additionally, Meisen's information has been fully verified. In fact, Meisen provided complete and accurate responses to the initial questionnaire, and our verification revealed no discrepancies or omission in Meisen's responses.²⁸³ Thus, the record does not support applying facts otherwise available or total AFA to Meisen.²⁸⁴

Meisen's responses to our questionnaires were submitted by the established deadlines, and we found the information to be complete and presented in a manner that could be used without undue difficulties, and that the reporting reflected the best of Meisen's abilities with regard to Meisen's reporting of its sawn wood purchases, loans, and financial statements, and land purchases. Therefore, in accordance with section 782(e) of the Act, we cannot reject Meisen's data, and in accordance with section 776(b) of the Act, we cannot apply an adverse inference.

We do recognize, however, the petitioner's concerns that the record of this investigation indicates that Meisen is engaged in advertising and selling its materials in an untruthful manner to consumers in the United States. Such business practices fall within the expertise of the U.S. Federal Trade Commission, and we have therefore shared relevant public information with that agency for further investigation and, if appropriate, enforcement action.

Comment 10: Whether Commerce Should Continue to Find that Meisen Was Uncreditworthy

Meisen's Comments:

- Commerce's creditworthiness analysis and its focus on current and quick ratios is overly rigid and unreasonable, and the analysis does not support the finding that Meisen is uncreditworthy when all of the facts are taken into account.²⁸⁵
- There is no evidence on the record that Meisen ever had any trouble paying its debt or that it ever delayed or missed an interest or principal payment on its loans.
- A determination of creditworthiness must also account for the growth potential of the company and, as Commerce found, Meisen was gradually financing more of its

²⁸¹ See Meisen's Final Calculation Memorandum.

²⁸² *Id.*

²⁸³ See Meisen's Verification Report at 8-9.

²⁸⁴ See sections 776(a) and 776(a)(2)(A), (B), (C), and (D) of the Act.

²⁸⁵ See Meisen's Case Brief at 7.

operations through wholly-owned funds versus debt, and Meisen had enough interest coverage to pay off its interest expenses.

- The record reflects the fact that Meisen’s U.S. affiliates were willing and able to lend Meisen funds as needed.
- Commerce should determine that Meisen is creditworthy in its final determination, as the record demonstrated that Meisen had no problems paying its debts and was not a default risk.
- Meisen objects to Commerce requiring briefing before it releases its calculation of the margins using an uncreditworthiness benchmark. Without this benchmark, Meisen cannot adequately comment on all potential issues.
- As applying an uncreditworthiness benchmark only to long-term loans is consistent with Commerce’s practice, Commerce should clarify that any uncreditworthiness benchmark has not been applied to Meisen’s short-term loans.
- Commerce should reject the petitioner’s arguments and should find Meisen creditworthy.

The GOC’s Comments:

- Commerce’s determination on the creditworthiness issue was in error and the GOC supports the arguments made by Meisen in its case briefs on the issue.

The Petitioner’s Comments:

- Commerce’s practice and the record in this investigation demonstrate that Meisen’s arguments regarding creditworthiness should be rejected.
- In *Solar Cells from China 2014*, Commerce emphasized the importance of the current and quick ratios in its analysis of uncreditworthiness, because they indicate a firm’s financial health and its ability to meet its costs and fixed financial obligations with cash flow.²⁸⁶ *Solar Cells from China 2014* also makes it clear that the current and quick ratios are relevant to a respondent’s ability to cover upcoming obligations; if they are not, the respondent must accumulate new debt in order to cover existing debt.²⁸⁷
- In *HRS from Brazil*, Commerce stated that low current and quick ratios reveal a “lack of creditor protection that would likely cause doubts about {a company’s} ability to meet its debt obligations.”²⁸⁸
- While Commerce examined other indicators in its Post-Preliminary Analysis, its past practice clearly demonstrates the importance of the current and quick ratios as threshold issues.²⁸⁹ When current and quick ratios are poor, a reasonable creditor would question a company’s ability to meet its future debt obligations.

²⁸⁶ See Petitioner’s Rebuttal at 32 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Preliminary Intent to Rescind, in Part; 2014*, 82 FR 2317 (January 9, 2017) (*Solar Cells from China 2014*)).

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 33 (citing *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 8313 (February 19, 1999) (*HRS from Brazil*)).

²⁸⁹ *Id.*

- The record contradicts Meisen’s claims regarding the payment status of Meisen’s existing loans.

Commerce’s Position: In the Post-Preliminary Analysis, and as discussed in more detail in the Meisen Post-Preliminary Memorandum, we found Meisen to be uncreditworthy during the POI.²⁹⁰ In the Post-Preliminary Analysis, we applied a comprehensive analysis of Meisen’s creditworthiness, pursuant to 19 CFR 351.505(a)(4)(i)(A)-(D), by examining various indicators of Meisen’s financial health, its ability to meet costs and fixed financial obligations with cash flow, and evidence of its future financial position.²⁹¹ Specifically, we analyzed Meisen’s current ratio, quick ratio, cash flow to total liabilities ratio, debt-to-equity ratio, debt-to-assets ratio, EBITDA to interest expense ratio, net profit margin, and return on equity.²⁹² On the basis of this analysis, we find Meisen’s arguments to be unpersuasive, and continue to find that the company was uncreditworthy for this final determination. Due to the business proprietary nature of Meisen’s financial information, we have addressed certain of Meisen’s arguments in Meisen’s Final Calculation Memorandum.²⁹³ For the final determination, we continue to find Meisen uncreditworthy.²⁹⁴

Meisen objected to Commerce’s requiring briefing before the release of margin calculations using an uncreditworthiness benchmark, because Meisen purportedly could not adequately comment on all potential issues.²⁹⁵ However, we released the Default Rates Memorandum and allowed interested parties an opportunity to comment.²⁹⁶ Moreover, the calculation of an interest rate for an uncreditworthy company (incorporating information for a default rate) is specified in 19 CFR 351.505(a)(3)(iii). Thus, Meisen’s objection about briefing on this issue before seeing margin calculations is unwarranted.

Meisen’s remaining concern is whether Commerce would apply the uncreditworthy benchmark to all of Meisen’s loans or just its long-term loans, and whether such a calculation would be accurate.²⁹⁷ However, 19 CFR 351.505(a)(3)(iii) applies a straightforward mechanical calculation using the default rates listed in the Default Rates Memorandum. As stated in Meisen’s Final Calculation Memorandum, we will apply the uncreditworthiness benchmark to Meisen’s long-term loans, pursuant 19 CR 351.505(a)(3)(iii) and (a)(4).²⁹⁸

²⁹⁰ See Post-Preliminary Analysis at 19-20; *see also* Memorandum, “Countervailing Duty Investigation on Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Meisen Post-Preliminary Analysis Calculation Memorandum,” dated January 9, 2020 (Meisen Post-Preliminary Memorandum).

²⁹¹ See Meisen Post-Preliminary Memorandum at 3-5.

²⁹² *Id.*

²⁹³ See Meisen’s Final Calculation Memorandum.

²⁹⁴ *Id.*

²⁹⁵ See Meisen’s Case Brief at 7.

²⁹⁶ See Default Rates Memorandum.

²⁹⁷ See Meisen’s Default Rates Comments (citing Meisen’s Case Brief).

²⁹⁸ Also, because Meisen was uncreditworthy in 2017, we have used an interest rate reflective of an uncreditworthy company in the calculation for the Land for LTAR program for Meisen’s land purchase made in 2017.

Comment 11: Whether Commerce Should Countervail Subsidies Received by Foremost's Tolling Companies

The Petitioner's Comments:

- Commerce should estimate the subsidies received by Foremost's tolling companies and include those subsidies in Foremost's final subsidy rate.
- Commerce should not allow respondents to escape countervailing duties by farming out a portion of their production process to third parties that themselves likely receive countervailable subsidies.
- In *Rebar from Turkey II*, Commerce required respondents to provide questionnaire responses for their toll processors.²⁹⁹
- Subsidies received by Foremost's tolling companies are not included in Foremost's preliminary subsidy rate. However, Foremost has acknowledged that its toll processors receive subsidized inputs and that those input subsidies are not captured in Commerce's preliminary subsidy calculations. This fact is critical, as the tollers are responsible for supplying their own inputs.
- To calculate the most accurate subsidy rate possible, Commerce should use Foremost's subsidy rate and use it as a proxy for its tolling companies, to increase Foremost's *ad valorem* subsidy rate.

*Foremost's Rebuttal:*³⁰⁰

- Commerce should not attribute any subsidies received by unaffiliated tollers to Foremost.
- Commerce's regulations only permit attribution of subsidies from one firm to another in a limited set of circumstances, none of which apply here. There is no claim that Foremost is cross-owned with, or can direct the operations of, its tollers.
- Any hypothetical subsidy received by the tolling companies would be properly treated as a subsidy to the tolling companies themselves, and there is no indication that any such subsidies were passed on to Foremost.
- Even accepting the petitioner's hypothesis that Foremost's tolling companies received inputs from the GOC for LTAR, Commerce's upstream subsidy provisions would apply, rather than its attribution provisions.
- In *Rebar from Turkey II*, Commerce only attributed subsidies received by tollers to the producers of subject merchandise after finding that the relationship between the producers and tollers was akin to that between a producer and a trading company, under 19 CFR 351.525(c). Commerce has not made any such finding in this proceeding and has gathered no information related to Foremost's relationship with its unaffiliated tolling companies.
- Further, unlike the situation in *Rebar from Turkey II*, in which the tolling companies were responsible for all manufacturing activities and the respondent merely sold the finished products, Foremost's tollers are not responsible for all production activities. Rather, only

²⁹⁹ See *Steel Concrete Reinforcing Bar From the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 82 FR 12195 (March 1, 2017), unchanged in *Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 82 FR 23188 (May 22, 2017) (*Rebar from Turkey II*) and accompanying IDM at 12.).

³⁰⁰ See Foremost's Rebuttal at 1-5.

in some instances have they engaged in applying veneers to nearly finished products. Therefore, this case is not akin to *Rebar from Turkey II*, and there is no basis for finding the same kind of trading company relationship that Commerce found to be present in that investigation.

- In *Rebar from Turkey I 2016 Review*, Commerce explained that it only attributes subsidies received by a toller to a respondent in accordance with 19 CFR 351.525(c) when the tolling company performs all production activities and the respondent sells the finished product.³⁰¹
- Commerce was aware of the petitioner's concerns regarding this issue early in the proceeding, and had it viewed these concerns as legitimate, it would have likely requested additional information regarding Foremost's tollers.
- Having determined not to gather the information requested by the petitioner, Commerce should not now resort to selecting from facts available to apply a hypothetical subsidy rate to Foremost's total subsidy rate.

The GOC's Rebuttal:

- Foremost reported that it used toll processors for certain production steps, and provided information requested by Commerce regarding the identities of the tollers, the associated tolling contracts, and volume and value of the transactions involved.
- Given that Commerce did not further pursue information regarding the identified tollers, it is clear that Commerce does not consider any subsidies received by these tollers to be attributable to Foremost.
- Commerce's initial questionnaire identifies the categories of companies that must provide full questionnaire responses (*i.e.*, certain cross-owned companies, trading companies, and companies producing goods on behalf of an exporter), but none of these categories include unaffiliated tollers. The attribution regulations at 19 CFR 351.525 do not contemplate the reporting of, or attribution of, subsidies received by unaffiliated tollers.
- The petitioner provides no support for its argument that Commerce must estimate subsidies received by Foremost's unaffiliated tollers and then add those rates to Foremost's own *ad valorem* subsidy rate.
- *Rebar from Turkey II* has no relevance to this case, as Commerce had explicitly requested a questionnaire response from a tolling company in that proceedings, and the tolling company refused to cooperate.

Commerce's Position: For the reasons detailed below, we disagree with the petitioner that Commerce should attribute any subsidies provided to Foremost's tolling companies to Foremost itself.

³⁰¹ See *Steel Concrete Reinforcing Bar From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review in Part; 2016*, 83 FR 63472 (December 10, 2018), and accompanying PDM at 9, unchanged in *Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2016*, 84 FR 36051 (July 26, 2019) (*Rebar from Turkey I 2016 Review*).

Foremost's use of tollers was first reported in its initial questionnaire response, when Foremost stated that "for some products, it uses toll processors for certain production steps. In some of these tolling arrangements, the toll processors apply veneers to the semi-finished product."³⁰² Foremost further explained it was not reporting purchases of the inputs, *i.e.*, veneers, used by these toll producers as they were purchased by the tollers themselves.³⁰³ In the supplemental questionnaire issued to Foremost, Commerce requested further information regarding these tolling activities, such as the identities of the tolling companies, where the activities take place, how much of the activity in question (*i.e.*, the application of veneers during the rough mill production stage) is conducted by the tollers as opposed to Foremost, and whether Foremost or the toller was responsible for selling the finished goods. Foremost, in its response, indicated that only one company is involved in the application of veneers to the subject merchandise, that this company does not account for the entirety of this activity, and that all goods are returned to Foremost for incorporation in the finished product before being sold.³⁰⁴ Foremost also provided a copy of the tolling contract between itself and the company responsible for applying a portion of the veneers to goods produced by Foremost.³⁰⁵

As an initial matter, we recognize that our regulations permit us to attribute subsidies received from one company to another where cross-ownership exists within the meaning of 19 CFR 351.525(b)(6)(vi). Cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same way it can use its own assets.³⁰⁶ The *CVD Preamble* notes that, while this standard is normally met through a majority voting ownership interest or common ownership, other circumstances may exist that would allow the sort of control contemplated in the regulation.³⁰⁷ As such, in issuing our supplemental questionnaire to Foremost, we sought information that might indicate whether Foremost exercises or restrains the activities or assets of its toller in the same sort of ways it might use its own assets. The fact that the tolling company carries out its activities at its own facility and is responsible for acquiring its own materials, and that there are no indications in the contract between the two companies that suggest a controlling position by Foremost, leads us to conclude that there is no cross-ownership between the two companies, or a means to attribute subsidies received by one company to the other in accordance with 19 CFR 351.525(b).

With respect to the petitioner's argument regarding Commerce's finding in *Rebar from Turkey II*, we find the petitioner's argument to be inapposite to, and distinguishable from, the instant investigation. We clarified our actions in *Rebar from Turkey II* in *Rebar from Turkey I 2016 Review*:

³⁰² See Foremost IQR at 26.

³⁰³ *Id.* at 26-27.

³⁰⁴ *Id.*

³⁰⁵ *Id.* at Exhibit Q5.

³⁰⁶ See 19 CFR 351.525(b)(6)(vi).

³⁰⁷ See *CVD Preamble*, 63 FR at 65401.

In the second CVD investigation of rebar from Turkey (*Rebar II*), we found that it was appropriate to attribute subsidies received by certain tolling companies to a company respondent when the relationship between the tolling company and the respondent is akin to the relationship between a producer and its trading company under 19 CFR 351.525(c) (*i.e., the tolling company performs all production activities and the respondent sells the finished product*).³⁰⁸

In *Rebar from Turkey II*, we found that an arrangement “akin to the relationship between a producer and its trading company” existed between the respondent company and the company with which it had a tolling relationship, in accordance with 19 CFR 351.525(c).³⁰⁹ This regulation permits us to attribute subsidies from one company to another, absent a finding of cross-ownership, when one company serves as a trading company selling goods produced by another company. As was later clarified in *Rebar from Turkey I 2016 Review*, the relationship between the respondent and tolling company was found to be akin to a trading company relationship because one company, the toller, served to wholly produce the goods, and the other, the respondent, only served to sell them.

In contrast, in the instant investigation, the record does not support such a finding. The record is clear that: (1) Foremost’s toller only accounts for a portion of one step of the production process, (2) the goods are then returned to Foremost, (3) the toller has no role in the final assembly of the finished products, and (4) the toller has no role in selling the goods. As Foremost accounts for both the bulk of the production process and the sale of the finished goods, we find that there is no type of relationship that is akin to a trading company relationship as contemplated in 19 CFR 351.525(c), or as was found to exist in *Rebar from Turkey II*.

Comment 12: Whether Commerce Should Continue to Find that Foremost Was Uncreditworthy

Foremost’s Comments:

- Commerce should reconsider its post-preliminary finding that Foremost and its cross-owned company, FLB, were uncreditworthy during the POI.
- In the Post-Preliminary Analysis, Commerce based its uncreditworthiness finding on the financial health indicators of Foremost and FLB.
- However, Commerce verified that both Foremost and FLB are in a transitional state, with FLB in the process of winding down its operations, and Foremost in the process of getting its operations up to speed. In light of this transitional period for both companies, strict financial ratios do not capture the viability of these companies or their ability to repay loans, especially given the larger corporate context in which they operate.
- Commerce should instead base its assessment of creditworthiness on the parent company, FWW, whose financial health is strong. In *CCP from China*, Commerce evaluated

³⁰⁸ See *Rebar from Turkey I 2016 Review* IDM at 9 (emphasis added).

³⁰⁹ See *Rebar from Turkey II* IDM at 6.

creditworthiness at the consolidated level, because companies in the group had the ability to shift resources among themselves.³¹⁰

- All of Foremost's loans at issue were paid on time.
- Commerce should determine that Foremost is creditworthy because its loans were secured by its land, building, and equipment assets. With an asset serving as collateral for the loans, there is no concern about Foremost's ability to repay the loans.
- Foremost provided the land valuation reports used to secure its loans, which indicate that the land-use rights of Foremost and FLB were valued higher than the original loan amounts, further indicating that the loans were reasonable and based on commercial considerations.
- Although Commerce found Foremost and FLB to be uncreditworthy in the Post-Preliminary Analysis, Commerce has not yet released any revised calculations, nor has Commerce provided any materials concerning the interest rate Commerce would apply. Commerce should therefore issue draft calculations in advance of the final determination.

The Petitioner's Comments:

- Commerce should not analyze the creditworthiness of Foremost's parent company, FWW, rather than the creditworthiness of Foremost or FLB.
- FWW is a Hong Kong, not mainland Chinese, company, and Foremost has pointed to no record information indicating that FWW had any role in obtaining the loans in question.
- Even if Commerce wanted to analyze the creditworthiness of FWW, Foremost never submitted a response to Commerce's creditworthiness questionnaire on behalf of that company, instead limiting its responses to the companies that actually obtained loans in China, *i.e.*, Foremost and FLB.
- *CCP from China* is not applicable in this scenario, because the parent company in that case was Chinese and had also reported subsidies that were attributable to the respondent. Foremost did not report the receipt of any subsidies by FWW, and Commerce attributed no subsidies received by FWW to Foremost.
- In *Citric Acid 08-09 Review*, Commerce rejected similar arguments that a lender would not be concerned with a borrower's creditworthiness as long as the loan is secured by land.³¹¹
- In *Citric Acid 08-09 Review*, Commerce stated that “[p]rotecting the bank's interest and the existence of a security or guarantee does not prove a company's creditworthiness, but rather that the bank has sought to protect its interests.”³¹²
- Foremost's assertion that simply because a loan is secured, a bank would have “no concern about Foremost's inability to repay its loans” defies common sense. Before a

³¹⁰ See Foremost's Rebuttal Brief at 3 (citing *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010) (*CCP from China*), and accompanying IDM at Comment 33).

³¹¹ See Petitioner's Rebuttal at 29 (citing *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011) (*Citric Acid 08-09 Review*), and accompanying IDM at Comment 18).

³¹² *Id.*

bank provides a loan, it wants an appraisal of the property, proof that the borrower has sufficient income to repay the loan, and a good credit score. Banks would prefer to collect on loans, not liquidate repossessed property, and would not be indifferent between receiving payment or repossessing a secured asset.

The GOC's Comments

- Commerce's determination on the creditworthiness issue was in error and the GOC supports the arguments made by Foremost in its case brief on the issue.³¹³

Commerce's Position: We disagree with Foremost that FWW's financial information is more pertinent to our creditworthiness analysis than the information provided by Foremost and FLB. In the creditworthiness questionnaire sent to Foremost, we asked that the company "provide a response for Foremost and its cross-owned affiliates" based on financial statements already on the record, and for the years covering loans already reported on the record.³¹⁴ Foremost, in turn, stated that it "understands that {Commerce's} questions here concern the creditworthiness of the responding companies that obtained loans in China and, accordingly, provides responses to the questions in this section with respect to {Foremost} and FLB."³¹⁵ Notably, Foremost did not provide any response to our creditworthiness questionnaire with respect to FWW. The fact that we do not possess all of the information necessary to conduct a creditworthiness analysis with respect to FWW is reason enough not to substitute an analysis of that company for an analysis of Foremost and FLB.

Additionally, and just as important, our record does not support Foremost's contention that our finding in *CCP from China* applies here, *i.e.*, that the cross-owned companies can shift resources among themselves. While business is conducted among some of the parties, with FWW acting as an international selling agent for Foremost, there is no indication that this relationship involves any potential transfer of assets between the parties, or that the relationship extends beyond a normal trading company relationship.³¹⁶ Moreover, despite Foremost's characterization of FWW as a "parent company," the facts on the record demonstrate that FWW is the only parent company of Foremost, owning the company wholly. FWW, and Foremost in turn, are subsidiaries of Foremost Groups Limited (FGL), while FLB is a subsidiary of Foremost Groups Holdings Limited (FGHL).³¹⁷ While FGL and FGHL are ultimately related via common ownership,³¹⁸ any analysis of FWW's financial information that is on the record, including its consolidated financial statements, would necessarily exclude FLB. Foremost's contention that FWW's financial situation had some bearing on the loans received by Foremost and FLB is also not supported on the record, which contains no copies of any of the loan agreements in question

³¹³ See GOC's Case Brief at 17.

³¹⁴ See Commerce's Letter, "Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: New Subsidy Allegations Questionnaire," dated October 4, 2019.

³¹⁵ See Foremost's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Foremost's New Subsidy Allegations Questionnaire Response," dated October 16, 2019 at 5.

³¹⁶ See Foremost's Verification Report at 5.

³¹⁷ *Id.* at 3-4.

³¹⁸ *Id.* at 4.

that are completely translated. The only copies of such agreements were taken at verification, and the incomplete translations acquired at that time make no readily apparent reference to FWW in the loan agreements for either Foremost or FLB.³¹⁹

We further disagree with Foremost's contention that its land evaluation reports sufficiently demonstrate that Foremost and FLB were creditworthy during the years in question. As we noted in *Citric Acid 08-09 Review*, "the loans under review are countervailable, so it is not appropriate to rely on the lending practices of the banks providing these loans as evidence of creditworthiness."³²⁰ The fact that banks seek to have loans secured is only proof that they are intent on protecting their own assets, and this does not reflect on the creditworthiness of the loan recipients.³²¹

Finally, in response to Foremost's arguments regarding the interest rate to be used, we released the Default Rates Memorandum prior to this final determination and allowed parties to comment on the adjustment to the interest rate to be used in the event that Commerce continued to find the companies to be uncreditworthy.³²² Commerce's regulations, at 19 CFR 351.505(a)(3)(iii), provides for a straightforward, mechanical calculation using the default rates listed in the Default Rates Memorandum.

IX. RECOMMENDATION

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



Agree



Disagree

2/21/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

³¹⁹ *Id.* at Exhibit 16, pages 12-24 (FLB) and 35-49 (Foremost).

³²⁰ See *Citric Acid 08-09 Review* at Comment 18.

³²¹ *Id.*

³²² See Default Rates Memorandum.

APPENDIX I

AFA Rate Calculation

A. Provision of Inputs for LTAR	Rate	Source
Provision of Standing Timber for LTAR	20.06%	Highest Rate for Similar program Based on Benefit Type
Provision of Cut Timber for LTAR	20.06%	Highest Rate for Similar program Based on Benefit Type
Provision of Veneers for LTAR	20.06%	Highest Rate for Similar program Based on Benefit Type
Provision of Plywood for LTAR	3.66%	Benefit Calculated - Meisen
Provision of Formaldehyde for LTAR	20.06%	Highest Rate for Similar program Based on Benefit Type
Provision of Urea for LTAR	20.06%	Highest Rate for Similar program Based on Benefit Type
Provision of Urea-Formaldehyde Resin for LTAR	20.06%	Highest Rate for Similar program Based on Benefit Type
Provision of Electricity for LTAR	1.55%	Benefit Calculated - Foremost
Provision of Water for LTAR	0.05%	Benefit Calculated – Foremost
Provision of Sawn Wood and Continuously Shaped Wood for LTAR	20.06%	Similar/Comparable program (based on the treatment of the benefit) ³²³
Provision of Particleboard for LTAR	1.15%	Benefit Calculated – Ancientree
Provision of Fiberboard for LTAR	3.70%	Benefit Calculated – Foremost
B. Provision of Land for LTAR		
Provision of Land-Use Rights by the GOC to Encouraged Industries for LTAR	6.73%	Benefit Calculated - Foremost
Provision of Land to SOEs by the GOC for LTAR		

³²³ See *Chlorinated Isocyanates from the People's Republic of China: Final Affirmative Countervailing Duty Determination*; 2012, 79 FR 56560 (September 22, 2014), and accompanying IDM at 22.

C. Loans and Credit		
Policy Loans to the Wooden Cabinet and Vanity Industry		Benefit Calculated – Foremost
Preferential Loans for SOEs	6.28%	Highest Rate for Similar program Based on Benefit Type
Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program	2.05%	Highest Rate for Similar program Based on Benefit Type
D. Grant Programs		
Foreign Trade Development Fund Grants	1.27%	Highest Rate for Similar program Based on Benefit Type ³²⁴
Export Assistance Grants	1.27%	Highest Rate for Similar program Based on Benefit Type
Export Interest Subsidies	1.27%	Highest Rate for Similar program Based on Benefit Type
Interest Loan Subsidies for the Forestry Industry	1.27%	Highest Rate for Similar program Based on Benefit Type
Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands	1.27%	Highest Rate for Similar program Based on Benefit Type
Funds for Outward Expansion of Industries in Guangdong Province	1.27%	Highest Rate for Similar program Based on Benefit Type
Provincial Fund for Fiscal and Technological Innovation	1.27%	Highest Rate for Similar program Based on Benefit Type
State Key Technology Renovation Fund	1.27%	Highest Rate for Similar program Based on Benefit Type
Shandong Province’s Special Fund for the Establishment of Key Enterprise Technology Centers	1.27%	Highest Rate for Similar program Based on Benefit Type
Shandong Province’s Environmental Protection Industry Research and Development Funds	1.27%	Highest Rate for Similar program Based on Benefit Type
Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises	1.27%	Highest Rate for Similar program Based on Benefit Type

³²⁴ The highest applicable AFA rate for grants changed since the *Preliminary Determination*. See *High Pressure Steel Cylinders from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2017, 84 FR 71373 (December 27, 2019) and accompanying IDM at Comment 6 (“Production Base Construction for Gas Storage and Transportation Equipment” grant program).

Waste Water Treatment Subsidies	1.27%	Highest Rate for Similar program Based on Benefit Type
Technology to Improve Trade Research and Development Fund	1.27%	Highest Rate for Similar program Based on Benefit Type
Land-use Rights for LTAR and Other Incentives in Rizhao Development Zone (Rizhao High-Tech Industry Park)	1.27%	Highest Rate for Similar program Based on Benefit Type
Huai'an Hongze Economic Development Zone - Preferential Policy Programs	1.27%	Highest Rate for Similar program Based on Benefit Type
E. Income Tax Programs		
Income Tax Reductions under Article 28 of the Enterprise Income Tax	25%	Benefit Calculated - Meisen
Tax Offsets for Research and Development under the Enterprise Income Tax		Highest Rate for Similar program Based on Benefit Type
Preferential Income Tax Policy for Enterprises in the Northeast Region		Highest Rate for Similar program Based on Benefit Type
Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China		Highest Rate for Similar program Based on Benefit Type
Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment		Highest Rate for Similar program Based on Benefit Type
F. Value-Added Tax Programs		
Value-Added Tax and Import Duty Exemptions for Use of Imported Equipment	9.71%	Highest Rate for Similar program Based on Benefit Type
Value-Added Tax Rebate Exemptions on FIE Purchases of Chinese-Made Equipment	9.71%	Highest Rate for Similar program Based on Benefit Type
G. Export Credit Subsidies		
Export Seller's Credit	10.54%	Highest Rate for Similar program Based on Benefit Type
Export Buyer's Credit	10.54%	Highest Rate for Similar program Based on Benefit Type
H. Other Subsidies		
Equipment Subsidy	1.31%	Calculated Benefit - Foremost
Prize and Supporting Fund for Model Enterprises	0.06%	Calculated Benefit - Ancientree

2016 Provincial Business Development Special Fund	1.27%	Highest Rate for Similar program Based on Benefit Type
Subsidy for High-Tech Enterprise Application	0.03%	Calculated Benefit - Meisen
International Market Development Fund for Medium-Small Enterprises	1.27%	Highest Rate for Similar program Based on Benefit Type
Forest Product Processing Grant	1.27%	Highest Rate for Similar program Based on Benefit Type
Reward to Little Giant Enterprises	1.27%	Highest Rate for Similar program Based on Benefit Type
Credit Insurance Subsidy	1.27%	Highest Rate for Similar program Based on Benefit Type
Reward for Technology Renovation	1.27%	Highest Rate for Similar program Based on Benefit Type
Property Insurance Subsidy	1.27%	Highest Rate for Similar program Based on Benefit Type
Fund for Encouraging the Development of FIE	1.27%	Highest Rate for Similar program Based on Benefit Type
Rebate of VAT of Tax-Control System	1.27%	Highest Rate for Similar program Based on Benefit Type
Rebate for Individual Income Tax Collection	1.27%	Highest Rate for Similar program Based on Benefit Type
Grant for Labor and Social Security	1.27%	Highest Rate for Similar program Based on Benefit Type
Rebate of Export Insurance Fee	1.27%	Highest Rate for Similar program Based on Benefit Type
Reward for Safety Examination	1.27%	Highest Rate for Similar program Based on Benefit Type
Rebate for VAT Collection	1.27%	Highest Rate for Similar program Based on Benefit Type
Small and Medium Enterprise International Market Development Fund	1.27%	Highest Rate for Similar program Based on Benefit Type
Prize and Award of People's Government of Shanghai	1.27%	Highest Rate for Similar program Based on Benefit Type
Financial Support Fund	1.27%	Highest Rate for Similar program Based on Benefit Type
Prize and Award of People's Government of Fengcheng Town	1.27%	Highest Rate for Similar program Based on Benefit Type

Financial Support Fund of People's Government of Fengcheng Town	1.27%	Highest Rate for Similar program Based on Benefit Type
Foreign Trade Special Fund	1.27%	Highest Rate for Similar program Based on Benefit Type
Labor & Employment Subsidy	1.27%	Highest Rate for Similar program Based on Benefit Type
Rizhao Dong Gang District top 10 Enterprise Prize - Year 2010	1.27%	Highest Rate for Similar program Based on Benefit Type
Special Funds for Industrial Enterprise Development	1.27%	Highest Rate for Similar program Based on Benefit Type
Rizhao Dong Gang District top 10 Enterprise prize - Year 2009	1.27%	Highest Rate for Similar program Based on Benefit Type
Special Support Funds for Trade	1.27%	Highest Rate for Similar program Based on Benefit Type
Rizhao Dong Gang District top 10 enterprise prize - Year 2011	1.27%	Highest Rate for Similar program Based on Benefit Type
Top 10 Highest Tax Contribution Enterprise Prize - Year 2012	1.27%	Highest Rate for Similar program Based on Benefit Type
Taiwanese Enterprises "Company Culture Building" subsidy	1.27%	Highest Rate for Similar program Based on Benefit Type
Refund Administration Fee for Personal Tax Declaration	1.27%	Highest Rate for Similar program Based on Benefit Type
Shandong Province Export Business Subsidy - Year 2015	1.27%	Highest Rate for Similar program Based on Benefit Type
Prize for Pioneer in Business Development	1.27%	Highest Rate for Similar program Based on Benefit Type
Enterprise Stability Subsidy	1.27%	Highest Rate for Similar program Based on Benefit Type
Senior Technician Subsidy	1.27%	Highest Rate for Similar program Based on Benefit Type

Total AFA Rate: 293.45%