



C-570-115
Investigation
POI: 1/1/2018 – 12/31/2018
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May 11, 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 in
the Countervailing Duty Investigation of Certain Glass Containers
from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers of certain glass containers (glass containers) from the People's Republic of China (China), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2018 through December 31, 2018.

The mandatory respondents subject to this investigation are Guangdong Huaxing Glass Co., Ltd. (Guangdong Huaxing) and Qixia Changyu Glass Co. Ltd. (Qixia Changyu).

As a result of our analysis, we made changes to the subsidy rate calculations for Guangdong Huaxing and Qixia Changyu. Additionally, we have not modified the scope of this investigation.

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

Comment 1: Export Buyer's Credit Program
Comment 2: Information Submitted by the Government of China and the Mandatory Respondents
Comment 3: Application of AFA to Non-Responsive Companies
Comment 4: Inclusion of Guangdong Huaxing's Leases of Land-Use Rights in Calculation of Land-Use Rights for LTAR
Comment 5: Application of AFA for Self-Reported Programs
Comment 6: Inclusion of Other Business Revenue in Guangdong Huaxing's Sales Denominators



Comment 7:	Whether Commerce Should Countervail the Entire Amount of Guangdong Huaxing’s Self-Reported Subsidy
Comment 8:	Qixia Changyu Creditworthiness
Comment 9:	Input Benchmarks for Ocean Freight
Comment 10:	Application of AFA for the Provision of Soda Ash, Silica Sand, and Limestone for LTAR
Comment 11:	Inland Freight
Comment 12:	Application of AFA to Guangdong Huaxing for Non-Response of Cross-Owned Affiliate
Comment 13:	Application of Partial AFA for Guangdong Huaxing’s Land Purchases
Comment 14:	Application of AFA to Guangdong Huaxing’s Reporting of Outstanding Financing
Comment 15:	Soda Ash, Silica Sand, and Limestone LTAR Benefit Calculations
Comment 16:	Guangdong Huaxing’s Land Benefit Calculations
Comment 17:	Land Benchmark
Comment 18:	Guangdong Huaxing’s Loan Benefit Calculations

II. BACKGROUND

A. Case History

On March 2, 2020, Commerce published the *Preliminary Determination* in this proceeding.¹

Due to the “Level 4: Do Not Travel” advisory issued by the U.S. Department of State for all of China, Commerce did not conduct verifications of either Guangdong Huaxing or Qixia Changyu.² On March 18, 2020, interested parties submitted affirmative case briefs³ and on March 25, 2020, interested parties submitted rebuttal briefs.⁴ On March 23, 2020, the petitioner and Qixia Changyu submitted requests for a hearing and Guangdong Huaxing submitted a

¹ See *Certain Glass Containers from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 85 FR 12256 (March 2, 2020) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, “Verification, New Subsidy and Creditworthiness Allegations,” dated March 16, 2020 (NSA & Creditworthiness Memo).

³ See Petitioner’s Letter, “Glass Containers from the People’s Republic of China: Case Brief,” dated March 18, 2020 (Petitioner Case Brief); Guangdong Huaxing’s Letter, “Certain Glass Containers from the People’s Republic of China: Case Brief,” dated March 18, 2020 (Guangdong Huaxing Case Brief); Qixia Changyu’s Letter, “Certain Glass Containers from the People’s Republic of China: Case Brief,” dated March 18, 2020 (Qixia Changyu Case Brief); and GOC’s Letter, “GOC Case Brief – Countervailing Duty Investigation of Certain Glass Containers from the People’s Republic of China (C-570-105),” dated March 18, 2020 (GOC Case Brief).

⁴ See Petitioner’s Letter, “Glass Containers from the People’s Republic of China: Rebuttal Brief,” dated March 25, 2020 (Petitioner Rebuttal Brief); Guangdong Huaxing’s Letter, “Certain Glass Containers from the People’s Republic of China: Rebuttal Brief,” dated March 25, 2020 (Guangdong Huaxing Rebuttal Brief); and Qixia Changyu’s Letter, “Certain Glass Containers from the People’s Republic of China: Rebuttal Case Brief,” dated March 25, 2020 (Qixia Changyu Rebuttal Brief).

request to participate in the hearing.⁵ On April 2, 2020, the petitioner and Qixia Changyu withdrew their requests for a hearing.⁶

B. Period of Investigation

The POI is January 1, 2018 through December 31, 2018.

III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are glass containers. 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 antidumping duty investigation of glass containers from China, Commerce received scope comments from interested parties. Commerce issued the Preliminary Scope Decision Memorandum to address these comments and establish a period of time for parties to address scope issues in scope case and rebuttal briefs.⁷ We received comments from interested parties on the Preliminary Scope Decision Memorandum, which we address in the Final Scope Decision Memorandum, dated contemporaneously with this final determination.⁸

V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Following the *Preliminary Determination*, and as explained in a letter to all interested parties dated March 16, 2020, during the course of this investigation, a Level 4 Travel Advisory was imposed for all of China, preventing Commerce personnel from traveling to China to conduct verification.⁹ Pursuant to section 776(a)(4)(D) of the Act, in situations where information has been provided but the information cannot be verified, Commerce will use the facts otherwise available in reaching the applicable determination. Accordingly, and as Commerce explained, because it was unable to proceed to verification for reasons beyond its own control, Commerce has relied on the information submitted on the record, which it relied on in making its *Preliminary Determination*, as facts available in making this final determination, pursuant to

⁵ *See* Petitioner's Letter, "Certain Glass Containers from the People's Republic of China: Request for Hearing," dated March 23, 2020; Qixia Changyu's Letter, "Certain Glass Containers from the People's Republic of China: Request for a Hearing," March 23, 2020; and Guangdong Huaxing's Letter, "Certain Glass Containers from the People's Republic of China: Request to Participate in Hearing," dated March 23, 2020.

⁶ *See* Petitioner's Letter, "Certain Glass Containers from the People's Republic of China: Withdrawal of Hearing Request," dated April 2, 2020 and Qixia Changyu's Letter, "Certain Glass Containers from the People's Republic of China: Withdrawal of Request for a Hearing," dated April 2, 2020.

⁷ *See* Memorandum, "Certain Glass Containers from the People's Republic of China: Preliminary Scope Decision Memorandum," dated April 3, 2020.

⁸ *See* Memorandum, "Certain Glass Containers from the People's Republic of China: Final Scope Decision Memorandum," dated May 11, 2020.

⁹ *See* NSA & Creditworthiness Memo.

section 776(a)(2)(D) of the Act.¹⁰ In addition, in certain circumstances, Commerce has also resorted to facts available for certain aspects of its analysis, pursuant to section 776(a)(1), and (a)(2)(A)-(C) of the Act.

Moreover, for certain of our findings regarding the countervailability of certain programs in the *Preliminary Determination*, we applied an adverse inference in selecting from among the facts otherwise available, in accordance with section 776(b) of the Act, based on our findings that the GOC failed to cooperate to the best of its ability in certain respects.¹¹ Furthermore, in the *Preliminary Determination*, we applied total adverse facts available (AFA) to calculate a subsidy rate for 47 companies that did not respond to our quantity and value (Q&V) questionnaire (non-responsive companies), in accordance with section 776(a)-(b) of the Act.¹² We have made no changes to the underlying decision to apply AFA for this *Final Determination*.

However, we are making one modification to our application of AFA to non-responsive companies. We found that we inadvertently included nine companies in the list of non-responsive companies even though these nine companies never received our Q&V questionnaire.¹³ Therefore, for the final determination, we have corrected our inadvertent error, and have determined not to apply AFA to these nine companies that did not receive our Q&V questionnaire and are applying AFA to 38 non-responsive companies.¹⁴

Furthermore, as discussed in Comment 10, we have modified our application of facts otherwise available with respect to the GOC based on the GOC's responses to our supplemental questionnaires received after the *Preliminary Determination* and for the final determination, we have applied AFA to several aspects of the GOC's provision of inputs for less than adequate remuneration (LTAR).

VI. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

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

B. Attribution of Subsidies

We made no changes to, and interested parties raised no issues in their case briefs regarding, the methodology underlying our attribution of subsidies in the *Preliminary Determination*. For a

¹⁰ See PDM at 6-7.

¹¹ *Id.* at 17-19.

¹² *Id.* at 8-16.

¹³ See Memorandum, "Countervailing Duty Investigation of Certain Glass Containers from the People's Republic of China: Delivery of Quantity and Value Questionnaires," dated November 27, 2019 (Q&V Delivery Memo).

¹⁴ Additional details are in Comment 3.

¹⁵ See PDM at 32-34.

description of the methodology used for this final determination, *see* the *Preliminary Determination*.¹⁶

C. Denominators

As explained in Comment 7, we have made an adjustment to the denominator relied on for the calculation of Guangdong Huaxing's subsidy rate.

D. Benchmarks and Interest Rates

Interested parties raised issues in their case briefs regarding the benchmarks we used in the *Preliminary Determination*.¹⁷ For further discussion of the benchmarks used in this final determination, *see* Comments 9 and 17.

VII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Provision of Soda Ash for LTAR

The GOC, the petitioner, and the mandatory respondents provided comments regarding this program, which are addressed in Comments 9, 10, 11, and 15. We have not changed our methodology for calculating a subsidy rate for Guangdong Huaxing and Qixia Changyu under this program.¹⁸

Guangdong Huaxing: 0.55 percent *ad valorem*
Qixia Changyu: 0.39 percent *ad valorem*

2. Provision of Limestone for LTAR

The GOC, the petitioner, and the mandatory respondents provided comments regarding this program, which are addressed in Comments 9, 10, 11, and 15. We have not changed our methodology for calculating a subsidy rate for Guangdong Huaxing and Qixia Changyu under this program.¹⁹

Guangdong Huaxing: 1.16 percent *ad valorem*
Qixia Changyu: 1.28 percent *ad valorem*

¹⁶ *Id.* at 26-28.

¹⁷ *Id.* at 34-42.

¹⁸ *Id.* at 43-44.

¹⁹ *Id.* at 45-46.

3. *Provision of Silica Sand for LTAR*

The GOC, the petitioner, and the mandatory respondents provided comments regarding this program, which are addressed in Comments 9, 10, 11, and 15. We have not changed our methodology for calculating a subsidy rate for Guangdong Huaxing and Qixia Changyu under this program.²⁰

Guangdong Huaxing: 4.24 percent *ad valorem*
Qixia Changyu: 7.17 percent *ad valorem*

4. *Provision of Electricity for LTAR*

No parties provided comments regarding this program. We have not changed our methodology for calculating a subsidy rate for Guangdong Huaxing and Qixia Changyu under this program.²¹

Guangdong Huaxing: 3.37 percent *ad valorem*
Qixia Changyu: 2.22 percent *ad valorem*

5. *Provision of Land and/or Land Use Rights to Glass Container Producers for LTAR*

Commerce is examining whether the GOC has encouraged the development of the glass containers industry through the provision of land-use rights at less than adequate remuneration. Guangdong Huaxing and Qixia Changyu reported purchasing or leasing land during the POI and AUL period. In the *Preliminary Determination*, we determined, as facts otherwise available, that the GOC encouraged the glass containers industry and thus this program was specific within the meaning of section 771(5A)(D)(i).²² However, we also noted that we requested additional documentation from the GOC, but their response to the questionnaire was not due until after the date of the *Preliminary Determination*.²³ We have now received the GOC's response to that request for information, and our full analysis is below.

In examining this program, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for preferential land pricing to support such objectives or goals. The GOC's national five-year plans identify the provision of land and land financing as policy tools to direct economic development for key objectives. For example, the "National 13th Five-Year Plan of Economic and Social Development (2016-2020)" (13th FYP) discusses an emphasis on "transform{ing} and upgrad{ing} major manufacturing technologies and improv{ing} policies to support enterprises in emulating world-wide models in terms of techniques, processes, equipment, energy efficiency, and environmental protection," specifically noting an emphasis on improving "the supply of

²⁰ *Id.* at 46-48.

²¹ *Id.* at 49-50.

²² *Id.* at 51-52.

²³ *Id.* at 25.

consumer goods.”²⁴ Moreover, the 13th FYP states that, “Approval procedures related to the projects and initiatives included in this plan will be streamlined and priority will be given to them in site selection, land availability, and funding arrangements.”²⁵

Furthermore, the Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue) (2005 version, 2011 version, and 2013 amendment), specifically encourages the development and production of glass containers, and is consistent with the *Decision of the State Council on Promulgating the Interim Provisions Promoting Industrial Structure Adjustment for Implementation* (Guo Fa {2005} No. 40) (Decision 40) regarding support for such industries through land policies.²⁶ In addition, the “Twelfth Five-Year Outline of the Guidelines for National Economic and Social Development (2011-2015)” (12th FYP) similarly identifies land management policies as development tools, referencing the importance of the Industrial Catalogue’s encouraged industries alongside implementing differential land management policy: “Modify and perfect the current industrial guidance catalogue, clarify the encouraged, limited and prohibited industrial for different principle function areas. Implement the differential land management policy, scientifically set the different land using scale, and carry out strict land use control.”²⁷

Policy plans at the provincial level identify a focus on the light industry, which includes the glass industry.²⁸ Specifically, the 13th FYP for Guangdong Province, where mandatory respondent Guangdong Huaxing is located, calls for “accelerat{ing} the green transformation and upgrading of the manufacturing industry, {a} focus on promoting the green transformation of traditional manufacturing industries such as... {the} light industry.”²⁹ The Guangdong 13th FYP goes on to suggest optimizing the structure and layout of the manufacturing industry by building industrial clusters and bases for advanced manufacturing.³⁰

The GOC has previously explained that Decision 40 provides for encouragement policies for the industries in the encouraged industry category, and, unless an industry is in the encouraged category, land or other policies are not directed to support those industries.³¹ The GOC also

²⁴ See GOC’s Letter, “GOC Initial Questionnaire Response: Countervailing Duty Investigation on Certain Glass Containers from the People’s Republic of China (C-570-115),” dated January 10, 2020 (GOC IQR) at Exhibit II.B.1., “National 13th Five-Year Plan of Economic and Social Development (2016-2020)” (13th FYP), Chapter 22 Section 3.

²⁵ *Id.* at Chapter 80 Section 2.

²⁶ *Id.* at Exhibit II.B.3., Industrial Catalogue, Chapter 19 Article 26 (2011 Version) (2013 Amendment) identifying the “{d}evelopment of techniques and technologies and production of lightweight glass containers (disposable small-diameter glass bottles with a lightweight degree $L < 1.0$) and development and production of key equipment” as an encouraged project; *see also* Exhibit II.B.6.

²⁷ *Id.* at Exhibit II.B.1., “Twelfth Five-Year Outline of the Guidelines for National Economic and Social Development of the People’s Republic of China” (12th FYP), Chapter 19 Section 2.

²⁸ See GOC’s Letter, “GOC Supplemental Questionnaire Responses: Countervailing Duty Investigation on Certain Glass Containers from the People’s Republic of China (C-570-115),” dated February 26, 2020 (GOC SQR) at Exhibit S2-2. The Light Industry Development Plan (2016-2020) identifies the “durable consumer goods” industry, including “daily use glass” as a key part of the light industry.

²⁹ *Id.* at Exhibit S-1.2.

³⁰ *Id.*

³¹ See *Common Alloy Aluminum Sheet from the People’s Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final Determination with Final Antidumping Duty*

submitted the “Notice of the Ministry of Land and Resources on Adjusting the Implementation Policy of the Minimum Price for Industrial Land Transfer (Guo Fa No. 56 (2009))” (*Minimum Price for Land Transfer Notice*), which allows for reduced reserve prices of land sales for industrial priority projects.³² The *Minimum Price for Land Transfer Notice* clarifies that priority development of industries refers to industries that have been prioritized for development in local industry plans formulated in accordance with the Guidance Catalogue.³³

As detailed above, national development plans in China provide for priority land supply and financing arrangements for priority development projects. The documents discussed above also consistently identify the glass industry, and specifically the glass containers industry, as a target for economic development and preferential land policies. We find that the GOC’s use of preferential land policies to develop the glass containers sector at the national level indicates there is a program to provide land for LTAR to producers of glass containers within the meaning of section 771(5A)(D)(i) of the Act. We also continue to find that because the Chinese government owns all land in China, entities that provided the land to the respondents are “authorities” within the meaning of section 771(5)(B) of the Act, and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.³⁴

The GOC, the petitioner, and the mandatory respondents provided comments regarding this program, which are addressed in Comments 4, 13, 16, and 17. We have not changed our methodology with regards to the benefit analysis or calculating a subsidy rate for Qixia Changyu under this program but have changed our methodology for calculating a subsidy rate for Guangdong Huaxing by including benefits received pursuant to leased land.³⁵

Guangdong Huaxing: 4.40 percent *ad valorem*
Qixia Changyu: 1.87 percent *ad valorem*

6. Policy Loans to the Glass Container Industry

Commerce is examining whether the GOC has encouraged the development of the glass containers industry through financial support from State Owned Commercial Banks (SOCBs) and government policy banks. In the *Preliminary Determination*, we determined, as facts otherwise available, that the GOC encouraged the glass containers industry and thus this program

Determination, and Preliminary CVD Determination of Critical Circumstances, 83 FR 17651 (April 23, 2018) (*Aluminum Sheet from China Prelim*), and accompanying PDM at 47 (unchanged in *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 Final*)).

³² See GOC SQR at Exhibit S-9.3.

³³ *Id.*

³⁴ See Memorandum, “Certain Glass Containers from the People’s Republic of China – Countervailing Duty Investigation: Land Analysis Memo,” dated January 30, 2020 (Land Analysis Memo) (containing a memorandum titled “Benchmark Analysis of the Government Provision of Land-Use Rights in China for Countervailing Duty Purposes,” dated October 2, 2018).

³⁵ See PDM at 50-52.

was specific within the meaning of section 771(5A)(D)(i).³⁶ However, we also noted that we requested additional documentation from the GOC, but their response to the questionnaire was not due until after the date of the *Preliminary Determination*.³⁷ We have now received the GOC's response to that request for information, and our full analysis is below.

When examining a policy lending program, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support such objectives or goals. Where such plans or policy directives exist, then it is our practice to find that a policy lending program exists that is *de jure* specific to the targeted industry (or producers that fall under that industry) within the meaning of section 771(5A)(D)(i) of the Act. Once that finding is made, we rely upon the analysis undertaken in *CFS PRC* to further conclude that the national and local government control over the SOCBs render the loans a government financial contribution.³⁸ Guangdong Huaxing, Qixia Changyu, and certain cross-owned affiliates reported having loans outstanding during the POI. Commerce continues to find that these loans provide countervailable subsidies under a policy lending program directed at the glass containers industry. Record information demonstrates the GOC placed great emphasis on targeting the glass containers industry for development throughout recent years.

For example, the “Twelfth Five-Year Outline of the Guidelines for National Economic and Social Development (2011-2015)” (12th FYP) encourages an optimization of the industrial layout in order to “transform and improve the consumer goods industry, and promoting the enlargement and enhancement of manufacturing industries,” including the creation of “advanced manufacturing bases with international competitiveness” and the development of “a number of modern industry clusters with distinctive characteristics, a prominent brand image and a sound service platform.”³⁹ It also indicates the maintenance of “the current advantage in export markets” and indicates that the GOC “will also speed up the nurturing of new advantages,” including encouraging “enterprises to build up international sales channels to increase their ability to expand international market shares” and “actively develop {ing} emerging markets and promote the diversification of the export market.”⁴⁰ The 12th FYP specifically identifies the light industry as a key manufacturing industry.⁴¹ The current “National 13th Five Year Plan of Economic and Social Development (2016-2020)” (13th FYP) continues these objectives, calling for “{c}arrying out deep structural adjustment and revitalizing the real economy, we will move ahead with supply-side structural reforms, foster new industries while upgrading traditional ones, and move faster to put in place a new modern industrial system that has strong innovative capabilities, provides quality services, is based on close collaboration, and is environmentally friendly.”⁴² The 13th FYP also calls for “lowering enterprise financial costs” and “creat {ing} new direct financing products suitable to the needs of enterprises.”⁴³

³⁶ *Id.* at 52-54.

³⁷ *Id.* at 24-25.

³⁸ See *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*), and accompanying IDM at Comment 8.

³⁹ See GOC JIQR at Exhibit II.B.1., 12th FYP, Chapter 9.

⁴⁰ *Id.* at Chapter 51.

⁴¹ *Id.* at Chapter 9.

⁴² *Id.* at Exhibit II.B.1., 13th FYP, Part V.

⁴³ *Id.* at Section 6.

Additional record evidence indicates that financial support is directed specifically toward certain encouraged industries, including the glass containers industry. For example, Decision 40 indicates that the “Catalogue for the Guidance of Industrial Structure Adjustment” is an important basis for investment guidance and government administration of policies such as public finance, taxation, land, and credit.⁴⁴ Decision 40 further indicates that projects in “encouraged” industries shall be provided credit support in compliance with credit principles.⁴⁵ The Industrial Catalogue (2005 version, 2011 version, and 2013 amendment) specifically includes glass container and glass bottle production, and the development of related production technology, as encouraged.⁴⁶ For example, the 2011 version of the Industrial Catalogue includes among “encouraged” projects the “{d}evelopment of techniques and technologies and production of lightweight glass containers (disposable small-diameter glass bottles with a lightweight degree $L < 1.0$) and development and production of key equipment.”⁴⁷

Finally, industry-specific plans identify the glass containers industry as a target for development. Specifically, the Light Industry Development Plan (2016-2020) identifies the “durable consumer goods” industry, and specifically the “daily glass industry,” as a major industry, and includes information about increased financial and taxation support, and strengthened financial policy support.⁴⁸

Thus, given the evidence demonstrating the GOC’s objective of developing the glass industry, and more specifically the glass containers industry, through preferential loans, we determine there is a program of preferential policy lending specific to producers of glass containers within the meaning of section 771(5A)(D)(i) of the Act. We also continue to find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act.

The GOC, the petitioner, and the mandatory respondents provided comments regarding this program, which are addressed in Comments 14 and 18. We have not changed our methodology with respect to our benefit analysis or calculating a subsidy rate for Guangdong Huaxing and Qixia Changyu under this program, though we have corrected certain calculation errors argued by parties.⁴⁹

Guangdong Huaxing: 1.10 percent *ad valorem*

Qixia Changyu: 1.70 percent *ad valorem*

⁴⁴ *Id.* at Exhibit II.B.6., Chapter III Article 12.

⁴⁵ *Id.* at Chapter III Articles 13, 14, and 17.

⁴⁶ *Id.* at Exhibit II.B.3.

⁴⁷ *Id.* at Chapter 19 Article 26 of the Industrial Catalogue (2011 Version) (2013 Amendment).

⁴⁸ *See* GOC SQR at Exhibit S2-2.

⁴⁹ *See* PDM at 52-54.

7. *Export Buyer's Credit Program*

The GOC, the petitioner, and the mandatory respondents provided comments regarding this program, which are addressed in Comment 1. We have not changed our methodology for calculating a subsidy rate for Guangdong Huaxing and Qixia Changyu under this program.⁵⁰

Guangdong Huaxing: 10.54 percent *ad valorem*
Qixia Changyu: 10.54 percent *ad valorem*

8. *Income Tax Reduction for High or New Technology Enterprises*

No parties provided comments regarding this program. We have not changed our methodology for calculating a subsidy rate for Guangdong Huaxing under this program.⁵¹

Guangdong Huaxing: 1.06 percent *ad valorem*

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

No parties provided comments regarding this program. We have not changed our methodology for calculating a subsidy rate for Guangdong Huaxing or Qixia Changyu under this program.⁵²

Guangdong Huaxing: 0.09 percent *ad valorem*
Qixia Changyu: 0.27 percent *ad valorem*

10. *“Other Subsidies”*

The GOC, the petitioner, and the mandatory respondents provided comments regarding these programs, which are addressed in Comments 5 and 7. We have not changed our methodology for calculating a subsidy rate for Guangdong Huaxing and Qixia Changyu under these programs.⁵³

Guangdong Huaxing: 0.59 percent *ad valorem*
Qixia Changyu: 0.02 percent *ad valorem*

B. Programs Determined Not to Be Used by Guangdong Huaxing and Qixia Changyu or Not to Confer a Measurable Benefit to Guangdong Huaxing and Qixia Changyu During the POI

1. Foreign Trade Development Fund Grants Program
2. Grants for Energy Conservation and Emission Reduction
3. Export Loans from Chinese State-Owned Banks
4. Treasury Bond Loans

⁵⁰ *Id.* at 54-55.

⁵¹ *Id.* at 55-56.

⁵² *Id.* at 56-57.

⁵³ *Id.* at 43-44.

5. Export Credit Guarantees
6. Preferential Loans for SOEs
7. Preferential Lending to “Honorable Enterprises”
8. Exemptions for SOEs from Distributing Dividends
9. Loans and/or Interest Forgiveness for SOEs
10. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
11. The State Key Technology Renovation Project Fund
12. Export Assistance Grants Program
13. Government of PRC and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands
14. Grants to Loss-Making SOEs
15. Export Interest Subsidies
16. SME Technology Innovation Fund
17. Special Fund for Energy Saving Technology Reform
18. Preferential Income Tax Policy for Enterprises in the Northeast Region
19. Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
20. Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax
21. Income Tax Benefits for Domestically Owned Enterprises Engaging in Research and Development
22. Value Added Tax (VAT) and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Development Fund
23. Deed Tax Exemptions for SOEs Undergoing Mergers or Restructuring
24. Provision of Land and/or Land Use Rights to SOEs for LTAR
25. Provision of Pig Iron for LTAR

C. New Subsidy and Creditworthiness Allegations

On January 28, 2020, the petitioner submitted timely new subsidy allegations (NSAs). On February 11, 2020, Commerce issued a supplemental questionnaire pertaining to the petitioner’s NSAs, which the petitioner responded to on February 20, 2020. Further, on February 12, 2020, the petitioner submitted a creditworthiness allegation with respect to Qixia Changyu and a certain cross-owned affiliate. While we acknowledge that the NSAs were timely filed under 19 CFR 351.301(c)(2)(iv)(A), we were unable to initiate an investigation of these programs due to the complex nature of the allegations, the amount of time left in our investigation, and the constraints on our resources. This is explained in further detail in a March 16, 2020 memorandum placed on the record of this investigation.⁵⁴ We noted in that memorandum that we will further investigate these allegations in the first administrative review, if a countervailing duty order is issued, and such a review is requested under section 751 of the Act.⁵⁵ *See* Comment 8 for further discussion of the creditworthiness allegation.

⁵⁴ *See* NSA & Creditworthiness Memo

⁵⁵ *Id.*

VIII. ANALYSIS OF COMMENTS

Comment 1: Export Buyer's Credit Program

Qixia Changyu's Comments

- Commerce should determine that Qixia Changyu did not receive any benefits under the Export Buyer's Credit Program (EBCP).⁵⁶
- In the *Preliminary Determination*, Commerce applied an AFA rate of 10.54 percent for the EBCP based solely on the alleged failure of the GOC to provide certain requested information, which was not needed. Commerce ignored the fact that Qixia Changyu submitted declarations from its U.S. importers testifying that they did not receive any benefits under the program.⁵⁷
- The courts have rejected Commerce's application of AFA to find a benefit under the EBCP in many other cases where respondents provided such information.⁵⁸ The Court of International Trade (CIT) stated that Commerce's "(flawed) reasoning has remained unwavering – despite now eleven decisions from this Court urging Commerce to correct the repeated blatant deficiencies in its AFA analyses of the EBCP."⁵⁹
- The application of AFA was not justified in this case because there were no gaps in the record that needed to be filled.⁶⁰
- Qixia Changyu submitted declarations from its U.S. importers demonstrating that they did not use the program. As a result, all of the information Commerce needed to conclude that Qixia Changyu did not benefit from the program was on the record and the information allegedly not supplied by the GOC was not necessary.⁶¹
- With respect to the EBCP, Commerce must conclude that all the factual statements and information regarding the EBCP submitted by the GOC and the written confirmations of non-use provided by Qixia Changyu are accurate.⁶²

Guangdong Huaxing's Comments

- Commerce's application of AFA to the EBCP is unsupported by record evidence and contrary to law.⁶³
- Record evidence demonstrates that Guangdong Huaxing did not use or benefit from the EBCP. Guangdong Huaxing provided a list of all the customers to whom it exported during the POI.⁶⁴

⁵⁶ See Qixia Changyu Case Brief at 3.

⁵⁷ *Id.*

⁵⁸ *Id.* (citing *Guizhou Tyre Co. v. United States*, 348 F. Supp. 3d 1261, 1270 (CIT 2018) (*Guizhou Tyre*)).

⁵⁹ *Id.* at 4 (citing *Guizhou Tyre Co., Ltd. et. al. v. United States*, 415 F.Supp.3d 1335, 1341 (CIT 2019)).

⁶⁰ *Id.* at 5.

⁶¹ *Id.*

⁶² *Id.* at 6.

⁶³ See Guangdong Huaxing Case Brief at 4.

⁶⁴ *Id.*

- Guangdong Huaxing has never been contacted by either the Export Import Bank of China (EIBC) or other state-owned commercial banks or their export customers to assist in obtaining buyer credits under this program.⁶⁵
- Commerce was apparently satisfied with Guangdong Huaxing's answer and it did not issue any supplemental questionnaires to Guangdong Huaxing regarding the EBCP.⁶⁶
- The GOC corroborated Guangdong Huaxing's response by submitting printouts of searches in the EIBC's database of Guangdong Huaxing's customers' names.⁶⁷
- Commerce's finding that Guangdong Huaxing benefitted from and used the EBCP is an adverse inference against Guangdong Huaxing in violation of statutory and case law precedents.⁶⁸
- Commerce has not identified a gap in the record. The only missing information that Commerce can possibly point to is the identity of foreign banks to whom the EIBC could potentially disburse loans, which the CIT has repeatedly found to be irrelevant information.⁶⁹

GOC's Comments

- Commerce's application of AFA to the EBCP is unlawful and unsupported by substantial evidence.⁷⁰
- In a contemporaneous remand redetermination involving a countervailing duty (CVD) review of New Pneumatic Off-the-Road Tires from the People's Republic of China, Commerce reversed its AFA finding for the EBCP and properly found that the program was not used based on non-use declarations submitted by respondents' customers.⁷¹ Commerce should find the same here.
- It is not Commerce's practice to assign an AFA rate to a respondent in CVD proceedings based solely on the fact that the foreign government failed to participate to the best of its ability. Rather, in instances in which the foreign government fails to adequately respond to Commerce's questionnaires, it is Commerce's practice to apply AFA and assume that the alleged subsidy constitutes a financial contribution and is specific. In such instances, Commerce calculates the benefit by relying on the information supplied by the respondent firms. However, if the information on the record indicates that the respondent did not use the program, Commerce will find the program was not used, regardless of whether the foreign government participated to the best of its ability.⁷²
- If a respondent has claimed that it can establish non-use of a program as a factual matter, without an accompanying or complete government response, Commerce has determined

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 4-5.

⁶⁸ *Id.* at 5.

⁶⁹ *Id.*

⁷⁰ See GOC Case Brief at 28.

⁷¹ *Id.* at 29.

⁷² *Id.* at 30 (citing *Certain In-Shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty New Shipper Review*, 73 FR 9993 (February 25, 2008)).

that it will analyze the responses provided by the company to determine if the information on the record is sufficient to establish non-use.⁷³

- The courts have also embraced this legal principle. For example, in *Fine Furniture*, the CIT stated that “{w}e do not treat the GOC and Fine Furniture as a joint entity in making our determination; rather, we acknowledge that, in the context of a CVD investigation, an inference adverse to the interests of a non-cooperating government respondent may collaterally affect a cooperative respondent. While such an inference is permissible under the statute, it is disfavored and should not be employed when facts not collaterally adverse to a cooperative party are available.”⁷⁴
- The CIT has also noted that it would be “inappropriate for Commerce to apply AFA for no reason other than to deter the {government’s} non-cooperation in future proceedings when relevant evidence existed elsewhere on the record.”⁷⁵
- The court has ruled out the reasonableness of the application of AFA in the face of exculpatory evidence provided by the company respondent where the government did not respond.⁷⁶
- None of the information Commerce deems as missing actually creates a material gap in the record concerning usage.⁷⁷ The information that was not provided goes to the countervailability of the EBCP; it neither impacts the evaluation of the program nor the determination of usage of the program.⁷⁸
- Record evidence demonstrates that the EBCP was not used by the mandatory respondents’ customers. Usage could be determined in this case in three ways. First, the GOC stated that the respondents’ customers did not use the program and provided screen shots of the GOC’s database search. Second, the GOC verified this by contacting the respondents to ask for their customer lists and then providing the lists to the EIBC, who searched their records to confirm that customers provided in the lists did not receive any Export Buyers Credits from the EIBC during the POI. And third, the respondents provided statements of non-use in their initial responses after confirmation with their U.S. customers and submission of customer declarations.⁷⁹
- If there was a gap in the record, it is Commerce’s failure to review the reported non-use statements provided by the GOC and the respondents and to ask the appropriate questions.⁸⁰ Commerce could have attempted to verify claims of non-use at the respondents U.S. customers’ offices but chose not to.⁸¹

⁷³ *Id.* at 31.

⁷⁴ *Id.* at 32 (citing *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254 (CIT 2012) (*Fine Furniture*)).

⁷⁵ *Id.* (citing *Changzhou Trina Solar Energy Co. v. United States*, 255 F. Supp. 3d 1312, 1313 (CIT 2017) (*Changzhou Trina II*)).

⁷⁶ *Id.* (citing *Guizhou Tyre* (“To apply AFA in circumstances where relevant information exists elsewhere on the record - that is, solely to deter non-cooperation or ‘simply to punish’ - would make the agency’s determination based on an incomplete (and therefore, inaccurate) account of the record; that is a fate this court should sidestep.”)).

⁷⁷ *Id.* at 34.

⁷⁸ *Id.* at 37.

⁷⁹ *Id.* at 38.

⁸⁰ *Id.* at 39.

⁸¹ *Id.* at 40.

Petitioner's Rebuttal Comments

- Commerce should follow its established practice and continue to apply AFA with respect to the EBCP in its final determination.⁸²
- The record of this investigation does not contain complete information regarding the EBCP and does not adequately demonstrate that respondents did not use the program. Moreover, the case law cited by the respondents is distinguishable and unpersuasive.⁸³
- The 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 EBCP was used by respondents. The respondents and the GOC argue that this information was simply not “necessary.” If effect, the respondents and the GOC have taken it upon themselves to decide what information is required for Commerce to make a determination as to the use of the EBCP.⁸⁴
- The GOC’s assertion that there are no gaps in the record regarding the EBCP falls apart when coupled with the fact that the GOC failed to provide critical information, and thus, at minimum, it is not possible to determine the full universe of information that would be required from respondents with respect to this program.
- The respondents and the GOC misunderstand Commerce’s application of AFA with respect to the EBCP in this and other proceedings. The GOC points to the submissions of declarations of non-use as evidence that the program was definitively not used by respondents. However, even with these declarations, critical evidence remains missing from the record.
- Commerce should reject the respondents’ attempts to reframe the agency’s assessment of whether the record contains complete information regarding the EBCP. The respondents insist that the record is complete but ignore that Commerce has repeatedly asked for additional information from the GOC regarding the EBCP.
- As Commerce explained in an administrative review of *CSPC from China*, it is “futile” to continue these information requests.⁸⁵
- As Commerce noted, the program appears to have been amended in 2013 and it appears that the 2013 revisions may have eliminated the \$2 million minimum contract threshold that was in place for the program. The GOC has not provided any information regarding the program’s amendments or whether the minimum contract threshold has been eliminated.⁸⁶
- The GOC also refused to provide information regarding the partner and correspondent banks involved in the disbursement of funds under the EBCP. This is essential information regarding the internal administration of the program, yet the GOC claims

⁸² See Petitioner Rebuttal Brief at 6.

⁸³ *Id.*

⁸⁴ *Id.* at 6-7.

⁸⁵ *Id.* at 9 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent to Rescind, in Part; 2014*, 82 FR 2317 (January 9, 2017) (*CSPC from China*) (“The nature of the GOC’s responses to those information requests further indicates that any attempt to request the information again from the GOC would be futile. Absent the requested information, the GOC’s and respondent companies’ claims of non-use of this program are not verifiable.”).

⁸⁶ *Id.* at 10.

repeatedly that it “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.”⁸⁷

- The respondents attempt to analogize this investigation to *Guizhou Tyre*. In *Guizhou Tyre*, the CIT ordered Commerce to reconsider its decision to apply AFA to the EBCP and to consider the evidence of non-use that was on the record. The CIT held that Commerce needed only to explain in sufficient detail its reasoning behind its application of AFA. In this investigation, Commerce has thoroughly explained its rationale for applying AFA to the cost of goods, explaining in greater detail than it did in the administrative proceeding underlying *Guizhou Tyre* why the agency cannot verify the respondents’ use of the EBCP and why it required information and documentation regarding the internal administration of the program in order to understand the extent to which the program was used.⁸⁸

Commerce’s Position: We continue to find that the record of the instant investigation does not support a finding of non-use of the EBCP by Qixia Changyu or Guangdong Huaxing. We next describe the evolution of Commerce’s treatment of this program.

Solar Cells Initial Investigation of the EBCP

Commerce first investigated and countervailed the EBCP in the 2012 investigation of solar cells.⁸⁹ Our initiation was based on, among other information, the EIBC’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.”⁹⁰ Commerce initially asked the GOC to complete the “standard questions appendix” for the EBCP. 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.⁹¹

The GOC provided none of the information requested by Commerce in the ensuing investigation, despite being given multiple opportunities to do so, but simply stated that “{n} one of the respondents or their reported cross-owned companies applied for, used, or benefitted from the alleged programs during the POI.”⁹² In response to a request from Commerce for information concerning the operation of the EBCP and how we might verify usage of the program, the GOC

⁸⁷ *Id.*

⁸⁸ *Id.* at 11-12.

⁸⁹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China Investigation*), and accompanying IDM at 9 and Comment 18 (discussing Commerce’s determination with respect to the Export Buyer’s Credit Program, which was initially challenged but the case was later dismissed).

⁹⁰ *Id.* at 59.

⁹¹ *Id.*

⁹² *Id.*

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.”⁹³ 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.⁹⁴ 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.⁹⁵

Based on the GOC’s responses, Commerce’s understanding was that, under this program, loans were provided directly from the EIBC 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.⁹⁶ Additionally, Commerce concluded that even if the respondent company might have some knowledge of loans provided to its customers through its involvement in the application process, such information is not of the type Commerce would examine to verify that the claim of non-use at issue was complete and accurate:

{E}ven if the {respondent exporter} might have been involved in, or might have received some notification of, its customer’s application for receiving such export credits, such information is not the type of information that the Department needs to examine in order to verify that the information is complete and accurate. For verification purposes, the Department must be able to test books and records in order to assess whether the questionnaire responses are complete and accurate, which means that we need to tie information to audited financial statements, as well as to review supporting documentation for individual loans, grants, rebates, *etc.* If all a company received was a notification that its buyers received the export credits, or if it received copies of completed forms and approval letters, we have no way of establishing the completeness of the record because the information cannot be tied to the financial statements. Likewise, if an exporter informs Commerce that it has no binder (because its customers have never applied for export buyer’s credits), there is no way of confirming that statement unless the facts are reflected in the books and records of the respondent exporter.⁹⁷

Commerce concluded that, without GOC cooperation, usage of the program could not be confirmed at the respondent exporters in a manner consistent with its long-standing verification

⁹³ *Id.* at 60.

⁹⁴ *Id.* at 60-61.

⁹⁵ *Id.* at 61.

⁹⁶ See *Solar Cells from China Investigation* IDM at 61.

⁹⁷ *Id.* at 61-62.

methods.⁹⁸ 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.⁹⁹

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 subledger 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.

⁹⁸ Commerce provided a similar explanation in the 2014 investigation of solar products from China. See *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products*), and accompanying IDM at 93. This was affirmed by the Court in *Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334 (CIT 2016) (*Changzhou Trina I*). In *Changzhou II*, the Court noted that the explanation from *Solar Products* constituted “detailed reasoning for why documentation from the GOC was necessary” to verify non-use. See *Changzhou Trina II*. However, the Court found that the 2014 review of solar cells from China at issue in *Changzhou III* was distinguishable because the respondents submitted customer certifications of non-use, and Commerce had “failed to show why a full understanding” of the program was necessary to verify non-use. *Id.* at 10 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017), amended by *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 46760 (October 6, 2017), and accompanying IDM). The Court in *Guizhou Tyre I* reached a similar conclusion concerning the 2014 review of tires from China. See *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2014*; 82 FR 18285 (April 18, 2017), and accompanying IDM; see also *Guizhou Tyre Co. v. United States*, 348 F. Supp. 3d 1261, 1271 (CIT 2018) (*Guizhou Tyre I*).

⁹⁹ The Court agreed with Commerce in *RZBC Group*, following a remand, finding that Commerce could not verify non-use of the program by examining the respondent-exporter’s audited financial statements or other books and records because record evidence demonstrated that the program terms were ambiguous. See *RZBC Group Shareholding Co. v. United States*, 222 F. Supp. 3d 1196, 1201-02 (CIT 2017) (concerning *Citric Acid and Certain Citrate Salts: Final Review of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*China Citric Acid 2012 Review*) and accompanying IDM at Comment 6).

In the investigation of solar cells, however, despite Commerce's repeated requests for information, the GOC failed to offer any guidance as to how Commerce could research for the EBCP lending in respondent exporters' books and records that could be tied to financial statements, tax returns, or other relevant company documents. Therefore, Commerce concluded in that investigation that it could not verify usage of the program at the respondent exporters and instead attempted verification of usage of the program at the EIBC itself because it "possessed the supporting records needed to verify the accuracy of the reported non-use of the EBC Program {and} would have complete records of all recipients of export buyer's credits." We noted our belief that "{s}uch records could be tested by {Commerce} to check whether the U.S. customers of the company respondents had received export buyer's credits, and such records could then be tied to the {China} Ex-Im Bank's financial statements."¹⁰⁰ However, the GOC refused to allow Commerce to query the databases and records of the EIBC.¹⁰¹ Furthermore, there was no information on the record of the solar cells investigation from the respondent exporters' customers.

Chlorinated Isocyanurates Investigation of the EBCP

Two years later, in the *Chlorinated Isocyanurates (Chlorinated Isos) Investigation*,¹⁰² the respondents submitted certified statements from all customers claiming that they had not used the EBCP. This appears to have been the first instance of respondents submitting such customer certifications. At that point in time, as explained in detail above, Commerce, based on the limited information provided by the GOC in earlier investigations, was under the impression that the EBCP provided medium- and long-term loans and that those loans were provided directly from the EIBC to the borrowers (*i.e.*, the respondent exporters' customers) *only*. Because the respondents' customers were participating in the proceeding, verification of non-use appeared to be possible through examining the financial statements and books and records of the U.S. customers for evidence of loans provided directly from the EIBC 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."¹⁰³

2013 Amendments to the EBCP

Our understanding of the operation of the EBCP began to change after the *Chlorinated Isos Investigation* had been completed in September 2014. In *China Citric Acid 2012 Review*, Commerce began to gain a better understanding of how the EIBC issued disbursement of funds

¹⁰⁰ See *Solar Cells from China Investigation* IDM at 62.

¹⁰¹ *Id.*

¹⁰² See *Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination*; 2012, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos Investigation*), and accompanying IDM.

¹⁰³ *Id.* at 15.

and the corresponding timeline; however, Commerce’s attempts to verify the program’s details and statements from the GOC concerning the operation and use of the program were thwarted by the GOC.¹⁰⁴ In subsequent proceedings, Commerce continued to investigate and evaluate this program.

For example, in the *Silica Fabric Investigation*¹⁰⁵ conducted in 2016-2017, based on what we had learned in *China Citric Acid 2012 Review*, we asked the GOC about certain changes to the EBCP, including changes in 2013 that eliminated the U.S. dollars (USD) 2 million minimum business contract requirement.¹⁰⁶ In response, the GOC stated that there were three relevant documents pertaining to the EBCP: (1) “Implementing Rules for the Export Buyer’s Credit of the Export-Import Bank of China” which were issued by the Export-Import Bank of China on September 11, 2005 (referred to as “1995 Implementation Rules”); (2) “Rules Governing Export Buyer’s Credit of the Export-Import Bank of China” which were issued by the Export-Import Bank of China on November 20, 2000 (referred to as “2000 Rules Governing Export Buyer’s Credit” or “Administrative Measures”); and (3) 2013 internal guidelines of the Export-Import Bank of China.¹⁰⁷ According to the GOC, “{t}he Export-Import Bank of China has confirmed to the GOC that its 2013 guidelines are internal to the bank, non-public, and not available for release.”¹⁰⁸ The GOC further stated that “those internal guidelines do not formally repeal or replace the provisions of the {Administrative Measures} which remain in effect.”¹⁰⁹

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

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

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

¹⁰⁴ See *China Citric Acid 2012 Review* 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.”).

¹⁰⁵ See *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017) (*Silica Fabric Investigation*), and accompanying IDM.

¹⁰⁶ See Commerce’s Letter, “Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China: 7th GOC Supplemental Questionnaire,” dated August 30, 2016.

¹⁰⁷ See GOC’s Letter, “Certain Amorphous Silica Fabric from the People’s Republic of China; CVD Investigation; GOC 7th Supplemental Response,” dated September 6, 2016.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

Department's understanding of how this program operates and how it can be verified.

Additional information in the GOC's supplemental questionnaire response also indicated that the loans associated with this program are not limited to direct disbursements through the EX-IM Bank. Specifically, the GOC stated that customers can open loan accounts for disbursements through this program with other banks. The funds are first sent from the EX-IM Bank to the importer's account, which could be at the EX-IM Bank or other banks, and that these funds are then sent to the exporter's bank account. Given the complicated structure of loan disbursements for this program {Commerce's} complete understanding of how this program is administrated is necessary. Thus, the GOC's refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administrated by the EXIM Bank, impeded {Commerce's} ability to conduct its investigation of this program.¹¹⁰

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."¹¹¹

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."¹¹²

The Instant Investigation

In this investigation, we initiated an investigation of the EBCP based on the information in the Petition indicating that foreign customers of Chinese exporters have received a countervailable subsidy in the form of preferential export loans from the EIBC.¹¹³ In the Initial Questionnaire issued to the GOC, 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 ExIm {Bank} under the Buyer Credit Facility."¹¹⁴ The Standard Questions Appendix requested various types of information that Commerce requires 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 program application process, program

¹¹⁰ See *Silica Fabric Investigation* IDM at 12 (internal citations omitted).

¹¹¹ *Id.* at 62.

¹¹² *Id.*

¹¹³ See Memorandum, "Enforcement and Compliance Office of AD/CVD Operations Countervailing Duty Initiation Checklist: Certain Glass Containers from the People's Republic of China," dated October 15, 2019 (Initiation Checklist) at 9.

¹¹⁴ See Commerce's Letter, "Countervailing Duty Investigation of Certain Glass Containers from the People's Republic of China: Countervailing Duty Questionnaire," dated November 27, 2019 (Initial Questionnaire) at 26.

eligibility criteria, and program use data. Rather than respond to the questions in the Standard Questions Appendix, the GOC stated it had confirmed “none of the respondents’ customers applied for, used, or benefitted from the alleged program during the POI. Thus, a response to the Standard Questions Appendix is not necessary.”¹¹⁵

Further, in the Initial Questionnaire, we asked the GOC to “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.”¹¹⁶ While the GOC provided two of the requested documents, the GOC did not provide the 2013 Revisions.¹¹⁷ In our supplemental questionnaire to the GOC, we again asked the GOC to respond to all items in the Standard Questions Appendix.¹¹⁸ Instead of providing the requested information, the GOC stated that “the GOC sees no legal basis on which to require a Standard Questions Appendix response for programs not used by any of the individually investigated companies and, thus, the GOC will not be providing Standard Questions Appendix responses for non-used programs.”¹¹⁹ In response to the specific request for the guidelines adopted by the EIBC in 2013, the GOC responded that the “2013 guidelines are internal to the bank, non-public, and not available for release.”¹²⁰ Furthermore, the GOC stated that Commerce “has been provided with sufficient and verifiable information which permits the Department to reach a finding that the program was not used by the respondents during the POI. Therefore, this question is not material in this case.”¹²¹

Information on the record indicates that the GOC revised the EBCP in 2013 to eliminate the requirement that loans under the program be for a minimum of two million USD.¹²² Moreover, information on the record also indicates that the EIBC may disburse export buyer’s credits either directly or through third-party partner and/or correspondent banks.¹²³ We asked the GOC to provide the 2013 Revisions, a list of all third-party banks involved in the disbursement/settlement of export buyer’s credits, and a list of all partner/correspondent banks involved in disbursement of funds under this program.¹²⁴ As noted above, the GOC failed to provide the requested information. By failing to comply with Commerce’s requests to provide this information, the GOC has deprived Commerce of the information necessary to fully understand the details of this program, including: the application process, internal guidelines and rules governing this program, interest rates used during the POI, and whether the GOC uses third-party banks to disburse/settle export buyer’s credits.

¹¹⁵ See GOC’s Letter, “GOC Initial Questionnaire Response: Countervailing Duty Investigation on Certain Glass Containers from the People’s Republic of China (C-570-115),” dated January 10, 2020 (GOC IQR) at 15.

¹¹⁶ See Initial Questionnaire at 26.

¹¹⁷ See GOC IQR at 16 and Exhibits II.B.8 and II.B.9; see also GOC SQR at Part 2.

¹¹⁸ See Commerce’s Letter, “Countervailing Duty Investigation of Certain Glass Containers from the People’s Republic of China: Second Supplemental Questionnaire for Initial Countervailing Duty Questionnaire,” dated January 27, 2020 (GOC Second FS SQ).

¹¹⁹ See GOC SQR at Part 1.

¹²⁰ *Id.* at Part 2.

¹²¹ *Id.*

¹²² See GOC IQR at Exhibit II.B.7.

¹²³ *Id.* at Exhibits II.B.8 and II.B.9.

¹²⁴ See Commerce’s Letter, “Countervailing Duty Investigation of Certain Glass Containers from the People’s Republic of China: Second Supplemental Questionnaire for the Government of the People’s Republic of China,” dated February 6, 2020 (GOC Second SQ) at 3.

The 2013 Revisions were especially significant because record evidence indicates the credits may not be *direct* transactions from the EIBC to U.S. customers of the respondent exporters, but rather, that there can be intermediary banks involved, the identities of which were unknown to Commerce.¹²⁵ As noted above, in prior examinations of this program, we found that the EIBC, as a lender, is the primary entity that possesses the supporting information and documentation necessary for Commerce to fully understand the this program’s operation following the 2013 Revisions, which is a prerequisite to Commerce’s ability to verify non-use of the program.¹²⁶ Performing the verification steps outlined above to verify claims on non-use would require knowing the names of the intermediary banks. The names of these banks, not the name “China Ex-Im Bank,” would appear in the subledgers of the U.S. customers if they received the credits. As explained recently in the investigation of *Common Alloy Aluminum Sheet from China*:

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.¹²⁷

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 Commerce cannot verify claims of non-use at the GOC,¹²⁸ having a list of the correspondent banks is critical to conducting a verification of non-use at the U.S. customers.

Furthermore, although respondents Guangdong Huaxing and Qixia Changyu reported that their U.S. customers did not use the program, when asked to explain in detail the steps taken to confirm that no customer used the EBCP, Guangdong Huaxing and Qixia Changyu responded that they simply contacted the customers involved in the sale of subject merchandise to the U.S. during the POI and provided customer declarations or an email response for the identified customers.¹²⁹

¹²⁵ See GOC IQR at Exhibits II.B.8 and II.B.9.

¹²⁶ See, *e.g.*, *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), and accompanying IDM at Comment 6; see also *Chlorinated Isos from China 2014* IDM at Comment 2 (concluding that “without the GOC’s necessary information, the information provided by the respondent companies is incomplete for reaching a determination of non-use”).

¹²⁷ See *Aluminum Sheet from China Final* IDM at Comment 4 (internal citations omitted).

¹²⁸ Commerce no longer attempts to verify usage of the EBCP with the GOC given the inadequate information provided in its questionnaire responses, in particular, the GOC’s refusal to provide the 2013 revisions to the administrative rules. See *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), and accompanying IDM at Comment 1.

¹²⁹ See Guangdong Huaxing’s Letter, “Certain Glass Containers from the People’s Republic of China: Section III Questionnaire Response,” dated January 10, 2020 (Guangdong Huaxing IQR) at 23 and Qixia Changyu’s Letter,

Despite the respondents' assertions that their U.S. customers did not use the EBCP, the customer declarations and email statements are, alone, insufficient to establish non-use.¹³⁰ Guangdong Huaxing argues as evidence of its non-use of the EBCP the fact that it has never been contacted by either the EIBC or other state-owned commercial banks or their export customers to assist in obtaining buyer credits under this program.¹³¹ This alone, however, is also insufficient to establish non-use. Rather, additional information is necessary for Commerce to make such a determination. Specifically, Commerce requires information necessary to fully understand the details and operation of this program, including: the application process, internal guidelines and rules governing this program, the types of goods eligible for export financing under this program, interest rates used during the POI, and whether the GOC uses third-party banks to disburse/settle export buyer's credits.¹³² As noted above, the GOC failed to provide the requested necessary information regarding the EBCP.¹³³ The GOC asserts that the screenshots it provided from the EIBC covering all of respondents' U.S. customers indicate that none of the respondents' U.S. customers are the clients of any of the EIBC's accounts.¹³⁴ However, Commerce cannot verify claims of non-usage, whether originating with the respondents or their U.S. customers, if it does not know the names of the intermediary banks that might appear in the books and records of the recipient of the credit (*i.e.*, loan) or the cash disbursement made pursuant to the credit. As explained above, there will not necessarily be an account in the name "China Ex-Im Bank" or "Ex-Im Bank" in the books and records (*e.g.*, subledger, tax return, bank statements) of either the exporter or the U.S. customer.

Without such necessary information, Commerce would have to engage in an unreasonably onerous examination of the business activities and records of respondents' customers without any guidance as to which loans or banks to subject to scrutiny for each company. The GOC refused to provide a list of all correspondent banks involved in the disbursement of credits and funds under the program. A careful verification of respondents' non-use of this program without understanding the identity of these correspondent banks would be unreasonably onerous, 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 (no 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

"Certain Glass Containers from the People's Republic of China: CVD Questionnaire Response," dated January 10, 2020 (Qixia Changyu IQR) at 25.

¹³⁰ See *Carbon and Alloy Steel Threaded Rod from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 8833 (February 18, 2020) and accompanying IDM at Comment 6; 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) and accompanying IDM at Comment 4; see also *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 Rescission of Review, in Part: 2016*, 84 FR 45125 (August 28, 2019) and accompanying IDM at Comment 1.

¹³¹ See Guangdong Huaxing Case Brief at 4.

¹³² *Id.*

¹³³ See GOC IQR at 14-24.

¹³⁴ *Id.* at 17; see also GOC Case Brief at 38.

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 EIBC *via* an intermediary bank. This would be an unreasonably onerous undertaking for any company that received more than a small number of loans.

Furthermore, the third step of Commerce's typical non-use verification procedures (*i.e.*, selecting *specific* entries from the subledger and requesting to see underlying documentation, such as applications and loan agreements) likewise would be of no value. This step might serve merely to confirm whether banks were correctly identified in the subledger - not necessarily whether those banks were correspondent banks participating in the EBCP. 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 EIBC.¹³⁵ Commerce would simply not know what to look for behind each loan in attempting to identify a loan provided by the EIBC via a correspondent bank.

This same sample "paper trail" would be necessary even if the GOC provided the list of correspondent banks. Suppose, for example, 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 EIBC. 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 EIBC financing: specific applications, correspondence, abbreviations, account numbers, or other indicia of EIBC involvement. As explained above, the GOC failed to provide Commerce with any of this information. Thus, even if Commerce were to attempt to verify the respondents' non-use of the EBCP 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 would still not be able to verify which loans were normal loans versus EBCP loans due to its lack of understanding of what underlying documentation to expect, and whether/how that documentation would indicate EIBC involvement. In effect, companies could provide Commerce with incomplete loan documentation without Commerce understanding that the loan documentation was incomplete. Even if it were complete and identified EIBC involvement, without a thorough understanding of the program, Commerce might not recognize indicia of such involvement.

For all the reasons described above, Commerce requires the 2013 Revisions, as well as other necessary information concerning the operation of the EBCP, 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 necessary "roadmap" for the verifiers by which they can conduct an effective verification, perform a "completeness test" and confirm whether the program was not used as claimed by the respondent.

¹³⁵ In this investigation, our questionnaire stated: "Provide a sample application for each type of financing provided under the Buyer Credit Facility, the application's approval, and the agreement between the respondent's customer and the China Ex-Im that establish the terms of the assistance provided under the facility." See Initial Questionnaire at 6. The GOC responded "Based on the information available to the GOC at this stage, the GOC confirms that none of the respondents' customers applied for, used, or benefitted from the alleged program during the POI. Thus, a response to the Standard Questions Appendix is not necessary." See GOC IQR at 15.

Thus, Commerce finds it could not *accurately and effectively* verify usage from the respondents' customers, even if Commerce attempted the unreasonably onerous examination of each of their customers' loans. To conduct verification at respondents' 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. Therefore, Commerce concludes that, as a result of the GOC's failure to cooperate, the record of this investigation lacks verifiable information concerning respondents' use of the EBCP.

As explained in the *Preliminary Determination*, necessary information from the GOC is missing from the record, and the GOC withheld the requested information described above, which is necessary to determine whether respondents' U.S. customers actually used the EBCP during the POI.¹³⁶ The GOC's withholding of this necessary information prevents us from fully understanding and analyzing the operation of this program, thereby impeding this proceeding. Accordingly, we have relied on the facts otherwise available, pursuant to section 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, to determine whether this program was used by Guangdong Huaxing and Qixia Changyu and conferred a benefit.

Furthermore, pursuant to section 776(b) of the Act, we continue to find that the GOC also failed to cooperate with Commerce by not acting to the best of its ability.¹³⁷ As noted above, the GOC failed to provide the requested information needed to allow Commerce to analyze this program fully. As a result, the GOC did not provide information that would permit us to make a determination as to whether this program confers a benefit. Moreover, absent the requested information, we are unable to rely on the GOC's and the respondents' claims of non-use of this program. The GOC has not provided information with respect to whether it uses third-party banks to disburse/settle export buyer's credits from the EIBC. Such information is essential to understanding how export buyer's credits flow to/from foreign buyers and the EIBC. Absent the requested information, the GOC's and respondents' claims of non-use of this program are not verifiable. We requested the 2013 Revisions because information indicates that the 2013 Revisions implemented important program changes.¹³⁸ For example, record evidence indicates that the loans associated with this program are not limited to direct disbursements through the EIBC.¹³⁹ Specifically, the record indicates that: (1) customers can open loan accounts for disbursements through this program with third-party banks; (2) the funds are first sent to the importer's account, which could be at the EIBC or third-party banks; and (3) these funds are then sent to the exporter's bank account.¹⁴⁰ Because of the complicated structure of loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary to confirm whether the respondents' customers obtained loans under the program.

¹³⁶ See PDM at 28-31 and 54-55.

¹³⁷ *Id.*

¹³⁸ See *Silica Fabric Investigation* IDM at 61.

¹³⁹ See GOC IQR at Exhibits II.B.8 and II.B.9.

¹⁴⁰ *Id.*

Thus, as discussed above, the GOC's refusal to provide the 2013 Revisions, which set internal guidelines for how this program is administered by the EIBC, and a list of partner/correspondent banks that are used to disburse funds through this program, constitutes a failure to cooperate to the best of the GOC's ability. Therefore, as AFA, we find that respondents Guangdong Huaxing and Qixia Changyu used and benefitted from this program, despite their claims that their U.S. customers had not obtained export buyer's credits from the EIBC during the POI.¹⁴¹

Finally, relying on AFA because we do not have complete information, Commerce finds the EBCP to be an export subsidy for this final determination.¹⁴² Although the record regarding this program suffers from significant deficiencies, we note that the GOC's description of the program and supporting materials (albeit ultimately found to be deficient) demonstrates that through this program, state-owned banks, such as the EIBC, provide loans at preferential rates for the purchase of exported goods from China.¹⁴³ Moreover, the program was alleged by the petitioner as an example of a possible export subsidy.¹⁴⁴ Furthermore, Commerce has previously found this program to be an export subsidy.¹⁴⁵ Thus, taking all such information into consideration indicates the provision of the export buyer's credits is contingent on exports and therefore specific, within the meaning of section 771(5A)(A) and (B) of the Act. Moreover, we find that under the EBCP, the GOC bestowed a financial contribution pursuant to section 771(5)(D) of the Act.

Similarly, we disagree with the respondents' assertion that Commerce should not substitute an AFA determination regarding use of the EBCP for alleged record evidence of non-use in the form of customer declarations. In this investigation, and as discussed above, we have information on the record indicating the existence of the 2013 Revisions and the involvement of third-party banks. We explained why having these documents and additional information regarding the functioning of the EBCP from the GOC was necessary to have a full understanding of the EBCP in order to *accurately and effectively* verify non-use.

¹⁴¹ See Guangdong Huaxing IQR at 23 and Qixia Changyu IQR at 25.

¹⁴² See PDM at 31.

¹⁴³ See GOC IQR at Exhibit II.B.8 ("The export buyer's credit {program} managed by {the EIBC} is an intermediate and long-term credit to foreigners, used for importers making payment at sight for goods to Chinese exporters, which may promote export of goods and technical services."); see also GOC IQR at Exhibit II.B.7 "According to the Ex-Im Bank, in order to make a disbursement, the Ex-Im Bank lending contract requires the buyer (importer) and seller (exporter) to open accounts with either the Ex-Im Bank or one of its partner banks;" and GOC IQR at Exhibit II.B.9 at 1 ("{The EBCP provides} support for the export of China's sets of equipment, ships, and other mechanical and electronic products.").

¹⁴⁴ See Petition, Volume III at 14-15; see also Petitioner's Letter, "Certain Glass Containers from the People's Republic of China: Responses to First Supplemental Questions on China CVD Volume III of the Petition," dated October 4, 2019 (Petition Supp) at 4-5.

¹⁴⁵ 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) (*Tires from China*), and accompanying IDM at Comment 16.

Regarding the GOC's reference to the *Guizhou Tyre II* Remand, we initially note that Commerce performed that remand under respectful protest.¹⁴⁶ Moreover, Commerce noted that its "previous findings with respect to the impracticality of verifying these claims of non-use by the respondents or by their customers, and of verifying the GOC's claims that neither of the two mandatory respondents nor any of their U.S. customers used the program remain unchanged."¹⁴⁷ Commerce additionally concluded in the *Guizhou Tyre II* Remand that there still remained "a 'gap' in the record – *i.e.*, missing necessary information concerning the operation of the EBCP," which "prevents an accurate and effective verification of {the respondents'} customers' certifications of non-use and {another respondents'} statements that its customers did not use the program."¹⁴⁸ This critical gap in the record – which is exacerbated by the GOC's failure to cooperate to the best of its ability in providing us with such necessary information – exists in this investigation, as explained above.

The respondents argue that Commerce cannot allow adverse inferences based on a party's failure to cooperate to adversely affect a cooperating respondent. We disagree. The GOC cites to the CIT's finding in *Fine Furniture*, where the CIT acknowledged that "in the context of a CVD investigation, an inference adverse to the interests of a non-cooperating government respondent may collaterally affect a cooperating respondent," but held that while "such an inference is permissible under the statute, it is disfavored and should not be employed when facts not collaterally adverse to a cooperative party are available."¹⁴⁹ However, the Court of Appeals for the Federal Circuit (CAFC) has allowed an adverse inference against a government to impact an otherwise cooperative respondent, when the government is the holder of the missing necessary information.¹⁵⁰ Furthermore, the CIT has recognized that "if a foreign government fails to cooperate in a countervailing duty case, Commerce may apply AFA even if the collateral effect is to 'adversely impact a cooperating party.'"¹⁵¹ This is because the foreign government is in the best position to provide information regarding the operation of a subsidy program. Obviously, this has an effect on the respondent company, but this does not mean that Commerce's application of AFA was unlawful. The CIT has also stated that Commerce should avoid such collateral effects if relevant information exists elsewhere on the record.¹⁵² However, as explained above, the claims of non-use on the record are not verifiable.

With regard to the GOC's reliance on *Changzhou II*, we find that Commerce's decision not to apply AFA in that case was predicated on Commerce's inadequate understanding of the EBCP

¹⁴⁶ See *Guizhou Tyre Co. Ltd., et al. v. United States*, Consol. Ct. No. 17-00101, Slip Op. 19-114 (CIT 2019), Final Results of Redetermination Pursuant to Court Remand (November 18, 2019) (*Guizhou Tyre II* Remand) at 1-2 and 8.

¹⁴⁷ *Id.* at 8.

¹⁴⁸ *Id.*

¹⁴⁹ See GOC Case Brief at 32 (citing *Fine Furniture*).

¹⁵⁰ See *KYD, Inc. v. United States*, 607 F. 3d 760 (Fed. Cir. 2010) (finding that a collateral impact on a cooperating party does not render the application of adverse inferences in a CVD investigation improper); see also *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F. 3d 1365, 1372 (Fed. Cir. 2014) (*Fine Furniture*) (affirming Commerce's application of adverse inferences when the GOC did not provide requested information despite the respondents' cooperation).

¹⁵¹ See *Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp. 3d 1316 (CIT 2018) (*Changzhou III*) at 1325 (quoting *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1342 (CIT 2013)).

¹⁵² *Id.*

before additional information became available to Commerce regarding the program in subsequent proceedings. Specifically, as noted above, we have information regarding the 2013 Revisions and the involvement of third-party banks on the record of this case.¹⁵³ In *Changzhou II*, we did not have such information on the record.¹⁵⁴ Because the GOC has withheld critical information with respect to the 2013 Revisions, we are unable to determine how the program now operates, and, thus, we cannot verify the respondent companies' customers' certifications of non-use. Finally, with regard to the argument that Commerce must conclude that all the factual statements and information regarding the EBCP submitted by the GOC and the written confirmations of non-use provided by Qixia Changyu are accurate, we address this argument in Comment 2 below.

Comment 2: Information Submitted by the GOC and the Mandatory Respondents

Qixia Changyu's Comments

- Since Commerce has decided that it cannot conduct verification, Commerce must assume for purposes of its final determination that every factual statement submitted by the GOC and the mandatory respondents is accurate.¹⁵⁵
- The CIT has found that a “deliberate refusal to subject certain factual information to verification procedure is not the equivalent of a valid finding that ... such information ‘cannot be verified.’”¹⁵⁶

Petitioner's Rebuttal Comments

- Commerce is not required to assume that all information submitted by the respondents is complete and accurate.¹⁵⁷
- While Commerce originally intended to conduct verification, this became impossible after a Level 4 travel advisory was issued for China surrounding the COVID-19 global pandemic.¹⁵⁸
- Commerce noted that it would be relying on “facts otherwise available” to reach a final determination based on information already on the record. Furthermore, Commerce recognized that the reasons for not conducting verification were beyond its control.¹⁵⁹
- Even though Commerce is not conducting a verification, the agency is still the expert fact finder and must weigh all competing evidence that is on the record as well as consider whether the respondents and the GOC have provided full and complete answers to the agency's requests for information.¹⁶⁰

¹⁵³ See GOC IQR at Exhibit II.B.7.

¹⁵⁴ See *Changzhou II*; see also *Solar Products* IDM at Comment 11.

¹⁵⁵ See Qixia Changyu Case Brief at 6.

¹⁵⁶ *Id.* (citing *China Kingdom Import & Export Co., Ltd. v. United States*, 507 F. Supp. 2d 1337, 1341 (CIT 2007) (*China Kingdom*)).

¹⁵⁷ See Petitioner Rebuttal Brief at 3.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 3-4.

- Qixia Changyu cites to *China Kingdom* for the proposition that “a deliberate refusal to subject certain factual information to a verification procedure is not the equivalent of a valid finding that ... such information ‘cannot be verified.’” However, this reference is misleading and the cases are factually distinguishable. Here, Commerce did not deliberately refuse to verify the respondents’ and the GOC’s questionnaire responses. Instead, the agency intended to conduct verification but was ultimately prevented from doing so because of the COVID-19 global pandemic.¹⁶¹
- Where Commerce finds the record is incomplete because the GOC has refused to provide information, Commerce should rely on “facts otherwise available” with adverse inferences. Thus, Commerce’s inability to verify the respondents’ and the GOC’s questionnaire responses due to extraordinary circumstances beyond the agency’s control does not require the agency to accept the respondents’ and the GOC’s answers as accurate without thorough review of all information on the record and an evaluation of whether the answers provided are fully complete.¹⁶²

Commerce’s Position: We agree with the petitioner. Pursuant to section 776(a) of the Act, Commerce may make a determination based on facts available if, among other reasons, necessary information is missing from the record,¹⁶³ a party significantly impedes a proceeding,¹⁶⁴ or a party provides information that cannot be verified.¹⁶⁵ Here, the GOC and the mandatory respondents provided responses to many of Commerce’s questions; however, as explained above, Commerce is unable to verify these responses. Therefore, as discussed above, this final determination is based on the facts otherwise available, in accordance with section 776(a)(2)(D) of the Act. Additionally, the GOC failed to provide responses to many of Commerce’s questions.¹⁶⁶ For example, as explained in Comment 1 above, the GOC failed to respond to all of the questions in the Standard Questions Appendix for the EBCP and also failed to provide the requested 2013 Revisions. Additionally, as explained in Comment 10 below, the GOC failed to provide a complete response to Commerce’s questions regarding the input producers identified by the mandatory respondents. The failure of the GOC to provide answers to Commerce’s questions hinders Commerce’s ability to conduct a thorough analysis and significantly impedes the proceeding. Therefore, pursuant to section 776(a)(2)(C) of the Act, this provides an additional basis for Commerce to resort to facts available in this investigation for certain programs.

Furthermore, pursuant to section 776(b) of the Act, Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In the instant case, as mentioned in Comment 1 above and elsewhere in this final determination, the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information in various respects. Therefore, pursuant to section 776(b) of the Act, find that an adverse inference

¹⁶¹ *Id.* at 4.

¹⁶² *Id.* at 5.

¹⁶³ See section 776(a)(1) of the Act.

¹⁶⁴ See section 776(a)(2)(C) of the Act.

¹⁶⁵ See section 776(a)(2)(D) of the Act.

¹⁶⁶ See Commerce’s Letter, “Countervailing Duty Investigation of Certain Glass Containers from the People’s Republic of China: Supplemental Questionnaire for the Government of the People’s Republic of China,” dated January 24, 2020 (GOC First SQ); see also GOC Second SQ.

is warranted with respect to certain information for which the GOC failed to respond to Commerce's questions.

For all other information for which the GOC and the mandatory respondents did provide information pursuant to Commerce's requests, we find that since this information cannot be verified in this investigation, it is necessary to rely on section 776(a) of the Act and make our final determination based on the facts otherwise available, particularly in accordance with section 776(a)(2)(D) of the Act. However, with respect to this information, Commerce is not required to assume that every factual statement is complete and accurate simply because Commerce was unable to verify it. In particular, we agree with the petitioner that, even though this final determination is based on the facts otherwise available, this does not mean that Commerce is no longer the expert fact finder, can no longer weigh all competing evidence on the record as a whole, or can no longer consider whether the company respondents and the GOC have provided full and complete answers to Commerce's requests for information. Indeed, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) contemplates that, in a facts available scenario, including where information cannot be verified, "Commerce . . . must make {its} determination based on all evidence of record, weighing the record evidence to determine that which is the most probative of the issue under consideration."¹⁶⁷ This suggests that Commerce remains empowered to consider competing information on the record, and to draw conclusions from information submitted on the record, including where certain information suggests that particular programs constitute countervailable subsidies.

As the petitioner pointed out, it was Commerce's intention to conduct a verification; however, due to travel restrictions instituted as a result of extenuating circumstances, Commerce was unable to conduct a verification. Qixia Changyu cites to a CIT decision in which the CIT found that a "deliberate refusal to subject certain factual information to verification procedure is not the equivalent of a valid finding that . . . such information 'cannot be verified.'"¹⁶⁸ In this investigation, Commerce did not deliberately refuse to verify any factual information. Instead, Commerce's decision to not conduct verification was a result of factors outside of Commerce's control. The fact that the information submitted by the GOC and the mandatory respondents in this proceeding cannot be verified is not a result of Commerce's actions. Therefore, Commerce is not required to accept as complete and accurate all the information placed on the record by the parties.

¹⁶⁷ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994), at 869 (SAA). In addition, Commerce need not "prove that the facts available are the best alternative information. Rather, the facts available are information or inferences which are reasonable to use under the circumstances."

¹⁶⁸ See Qixia Changyu Case Brief at 6.

Comment 3: Application of AFA to Certain Non-Responsive Companies

GOC's Comments

- In the *Preliminary Determination*, Commerce confirmed that 49 of the 58 quantity and value (Q&V) questionnaires were delivered. And of the 49 companies that received the questionnaire, only two timely responded to Commerce's request for information. Accordingly, Commerce applied AFA to the 47 non-responsive companies.¹⁶⁹
- Commerce incorrectly summarized the status of delivery to and response from several Q&V questionnaire recipients. A comparison of the Delivery Memo with the list of non-responsive companies in the *Preliminary Determination* reveals that nine companies to which the Q&V questionnaires were sent were not successfully delivered and that these companies were incorrectly included in the list of non-responsive companies.¹⁷⁰
- It is evident that it was not Commerce's intention to apply AFA to companies to which Q&V questionnaires were not successfully delivered, thus, Commerce should correct this error.¹⁷¹

No parties submitted rebuttal comments on this issue.

Commerce's Position: We agree with the GOC. Commerce issued Q&V questionnaires to 58 of the 74 potential respondents that appeared in the U.S. Customs and Border Protection (CBP) data and which were identified in the Petition with a complete address.¹⁷² In our *Preliminary Determination*, we stated that of the 58 Q&V questionnaires that were sent out, 49 were successfully delivered.¹⁷³ However, after further review, we found that only 40 were actually successfully delivered. We mistakenly included nine companies in the list of non-responsive companies even though these nine companies never received our Q&V questionnaire.¹⁷⁴ Therefore, for the final determination, we have corrected our inadvertent error, and have determined not to apply AFA to an additional nine companies that did not receive our Q&V questionnaire: Asia Trade Connection, Built in China, East Asia Glass Limited, New Westgate Glass Packaging, Qingdao Jutai International Trade Co, SGS Bottle, Shandong Qingguo Foods, Unipack Glass, and Xuzhou Wan Xuan Import and Export. Instead, these companies will receive the all-others rate for the final determination. We will also correct our instructions to CBP for these nine companies.

¹⁶⁹ See GOC Case Brief at 40.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 41.

¹⁷² See PDM at 2.

¹⁷³ *Id.*

¹⁷⁴ See Memorandum, "Countervailing Duty Investigation of Certain Glass Containers from the People's Republic of China: Delivery of Quantity and Value Questionnaires," dated November 27, 2019.

Comment 4: Inclusion of Guangdong Huaxing’s Leases of Land-Use Rights in Calculation of Land-Use Rights for LTAR

Petitioner’s Comments

- Commerce should include Guangdong Huaxing’s leases of land-use rights in the benefit calculation for the final determination.
- Commerce has countervailed leases of land-use rights from government authorities in past cases.¹⁷⁵
- Commerce preliminarily found as facts available that the provision of land-use rights confers a financial contribution in the form of the provision of a good within the meaning of section 771(5)(D)(iii) of the Act and Guangdong Huaxing’s supplemental questionnaire response shows that it rents the land-use rights from certain parties.¹⁷⁶
- With regard to land ownership in China, Commerce found that with respect to the legal framework, private land ownership is still prohibited in China, and all land is still owned by some level of government: rural land by the local government or “collective” at the township or village level (referred to as “collectively owned”); urban land by the national government (referred to as ‘state-owned’).¹⁷⁷
- In citing its Land Analysis Memo,¹⁷⁸ Commerce found as facts available that the provision of land-use rights is specific pursuant to section 771(5A)(D)(i) of the Act because it is limited to certain encouraged industries.
- No record information on Guangdong Huaxing’s leases conflicts with the information that Commerce relied upon to determine that the provision of land-use rights is specific pursuant to section 771(5A)(D)(i) of the Act.
- For the industrial land rental benchmark in the Asia Marketview reports, Commerce should follow the methodology it used in the *Preliminary Determination* of inflating an average of the quarterly 2010 rental rates to the POI, using the same Thai consumer price index (CPI) on the record.

No parties submitted rebuttal comments on this issue.

Commerce’s Position: We agree with the petitioner. In addition to land purchases, Guangdong Huaxing also reported that it leased land during the POI.¹⁷⁹ Consistent with prior determinations,¹⁸⁰ we find that Guangdong Huaxing’s leased land provides a countervailable

¹⁷⁵ See, e.g., *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 21-22; see also *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480, July 15, 2008, and accompanying IDM at Comment F.12.

¹⁷⁶ See Guangdong Huaxing SQR at 8-9 and Exhibits 10, 11.

¹⁷⁷ See Petitioner Case Brief at 27 (citing Land Analysis Memo at 13-14).

¹⁷⁸ *Id.* (containing a memorandum titled “Benchmark Analysis of the Government Provision of Land-Use Rights in China for Countervailing Duty Purposes,” dated October 2, 2018).

¹⁷⁹ See Guangdong Huaxing SQR at 8-9 and Exhibits 10 and 11.

¹⁸⁰ See, e.g., *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances*

benefit. In addition, we reaffirm our finding that the governing body of a village (*i.e.*, a village committee) is a government authority.¹⁸¹ Thus, we find that the village committees and cooperatives from which Guangdong Huaxing leased land were and are “authorities” within the meaning of section 771(5) of the Act at the time of the lease agreements and throughout the POI.¹⁸² We also find the provision of land via these land leases to be specific within the meaning of section 771(5A)(D)(i), consistent with the analysis included above in the land program description in the section titled “Programs Determined to Be Countervailable.”

For the final determination, to calculate Guangdong Huaxing’s leased land benefit,¹⁸³ we used industrial rental prices for factories in Bangkok from CBRE’s “Asian Marketview Report,”¹⁸⁴ for all quarters of 2010, which we inflated to derive the 2018 benchmark. We then calculated a monthly U.S. dollar per square meter per month benchmark for 2018 and converted this benchmark price into RMB using the average annual exchange rate during the POI. We next derived the RMB per square meter per month price for each piece of Guangdong Huaxing’s leased land. We calculated a benefit for each piece of leased land by taking the difference between the benchmark price and each of Guangdong Huaxing’s reported RMB per square meter per month leased land amounts. We multiplied this difference by the amount of land leased, and then by 12, to determine the total benefit for the POI for all of Guangdong Huaxing’s leased land. We then divided this amount by the appropriate total sales denominator, as discussed in the “Subsidies Valuation” section, to determine the benefit for Guangdong Huaxing leased land. This amount was added to the benefit from Guangdong Huaxing’s purchases of land for LTAR, as described above.

On this basis, we determined a net countervailable subsidy rate of 4.40 percent *ad valorem* for Guangdong Huaxing and its cross-owned affiliates under this program.¹⁸⁵

Determination, 75 FR 57444 (September 21, 2010) (*Seamless Pipe from China*), and accompanying IDM at 22-23; *Certain Fabricated Structural Steel From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 33224 (July 12, 2019) (*FSS from China*), and accompanying PDM at 60, unchanged in *Certain Fabricated Structural Steel from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 5384 (January 30, 2020), and accompanying IDM.

¹⁸¹ See *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*Off-the-Road Tires from China*), and accompanying IDM at Comment F.12; *Light-Walled Rectangular Pipe and Tube From People’s Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) (*Pipe and Tube from China*), and accompanying IDM at Comment 5.

¹⁸² See Guangdong Huaxing’s Letter, “Certain Glass Containers from the People’s Republic of China: Section III Supplemental Questionnaire Response,” dated February 26, 2020 (Guangdong Huaxing SQR) at 8-9 and Exhibits 10 and 11.

¹⁸³ See Memorandum, “Guangdong Huaxing Glass Co. Ltd. Final Calculation Memorandum,” dated May 11, 2020 (Guangdong Huaxing Final Calc Memo).

¹⁸⁴ See Memorandum, “Certain Glass Containers from the People’s Republic of China – Countervailing Duty Investigation: Asian Marketview Report” dated January 30, 2020 (Land Benchmark Data Memo) (containing “Asian Marketview Report” pricing data).

¹⁸⁵ See Guangdong Huaxing Final Calc Memo.

Comment 5: Application of AFA for Self-Reported Programs

Petitioner's Comments

- Commerce should continue to apply AFA to the respondents' self-reported grant programs and should continue to treat all self-reported grants as a singular program.¹⁸⁶
- Commerce requested that the GOC provide a full questionnaire response regarding the "Other Subsidies" reported on behalf of the mandatory respondents or their cross-owned affiliates. However, the GOC refused to do so. Therefore, Commerce should continue to sum up all the rates calculated for each grant to arrive at a final countervailable subsidy rate for all of the self-reported grant programs.¹⁸⁷

Qixia Changyu's Rebuttal Comments

- Application of AFA to the respondents' self-reported grant programs based on the GOC's failure to provide sufficient information on these alleged programs is contrary to both U.S. and international law.¹⁸⁸ Commerce should reverse its *Preliminary Determination* regarding the self-reported programs and exclude these programs from the subsidy rates for the mandatory respondents.
- According to the regulations, if Commerce "discovers a measure" that appears to be a countervailable subsidy and was not included in the Petition, Commerce can include it in the ongoing investigation so long as "sufficient time remains before the scheduled date for the final determination." If sufficient time does not remain, the regulations direct Commerce to defer investigation of the discovered measure to a future administrative review or to allow the petitioner to withdraw and re-file its petition to include the new measure. Here, Commerce did not "discover" the program. Rather, Qixia Changyu self-reported the receipt of benefits under the catch-all section of the questionnaire entitled "Other Subsidies."¹⁸⁹
- By self-reporting these benefits, Qixia Changyu did not admit or concede that these programs were countervailable.¹⁹⁰
- Commerce's decision to apply AFA is not supported by substantial evidence because Commerce has not explained why the measures appear to be countervailable. Additionally, Commerce has not adequately examined whether there is sufficient time to include the subsidy in the investigation and render a finding backed by substantial evidence and not based entirely on AFA.¹⁹¹
- In the instant case, Commerce did not have sufficient time to fully review these programs given the cancellation of verification and the failure to extend the deadline for the final

¹⁸⁶ See Petitioner Case Brief at 28.

¹⁸⁷ *Id.* at 29.

¹⁸⁸ See Qixia Changyu Rebuttal Brief at 3.

¹⁸⁹ *Id.* at 3-4.

¹⁹⁰ *Id.* at 4.

¹⁹¹ *Id.*

determination. As a result, Commerce should defer consideration of these alleged programs until the first administrative review.¹⁹²

- Lastly, the application of AFA to the “discovered” subsidies in this case is also inconsistent with the World Trade Organization (WTO) Subsidies and Countervailing Measures (SCM) Agreement.¹⁹³ Commerce must provide a more direct inquiry supported by sufficient evidence that the alleged programs appear to be countervailable and initiate a discrete investigation of these programs.¹⁹⁴

Commerce’s Position: We disagree with Qixia Changyu’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.

Section 775(1) 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.”¹⁹⁵ 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.”¹⁹⁶ 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.¹⁹⁷ Moreover, Commerce has broad discretion to determine which information it deems relevant to its determination, and to request that information.¹⁹⁸

Thus, consistent with the CIT’s holding in *Changzhou Trina I*,¹⁹⁹ we find that Commerce’s “other assistance” question enables Commerce to effectuate its obligation to investigate subsidies

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 4-5.

¹⁹⁵ See section 775(1) of the Act (emphasis added).

¹⁹⁶ See S. Rep. No. 96-249, at 98 (1979); see also *Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d 1141, 1150n.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.”).

¹⁹⁷ See 19 CFR 351.311(a) and (c).

¹⁹⁸ See *Changzhou Trina I*, 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., *Acciai Speciali Terni S.p.A., et al., v. United States*, 26 CIT 148, 167 (CIT 2002); and *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986).

¹⁹⁹ See *Changzhou Trina I*, 195 F. Supp. 3d at 1342 (“Commerce’s inquiry concerning the full scope of governmental assistance provided by the {GOC} 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}, and this inquiry was not contrary to law.”).

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, in our Initial Questionnaire, we asked the GOC whether it provides any other form of assistance to producers or exporters of glass containers and directed the GOC to coordinate with the mandatory respondents to determine if they are reporting any usage of any subsidy program(s).²⁰⁰ The GOC responded with the following:

Sufficient evidence with regard to the existence, amount, and nature of a subsidy must be presented for the Department to initiate the investigation of another program, consistent with Article 11.2(iii). The GOC believes, therefore, that an answer to this question is premature absent a more direct inquiry supported by credible evidence and the initiation of a discrete investigation by the Department.²⁰¹

In our first supplemental questionnaire to the GOC, we again requested that the GOC provide information regarding "Other Subsidies" reported by the mandatory respondents or any of their reported cross-owned companies.²⁰² Once again the GOC refused to respond to our inquiry, stating again that the respondents and the GOC "have cooperated to the best of their ability to provide the information requested... {and that} an answer to this question is premature absent a more direct inquiry supported by credible evidence and the initiation of a discrete investigation by the Department."²⁰³ In response to our question about "other subsidies" received from the GOC, both mandatory respondents reported receiving numerous grants from the GOC.²⁰⁴ 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.²⁰⁵ Furthermore, our decision to countervail these programs is consistent with the guidelines established under section 775 of the Act and 19 CFR 351.311(b).

²⁰⁰ See Initial Questionnaire at 44.

²⁰¹ See GOC IQR at 127.

²⁰² See GOC First SQ at 5.

²⁰³ See GOC SQR at 13-14.

²⁰⁴ See Guangdong Huaxing IQR at 51; see also Qixia Changyu IQR at 57.

²⁰⁵ See PDM at 27-28.

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 Qixia Changyu 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.”²⁰⁶

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. Commerce notified the mandatory respondents of its investigation of these programs, as the respondents self-reported the programs in their initial CVD questionnaire responses.²⁰⁷ Moreover, the GOC was notified of Commerce’s investigation of these programs by Commerce’s issuance of a supplemental questionnaire concerning the programs.²⁰⁸

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

Comment 6: Inclusion of Other Business Revenue in Guangdong Huaxing’s Sales Denominators

Petitioner’s Comments

- Commerce regulations and practice require that the respondents’ sales denominators correspond with the “Entered Value” declared to CBP for subject merchandise.²⁰⁹
- Consistent with Commerce’s regulations at 19 CFR 351.525(a), Commerce should not include other business revenue in Guangdong Huaxing’s sales denominators.
- Guangdong Huaxing’s “other” income accounts include subsidy income from the GOC, rather than merely the sales of products. Including “other” income in the sales denominator results in an unreasonable increase in Guangdong Huaxing’s sales denominators.

²⁰⁶ See *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) and accompanying IDM at Comment 1; 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.

²⁰⁷ See Guangdong Huaxing IQR at 51; see also Qixia Changyu IQR at 57.

²⁰⁸ See Initial Questionnaire at 44 and GOC First SQ at 5.

²⁰⁹ See Petitioner Case Brief at 29.

No parties submitted rebuttal comments on this issue.

Commerce’s Position: We agree with the petitioner. However, based on record evidence, the sales denominators Commerce used to calculate benefits for self-reported programs do not contain “other” business income. Specifically, in Guangdong Huaxing’s and each of its cross-owned companies excel benefit calculation spreadsheets, it is clear that sales value is used in Guangdong Huaxing’s sales denominator, net of any “other” income amounts.²¹⁰ For instance, in Guangdong Huaxing’s excel benefit calculation spreadsheet, cell R19 in the “Sales” tab, contains “Other Business Revenue.” The amount of “Other Business Revenue” is not used in Guangdong Huaxing’s generation of its sales denominator used for its benefit calculations. Accordingly, for the final determination, we have made no change to Guangdong Huaxing’s final sales denominator calculations.²¹¹

Comment 7: Whether Commerce Should Countervail the Entire Amount of Guangdong Huaxing’s Self-Reported Subsidy²¹²

Petitioner’s Comments

- Guangdong Huaxing reports receiving a lump sum payment of certain funds from a Chinese district during the POI.²¹³
- Guangdong Huaxing should not be allowed to record receipt of this payment in installments; Commerce should include this entire payment in its POI calculations.

No parties submitted rebuttal comments on this issue.

Commerce’s Position: We agree with the petitioner. However, based on record evidence, the entire amount of this payment is included in our grants benefit calculation. Specifically, in Guangdong Huaxing’s excel benefit calculation spreadsheet, in the “Grants” tab, the entire amount of the payment in question is included in cell C98. Accordingly, for the final determination, we have made no change to Guangdong Huaxing’s final sales denominator calculations.²¹⁴ We note that the benefit amount is measurable.²¹⁵

Comment 8: Qixia Changyu Creditworthiness

Petitioner’s Comments

- While Commerce deferred a full examination of creditworthiness of Qixia Changyu and its cross-owned affiliate Yantai Changyu Glass Co., Ltd. (Yantai Changyu), Commerce

²¹⁰ See Guangdong Huaxing Final Calc Memo.

²¹¹ *Id.*

²¹² The name of the specific program is proprietary. See Petitioner Case Brief at 31 for the name of the program.

²¹³ Due to the proprietary nature of this argument see Petitioner Case Brief at 31.

²¹⁴ See Guangdong Huaxing Final Calc Memo.

²¹⁵ *Id.*

can rely on facts available to determine that Qixia Changyu and Yantai Changyu are uncreditworthy.²¹⁶

- Qixia Changyu and Yantai Changyu received long-term loans despite negative financial health. Qixia Changyu and Yantai Changyu received financing from government-controlled banks. However, these two companies' financial ratios demonstrate poor short term solvency.²¹⁷
- Despite the fact that Qixia Changyu and Yantai Changyu pose a high risk due to their lack of liquidity, they received loans from state-controlled banks without providing an application. As such, Commerce should rely on facts available to determine that Qixia Changyu and Yantai Changyu were uncreditworthy during the POI.²¹⁸

Qixia Changyu's Rebuttal Comments

- Commerce was correct to defer this issue to the first administrative review and should reject the petitioner's argument to rely on facts available to determine that Qixia Changyu and Yantai Changyu were uncreditworthy during the POI.²¹⁹
- Commerce never accepted the petitioner's allegation of uncreditworthiness and never issued Qixia Changyu a supplemental questionnaire requesting the information required by Commerce to make a creditworthiness determination.²²⁰
- Commerce has already decided to defer consideration of this issue until the first administrative review. There is insufficient time to investigate this allegation because the final determination is due on May 11, 2020 and the petitioner has declined to request that the deadline be aligned with the deadline for the final determination in the parallel antidumping duty investigation.²²¹
- It is unreasonable for the petitioner to request that Commerce investigate Qixia Changyu and Yantai Changyu's creditworthiness, refuse to request an extension of the deadline for the final determination so that Commerce has sufficient time to consider and investigate the allegation, and then request that Commerce find Qixia Changyu and Yantai Changyu to be uncreditworthy based on a record that is incomplete due to the petitioner's own litigation strategy.²²²
- Commerce has not even determined that the factual information cited by the petitioner is sufficient to support an allegation, let alone a final affirmative determination. Even if the record is sufficient to support an allegation of uncreditworthiness, Commerce does not have sufficient evidence to support an affirmative final determination which is supported by substantial evidence.²²³

²¹⁶ See Petitioner Case Brief at 31.

²¹⁷ *Id.* at 31-32.

²¹⁸ *Id.* at 32-33.

²¹⁹ See Qixia Changyu Rebuttal Brief at 8.

²²⁰ *Id.* at 5.

²²¹ *Id.*

²²² *Id.* at 6.

²²³ *Id.*

Commerce’s Position: We agree with Qixia Changyu. As we have already explained,²²⁴ an investigation into creditworthiness is a complex and time-consuming undertaking. We have also stated in prior investigations²²⁵ that analyzing an allegation of creditworthiness is highly complex and requires in-depth analysis of a firm’s past and present financial health (*e.g.*, debt-to-asset ratios, debt-to-equity ratios, quick ratios), a firm’s past and present ability to meet its financial obligations, and evidence of a firm’s future financial position, among other factors. Moreover, we cannot unilaterally make a decision on creditworthiness for this final determination without allowing all parties ample time to submit information and argument regarding this issue, as the petitioners seem to propose. For these reasons, Commerce did not have adequate time to review the petitioner’s creditworthiness allegation in this investigation. However, in the event that this investigation results in a CVD order, we will, if requested, investigate this uncreditworthiness allegation as part of a future administrative review of Qixia Changyu.

Comment 9: Input Benchmarks for Ocean Freight

Petitioner’s Comments

- Guangdong Huaxing provided ocean freight benchmark information from Maersk and Descartes, which provide monthly container rates during the POI for international ocean freight from Los Angeles to Shanghai and New York to Qingdao.
- The Maersk and Descartes ocean freight benchmark information is publicly available and refers to the same size and weight of container as the Xeneta information used by Commerce in the *Preliminary Determination*.
- Including shipping rates from the United States provides a more accurate reflection of the prices Chinese firms would expect to pay for ocean freight by importing inputs from a global market.
- Commerce should include the ocean freight data for shipments from Los Angeles to Shanghai and New York to Qingdao, when developing its global price under its tier-two benchmark and should average these two rates with the rates Commerce relied on in the *Preliminary Determination*.
- Maersk and Descartes data is the only ocean freight data that satisfies Commerce’s regulatory criteria. 19 CFR 351.102(b)(21)(iii) requires the information used by Commerce to assess the adequacy of remuneration to be “publicly available,” whereas Xeneta data are proprietary.
- Pursuant to 19 CFR 351.511(a)(2)(ii), where there are multiple commercially available world market prices, Commerce will average these record prices to develop its world market price.
- Global market price benchmarks are not intended to reflect the purchasing experiences of the respondents, but rather, should reflect the experience of a hypothetical firm located in China that purchased the input during the POI.
- Pursuant to 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under “tier two,” Commerce must adjust the benchmark price to reflect the price that a

²²⁴ See NSA & Creditworthiness Memo.

²²⁵ See *Seamless Pipe from China* IDM at Comment 28.

firm actually paid or would pay if it imported the product; Xeneta data are not actual price quotes.

- Commerce regulations express a preference for “world market prices” under tier two, whereas the Xeneta data only includes freight charges specific to Asian routes.
- Xeneta data includes different types of handling charges for some routes but not all which is inconsistent with Commerce practice.
- To the extent Commerce inappropriately finds that Xeneta data should be used in its benchmark calculations, it should average all sources of global shipping data on the record, including Xeneta, Maersk, and Descartes data.

Guangdong Huaxing’s Rebuttal Comments

- The record contains Descartes ocean freight data but not Maersk ocean freight data. The Maersk ocean freight information relates to standard equipment guide that delineates the standard weight of containers for Commerce’s reference in calculating a per kilogram freight rate.
- In arguing that Xeneta data is proprietary, the petitioner wrongly equates publicly available with public on the record. Commerce has a well-established understanding that publicly available means that any party could obtain the data, even if for a subscription fee.²²⁶
- The petitioner is incorrect that Descartes ocean freight data is more representative of world market prices. Descartes data only represents one route, from Long Beach, CA to Shanghai, China using 2004 data and, thus, is not more representative than the multiple Asian routes found in the Xeneta ocean freight data.
- Commerce’s regulation does not merely indicate that the price should be a world market price as petitioner argues. 19 CFR 351.511(a)(2)(ii) provides that the world market price should be reasonably representative of prices that would be available to purchasers in China and when averaging multiple sources, must make “due allowance for factors affecting comparability.”
- 19 CFR 351.511(a)(2)(iv), in discussing delivered prices, also states Commerce will “adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product.” China is located in Asia and it is most reasonable and reflective of the purchasing situation in China to use major routes in the region.
- Commerce has relied upon Xeneta in multiple recent reviews and investigations finding it fulfilled all of Commerce’s requirements, including public-availability and representativeness of world market prices.²²⁷

²²⁶ See Guangdong Huaxing Rebuttal Case Brief at 12 (citing *Laminated Woven Sacks Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) and accompanying IDM at 75 and *Jining Yongjia Trade Co. v. United States*, 34 C.I.T. 1510, 1523 (2010) (agreeing with Commerce’s determination that APMC data is publicly available even though not available on the website because they can be obtained in person at the source by request)).

²²⁷ See Guangdong Huaxing Rebuttal Case Brief at 13 citing *Certain Crystalline Silicon Photovoltaic Products Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014-2015*, 82 FR 42792 (September 12, 2017); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules Final Results of Countervailing Duty Administrative Review and*

- However, if Commerce determines to average Xeneta and Descartes data, Commerce should only count the Descartes data as one USA-China route in averaging the five routes in the Xeneta data.

Commerce’s Position: We agree with the petitioner and will average Xeneta ocean freight data with Descartes ocean freight data for the final determination. As an initial matter, we note that there is no Maersk ocean freight data on the record. Guangdong Huaxing provided only Maersk ocean freight information that relates to standard equipment guide that delineates the standard weight of containers for Commerce’s reference in calculating a per kilogram freight rate, not actual ocean freight rates.²²⁸ Therefore, the only ocean freight data on the record, apart from Xeneta data, is Descartes ocean freight data.²²⁹

Commerce notes that the Descartes ocean freight data submitted by Guangdong Huaxing contains two ocean freight routes, (1) from Long Beach, CA to Shanghai, China, and (2) from New York NY to Qingdao, China which are both contemporaneous with the POI.²³⁰ Therefore, Commerce has ocean freight data on the record from Xeneta and Descartes.

Further, because of Commerce’s use of Xeneta ocean freight data in recent proceedings,²³¹ as noted by Guangdong Huaxing, we disagree with the petitioner that Xeneta data is inappropriate to value ocean freight due to: (1) the proprietary nature of the data; (2) including extra handling charges in certain routes; (3) not being comprised of actual price quotes; and (4) only representative of Asian routes. With regard to whether Xeneta data is proprietary, we disagree. Xeneta data is a pay for service subscription service, meaning any party can access the information if they pay for the service.²³² In this respect Xeneta is not proprietary but public in nature. Accordingly, pursuant to 19 CFR 351.102(b)(21)(iii), which requires the information used by Commerce to assess the adequacy of remuneration to be “publicly available,” Commerce considers Xeneta data to be public information.

We acknowledge the cases cited by the petitioner; however, these cases are based strictly on the record evidence of those proceedings. Further, in the time since the decisions in both *Aluminum Foil from China Final Determination* and *CTL Plate from China*, Commerce has further evaluated Xeneta data and found it to meet our regulatory requirements under 19 CFR

Rescission of Review, in Part; 2016, 84 FR 45125 (August 28, 2019); and *Ceramic Tile Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 48125 (September 12, 2019) (*Ceramic Tile Preliminary Determination*).

²²⁸ See Guangdong Huaxing’s Letter, “Certain Glass Containers from the People’s Republic of China: Benchmark Submission,” dated January 27, 2020, (Guangdong Huaxing Benchmark Submission) at Exhibit 6.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ See *Ceramic Tile Preliminary Determination* PDM at 13, unchanged in *Ceramic Tile From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, and Final Negative Critical Circumstances Determination*, 85 FR 19440 (April 7, 2020) (*Ceramic Tiles Final Determination*) and accompanying IDM.

²³² See *Laminated Woven Sacks Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) and accompanying IDM at 75.

351.511(a)(2)(iv) in other proceedings.²³³ Specifically, in *Solar Cells 2016*, Commerce found that not only does Xeneta ocean freight data consistently contain terminal handling charges, Xeneta data also represents a “commercially available world market price.”²³⁴

Moreover, Commerce has used both Xeneta and Descartes ocean freight data in past cases, finding both sources appropriate for calculating ocean freight.²³⁵ Accordingly, and pursuant to 19 CFR 351.511(a)(2)(ii), where there are multiple commercially available world market prices, Commerce will average these record prices to the extent practicable to develop its world market prices.²³⁶ Therefore, for the final determination, we have determined to use both Xeneta and Descartes freight data for calculating ocean freight, by averaging each Descartes ocean freight route with the five Xeneta ocean freight routes used for the *Preliminary Determination*.²³⁷

We note that the petitioner included a reference to Commerce’s decision to reject the Petitioner Benchmark Submission, arguing that Commerce should reconsider its decision.²³⁸ Commerce rejected the petitioner’s benchmark submission because it was untimely filed.²³⁹ In the Commerce Benchmark Rejection Letter, we explained that the petitioner’s extension request to file its benchmark information was untimely and cited to the *Initiation Notice* for this proceeding and to the Preamble, both of which explain that “for submissions that are due from multiple parties at the same time, extension requests are considered untimely if filed after 10:00 a.m. ET on the due date.”²⁴⁰ As explained in the Commerce Benchmark Rejection Letter, the petitioner failed to meet its obligations under both the *Initiation Notice* and the Preamble as they relate to simultaneous filings due from multiple parties.²⁴¹ We have no reason to deviate from the decision made in the Commerce Benchmark Rejection Letter. Further, because Commerce has

²³³ See *Certain Crystalline Silicon Photovoltaic Products Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014-2015*, 82 FR 42792 (September 12, 2017) (*Solar Cells 2014*); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules Final Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2016*, 84 FR 45125 (August 28, 2019) (*Solar Cells 2016*); *Ceramic Tile Preliminary Determination*, and accompanying PDM at 13, unchanged in *Ceramic Tile Final Determination IDM*; *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 Rescission of Review, in Part; 2017*, 85 FR 7727 (February 11, 2020) (*Solar Cells Prelim 2017*).

²³⁴ See *Solar Cells 2016* IDM at Comment 7.

²³⁵ See *Solar Cells 2014*, *Solar Cells 2016*, and *Solar Cells Prelim 2017*.

²³⁶ See *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 Rescission of Review, in Part; 2016*, 84 FR 45125 (August 28, 2019) and accompanying IDM at Comment 7.

²³⁷ See Guangdong Huaxing Final Calc Memo.

²³⁸ See Petitioner Case Brief at 33, FN 159.

²³⁹ See Commerce’s Letter, “Investigation of Certain Glass Containers from the People’s Republic of China: Denial of Request for Extension of Time to Submit Benchmark Information,” dated February 21, 2020 (Commerce Benchmark Rejection Letter), rejecting Petitioner’s Letter, “Glass Containers from the People’s Republic of China: Submission of Benchmark Information,” dated January 28, 2020 (Petitioner Benchmark Submission).

²⁴⁰ See Commerce Benchmark Rejection Letter (citing *Certain Glass Containers from the People’s Republic of China: Initiation of Countervailing Duty Investigation*, 84 FR 56168, 56170-71 (October 21, 2019) and *Extension of Time Limits*, 78 FR 57790, 57792 (September 20, 2013)).

²⁴¹ See Commerce Benchmark Rejection Letter at 2.

commercially available world market prices on the record for calculating benefits, we will continue to use the benchmark sources already on the record.

Comment 10: Whether Commerce Should Apply AFA to the Provision of Inputs for LTAR

Financial Contribution

GOC's Comments

- In the *Preliminary Determination*, Commerce found, as AFA, that each of the respondents' input suppliers were government authorities. This finding is not based on substantial evidence and is otherwise not in accordance with the law.²⁴²
- To be consistent with the statute, Commerce's AFA findings must satisfy three criteria: (1) it must identify a gap in the record; (2) it must identify how the offending party failed to cooperate to the best of its ability; and (3) the application of AFA to each element of the subsidy analysis must be supported by substantial evidence. An adverse inference cannot be applied unless it is appropriate to use "facts otherwise available."²⁴³
- Commerce found each of the mandatory respondents' soda ash, silica sand, and limestone producers to be "government authorities" despite the fact that many are wholly-owned by individuals.²⁴⁴
- Commerce determined that AFA was warranted because the GOC did not sufficiently answer questions regarding the Chinese Communist Party (CCP) and the "nine entities."²⁴⁵ However, record evidence demonstrates that even if one of the owners or managers of these individually-owned companies were part of the nine entities or if they had primary party organizations, this would not convert the companies into government authorities.²⁴⁶
- The logic, analysis, and conclusion in Commerce's Public Bodies Memorandum,²⁴⁷ which forms the basis of its *Preliminary Determination*, is incorrect. The CCP is not a political party or a government authority. Political parties in China are independent entities unrelated to any government functions.²⁴⁸

²⁴² See GOC Case Brief at 20.

²⁴³ *Id.* at 3-4.

²⁴⁴ *Id.* at 20.

²⁴⁵ See Initial Questionnaire at 56-57 (Commerce understands that for each level of government, *i.e.*, central, provincial, municipal, county, township, and village, there are corresponding (1) Chinese Communist Party (CCP) Congresses, (2) CCP Committees, (3) CCP Standing Committees, (4) People's Congresses, (5) Standing Committees of People's Congresses, (6) other government administration entities, including village committees, (7) the Chinese People's Political Consultative Conferences (CPPCC), and (8) the Discipline Inspection Committees of the CCP. Commerce also understands that, in accordance with the CCP Constitution, a (9) CCP committee, branch, or "primary organization" needs to be formed with any enterprise with three or more party members, regardless of state-ownership.).

²⁴⁶ See GOC Case Brief at 20.

²⁴⁷ See Memorandum, "Certain Glass Containers from the People's Republic of China – Countervailing Duty Investigation," dated January 30, 2020 (Public Bodies Memorandum).

²⁴⁸ See GOC Case Brief at 20-21.

- Commerce determined that the GOC failed to cooperate when it failed to respond to whether the individuals in the individually-owned companies are CCP officials or whether these companies have primary party organizations.²⁴⁹ Commerce made this finding despite the fact that (1) CCP officials cannot be a part of individually-owned companies, (2) that companies are governed by the Company Law and the Civil Servant Law, and (3) the CCP cannot control individually-owned companies through primary party organizations.²⁵⁰
- Commerce has never before encountered a factual circumstance where an individually-owned company was considered a government authority. And yet, Commerce has determined that such a circumstance exists in the instant case. This finding is unlawful and unreasonable and should be changed for the final determination.²⁵¹

Petitioner's Rebuttal Comments

- Commerce should continue to find, based on facts available or AFA, that input producers of soda ash, silica sand, and limestone, including those that the GOC claims are privately-owned, are “authorities” pursuant to section 771(5)(B) of the Act.²⁵²
- In its arguments, the GOC mischaracterizes Commerce’s reasoning to apply AFA. Commerce did not find that the GOC failed to provide requested information on the role of the CCP only. Rather, the GOC did not even provide underlying documents requested by Commerce that are necessary to determine the corporate structure and ownership of these companies.²⁵³
- In *Cast Iron Soil Pipe from China*, Commerce applied AFA when, similar to the facts here, the “GOC provided summary data denoting the business registration information and basic shareholder information for a number of producers, but did not provide detailed information (*e.g.*, company by-laws, articles of incorporation, licenses, capital verification reports, *etc.*) that was specifically requested by Commerce.”²⁵⁴
- Enterprises in which the government maintains less than controlling ownership interests, including no ownership interests, may be authorities where additional evidence such as industrial policy plans or government and CCP presence suggests that the government exercises meaningful control or that the enterprise is being used to carry out government functions.²⁵⁵
- The GOC disputes the conclusions of Commerce’s Public Bodies Memorandum, but offers no evidence to reverse Commerce’s findings in this memorandum.²⁵⁶

²⁴⁹ *Id.* at 27.

²⁵⁰ *Id.*

²⁵¹ *Id.* at 27-28.

²⁵² See Petitioner Rebuttal Brief at 13-14.

²⁵³ *Id.* at 14.

²⁵⁴ *Id.* at 14-15 (citing *Cast Iron Soil Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 6770 (February 28, 2019) (*Cast Iron Soil Pipe from China*), and accompanying IDM).

²⁵⁵ *Id.* at 16.

²⁵⁶ *Id.*

- The GOC also claims that “whether or not the GOC responded to these {CCP} questions is irrelevant because the information is no longer ‘necessary’ under the statute.”²⁵⁷ However, Commerce has rejected this argument in past cases.²⁵⁸
- Finally, Commerce correctly found that the GOC failed to cooperate when it refused to respond to whether the individually-owned companies are influenced or managed by CCP officials or whether these companies have primary party organizations.²⁵⁹
- In the *Preliminary Determination*, Commerce did not determine that the GOC failed to cooperate on this issue. Rather, in consideration of an outstanding questionnaire to the GOC with a due date after the date of the *Preliminary Determination*, Commerce found that insufficient information was on the record to determine whether the producers are authorities pursuant to section 771(5)(B) of the Act. Therefore, Commerce, citing the Public Bodies Memorandum, relied on “facts otherwise available,” pursuant to sections 776(a)(1) and (a)(2)(A) and (C) of the Act, to determine that these producers are authorities.²⁶⁰
- In response to requests from Commerce to provide a full response to the Input Producer Appendix of Commerce’s Initial Questionnaire for each producer of silica sand, soda ash, and limestone associated with the mandatory respondents and their cross-owned affiliates, the GOC responded that it had already submitted all information on all input producers of the mandatory respondents, except for certain updates to the English translations of the producers’ names. Thus, Commerce now has even more of a basis to find that the GOC failed to provide necessary information. Therefore, Commerce should continue to apply “facts otherwise available,” pursuant to sections 776(a)(1) and (a)(2)(A) and (C) of the Act, to determine that these producers are “authorities,” or a determination that these producers are authorities as a result of the application of AFA pursuant to section 776(b) of the Act.²⁶¹

Commerce’s Position: In the *Preliminary Determination*, we found, based on facts otherwise available, that the producers of soda ash, silica sand, and limestone utilized by the mandatory respondents are “authorities” within the meaning of section 771(5)(B) of the Act.²⁶² We made this decision due to a lack of complete information from the GOC in response to our questions. Therefore, the premise of the GOC’s argument that Commerce applied AFA on this issue in the *Preliminary Determination* is incorrect. After the *Preliminary Determination*, the GOC submitted a response to Commerce’s outstanding supplemental questionnaire which contained questions regarding the provision of soda ash, silica sand, and limestone for LTAR. For the reasons detailed below, for the final determination, we continue to find that the producers of soda ash, silica sand, and limestone utilized by the mandatory respondents are “authorities” within the meaning of section 771(5)(B) of the Act and, thus, that such producers provided a financial

²⁵⁷ *Id.*

²⁵⁸ *Id.* at 17 (citing *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 11962 (February 28, 2020) (*Cabinets from China*) and accompanying IDM at comment 6 and *Refillable Stainless Steel Kegs from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, in Part*, 84 FR 57005 (October 24, 2019) (*Steel Kegs from China*) and accompanying IDM at comment 1).

²⁵⁹ *Id.* at 18.

²⁶⁰ *Id.*

²⁶¹ *Id.* at 18-19.

²⁶² *See* PDM at 17-19.

contribution in supplying these inputs to the respondents within the meaning of section 771(5)(D)(i) of the Act. However, rather than being based on neutral facts available, due to the GOC's failure to respond to our requests for information, for the final determination, we find that an adverse inference is also warranted in selecting from among the facts otherwise available in reaching our determination on this issue.

As discussed in the *Preliminary Determination* under “Application of Facts Available: Input Producers are ‘Authorities,’” in order to analyze whether the domestic producers that supplied soda ash, silica sand, and limestone to the mandatory respondents are “authorities” within the meaning of section 771(5)(B) of the Act, we sought information regarding the ownership of the input producers identified by the mandatory respondents.²⁶³ 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.²⁶⁴ Moreover, we requested information concerning whether any individual owners, board members, or senior managers involved with these producers were either government or CCP officials, and the role of any CCP primary organization within the producers.²⁶⁵ 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.²⁶⁶

The GOC has objected to Commerce's questions regarding the role of CCP officials and organizations in the management of and operations of input suppliers. However, we have explained our understanding of the CCP's involvement in China's economic and political structure.²⁶⁷ Commerce has determined that “available information and record evidence indicates that the CCP meets the definition of the term ‘government’ . . . for the limited purpose of applying the U.S. CVD law to China.”²⁶⁸ Additionally, publicly available information indicates that Chinese law requires the establishment of CCP organizations “in all companies, whether state, private, domestic, or foreign-invested” and that such organizations may wield a controlling influence in the company's affairs.²⁶⁹

The GOC's response to our requests for information, or lack thereof, is fully described in the *Preliminary Determination*.²⁷⁰ Regarding the input producers identified by the mandatory respondents, the GOC did not provide a complete response to Commerce's questions regarding these producers. When asked to provide detailed information (*e.g.*, company by-laws, articles of incorporation, licenses, capital verification reports, *etc.*) for all majority government-owned enterprises that produced the soda ash, silica sand, and limestone purchased by the mandatory

²⁶³ *Id.*

²⁶⁴ *Id.* at 18; *see also* Initial Questionnaire at Input Producers Appendix.

²⁶⁵ *See* Initial Questionnaire at Input Producers Appendix.

²⁶⁶ *Id.*

²⁶⁷ *See, e.g., Carbon and Alloy Steel Threaded Rod From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 8833 (February 18, 2020), and accompanying IDM at 15-16.

²⁶⁸ *See* Public Bodies Memorandum.

²⁶⁹ *Id.*

²⁷⁰ *See* PDM at 17-19.

respondents during the POI, for soda ash and silica sand, the GOC “only provided the detailed ownership and registration information for wholly privately owned companies that have no state-ownership and which are ultimately owned by private individuals.”²⁷¹ With regard to limestone, the GOC did not indicate whether it provided this information for majority government-owned enterprises as well as privately-owned enterprises.²⁷² Moreover, the GOC provided only summary data denoting the business registration information and basic shareholder information for a number of producers, but did not provide the detailed information that was specifically requested by Commerce.²⁷³ Nor did the GOC elect to supplement its initial filing when Commerce presented it with a second opportunity to respond.²⁷⁴

The GOC stated in its initial questionnaire response, and reiterated in its case brief, that the information obtained from the Enterprise Credit Information Publicity System (ECIPS) “is authoritative evidence of the ownership structure of enterprises in China,”²⁷⁵ suggesting this was sufficient to understand the ownership structure of these producers. However, the ownership structure and basic registration information that the GOC provided does not indicate whether the owners and shareholders of the companies have any CCP involvement.²⁷⁶ And while the GOC provided a long narrative explanation of the role of the CCP, when asked to identify any owners, members of the board 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 informational database to search for the requested information.”²⁷⁷ Furthermore, in its initial questionnaire response, the GOC stated that “the facts below and related WTO jurisprudence demonstrates that the ‘nine entity’ questions are irrelevant to this proceeding and do not get to whether the suppliers at issue are ‘public bodies’ for the purposes of the Department’s LTAR analysis.”²⁷⁸ However, based on our analysis of these responses, we find that these responses lack the necessary information Commerce requested and hinder Commerce’s ability to determine whether the producers constitute “authorities.”

The information we requested regarding the role of CCP officials in the management and operations of these producers is necessary to our determination of whether these producers are “authorities” within the meaning of section 771(5)(B) of the Act. Commerce considers information regarding the CCP’s involvement in China’s economic and political structure to be relevant because public information suggests that the CCP exerts significant control over activities in China and is part of the governing structure in China.²⁷⁹ As explained in the Public Bodies Memorandum, record evidence demonstrates that producers in China that are majority-owned by the government, possess, exercise, or are vested with, governmental authority.²⁸⁰ Record evidence also demonstrates that the GOC exercises meaningful control over these entities

²⁷¹ See GOC IQR at 60-61 and 91.

²⁷² *Id.* at 109.

²⁷³ *Id.* at Exhibits II.E4.1, II.E4.2, II.E5.1, II.E5.2, II.E6.1, and II.E6.2.

²⁷⁴ See GOC SQR.

²⁷⁵ See GOC IQR at 61.

²⁷⁶ *Id.* at Exhibits II.E4.1, II.E4.2, II.E5.1, II.E5.2, II.E6.1, and II.E6.2.

²⁷⁷ See GOC IQR at 77.

²⁷⁸ *Id.* at 67.

²⁷⁹ See Public Bodies Memorandum.

²⁸⁰ *Id.*

and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.²⁸¹

Therefore, we determine that necessary information is not available on the record, and that the GOC withheld information that was requested of it with regard to purchases by the mandatory respondents. Accordingly, Commerce must rely on facts otherwise available in reaching a determination in this respect. Furthermore, we find that the GOC failed to cooperate by not acting to its ability to comply with requests for information regarding the ownership and CCP and government involvement in the management of producers of soda ash, silica sand, and limestone from whom the mandatory respondents purchased said inputs during the POI. Consequently, we find that an adverse inference in selecting from the facts available is warranted in the application of facts available. As AFA, and in light of our prior findings and the GOC's failure to provide rebuttal information to the contrary, we determine that any majority government-owned input producers that supplied Guangdong Huaxing and Qixia Changyu are "authorities" within the meaning of section 771(5)(B) of the Act.

In prior CVD proceedings, we found that the GOC was able to obtain the requested information independently regarding the companies involved, and thus we found that statements from company respondents, rather than from the GOC, were insufficient.²⁸² In the instant case, however, we have received responses regarding CCP involvement only from the mandatory respondents, and not from the GOC.

In addition, we disagree with the GOC that it provided Commerce with sufficient information to determine whether any of the mandatory respondents' input producers are privately-owned entities. We explained in the *Preliminary Determination* that the GOC's responses to the Input Producer Appendix for the inputs being investigated were deficient, and that the information supplied from ECIPS was not sufficient for our analysis of whether the input producers identified by the mandatory respondents are "authorities" under the Act.²⁸³ 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. For the reasons described above, for the final determination, we find that the GOC failed to provide on the record information necessary for Commerce to analyze whether the respondents' input producers are authorities.

Therefore, we find that necessary information is missing from the record, and that the GOC withheld necessary information that was requested of it and significantly impeded this proceeding, pursuant to section 776(a)(1) and (a)(2)(A) and (C) of the Act. Therefore, we must rely on facts otherwise available in conducting our analysis of the respondents' input producers. Moreover, as a result of incomplete responses to Commerce's questionnaires received following the *Preliminary Determination*,²⁸⁴ we also 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

²⁸¹ *Id.*

²⁸² See *China Citric Acid 2012 Review* IDM at Comment 5.

²⁸³ See PDM at 18.

²⁸⁴ See GOC IQR at 67-74, 96-100, and 114-118; see also GOC SQR, Part 2 at 23, 26, and 28.

that an adverse inference is warranted in selecting from the facts available, pursuant to section 776(b)(1)(A) of the Act. 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 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,²⁸⁵ 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. Thus, for the final determination, we find, as AFA, that the input producers of soda ash, silica sand, and limestone, which supplied the respondents, are "authorities" within the meaning of section 771(5)(B) of the Act.

Specificity

GOC's Comments

- In the *Preliminary Determination*, Commerce found, as AFA, that the provision of soda ash, silica sand, and limestone for LTAR is specific. This finding is not based on substantial evidence and is otherwise not in accordance with law.²⁸⁶
- To be consistent with the law, Commerce's AFA findings must satisfy three criteria: (1) it must identify a gap in the record; (2) it must identify how the offending party failed to cooperate to the best of its ability; and (3) the application of AFA to each element of the subsidy analysis must be supported by substantial evidence. An adverse inference cannot be applied unless it is appropriate to use "facts otherwise available."²⁸⁷
- Commerce applied AFA to the GOC for its failure to provide the requested specificity information on the volume and value of each industry that used soda ash, silica sand, or limestone. However, the GOC explained, as it has done in every CVD proceeding, that it does not collect or maintain the requested specificity information. The Court of Appeals for the Federal Circuit (Federal Circuit) has held that Commerce cannot penalize a party for not being able to provide information that it does not have.²⁸⁸
- Therefore, any finding that the GOC did not cooperate to the best of its ability is nothing more than a conclusory statement without any basis in fact. For the final determination, Commerce should reverse its "facts otherwise available" finding with respect to specificity.²⁸⁹

²⁸⁵ See Public Bodies Memorandum.

²⁸⁶ See GOC Case Brief at 20.

²⁸⁷ *Id.* at 3-4.

²⁸⁸ *Id.* at 7-8 (citing *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1572 (Fed. Cir. 1990) ("while Commerce has broad discretion in applying an adverse inference, it may not "characterize a party's failure to list and give details of sales as a 'refusal' or 'inability' to give an answer where, in fact, there are no sales.")).

²⁸⁹ *Id.* at 9.

Petitioner's Rebuttal Comments

- The GOC's response with regard to specificity in this investigation includes the same deficient responses to Commerce's questionnaires as it has in prior proceedings in which Commerce found the application of AFA to be appropriate in this regard.²⁹⁰
- The GOC has provided no basis on which Commerce should find that it cooperated to the best of its abilities.²⁹¹ Commerce requested that the GOC provide a list of industries, volume, and value information for purchases of soda ash, silica sand, and limestone. However, the GOC did not provide this information in its initial or supplemental questionnaire response.²⁹²
- Since the GOC has not provided the requested information about whether its provision of soda ash, silica sand, and limestone is specific, the record 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. Therefore, Commerce should continue to find that the provision of these inputs for LTAR is specific.²⁹³

Commerce's Position: In the *Preliminary Determination*, we relied on facts otherwise available, pursuant to sections 776(a)(1) and (a)(2)(A) and (C) of the Act, to determine that the provision of soda ash, silica sand, and limestone for LTAR is *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act. Therefore, as an initial matter, the premise of the GOC's argument that we applied AFA in the *Preliminary Determination* in this regard is mistaken.²⁹⁴ As explained in the *Preliminary Determination*, we sought information from the GOC that would allow us to determine whether the provision of inputs for LTAR is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act; however, the GOC did not adequately provide information requested by Commerce.²⁹⁵ Specifically, we requested the GOC to “{p}rovide 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.”²⁹⁶ While the GOC did provide domestic consumption amounts, it did not provide information regarding the industries in China that purchase soda ash, silica sand, and limestone, stating that it is still collecting this information for soda ash and limestone and that neither the State Statistics Bureau (SSB) nor any relevant industry associations collect silica sand production data.²⁹⁷ Therefore, we issued a supplemental questionnaire to the GOC addressing this issue.²⁹⁸ Due to the fact that the responses for these supplemental questionnaires were due after the date of our *Preliminary Determination*, as stated

²⁹⁰ See Petitioner Rebuttal Brief at 20.

²⁹¹ *Id.* (citing *Steel Propane Cylinders from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 54086 (October 26, 2018) (*Steel Propane Cylinders from China Prelim*) and accompanying PDM at 30 (unchanged in *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*)).

²⁹² *Id.* at 21.

²⁹³ *Id.* at 21-22.

²⁹⁴ See PDM at 20.

²⁹⁵ *Id.*

²⁹⁶ *Id.* (citing Initial Questionnaire at 11, 15, 18, and 21).

²⁹⁷ See GOC IQR at 85, 105, and 124 (the GOC did not provide this information for pig iron because neither of the mandatory respondents reported purchasing pig iron during the POI).

²⁹⁸ See GOC Second SQ at 6-8.

above, for the *Preliminary Determination*, we relied on facts otherwise available pursuant to section 776(a) of the Act as to the specificity of these programs.²⁹⁹

In our supplemental questionnaire to the GOC, we once again requested that the GOC provide a list of the industries in China that purchase soda ash, silica sand, and limestone directly as well as the amounts purchased by the industry in which the mandatory respondents operate and the totals purchased by every other industry.³⁰⁰ The GOC responded that it does not collect or maintain statistics on the purchase volume of soda ash, silica sand, and limestone on an industry basis, and thus cannot provide the required list of industries in China that purchase soda ash, silica sand, and limestone directly, or the amounts purchased by these industries.³⁰¹ As we have stated in previous cases, we find the GOC's assertions to be insufficient inasmuch as the GOC has not provided relevant data regarding the industries that actually purchased the inputs or the volume and value of each industry's respective purchases for the POI.³⁰²

Consequently, in light of the GOC's failure to provide necessary information, we determine that the GOC withheld information that was requested of it and, thus, that Commerce must continue to rely on facts otherwise available in making our final determination.³⁰³ Moreover, by not adequately answering the questions we posed, we determine that the GOC failed to cooperate to the best of its ability to comply with our request for information.³⁰⁴ Consequently, we have determined that an adverse inference is warranted in the application of facts available.³⁰⁵ As AFA, we find that the purchasers of soda ash, silica sand, and limestone provided for LTAR are limited in number and therefore specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Market Distortion

GOC's Comments

- In the *Preliminary Determination*, Commerce found, as AFA, that the markets for soda ash, silica sand, and limestone were distorted, permitting the use of a tier two benchmark. This finding is not based on substantial evidence and is otherwise not in accordance with the statute.

²⁹⁹ *Id.*; see also PDM at 20.

³⁰⁰ *Id.*

³⁰¹ See GOC SQR, Part 2 at 22-27.

³⁰² See, e.g., *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Preliminary Affirmative Determination*, 80 FR 68843 (November 6, 2015), and accompanying PDM at 16-17 (unchanged in *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), and accompanying IDM at Comment 1; *Utility Scale Wind Towers from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 33422 (June 6, 2012) (unchanged in *Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from China*), and accompanying IDM at Comment 12)).

³⁰³ See section 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act.

³⁰⁴ See Initial Questionnaire at 31-32, 35-36, and 38-39; see also GOC Second SQ at 6-8.

³⁰⁵ See section 776(b)(1)(A) of the Act.

- To be consistent with the statute, Commerce’s AFA findings must satisfy three criteria: (1) it must identify a gap in the record; (2) it must identify how the offending party failed to cooperate to the best of its ability; and (3) the application of AFA to each element of the subsidy analysis must be supported by substantial evidence. An adverse inference cannot be applied unless it is appropriate to use “facts otherwise available.”
- Commerce applied “facts otherwise available” to its market distortion analysis, finding that the soda ash, silica sand, and limestone markets in China were distorted by government presence in the market. However, the GOC provided sufficient information to determine whether the soda ash, silica sand, and limestone markets were distorted and otherwise cooperated to the best of its ability.³⁰⁶
- The GOC provided the total number of producers of soda ash and limestone in which the government maintains a majority ownership or controlling interest. The GOC’s presence in the limestone market is minimal and cannot be distortive. Similarly, although the GOC’s presence in the soda ash industry is 50 percent, there is no evidence that is distortive. The GOC does not maintain this information with respect to silica sand.³⁰⁷
- There is no requirement that Commerce must have volume and value data to make a market distortion analysis. Commerce has, on countless occasions, based its market distortion analysis solely on volume data and the use of volume data is sufficient to determine the presence of government-owned or invested companies in the market.³⁰⁸
- While Commerce determines what information it needs, that authority has limits. The information requested and missing from the record must be “necessary” to Commerce’s analysis. Commerce must explain why it cannot conduct a market distortion analysis with volume data alone or it should use volume data to analyze market distortion and refrain from applying AFA in the final determination.³⁰⁹
- To the extent that Commerce believes that the GOC could obtain value information for soda ash, silica sand, and limestone through the ECIPS system, Commerce should have asked for this information in this manner. Commerce has a statutory obligation to inform parties of deficiencies in their submissions and to permit them an opportunity to cure those deficiencies.³¹⁰

Petitioner’s Rebuttal Comments

- Commerce should continue to rely on “facts otherwise available” to determine that the markets for soda ash, silica sand, and limestone were distorted due to GOC involvement.³¹¹

³⁰⁶ See GOC Case Brief at 17-18.

³⁰⁷ *Id.* at 18.

³⁰⁸ *Id.*

³⁰⁹ *Id.* at 19.

³¹⁰ *Id.* at 13.

³¹¹ See Petitioner Rebuttal Brief at 18-19.

- The GOC asserts that Commerce should not apply AFA because the GOC is unable to provide the requested information. However, Commerce has recently rejected identical arguments.³¹² Commerce should reject these arguments here too.
- Additionally, the GOC’s claim that Commerce did not fulfill its obligation under section 782(d) of the Act is unconvincing. This statute requires that Commerce inform the GOC of the nature of its deficiency where the respondent provides a deficient response, but the CIT has emphasized that “respondents are primarily responsible for the state of the record.” This is precisely what Commerce did when it issued a supplemental questionnaire again requesting that the GOC respond to questions it initially disregarded, specifically related to the production of these inputs.³¹³
- The GOC attempts to expand Commerce’s obligation under section 782(d) of the Act by shifting the burden to Commerce to specify exactly where the respondent should locate information necessary to respond to the questionnaire. The GOC alone had access to the ECIPS database, yet failed to provide relevant information from this source.³¹⁴

Commerce’s Position: As an initial matter, we note that in our *Preliminary Determination*, we relied on facts otherwise available, pursuant to sections 776(a)(1) and (a)(2)(A) and (C) of the Act, not AFA, as the GOC argues, to determine that the markets for soda ash and silica sand are distorted by GOC involvement. Contrary to the GOC’s claims, we in fact found in the *Preliminary Determination*, as facts otherwise available, that the limited information on the record about the limestone market did not indicate GOC predominance in the market. However, because there were no tier one benchmarks on the record, we nevertheless resorted to using tier two benchmarks. For the reasons detailed below, we determine that, after examining the GOC’s responses to our supplemental requests for information after the *Preliminary Determination*, the GOC has withheld necessary information that was requested of it, and thus Commerce will continue to rely on facts otherwise available for this final determination. Furthermore, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, for the final determination, an adverse inference is warranted in the application of facts otherwise available, pursuant to section 776(b)(1)(A) of the Act.

In particular, we look to the limited available information regarding the GOC’s involvement in the producers of soda ash, silica sand, and limestone industries during the POI. While the GOC has argued that the production information it provided for state-owned companies demonstrates that the markets for soda ash, silica sand, and limestone are not distorted, this argument ignores the basis for our findings regarding these inputs from the *Preliminary Determination*. For instance, as discussed in the *Preliminary Determination*, we requested information regarding production by companies in which the GOC claims it maintains less than a controlling ownership

³¹² *Id.* at 22 (citing *Cast Iron Soil Pipe from China* IDM at 19 (the “GOC assert{ed} 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.) and *Steel Propane Cylinders from China* IDM at 53 (the GOC argued 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.”)).

³¹³ *Id.* at 22-23.

³¹⁴ *Id.*

or management interest. 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. However, in responding to Commerce's request for this information, the GOC failed to provide complete information regarding these companies.³¹⁵

In past proceedings, the GOC has demonstrated that it has the ability, through the State Statistics Bureau (SSB) or other sources (*e.g.*, industry associations), to report data concerning the production of a wide variety of inputs.³¹⁶ Specifically, as discussed above, the GOC has previously provided, and Commerce has verified, information from other GOC-maintained databases concerning the value and volume of production by enterprises producing input products.³¹⁷ Moreover, Commerce has verified that the administrative authorities release detailed information of enterprises and other entities and which is intended to bring clarity to companies registered in China.³¹⁸ Based on this experience, we are aware that this system 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 asserts 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 for soda ash and limestone industries.³¹⁹ We disagree. We find that the GOC did not put forth maximum effort to provide information that is responsive to our requests.³²⁰ As such, we concluded that the GOC failed to cooperate to the best of its ability, and consistent with past practice,³²¹ we find that this warrants the application of AFA.

The GOC argues that just because its presence in the soda ash industry is 50 percent, this is not evidence that the soda ash market is distortive and that accordingly we should use tier one

³¹⁵ See GOC IQR at 60-111; *see also* GOC First SQ at 4 and GOC Second SQ at 6-9; and GOC SQR at Part 1, 5-6.

³¹⁶ See, *e.g.*, *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 79 FR 33174 (June 10, 2014), and accompanying PDM at 14-15 (unchanged in *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)) (*Crystalline Silicon Photovoltaic Products from China*).

³¹⁷ See *e.g.*, *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013*, 80 FR 77318 (December 14, 2015) (*Citric Acid from China; 2013 Review*), and accompanying IDM at Comment 2.

³¹⁸ See *Countervailing Duty Investigation of Stainless Steel Sheet 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 Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017)).

³¹⁹ See GOC Case Brief at 11.

³²⁰ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) ("the statutory mandate that a respondent act to 'the best of its ability' requires the respondent to do the maximum it is able to do").

³²¹ See *Cast Iron Soil Pipe from China* IDM at Comment 1.

benchmarks. We disagree. Commerce’s long-standing practice is to utilize a benchmark outside of the country of provision when record evidence indicates that the high level of the government’s share of the market of the good in question results in a distortion of that market.³²² Such a finding is consistent with the CVD *Preamble*, which suggests that government involvement in a market may, in certain circumstances, have a distortive effect on the price of a good when the government provider constitutes a majority, or in certain circumstances a substantial portion, of the market.³²³ The GOC’s arguments regarding this matter have been previously addressed and rejected by Commerce.³²⁴ Out-of-country benchmarks are required in such instances because the use of in-country private producer prices would be akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the government presence).³²⁵

Concerning soda ash, the GOC has reported that state-owned enterprises (SOEs) account for a substantial share of soda ash production in China (*i.e.*, 59.35 percent) during the POI.³²⁶ This percentage is greater than that which we have found in previous cases to cause a distortive effect and due to which we have declined to use in-country benchmarks.³²⁷ Moreover, similar to *Cylinders from China*,³²⁸ the share of imports in the domestic market of the good in question, at about one percent, is insignificant, further indicating that the government plays a predominant role through its involvement in the market.³²⁹ Therefore, we continue to determine that domestic prices in China for soda ash are distorted such that they cannot be used as a tier one benchmark. For the same reason, we determine that import prices into China cannot serve as a benchmark. The GOC also asserts that Commerce must explain why it cannot conduct a market distortion analysis with volume data alone or it should use volume data to analyze market distortion and refrain from applying AFA in the final determination. We disagree. Volume data from purely “majority government-owned” entities is not sufficient for our analysis. Our Initial Questionnaire clearly states that if the share of total volume and/or value of production that is accounted for by “majority government-owned” companies is less than 50 percent, we also require production data from less-than-majority-government-owned companies.³³⁰ This is necessary to understand the full picture of the level of government involvement in the market. In

³²² See *Circular Welded Carbon Quality Steel Line Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) (*Line Pipe from China*), and accompanying IDM at Comment 5.

³²³ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (*CVD Preamble*).

³²⁴ See, *e.g.* *Certain Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (*Racks from China*), and accompanying IDM at Comment 8; *Line Pipe from China* IDM at Comment 5; and *Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from China*), and accompanying IDM at Comment 7.

³²⁵ See *CWP from China* IDM at Comment 7.

³²⁶ See GOC IQR at 79.

³²⁷ See *Cast Iron Soil Pipe Fittings from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 32075 (July 11, 2018), and accompanying IDM at Comment 1; *CWP from China* IDM at 18,

³²⁸ See *High Pressure Steel Cylinders from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*Cylinders from China*), and accompanying IDM at 18.

³²⁹ See GOC IQR at 80.

³³⁰ See Initial Questionnaire at 30-31.

the instant case, the GOC has not provided this information. Furthermore, we disagree with the GOC's claim that Commerce did not fulfill its obligation under section 782(d) of the Act by not asking for value information for soda ash, silica sand, and limestone through the ECIPS system. With regard to value information about soda ash, silica sand, and limestone, we requested the GOC to "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."³³¹ We asked for this information multiple times, first in our Initial Questionnaire and then in a supplemental questionnaire.³³² Commerce met its statutory obligation when it notified the GOC of the deficiency and provided the GOC an opportunity to cure it. Therefore, we find it appropriate to resort to the use of AFA.

For the reasons stated above regarding the soda ash industry, and due to the GOC's failure to provide complete information about the silica sand and limestone industries,³³³ we conclude, as AFA, that the extent to which the GOC is involved in the operations of the producers of soda ash, silica sand, and limestone is such that prices for domestic (Chinese) transactions involving these inputs are significantly distorted. 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 soda ash, silica sand, and limestone for LTAR.³³⁴

Comment 11: Inland Freight

Qixia Changyu's Comments

- In calculating the input benchmarks, Commerce mistakenly valued inland freight using a source that is not on the record of this investigation. Commerce must correct this error in the final determination.³³⁵
- Commerce should have used the inland freight reported by Qixia Changyu in its initial questionnaire response.³³⁶

Petitioner's Comments

- In the *Preliminary Determination*, for its calculation of the input benchmark for Guangdong Huaxing, Commerce relied solely on Guangdong Huaxing's reported inland freight from Huangpu Port to its factory; however, each of Guangdong Huaxing's 12 cross-owned affiliates each reported their own costs for inland freight from the port to the factories for limestone, silica sand, and soda ash.³³⁷

³³¹ *Id.*; *see also* GOC Second SQ at 6-8.

³³² *Id.*

³³³ *See* PDM at 20-22.

³³⁴ *See* Guangdong Huaxing Final Calc Memo; *see also* Memorandum, "Qixia Changyu Glass Co., Ltd. Final Calculation Memorandum," dated May 11, 2020 (Qixia Changyu Final Calc Memo).

³³⁵ *See* Qixia Changyu Case Brief at 2.

³³⁶ *Id.*

³³⁷ *See* Petitioner Case Brief at 36.

- Commerce’s basis for inland freight expenses does not accurately reflect the rates that would actually be incurred to deliver inputs to the respondents’ production facilities because Commerce only used Guangdong Huaxing’s inland freight expense in its benefit calculation.³³⁸
- Qixia Changyu reported inland freight expenses from the port for only one input (*i.e.*, sand) and only provided inland freight expenses for some months of the POI and reported that it did not incur inland freight expenses from the port for any other inputs.³³⁹ Commerce should use not only Qixia Changyu’s reported inland freight, but rather correct the calculations by using the monthly averages of all port to plant rates for both respondents and their cross-owned affiliates in the input LTAR benchmarks.³⁴⁰
- Commerce’s preliminary calculation memorandum for Qixia Changyu does not list a source for the inland freight expenses from the port to the factory for Qixia Changyu that are in the benchmark calculation. Therefore, it is unclear what data Commerce relied on for Qixia Changyu’s inland freight calculations.³⁴¹

Commerce’s Position: We agree with Qixia Changyu’s argument that for the *Preliminary Determination* we mistakenly valued Qixia Changyu’s inland freight using a source that is not on the record of this investigation. For the final determination, we have revised our inland freight calculations for Qixia Changyu and used only the inland freight rates provided by Qixia Changyu.³⁴² In its questionnaire responses, Qixia Changyu provided inland freight rates for only one material input (silica sand) and for only two months (*i.e.*, January and May) of the POI.³⁴³ We have calculated the inland freight rate for Qixia Changyu by averaging the rates provided by Qixia Changyu for those two months and have applied that rate to Qixia Changyu’s purchases of soda ash and limestone as well as silica sand in order to determine a benchmark rate for all three material inputs.³⁴⁴ However, we have not included the inland freight rates of Guangdong Huaxing in our calculation of Qixia Changyu’s benchmarks, as suggested by the petitioner, because our practice is to use company-specific inland freight rates in calculating Tier 2 benchmarks.³⁴⁵ The inland freight rates reported by Qixia Changyu constitute the best information on the record because they reflect Qixia Changyu’s actual costs of inland freight from a nearby port actually used by Qixia Changyu during the POI.

We agree with the petitioner regarding the inclusion of Guangdong Huaxing’s cross-owned companies’ inland freight charges in the inland freight calculation. Commerce’s practice is to

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ See Petitioner Rebuttal Brief at 29.

³⁴¹ See Petitioner Case Brief at 36.

³⁴² See Qixia Changyu Final Calc Memo

³⁴³ See Qixia Changyu IQR at 38.

³⁴⁴ See Qixia Changyu Final Calc Memo.

³⁴⁵ See *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; 2014-2015*, 83 FR 11694 (March 16, 2018), and accompanying IDM at 15; see also *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), and accompanying IDM at 35.

average the inland freight expenses of all cross-owned companies for the inland freight expense.³⁴⁶ Accordingly, for the final determination, we have averaged the inland freight expenses for Guangdong Huaxing and all of its cross-owned companies to derive the inland freight expense in our benchmark calculation.³⁴⁷

Comment 12: Application of Adverse Facts Available (AFA) to Guangdong Huaxing for Non-Response of Cross-Owned Affiliate

Petitioner's Comments

- Guangdong Huaxing failed to provide a complete questionnaire response to Commerce for its cross-owned affiliate Company A³⁴⁸ which supplied an input used in the production of glass containers.
- Commerce attributes subsidies received by cross-owned affiliates to the combined sales of the respondent and the affiliate. In particular, Commerce attributes subsidies to the respondent if the cross-owned affiliates are: (1) producers of subject merchandise; (2) holding or parent companies; (3) input suppliers; or (4) other service providers.³⁴⁹
- Commerce's *Preamble* states that “{t}he underlying rationale for attributing subsidies between two separate corporations {with cross-ownership} is that the interests of those two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same ways it can use its own assets (or subsidy benefits).”³⁵⁰
- Commerce instructed Guangdong Huaxing to “provide a *complete* questionnaire response for those affiliates where ‘cross-ownership’ exists, and one of the following situations exists . . . the cross-owned company supplies an input product to you for production of the downstream product produced by the respondent”³⁵¹
- Because Guangdong Huaxing has several affiliated producers of subject merchandise and their sales make up a small revenue percentage of overall sales, the respondent requested that it be exempted from providing questionnaire responses for nine affiliated producers of subject merchandise as well as for Company A.
- Petitioner provided deficiency comments specifically identifying this affiliated input

³⁴⁶ See *Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination with Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 83 FR 17651 (April 23, 2018), and accompanying PDM at 18, (unchanged in *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018)).

³⁴⁷ See Guangdong Huaxing Final Calc Memo.

³⁴⁸ See Memorandum, “Final Determination in the Countervailing Duty Investigation of Certain Glass Containers from the People's Republic of China: Proprietary References for Comments 12, 13 and 14 of the Accompanying Issues and Decision Memorandum for Guangdong Huaxing Glass Co., Ltd.,” dated concurrently with this Memorandum (BPI Memo) for the identity of Company A.

³⁴⁹ See 19 CFR 351.525(b)(6)(ii)-(iv).

³⁵⁰ See Petitioner Case Brief at 7 (citing *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998)); see also *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-01 (CIT 2001).

³⁵¹ See Petitioner Case Brief at 7 (citing Initial Questionnaire at Section III, page 3).

supplier as a cross-owned affiliate.³⁵²

- While Guangdong Huaxing was fully aware that Company A is a cross-owned affiliate, the respondent argued that it did not have to provide a questionnaire response for Company A which supplies an item which is not an input.³⁵³
- In denying Guangdong Huaxing’s request for limited reporting, Commerce emphasized that “Huaxing is required to provide Section III responses for all cross-owned companies that otherwise meet the criteria listed in the Section III questionnaires (*e.g., input suppliers*).”³⁵⁴
- Thus, Commerce notified Guangdong Huaxing twice that it was required to provide questionnaire responses for all cross-owned input suppliers.
- Pursuant to Commerce’s regulations, “{i}f there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products”³⁵⁵
- It is Commerce’s role to determine what inputs qualify as “primarily dedicated,” and these products do not necessarily even need to be for the production of subject merchandise.³⁵⁶ As such, respondents cannot unilaterally refuse to provide information regarding cross-owned companies that provided inputs.
- Because Commerce is responsible for determining whether subsidies received by cross-owned suppliers should be attributed to the respondent, it is critical that respondents report all cross-owned suppliers of inputs used in the downstream product.
- Guangdong Huaxing described the operations of its affiliate, Company A, as “{p}roduction and sales: glass machinery; import and export of goods and technology permitted by the state; assembly and sells: glass machinery, rubber machinery, winery equipment, reducers, and other mechanical equipment and parts and related technical consulting services; software development, Sales.”³⁵⁷
- Guangdong Huaxing reports that Company A is involved in certain activities and that Guangdong Huaxing owns a majority interest in Company A.³⁵⁸
- Guangdong Huaxing’s claim that Company A provides certain activities, does not comport with its Section III questionnaire responses for itself and its affiliates. The notes

³⁵² See Petitioner’s Letter, “Certain Glass Containers from the People’s Republic of China: Comments on Guangdong Huaxing’s Section III Identification of Affiliated Companies,” dated December 20, 2019 (Petitioner Comments on Guangdong Huaxing Affiliates). Commerce notes that in Petitioner Comments on Guangdong Huaxing Affiliates at 5, the petitioner explained that “Guangdong Huaxing’s website, the company has “14 wholly-owned subsidiaries and 1 glass forming machinery and equipment company in {China},” but the petitioner did not identify Company A by name.

³⁵³ See BPI Memo for the identification of “item.”

³⁵⁴ See Petitioner Case Brief at 8 (citing Commerce’s Letter, “Certain Glass Containers from the People’s Republic of China: Response to Guangdong Huaxing Glass Co., Ltd.’s Request for Limited Reporting,” dated January 6, 2020 (Commerce Denial Letter) at 1).

³⁵⁵ *Id.* at 9 (citing 19 CFR 351.525(b)(6)(iv)).

³⁵⁶ *Id.* (citing *Seamless Pipe from China* IDM at 98).

³⁵⁷ See Guangdong Huaxing Rebuttal Brief at 4-5.

³⁵⁸ See BPI Memo for a discussion of this proprietary information.

to Guangdong Huaxing's 2018 financial statements indicated certain activities and Guangdong Huaxing reported certain activities as well.³⁵⁹

- Commerce's two-part adverse facts available (AFA) analysis first determines that information is absent from the record and that a respondent has withheld information; failed to provide information in the form requested; significantly impedes a proceeding; or provides information that cannot be verified. As demonstrated above, the record does not contain subsidy reporting for Company A, which makes it impossible for Commerce to calculate accurate *ad valorem* subsidy rates for Guangdong Huaxing for the final determination.
- Although Commerce's regulations, long-standing practice, and questionnaires require the respondents to provide questionnaire responses for their cross-owned input suppliers, Guangdong Huaxing withheld this information.
- Given that the record does not contain subsidy reporting for Company A that provided certain amounts of inputs³⁶⁰ to Guangdong Huaxing and its affiliates during the period of investigation (POI), Commerce should find that Guangdong Huaxing significantly impeded the proceedings given that Commerce was precluded from fully analyzing the subsidies provided to Company A during the information gathering phase of this investigation.
- For Commerce to apply adverse inferences, it must determine that the respondents failed to act to the best of their abilities. The "best of its ability" standard "assumes that {respondents} are familiar with the rules and regulations" and "does {not} require findings of motivation or intent." Indeed, "affirmative evidence of bad faith on the part of the respondent is not required before Commerce may make an adverse inference."³⁶¹
- Commerce may apply an adverse inference "under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made."³⁶²
- While Guangdong Huaxing may have believed Company A was not a cross-owned affiliate, determinations regarding the countervailability of a subsidy and whether to report information regarding a cross-owned affiliate are in the exclusive purview of Commerce in the context of a countervailing duty (CVD) investigation. The CIT has found in a series of flat-rolled steel investigations from Korea that "{r}espondents should be forthcoming with information, regardless of their views on relevancy, in the event the agency finds differently."³⁶³
- Guangdong Huaxing refused to report a questionnaire response for Company A even though the cross-owned affiliate provided certain amounts of inputs to Guangdong Huaxing and its affiliates. Guangdong Huaxing's failure to review its books and records,

³⁵⁹ See *id.* for a description of these activities.

³⁶⁰ See *id.* for further discussion of this issue.

³⁶¹ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

³⁶² *Id.*

³⁶³ See Petitioner Case Brief at 14 (citing *POSCO v. United States*, 337 F. Supp. 3d 1265, 1275 (CIT 2018)); see also *POSCO v. United States*, 353 F. Supp. 3d 1357, 1374-75 (CIT 2018) (finding that the respondent "improperly exercised its discretion in not reporting" R&D grants and upholding Commerce's decision to apply AFA); *POSCO v. United States*, 296 F. Supp. 3d 1320, 1340 (CIT 2018) (finding that "POSCO's reliance on its purported objectively reasonable belief about the irrelevance of the inputs is unavailing" and upholding Commerce's application of AFA to the respondent).

which clearly demonstrate that Company A provided inputs to Guangdong Huaxing as well as other company affiliates for the production of subject merchandise, does not absolve the respondent from its obligation to act to the best of its ability in providing full questionnaire responses for all of its cross-owned affiliates.

In *Plywood Products from China*,³⁶⁴ the agency applied AFA to the respondent, Bayley Wood, because it failed to disclose an affiliated company with familial ties early in the investigation.

- Commerce concluded, that “at a minimum, Bayley Wood has not acted to the best of its ability, and has fallen far short of the ‘maximum’ effort required by the statute,” by not providing complete responses or responses in a manner or form requested by Commerce.³⁶⁵
- The CIT recently affirmed Commerce’s decision to apply AFA because “Commerce reasonably suspected that Bailey failed to provide Commerce with information at the outset of the investigation.”³⁶⁶
- Additionally, in the final results of the final countervailing duty investigation into *Cold-Rolled Steel from Korea*,³⁶⁷ Commerce applied AFA after the respondent was found at verification to have purchases from an affiliated input supplier, despite reporting not reporting purchases from these suppliers. The respondent claimed it did not report these suppliers because only “trace amounts” of the inputs were used in subject merchandise production, and thus, it did not think the information was relevant.
- The CIT upheld Commerce’s decision to apply AFA, noting that Commerce’s questionnaire is framed in general terms and may expect that a respondent would either provide information regarding affiliated suppliers or explain why it could not.
- The facts here are even stronger in support of the application of AFA than in *Plywood Products from China*. While Guangdong Huaxing identified Company A as an affiliate, Guangdong Huaxing refused to provide a full questionnaire to Commerce even after the agency specifically instructed Guangdong Huaxing to do so.
- The facts demonstrate that Guangdong Huaxing “substituted its judgment for the judgment of the Department and precluded the Department from analyzing and determining, in a timely manner, whether Company A met the cross-ownership or attribution criteria as defined in 19 CFR 351.525(b)(6).”
- Commerce has routinely found that equipment suppliers are cross-owned affiliates.

³⁶⁴ See Petitioner Case Brief at 15 (citing *Certain Hardwood Plywood Products from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, In Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 19022 (April 25, 2017) (*Plywood Products from China Prelim*) and accompanying PDM at 25-31, (unchanged in *Countervailing Duty Determination of Certain Hardwood Plywood Products from the People’s Republic of China: Final Affirmative Determination, and Final Critical Circumstances Determination, In Part*, 82 FR 53473 (November 16, 2017) (*Plywood Products from China Final*), and accompanying IDM at Comment 1 (collectively *Plywood Products from China*)).

³⁶⁵ See *Plywood Products from China Prelim* PDM at 25-31.

³⁶⁶ See *Shangdong Dongfang Bayley Wood Co. v. United States*, 375 F. Supp. 3d 1339, 1346 (CIT 2019).

³⁶⁷ See Petitioner Case Brief at 16 (citing *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016) (*Cold-Rolled Steel from Korea*), and accompanying IDM at Comment 5).

For example, in *Solar from China*,³⁶⁸ Commerce “determined that Suntech was cross-owned with five of its affiliates, including other producers of solar cells, producers of equipment used to produce solar cells, and producers of polysilicon, the primary input into solar cells.”

- In the countervailing duty investigation into *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People’s Republic of China*,³⁶⁹ Commerce applied AFA where the respondent failed to provide a complete questionnaire response for cross-owned affiliate that was a holding company or parent company.
- Commerce should apply AFA for Guangdong Huaxing’s cross-owned input supplier, Company A, because Company A sold certain amounts of items to Guangdong Huaxing and its affiliates, but Guangdong Huaxing has not provided the information it requested on multiple occasions.
- Pursuant to Section 782(d) of the Act, Commerce provided Guangdong Huaxing with several opportunities to provide a response in its initial questionnaire this opportunity in its initial questionnaire, specifically instructing Guangdong Huaxing to report all of its cross-owned affiliates. Guangdong Huaxing responded that it would only provide questionnaire responses for four affiliated producers of subject merchandise and that it should be excluded from reporting for all other cross-owned affiliates. In other words, Guangdong Huaxing specifically sought guidance on whether to report all cross-owned affiliates to ensure that its subsidy reporting would not be deficient.
- Commerce carefully analyzed the information on the record and determined that Guangdong Huaxing’s initial affiliated questionnaire response was deficient. Specifically, Commerce instructed Guangdong Huaxing to provide questionnaire responses for all of its cross-owned affiliates.
- There was no additional obligation for Commerce to provide Guangdong Huaxing another opportunity to provide a full questionnaire response for Company A when it had already done so twice. Thus, Commerce satisfied the requirements under section 782(d) of the Act to remedy a deficient response, which permits the agency to apply AFA to Guangdong Huaxing for the final determination.

Guangdong Huaxing’s Rebuttal Comments:

- Guangdong Huaxing has fully responded and cooperated in this investigation and Commerce must reject petitioner’s argument to apply AFA to Guangdong Huaxing.
- Guangdong Huaxing fully disclosed all information about its affiliates and explained that according to the Section III questionnaire requirements, Guangdong Huaxing was not required to provide a questionnaire response for Company A. Commerce agreed with this understanding, never requested that Guangdong Huaxing provide a questionnaire response for Company A and found no deficiencies in Guangdong Huaxing’s questionnaire reporting in the *Preliminary Determination*.

³⁶⁸ See Petitioner Case Brief at 17 (citing *Solar Cells from China Investigation* IDM at 4).

³⁶⁹ *Id.* at 16 (citing *Seamless Pipe from China* IDM at Comment 22).

- In Guangdong Huaxing’s Identifying Affiliates Questionnaire Response, Guangdong Huaxing provided detailed information on all of its affiliates.³⁷⁰
- In response to comments filed by the petitioner pointing out that Guangdong Huaxing had an affiliate listed on its webpage that produced glass forming machinery and equipment, Guangdong Huaxing again identified this company as Company A, which was reported in its affiliation response and that “{t}his company supplies production equipment, which is not an input, to other affiliates. Thus, according to the reporting criteria in the Affiliation Questionnaire, this company should not be required to provide full questionnaire response.”³⁷¹
- Aware of this information, Commerce did not specifically request that Company A provide a section III questionnaire response or find any issues with that fact in the *Preliminary Determination*. Further, Commerce specifically contemplated Guangdong Huaxing’s reporting affiliates and required Guangdong Huaxing to provide section III questionnaire responses from more affiliates than Guangdong Huaxing initially explained it intended to provide.
- In other proceedings, Commerce has likewise specifically requested Section III questionnaire response from additional affiliates.³⁷²
- Petitioner claims that Guangdong Huaxing was instructed twice to provide questionnaire responses for all cross-owned input suppliers, therefore, Commerce should apply AFA to Guangdong Huaxing because Guangdong Huaxing did not provide a questionnaire response from Company A. These two instructions were the normal instructions in the initial questionnaire response and Commerce reiterating those instructions in informing Guangdong Huaxing that it was denying Guangdong Huaxing’s request to limit reporting of all of its cross-owned companies that produce subject merchandise.
- Petitioner is incorrect that Company A is an input supplier. Petitioner does not specifically argue that an affiliate supplier of machinery meets the requirements under 19 CFR 351.525(b)(6).
- Commerce has consistently found that suppliers of machinery and minor materials do not meet the plain meaning and intention of the regulatory language concerning input suppliers. Instead, the petitioner takes the position, despite multiple statements by Guangdong Huaxing to the contrary, that Company A actually produced and provided inputs to Guangdong Huaxing, which is not supported by the record.
- The entire premise of petitioner’s argument is that Guangdong Huaxing’s 2018 financial statement indicated both that Guangdong Huaxing purchased “commodity” and purchased “assets” from Company A. Petitioner claims it is unlikely that both of these

³⁷⁰ See BPI Memo for the number of Guangdong Huaxing’s cross-owned companies and Guangdong Huaxing Rebuttal Brief at 1 (citing Guangdong Huaxing’s Letter, “Certain Glass Containers from the People’s Republic of China: Section III Identifying Affiliates,” dated December 11, 2019 (Guangdong Huaxing Affiliates Response) at Exhibit 1).

³⁷¹ See Guangdong Huaxing Rebuttal Brief at 2.

³⁷² See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2017*, 85 FR 7727 (February 11, 2020) (after examining the Identifying Affiliates Questionnaire, Commerce requested an additional Section III questionnaire response from a company); *Fine Denier Polyester Staple Fiber Final Affirmative Determination of the Countervailing Duty Investigation*, 83 FR 3120 (January 23, 2018) (where Commerce later requested full Section III questionnaire response from two affiliated input producers).

refer to the machinery Company A supplied to Guangdong Huaxing, therefore Company A must actually be providing other inputs to Guangdong Huaxing.

- “Purchase of assets” has a specific accounting meaning that is fundamentally different than purchasing a product produced by that company. Purchasing an asset is transferring ownership of something that has value like vehicles or equipment.³⁷³ Indeed, in Guangdong Huaxing’s 2016 and 2017 financial statements, there is no purchase of assets, but only purchases of “commodity.”³⁷⁴
- Commerce did not request further information about machinery provided by Company A and Guangdong Huaxing can provide more information at the request of Commerce.³⁷⁵
- Petitioner also infers that the term “commodity” on its own likely refers to the purchase of inputs, citing to some of the other affiliates’ financial statements that likewise indicate they purchased “commodity” from Company A. The term “commodity” is a broad term that can certainly mean machinery or equipment. The definition of “commodity” is an “economic good.”³⁷⁶
- It would be outside of the legal scope of Company A’s business to provide inputs because the company’s business scope allows Company A to engage in “Production and sales: glass machinery; import and export of goods and technology permitted by the state; assembly and sales: glass machinery, rubber machinery, winery equipment, reducers, other mechanical equipment and parts and related technical consulting services; software development.”³⁷⁷
- Commerce issued an extensive supplemental questionnaire to Guangdong Huaxing and never made any requests for additional information from or about Company A.³⁷⁸
- In the *Plywood Products from China Final*, Commerce applied AFA for a company’s failure to report a particular affiliate. However, Guangdong Huaxing has reported Company A as an affiliate of Guangdong Huaxing and provided all requested information about Company A.³⁷⁹
- In *Cold-Rolled Steel from Korea*, Commerce applied AFA to a respondent because Commerce discovered at verification that, despite earlier reporting to the contrary, the respondent purchased inputs from an affiliated supplier.³⁸⁰ Company A did not produce or provide inputs to Guangdong Huaxing other than machinery, as Guangdong Huaxing reported in its initial questionnaire response.
- In sum, petitioner has no factual basis to argue that Company A produced or provided inputs to the Guangdong Huaxing companies. Therefore, Guangdong Huaxing has not

³⁷³ See Guangdong Huaxing Rebuttal Brief at 3 (referring to “asset” on the Merriam-Webster website (www.merriam-webster.com)).

³⁷⁴ *Id.* at 3-4 (citing Guangdong Huaxing IQR at Exhibits 4-6).

³⁷⁵ *Id.* at 4 (citing section 782(d) of the Act, requiring Commerce to promptly notify a party of a deficiency in its questionnaire response and provide to the extent practicable an opportunity to remedy or explain the deficiency).

³⁷⁶ *Id.* (referring to “commodity” on the Merriam-Webster website (www.merriam-webster.com)).

³⁷⁷ *Id.* at 4-5 (citing Guangdong Huaxing Affiliates Response at Exhibit 1).

³⁷⁸ See Commerce’s Letter, “Certain Glass Containers from the People’s Republic of China: Response to Guangdong Huaxing Glass Co., Ltd.’s First Supplemental Questionnaire,” dated January 27, 2020 (Guangdong Huaxing SQ).

³⁷⁹ See Guangdong Huaxing Rebuttal Brief at 5.

³⁸⁰ *Id.* at 5 (citing *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016) (*Cold-Rolled Steel from Korea*), and accompanying IDM at 64).

failed to act to the best of its ability in responding to Commerce’s information requests and Commerce should not apply AFA.

Commerce’s Position:

We disagree with the petitioner. As an initial matter, although record evidence clearly shows that Guangdong Huaxing is a majority owner of Company A, we note that Guangdong Huaxing did not request an exemption from reporting a Section III questionnaire response for its cross-owned Company A.³⁸¹ Guangdong Huaxing requested that nine cross-owned companies that produce subject merchandise be exempted from reporting.³⁸² In Exhibit 1 of its Affiliates Response, Guangdong Huaxing identified the nine cross-owned companies that produce subject merchandise, and provided the names and information of other cross-owned companies that do not produce merchandise.³⁸³ Guangdong Huaxing has maintained that Company A was not one of nine cross-owned companies.³⁸⁴ Specifically, record evidence indicates that Company A is not described as a company that produces subject merchandise,³⁸⁵ and Guangdong Huaxing has not stated or inferred that Company A has the capability to produce subject merchandise.³⁸⁶ Thus, the petitioner is incorrect that Guangdong Huaxing requested that Company A be exempted from reporting.

Pursuant to Commerce’s regulations, cross ownership between two or more companies “exists where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets.”³⁸⁷ If one corporation holds “a majority voting ownership interest between the two corporations” the standard for cross ownership will be met.³⁸⁸ Therefore, “{i}f there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, {Commerce} will attribute subsidies received by the input producer to the combined sales of the input and downstream products . . .”³⁸⁹

In the investigation, record evidence demonstrates that Guangdong Huaxing is a majority owner of Company A, and, thus, cross-ownership exists.³⁹⁰ However, the initial issue, as argued by the parties, is whether we consider the items supplied by Company A to Guangdong Huaxing to be an input. In its questionnaire response, Guangdong Huaxing explained that, “{t}his company {Company A} supplies {items}, which is not an input, to other affiliates.”³⁹¹ Additionally, Guangdong Huaxing explained that Company A is engaged in supplying certain items.³⁹²

³⁸¹ See Guangdong Huaxing Affiliates Response at 4-6 and Exhibit 1.

³⁸² *Id.*

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ *Id.* at Exhibit 1.

³⁸⁶ See Guangdong Huaxing’s Letter, “Certain Glass Containers from the People’s Republic of China: Rebuttal Comments,” dated December 27, 2019 (Affiliate Rebuttal Comments) at page 3.

³⁸⁷ 19 CFR 351.525(b)(6)(vi).

³⁸⁸ See 19 CFR 351.525(b)(6)(iv).

³⁸⁹ *Id.*

³⁹⁰ See Guangdong Huaxing IQR at Exhibit 1.

³⁹¹ See BPI Memo (citing Affiliate Rebuttal Comments at 3).

³⁹² See Guangdong Huaxing Affiliates Response at Exhibit 1 and Guangdong Huaxing Rebuttal Brief at 2.

Guangdong Huaxing argues in its rebuttal brief that, “{i}n indeed, the Department has consistently found that suppliers of machinery and minor materials do not meet the plain meaning and intention of the regulatory language concerning input suppliers.”³⁹³ However, Guangdong Huaxing fails to cite to any cases that support its statement. While Guangdong Huaxing does not consider machinery and equipment to be an input, Commerce disagrees with Guangdong Huaxing that suppliers of machinery could never meet the intent of the attribution regulations with regard to input suppliers. As the petitioner correctly notes, we have determined in past cases that equipment and machinery can be considered a primarily dedicated input depending on the facts and circumstances of the case.³⁹⁴

However, in the instant case, the record evidence does not support a finding that the glass machinery provided by Company A should be considered a primarily dedicated input such that it would meet the attribution criteria set forth in 19 CFR 351.525(b)(6)(iv). Therefore, we did not request a complete Section III questionnaire response from Company A. Specifically, Company A’s business license indicates that the range of its business activities are broad, explaining that Company A is engaged in “{p}roduction and sales: glass machinery; import and export of goods and technology permitted by the state; assembly and sales: glass machinery, rubber machinery, winery equipment, reducers, other mechanical equipment and parts and related technical consulting services; software development.”³⁹⁵ Thus, the legal scope for Company A as noted in its business license details several kinds of business activities beyond merely glass equipment manufacturing, such as rubber machinery and winery equipment.

The *Preamble* to Commerce’s regulations provides some guidance on the primarily dedicated standard. The *Preamble* states:

The main concern we have tried to address is the situation where a subsidy is provided to an input producer whose production is dedicated almost exclusively to the production of a higher value added product – the type of input product that is merely a link in the overall production chain. This was the case with stumpage subsidies on timber that was primarily dedicated to lumber production and subsidies to semolina primarily dedicated to pasta production.³⁹⁶

The *Preamble* goes on to state that “{Commerce} believe{s} that in situations such as these, the purpose of a subsidy provided to the input producer is to benefit the production of both the input and downstream products.”³⁹⁷ As noted above, Company A’s business license details a variety of production activities other than glass equipment manufacturing. Thus, record evidence in the instant case does not indicate that Company A’s production is “dedicated almost exclusively to the production of a higher value added product” in the manner suggested by the *Preamble* or that

³⁹³ See Guangdong Huaxing Rebuttal Brief at 3.

³⁹⁴ See *Solar from China* at 4 (Commerce “determined that Suntech was cross-owned with five of its affiliates, including other producers of solar cells, producers of equipment used to produce solar cells, and producers of polysilicon, the primary input into solar cells...”).

³⁹⁵ See Guangdong Huaxing Rebuttal Comments at 4-5 (making public Guangdong Huaxing’s previously BPI description of Company A’s business activities from Guangdong Huaxing Affiliation Response at Exhibit 1).

³⁹⁶ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (citations omitted).

³⁹⁷ *Id.* at 65401.

the purpose of any subsidy provided to Company A would be “to benefit the production of both the input and downstream products.” Therefore, Commerce did not specifically request or require a complete Section III questionnaire response from Company A.

Finally, we note that the cases cited by the petitioner are inapposite. In all the cases cited, Commerce applied AFA to respondents for not fully disclosing the identities or existence of certain cross-owned affiliates (*i.e.*, *Plywood Products from China*) or the complete picture with regard to those cross-owned affiliates’ production activities (*i.e.*, *Cold-Rolled Steel from Korea*). Contrary to those cases, we find that in this case Guangdong Huaxing did not withhold information regarding Company A. It fully disclosed this entity’s existence and production activities in its initial affiliation response, and again restated this information in its rebuttal comments to the petitioner.³⁹⁸ Accordingly, the application of adverse inferences in selecting from the facts available to Guangdong Huaxing is not warranted.

Comment 13: Application of Partial AFA for Guangdong Huaxing’s Land Purchases

Petitioner’s Comments:

- Guangdong Huaxing has not provided adequate information relating to its land purchases.³⁹⁹ Guangdong Huaxing reported paying “other expenses” for these purchases through the “three-old renovation” program but has not provided any information about how these expenses were established and negotiated or proof that these expenses were actually paid. Thus, Commerce should apply AFA to Guangdong Huaxing in relation to its land purchases.
- Guangdong Huaxing has not provided proof that these expenses were actually paid to the “village” or that it ever received a land use certificate. Thus, it is unclear whether Guangdong Huaxing actually paid for the land at all.
- It is unclear whether these land purchases included structures as well as land, as the Three-old program exists for the renovation of “villages,” which includes the purchase and renovation of structures.
- In response to a supplemental questionnaire, Guangdong Huaxing claimed that “Other expenses” were associated with the “Three-old renovation” program and that it was required to pay a certain amount⁴⁰⁰ to the villages that sold the land, the first time that the respondent provided any information indicating that its land purchase was part of the “Three-old renovation” program.
- Notably, the GOC failed to provide any information in its initial questionnaire or supplemental questionnaire regarding these land purchases that would indicate they were purchased pursuant to a specialized land program implemented by Guangdong Provincial government.
- Commerce does not have sufficient information to determine whether Guangdong Huaxing’s land purchases included structures and buildings in addition to the land itself.

³⁹⁸ See Guangdong Huaxing Affiliates Response at 4-6 and Exhibit 1 and Affiliate Rebuttal Comments at 3.

³⁹⁹ See BPI Memo for more information on this issue.

⁴⁰⁰ See *id.* for the amount paid.

- In Nanhai District,⁴⁰¹ the “Three-old” renovation program largely targets the transformation and upgrade of industrial facilities. The Land Remediation Plan of the Nanhai District in Foshan City for 2016-2020 lists a three-old renovation project for a “Huaxing Glass Lot” consisting of 30.92 hectares that was under construction between January 2016 to December 2020 which post-dates the land purchases in question. However, because Guangdong Huaxing has provided minimal information in response to Commerce’s questions, it is unclear whether Guangdong Huaxing’s reporting includes this 30.92 hectare project.⁴⁰²
- Guangdong Huaxing has consistently failed to produce relevant documentation regarding these land purchases that would corroborate and explain its payments under the “Three-old” Renovation program.
- Pursuant to a request for documentation of the negotiated price for land in the initiation questionnaire, Guangdong Huaxing claimed that “{t}he price paid for the land was negotiated with the village committees face to face,” such that there is no copy or documentation of the negotiations.⁴⁰³
- As a sophisticated Chinese glass containers producer with multiple affiliates and several land purchases throughout China, it is unclear why Guangdong Huaxing would pay the price it did for the land. Further, it is clear that Guangdong Huaxing did not pay for the land directly and that the land deal is missing certain documents.⁴⁰⁴
- Guangdong Huaxing explains that it has yet to receive the land-use certificates for the land purchases with no timeline as to when it will receive them. Guangdong Huaxing claims that there are “formalities of examination and approval” for conversion or change of use that are preventing the respondent from receiving the land use certificates.⁴⁰⁵ This seems highly unlikely as Guangdong Huaxing reports purchasing this land at a previous date.⁴⁰⁶
- After six years and Guangdong Huaxing’s admission that there is no timeline for receipt of the land use certificate, the facts available on the record demonstrate that the respondent has certain rights to the land.⁴⁰⁷
- Guangdong Huaxing also has provided no insight into whether its land purchases included expenses for the sales of buildings as part of the three-old renovation expenses.
- Alternatively, if Commerce does not find that AFA is warranted, as partial AFA, Commerce should set the purchase price to zero and apply the land benchmarks.

Guangdong Huaxing’s Rebuttal Comments:

- In the initial questionnaire response, Guangdong Huaxing provided a summary chart of its land purchases, providing all of the information requested by Commerce. Guangdong Huaxing also provided each of the Land Agreements.

⁴⁰¹ See *id.* for more information on this issue.

⁴⁰² See *id.* for more information on this issue.

⁴⁰³ See Petitioner Case Brief at 21 (citing Guangdong Huaxing IQR at 47).

⁴⁰⁴ See BPI Memo for more information on this issue.

⁴⁰⁵ See Petitioner Case Brief at 22 (citing Guangdong Huaxing SQR at 7-8).

⁴⁰⁶ See BPI Memo for the date of purchase and more proprietary arguments from the petitioner with regard to this issue and Petitioner Case Brief at 22 (citing Guangdong Huaxing IQR at Exhibit 24).

⁴⁰⁷ See *id.* for more information on this issue.

- Guangdong Huaxing could not provide documentation of its price negotiation because the price paid for the land was negotiated with each village committee in person. Guangdong Huaxing explained that the land parcels were owned by the villagers as a whole, which is a village committee in charge of the negotiations. The land parcels were not owned by the State which is not an unusual situation in China.
- Guangdong Huaxing did not appraise the land or e-mail negotiations because the sellers of land are village cooperatives, *i.e.*, the villagers themselves who have lower education levels and lack access and exposure to such types of business dealings. The villagers preferred a straightforward communication means *in person*.
- In Commerce’s extensive experience in China, Commerce has seen this in similar situated locales and there is no legal requirement for email communication that petitioner has cited on the record.
- Guangdong Huaxing paid more for the land because it had rented the land for many years prior to purchasing it and had built facilities on the land. It would cost significant money to have to move Guangdong Huaxing’s facilities to another locale. Therefore, this was a bargaining chip that the village had and could use to charge a certain price⁴⁰⁸ for the land.
- Accordingly, the price was still driven by normal market forces. Petitioner’s insinuation that the higher price must entail that Guangdong Huaxing also purchased factories and other buildings is also directly contradicted by the land agreements that only stipulate that the price was for the land alone—no mention of structures or buildings.
- Guangdong Huaxing provided two of the three land agreements in its Section III response and references the Three-old renovation program.⁴⁰⁹
- Guangdong Huaxing explained in the Supplemental Response that “Three-old Renovation means the renovation project of ‘old towns, old factories, and old villages’ in Guangdong Province. Guangdong Huaxing’s purchase of land owned by villages (the villagers as a whole) is a renovation of ‘old villages’. In such a case, Guangdong Huaxing was required to pay for the expenses of the so-named ‘Three-old’ renovation. It is part of the land payment.”⁴¹⁰
- Guangdong Huaxing also provided accounting vouchers for the payment of the land.⁴¹¹ The existence of land expenses under the “Three-old renovation program” was not new information provided late in the proceeding. Rather, it was reported in the initial questionnaire and explained further in the supplemental questionnaire.
- The land referenced by the petitioner in its case brief as being additional land is the same land reported by Guangdong Huaxing in its Section III response and our Supplemental Response.⁴¹²
- Commerce is familiar with many circumstances where negotiations occur in person or over the phone without documentation and still finds it can verify purchase prices and independent negotiation; the land purchase agreements themselves attest to these facts and are verifiable.

⁴⁰⁸ See *id.* for a further description of the sales price.

⁴⁰⁹ See Guangdong Huaxing IQR at Exhibit 24.

⁴¹⁰ See Guangdong Huaxing Rebuttal Brief (citing Guangdong Huaxing SQR at 8).

⁴¹¹ See Guangdong Huaxing SQR at Exhibit 9.

⁴¹² See Guangdong Huaxing Rebuttal Brief at 8.

- Guangdong Huaxing did provide insight into the fact that the sales did not include buildings through its own questionnaire responses including the land agreements themselves. Commerce is not missing information and therefore need not apply facts available, much less adverse facts available as Guangdong Huaxing has fully cooperated with Commerce's requests for information.
- Petitioner argues that Guangdong Huaxing's land agreement appear to enable Guangdong Huaxing to certain land use rights⁴¹³ and therefore Commerce has a basis to set the purchase price to zero. The petitioner references a certain article in the Land Agreement to support its argument that Commerce should set the purchase price to zero.⁴¹⁴
- With regard to the Land Agreement, Guangdong Huaxing reasonably foresaw that the formalities of examination and approval for conversion of the land would be complicated and time-consuming as may usually be the case in similar circumstances. Accordingly, it requested the other party in the Land Agreement to cooperate in handling the procedures for the conversion of the Plot from collective land to state-owned land until the conversion had been completed. Although that was almost 6 years ago, that is not unusual in China and there is no sign that a transfer to state-owned land cannot be completed.
- Guangdong Huaxing's right on the land is contingent on whether it made the whole payment, instead of contingent upon transfer to state-owned land or receiving land certificates. Even if the plot could not be converted into state-owned land immediately after this Land Agreement was signed, Guangdong Huaxing was entitled to use the land without additional payment.
- Therefore, "free of charge" here clearly must be interpreted as no *additional* payment is required, because Guangdong Huaxing had made whole payment for the land. Therefore, this argument to apply partial AFA also has no basis, based on the record of this investigation.

Commerce's Position:

We disagree with the petitioner. Guangdong Huaxing provided answers to many of Commerce's questions regarding its land purchases, and where it could not, it provided substantial explanations as to the reasons it could not.⁴¹⁵ Guangdong Huaxing provided a summary chart of all of its land purchases and the land purchase agreements.⁴¹⁶ In its responses to our questions, Guangdong Huaxing explained that it could not provide documentation of the price negotiations because the price paid for the land was negotiated with each village committee in person.⁴¹⁷ There is no record evidence to call into question Guangdong Huaxing's explanation.

Further, we disagree with the petitioner's claims that Guangdong Huaxing may be using the land parcels it reported free of charge. Guangdong Huaxing reported that, according to the full text of the Land Agreement, once payment is made in full, Guangdong Huaxing can use the land with

⁴¹³ See BPI Memo for a further description of the petitioner's proprietary argument.

⁴¹⁴ See *id.* for the Land Agreements article cited to by the petitioner.

⁴¹⁵ See Guangdong Huaxing IQR at 46-47 and Exhibits 23 and 24 and Guangdong Huaxing SQR at Exhibit 9.

⁴¹⁶ See Guangdong Huaxing IQR at Exhibit 23.

⁴¹⁷ *Id.* at 47.

no additional fees pending final approval of the purchase.⁴¹⁸ Thus, record evidence shows that Guangdong Huaxing did not use the land free of charge but did pay for the land and provided the payment vouchers for the “Three Old” renovation of land.⁴¹⁹

The petitioner raises concerns about Guangdong Huaxing’s land purchases based on the purchase price, claiming that the purchase price suggests that additional structures or buildings must have been included in the purchase price, and further noted a lack of documentation surrounding the purchase. However, Guangdong Huaxing explained that, because it set up operations on the land when it was renting it in the years prior to the purchase, it would have been more expensive to relocate, and thus the village had leverage to charge a certain price for the land.⁴²⁰ The agreements themselves state the amount of land being purchased and the price paid, with no mention of additional buildings or structures, which is not contradicted by any other record evidence.⁴²¹ During the investigative period, we find that Guangdong Huaxing has provided answers to our questions relating to its land purchases and provided available supporting documentation and explanations. Thus, we find the use of adverse inferences in selecting from the facts available in this circumstance is not warranted.

Finally, we disagree with the petitioner that Guangdong Huaxing provided information about the Three-old villages land program only in its supplemental questionnaire response. We note that Guangdong Huaxing first referenced the Three-old villages program in its initial Section III response⁴²² as well as in responding to our questions in its supplemental questionnaire response.⁴²³ Moreover, we find Guangdong Huaxing’s answers regarding its land purchases were sufficient and reasonable in both its initial section III questionnaire response and in its supplemental questionnaire response. Therefore, there is no information on the record that would cause us to question Guangdong Huaxing’s claims with respect to its land purchases.

Comment 14: Application of AFA to Guangdong Huaxing’s Reporting of Outstanding Financing

Petitioner’s Comments:

- Commerce’s questionnaire specifically requests that respondents report all forms of financing that they had outstanding during the POI, not just traditional loans.
- Guangdong Huaxing’s cross-owned affiliate Jiangsu Huaxing Glass Co., Ltd. (Jiangsu Huaxing) stated that questions on policy lending were “Not applicable, as the company had no financing that was outstanding during the POI.”⁴²⁴
- However, Jiangsu Huaxing’s 2018 Cash Flow Statement indicates receipt of certain amounts from certain activities.⁴²⁵

⁴¹⁸ *Id.* at 24.

⁴¹⁹ See Guangdong Huaxing SQR at Exhibit 9.

⁴²⁰ See BPI Memo and Guangdong Huaxing Rebuttal Brief at 6, and Guangdong Huaxing IQR at 46 and Exhibit 24.

⁴²¹ See Guangdong Huaxing IQR at Exhibit 23.

⁴²² *Id.* at 46-47 and Exhibits 23 and 24.

⁴²³ See Guangdong Huaxing SQR at 8-9.

⁴²⁴ See Petitioner Case Brief at 24 (citing Guangdong Huaxing’s Letter, “Certain Glass Containers from the People’s Republic of China: Section III Questionnaire Response,” dated January 17, 2020 (Jiangsu Huaxing IQR) at 16).

⁴²⁵ See BPI Memo for this proprietary information.

- No other details on these activities are available in certain proprietary documents.⁴²⁶
- Certain proprietary documents provide insight into Jiangsu Huaxing’s claim that it had no financing during the POI.⁴²⁷
- In a recent case, Commerce applied an AFA rate to policy lending for a respondent because the respondent failed to report one loan from a state-owned commercial bank.⁴²⁸
- The petitioner argues that Commerce should apply AFA according to sections 776(a)(1) and (2) and section 776(b) of the Act.
- Guangdong Huaxing failed to cooperate by not acting to the best of its ability to comply with a direct request from Commerce, *i.e.*, Commerce’s request to “Report all financing to your company that was outstanding at any point during the POI, regardless of whether you consider the financing to have been provided under this program.”⁴²⁹ Commerce should follow the precedent from *FSS from China* and apply an AFA rate to Guangdong Huaxing for this program.⁴³⁰

Guangdong Huaxing’s Rebuttal:

- The cash involved in this issue is not financing as contemplated by the questionnaire (*i.e.*, financing by a recognized State Authority).
- Commerce did not ask any questions about this in a supplemental questionnaire and Guangdong Huaxing can provide additional details on this information that supports its record statement that it did not have financing outstanding during the POI.
- The petitioner’s insinuation from a line item is not adequate to presume that Jiangsu Huaxing’s contention that it did not have outstanding financing during the POI is incorrect.

Commerce’s Position: We disagree with the petitioner and do not find that the application of adverse inferences in selecting from the facts available is warranted.

As an initial matter, we agree with the petitioner that our initial questionnaire requires respondents to report all types of financing. In the initial questionnaire under the section for “Loans and Credit,” specifically under “Policy Loans to the Glass Containers Industry,” we requested that Jiangsu Huaxing “Report *all* financing to your company that was outstanding at any point during the POI, regardless of whether you consider the financing to have been provided under this program.”⁴³¹ Jiangsu Huaxing replied that this question is: “{n}ot applicable, as the company had no financing that was outstanding during the POI.”⁴³² However, based on Jiangsu Huaxing’s 2018 Financial Statements, this statement is clearly inaccurate.⁴³³

⁴²⁶ See *id.* for this proprietary information.

⁴²⁷ See *id.* for this proprietary reference.

⁴²⁸ See Petitioner Case Brief at 25 (citing *FSS from China* IDM at Comment 8).

⁴²⁹ See Petitioner Case Brief at 24 (citing Initial Questionnaire).

⁴³⁰ See *FSS from China* IDM.

⁴³¹ See Initial Questionnaire at 9 (emphasis added).

⁴³² See Jiangsu Huaxing IQR at 16.

⁴³³ See BPI Memo for Jiangsu Huaxing’s proprietary reporting and Jiangsu Huaxing IQR at Exhibit 6.

Further, Guangdong Huaxing acknowledges in its rebuttal brief that Jiangsu Huaxing did in fact incur financing during the POI, but that it is not the type of financing “as contemplated by the questionnaire (i.e. financing by a recognized State Authority).”⁴³⁴ While Commerce’s lending question is included in the “Policy Loans to the Glass Containers Industry” section of the questionnaire, Jiangsu Huaxing should have answered in the affirmative and provided a response to this question.

That said, we did not provide Jiangsu Huaxing with an opportunity to remedy its deficient response with respect to activities during the POI.⁴³⁵ On January 27, 2020, we issued a supplemental questionnaire to Guangdong Huaxing⁴³⁶ and requested additional information from Guangdong Huaxing and certain of its cross-owned companies, but in this supplemental questionnaire we did not request information on Jiangsu Huaxing’s borrowing.⁴³⁷ As such, Commerce did not provide Jiangsu Huaxing with an additional opportunity to provide information with regard to its POI activities.

Commerce reviewed the 2018 financial statements of both Guangdong Huaxing and Jiangsu Huaxing which supports Guangdong Huaxing’s contention that certain activities are not related to policy lending.⁴³⁸

Lastly, the petitioner cites to *FSS from China* in support of its argument to apply AFA to Jiangsu Huaxing. We do not find *FSS from China* to be relevant to the instant case. In *FSS from China*, Commerce applied AFA to a respondent after discovering an unreported loan from a Chinese state-owned bank during verification.⁴³⁹ In the instant case, Jiangsu Huaxing provided its POI financial statements in its questionnaire response, which lists this particular activity during the POI. Further, while there is limited record evidence regarding the source of this activity, our review of Guangdong Huaxing’s financial statements, as noted above, suggests this is an inter-company transfer.

Given that Commerce did not inquire further from Jiangsu Huaxing about this issue, combined with the limited record information regarding the source of the activity, we find the use of adverse inferences in selecting from the facts available in this circumstance is not warranted. However, we note that if this investigation results in an order, we intend to pursue this issue further during the first administrative review, if one is requested.

⁴³⁴ See Guangdong Huaxing Rebuttal Brief at 11.

⁴³⁵ See BPI Memo for Jiangsu Huaxing’s proprietary reporting.

⁴³⁶ See Guangdong Huaxing SQ.

⁴³⁷ See Guangdong Huaxing SQR.

⁴³⁸ See BPI Memo for a discussion of this issue.

⁴³⁹ See *FSS from China* IDM at Comment 8.

Comment 15: Soda Ash, Silica Sand, and Limestone LTAR Benefit Calculations

Use of Data Within UN Comtrade Data

Petitioner's Comments:

- In its *Preliminary Determination*, Commerce recognized deficiencies relating to double counting and the inclusion of China data in the United Nations Commodity Trade Statistics Database (UN Comtrade) Data, stating, “{w}e deducted China and EU-28 (to avoid double counting of European countries) quantities from the total monthly amounts as well as removing any zero quantities in the data.”⁴⁴⁰
- The UN Comtrade data provided by Guangdong Huaxing does not allow the agency to make these adjustments because data for China was not separately provided. Only Qixia Changyu provided separate UN Comtrade data for Chinese exports, and removal of such data results in higher benchmark calculations for the same inputs from the same source.
- As such, to the extent Commerce relies on UN Comtrade data to value soda ash and limestone, Commerce should use the information provided by Qixia Changyu.

No parties submitted rebuttal comments on this issue.

Commerce's Position: We agree with the petitioner. Commerce prefers to calculate raw material input prices using complete available data contained in the UN Comtrade data.⁴⁴¹ Guangdong Huaxing's UN Comtrade data excluded transactions from China and into China.⁴⁴² However, the UN Comtrade data provided by Qixia Changyu contains complete transactions.⁴⁴³ Accordingly, for the final determination, we will use the data provided by Qixia Changyu (*i.e.*, UN Comtrade) to value raw material inputs (*i.e.*, soda ash, silica sand and limestone).⁴⁴⁴ However, we will exclude from Qixia Changyu's UN Comtrade data transactions that include double counting (*e.g.*, UN-28 data), transactions with zero quantity or value, and imports to China in order to avoid the inclusion of distortive prices in the benchmark.⁴⁴⁵

Allegations of Clerical Errors

Additionally, the petitioner alleged certain errors in Commerce's input LTAR benefit calculations for Guangdong Huaxing and its cross-owned companies including Foshan Huaxing Glass Co., Ltd., Daye Huaxing Glass Co., Ltd., Fujian Huaxing Glass Co., Ltd., Hebei Huaxing Glass Co., Ltd., Xinjiang Huaxing Glass Co., Ltd.⁴⁴⁶ No parties submitted rebuttal comments on the alleged errors, and we address each of these alleged errors below.

⁴⁴⁰ See Petitioner Case Brief at 39.

⁴⁴¹ See *Silica Fabric Investigation* IDM at Comment 14.

⁴⁴² See Guangdong Huaxing Benchmark Submission at Exhibits 1 and 2.

⁴⁴³ See Qixia Changyu's Letter, "Certain Glass Containers from the People's Republic of China: Benchmark Information," dated January 27, 2020 (Qixia Changyu Benchmark Submission) at Attachments 1-3.

⁴⁴⁴ See Guangdong Huaxing Final Calc Memo.

⁴⁴⁵ *Id.*

⁴⁴⁶ See Guangdong Huaxing Case Brief at 1-4.

A. *Daye Huaxing Glass Co. Ltd.*

The petitioner argues that when calculating the quartz sand benefit, certain purchase numbers were omitted from Commerce's calculation.⁴⁴⁷

Commerce's Position: We disagree with the petitioner. The purchase order numbers referenced by the petitioner are for 2019 quartz sand purchases, which Commerce did not include in Daye Huaxing Glass Co., Ltd.'s benefit calculation since they post-dated the POI. Accordingly, we have not made this proposed change to Guangdong Huaxing's final calculations.

B. *Foshan Huaxing Glass Co., Ltd.*

The petitioner argues that when calculating the quartz sand benefit, certain purchase numbers were omitted from Commerce's calculation.⁴⁴⁸

Commerce's Position: We disagree with the petitioner. The purchase order numbers referenced by the petitioner are for 2019 quartz sand purchases, which Commerce did not include in Foshan Huaxing Glass Co., Ltd.'s benefit calculation since they post-dated the POI. Accordingly, we have not made this proposed change to Guangdong Huaxing's final calculations.

C. *Fujian Huaxing Glass Co. Ltd.*

The petitioner argues that when calculating the soda ash benefit, Commerce summed the per-unit benefit column instead of the total benefit column to derive the total benefit.⁴⁴⁹

Commerce's Position: We agree with the petitioner. Therefore, for the final determination, we have corrected this inadvertent error by summing the total benefit column.⁴⁵⁰

D. *Guangdong Huaxing Glass Co., Ltd.*

The petitioner argues that when calculating the soda ash benefit, certain purchase numbers are missing benchmarks and, hence, the calculation did not generate benefits.⁴⁵¹

Commerce's Position: We disagree with the petitioner. The purchase order numbers referenced by the petitioner as missing from Commerce's Guangdong Huaxing Soda Ash calculation relate to purchases of calcium carbonate (limestone), not soda ash, and these purchase order numbers are appropriately included in the limestone benefit calculation.⁴⁵²

⁴⁴⁷ See Petitioner Case Brief at 43-44 for the proprietary purchase order numbers.

⁴⁴⁸ *Id.*

⁴⁴⁹ See *id.* for the proprietary column description.

⁴⁵⁰ See Guangdong Huaxing Final Calc Memo.

⁴⁵¹ See Petitioner Case Brief at 43-44 for the proprietary purchase order numbers.

⁴⁵² See Guangdong Huaxing Final Calc Memo.

Accordingly, we have not made this proposed change to Guangdong Huaxing's final calculations.

E. Hebei Huaxing Glass Co., Ltd.

The petitioner argues that when calculating the soda ash benefit, Commerce did not include all purchases in its soda ash benefit calculation.⁴⁵³

Commerce's Position: We agree with the petitioner. Therefore, for the final determination, we have corrected this inadvertent error by including all purchases of soda ash into the final benefit calculation.⁴⁵⁴

The petitioner argues that when calculating the limestone benefit, Commerce did not include all purchases in its limestone benefit calculation.⁴⁵⁵

Commerce's Position: We agree with the petitioner. Therefore, for the final determination, we have corrected this inadvertent error by including all purchases of limestone into the final benefit calculation.⁴⁵⁶

The petitioner argues that when calculating the quartz sand benefit, certain purchase numbers were omitted from Commerce's calculation.⁴⁵⁷

Commerce's Position: We disagree with the petitioner. The purchase order numbers referenced by the petitioner are for 2019 quartz sand purchases which Commerce did not include in Hebei Huaxing Glass Co., Ltd.'s benefit calculation since they post-dated the POI. Accordingly, we have not made this proposed change to Guangdong Huaxing's final calculations.

F. Xinjiang Huaxing Glass Co., Ltd.

The petitioner argues that when calculating the soda ash benefit, Commerce did not include all purchases in its soda ash benefit calculation.⁴⁵⁸

Commerce's Position: We disagree with the petitioner, in part. Certain of the purchase order numbers referenced by the petitioner are for 2019 soda ash purchases which Commerce did not include in Xinjiang Huaxing Glass Co., Ltd.'s benefit calculation since they post-dated the POI. However, certain other of the purchase order numbers referenced by the petitioner were inadvertently omitted from the benefit calculation. Therefore, for the final determination, we have corrected this inadvertent error by including certain purchase order numbers in the soda ash benefit calculation.⁴⁵⁹

⁴⁵³ See Petitioner Case Brief at 43-44 for the proprietary purchase order numbers.

⁴⁵⁴ See Guangdong Huaxing Final Calc Memo.

⁴⁵⁵ See Petitioner Case Brief at 43-44 for the proprietary purchase order numbers.

⁴⁵⁶ See Guangdong Huaxing Final Calc Memo.

⁴⁵⁷ See Petitioner Case Brief at 43-44 for the proprietary purchase order numbers.

⁴⁵⁸ *Id.*

⁴⁵⁹ See Guangdong Huaxing Final Calc Memo.

Comment 16: Guangdong Huaxing's Land Benefit Calculations

Guangdong Huaxing alleged certain errors in Commerce's land benefit calculations for Guangdong Huaxing and its cross-owned companies including Foshan Huaxing Glass Co., Ltd., Daye Huaxing Glass Co., Ltd., Foshan City San Shui Hua Xing Glass Co., Guizhou Huaxing Glass Co., Ltd., and Henan Huaxing Glass Co., Ltd.⁴⁶⁰ We address each of these alleged errors below.

No parties submitted rebuttal comments on this issue.

A. *Foshan Huaxing Glass Co., Ltd.*

Guangdong Huaxing argues that when calculating the land benefit amount, Commerce inadvertently failed to deduct the purchase price from the benchmark payment, resulting in the benchmark being used in place of the benefit. Guangdong Huaxing also put forth a proposed methodology for correcting this error.

Commerce's Position: We agree with Guangdong Huaxing that we made an inadvertent error in our land benefit calculation for Foshan Huaxing Glass Co., Ltd. and have corrected this error for the final determination. When calculating the land benefit, we inadvertently failed to deduct the purchase price from the benchmark payment, which resulted in the benchmark being used in place of the benefit. However, we disagree with Guangdong Huaxing's proposed methodology for correcting this error of calculating a prorated payment based on the size of each parcel of land. There is no evidence to support or allow assigning a prorated payment amount based on the square meter size of each parcel of land, *i.e.*, there is no record evidence showing that the price for each parcel of land is tied to the size of the parcel. Accordingly, for the final determination, we have calculated the land benefit based on the total price paid for the land and applied that amount to each parcel of land.⁴⁶¹

B. *Daye Huaxing Glass Co., Ltd.*

Guangdong Huaxing argues that Commerce incorrectly used an excel value of the date of purchase rather than the purchase price to value a 2006 land purchase. Guangdong Huaxing also put forth a proposed methodology for correcting this error.

Commerce's Position: We agree with Guangdong Huaxing that we made an inadvertent error in our land benefit calculation for Daye Huaxing Glass Co., Ltd. and have corrected this error for the final determination. When calculating the land benefit amount, Commerce inadvertently added the date of the purchase and land area instead of inputting the total price paid for the May 2006 land purchase by Daye Huaxing. However, we disagree with Guangdong Huaxing's proposed methodology for correcting this error. Guangdong Huaxing proposes using a Guangdong Huaxing 2011 land purchase amount to value the 2006 purchase of land. To correct

⁴⁶⁰ See Guangdong Huaxing Case Brief at 1-4.

⁴⁶¹ See Guangdong Huaxing Final Calc Memo.

this error Commerce will use the 2006 purchase amount, not the 2011 purchase amount. Accordingly, for the final determination, we have used the appropriate 2006 payment in calculating the total 2006 land benefit.⁴⁶²

C. Foshan City San Shui Hua Xing Glass Co., Ltd.

Guangdong Huaxing argues that Foshan City San Shui Xing Glass Co., Ltd.'s purchase price was not properly deducted from the from the benchmark price when deriving the benefit for the 2005 land purchase. Guangdong Huaxing also put forth a proposed methodology for correcting this error.

Commerce's Position: We agree with Guangdong Huaxing that we made an inadvertent error in our land benefit calculation for Foshan City San Shui Hua Xing Glass Co., Ltd. and have corrected this error for the final determination. When calculating the land benefit amount, Commerce inadvertently failed to deduct the purchase price form the benchmark price when deriving the benefit for the 2005 land purchase. Accordingly, for the final determination, we have properly deducted the land purchase price when deriving the benefit for the land purchase.⁴⁶³

D. Guizhou Huaxing Glass Co., Ltd.

Guangdong Huaxing argues that Commerce used the contract amount for land instead of the amount paid when calculating the land benefit. Guangdong Huaxing also put forth a proposed methodology for correcting this error.

Commerce's Position: We agree with Guangdong Huaxing that we made an inadvertent error in our land benefit calculation for Guizhou Huaxing Glass Co., Ltd. and have corrected this error for the final determination. When calculating the land benefit amount, Commerce inadvertently calculated the benefit using the contract price instead of the purchase price. Accordingly, for the final determination, we have properly deducted the land purchase price when deriving the benefit for the land purchase.⁴⁶⁴

E. Henan Huaxing Glass Co., Ltd.

Guangdong Huaxing argues that Commerce used the price figure reported for land that excluded taxes and other expenses paid, rather than the total purchase price. Guangdong Huaxing also put forth a proposed methodology for correcting this error.

Commerce's Position: We agree with Guangdong Huaxing that we made an inadvertent error in our land benefit calculation for Henan Huaxing Glass Co., Ltd. and have corrected this error for the final determination. When calculating the land benefit amount, Commerce inadvertently calculated the benefit using the price that excluded taxes and other expenses paid instead of the

⁴⁶² *Id.*

⁴⁶³ *Id.*

⁴⁶⁴ *Id.*

total purchase price. Accordingly, for the final determination, we have used the total price paid for the 2008 land purchase.⁴⁶⁵

Comment 17: Land Benchmark

Guangdong Huaxing's Comments

- Guangdong Huaxing argues that Commerce should use CBRE Research land prices from around the world as benchmarks for the final determination. Guangdong Huaxing contends that CBRE Research world land prices are more representative of world market prices than the Thai land prices used by Commerce.
- Additionally, Guangdong Huaxing maintains that while Commerce inflated the Thai land values from 2010, the CBRE Research world land prices it suggests using are from 2015-2018 and, thus, more contemporaneous than the Thai land prices.⁴⁶⁶

No parties submitted rebuttal comments on this issue.

Commerce's Position: We disagree with Guangdong Huaxing. In our *Preliminary Determination*, we explained that we cannot rely on the use of tier one or tier two benchmarks to assess the benefits from the provision of land for LTAR in China.⁴⁶⁷ As we explained in our *Preliminary Determination*, pursuant to *Sacks from China*,⁴⁶⁸ we determined that “Chinese land prices are distorted by the significant government role in that market,” and hence, no usable tier one benchmarks exist.⁴⁶⁹ We also explained that tier two benchmarks (*i.e.*, world market prices) are also inappropriate to value land in China.⁴⁷⁰ As a result, and consistent with past CVD investigations (*e.g.*, *Solar Cells from China* and *IMTDCs from China*),⁴⁷¹ we relied on land from Thailand contained in the “Asian Marketview Reports” by CB Richard Ellis (CBRE) for 2010 for use as a tier three benchmark 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.⁴⁷² We also stated that we will continue to

⁴⁶⁵ *Id.*

⁴⁶⁶ See Guangdong Huaxing Case Brief at 3.

⁴⁶⁷ See PDM at 41-42.

⁴⁶⁸ See *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) (*Sacks from China*), (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), and accompanying IDM at 15).

⁴⁶⁹ *Id.* at 41.

⁴⁷⁰ *Id.* at 42.

⁴⁷¹ See *Solar Cells from China Investigation* IDM at 6 and Comment 11; see also *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 21316 (April 11, 2016) (*IMTDCs from China*), and accompanying PDM at 13, (unchanged in *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) (*IMTDCs from China Final*)).

⁴⁷² See PDM at 42. Additionally, the complete history of our reliance on this benchmark is discussed in the above-referenced *Solar Cells from China Investigation* IDM. In that discussion, we reviewed our analysis from the *Sacks*

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.).⁴⁷³

In its Case Brief, Guangdong Huaxing argues that it placed contemporaneous world land values from the same CBRE Research source on the record. Guangdong Huaxing contends that Commerce should use these world land values because they are more contemporaneous with the POI and more representative of world prices than the CBRE Research Thailand information. After examining Guangdong Huaxing’s proposed land benchmark, we disagree with Guangdong Huaxing and we continue to conclude that the world market prices (*i.e.*, tier two) are not appropriate for valuing land in China with respect to CVD examinations.

We explained in the Land Benchmark Analysis Memorandum that, in selecting a tier two world market price, “Commerce examines the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in-country purchaser.”⁴⁷⁴ We went on to conclude that “since land is generally not simultaneously ‘available to an in-country purchaser’ while located and sold out-of-country on the world market, the facts of a given record generally do not permit Commerce to apply a second-tier benchmark for land-use rights. Thus, Commerce finds that land, as an *in situ* property, does not normally lend itself to be considered under this tier.”⁴⁷⁵

In determining to use an external benchmark for valuing land in China, we stated that Commerce relied on two important factors in determining whether a country’s land prices were suitable benchmarks: (1) the country’s geographic proximity to China; and (2) the level of economic development comparable to China.⁴⁷⁶ Guangdong Huaxing’s arguments focus on contemporaneity and the supposed representativeness of world prices. However, neither contemporaneity nor the existence of world prices speaks to the issue of whether Guangdong Huaxing’s proposed benchmarks represent prices in a comparable setting. In other words, contemporaneity and world market prices are unrelated to a country’s proximity to China and the country’s level of economic development. For example, Guangdong Huaxing’s proposed land benchmark contains world market prices from locations such as, *e.g.*, Frankfurt, Germany, Sao Paulo, Brazil, and Stockholm, Sweden.⁴⁷⁷ We find that locations such as these are not reasonable alternatives to China as locations for Asian production. Further, its submission does not include data that allows us to evaluate these locations’ economic comparability with respect to China. Accordingly, for the final determination, and pursuant to our practice,⁴⁷⁸ we will

from China investigation and concluded the CBRE data remained a valid land benchmark. *See Solar Cells from China Investigation* IDM at 6 and Comment 11.

⁴⁷³ *Id.*

⁴⁷⁴ *See* Land Analysis Memo at 27.

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.* at 30.

⁴⁷⁷ *See* Guangdong Huaxing Benchmark Submission at Exhibit 7.

⁴⁷⁸ *See Solar Cells from China Investigation* IDM at 6 and Comment 11; *see also* *IMTDCs from China* PDM at 13, (unchanged in *IMTDCs from China Final*).

continue to value land using indexed prices from “Asian Marketview Reports” by CB Richard Ellis (CBRE) for Thailand for 2010 as a tier three benchmark.⁴⁷⁹

Comment 18: Guangdong Huaxing’s Loan Benefit Calculations

Guangdong Huaxing’s Comments

- Guangdong Huaxing argues that Commerce made a ministerial error in totaling Guangdong Huaxing’s loan benefit. Guangdong Huaxing contends that Commerce summed Guangdong Huaxing’s loan benefit in cell AG147.⁴⁸⁰
- However, the cell immediately above AG147, AG146, was already the sum of all of Guangdong Huaxing’s loan benefits, resulting in Commerce double-counting Guangdong Huaxing’s total loan benefit.⁴⁸¹

No parties submitted rebuttal comments on this issue.

Commerce’s Position: We agree with Guangdong Huaxing that we made an inadvertent error in our calculation, and have corrected this error for the final determination.⁴⁸²

IX. RECOMMENDATION

We recommend approving all of the above positions. If these Commerce positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

Agree

Disagree

5/11/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁴⁷⁹ See Land Benchmark Data Memo (containing “Asian Marketview Report” pricing data).

⁴⁸⁰ See Guangdong Huaxing Case Brief at 4.

⁴⁸¹ *Id.*

⁴⁸² See Guangdong Huaxing Final Calc Memo.

APPENDIX

AFA Rate Calculation

Program Name	AFA Rate
Preferential Lending	
Policy Loans to Glass Container Industry	1.70%
Preferential Loans to State-Owned Enterprises (SOEs)	10.54% ⁴⁸³
Export Loans from Chinese State-Owned Banks (SOCBs)	10.54% ⁴⁸⁴
Treasury Bond Loans	10.54% ⁴⁸⁵
Export Credit Guarantees	10.54% ⁴⁸⁶
Preferential Lending to "Honorable Enterprises"	10.54% ⁴⁸⁷
Exemptions for SOEs from Distributing Dividends	10.54% ⁴⁸⁸
Loans and/or Interest Forgiveness for SOEs	2.32% ⁴⁸⁹
Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program	10.54% ⁴⁹⁰
Export Seller's Credit	4.25% ⁴⁹¹

⁴⁸³ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from China*).

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

⁴⁸⁷ See *Coated Paper from China*.

⁴⁸⁸ *Id.*

⁴⁸⁹ See *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*).

⁴⁹⁰ See *Coated Paper from China*.

⁴⁹¹ See *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011) (*Citric Acid from China*).

Export Buyer's Credit	10.54% ⁴⁹²
Provision of Goods and Services for Less Than Adequate Remuneration (LTAR)	
Provision of Soda Ash for LTAR	0.55%
Provision of Silica Sand for LTAR	7.17%
Provision of Calcium Carbonate (Limestone) for LTAR	1.28%
Provision of Pig Iron for LTAR	0.88% ⁴⁹³
Provision of Land and/or Land-Use Rights to Glass Containers Producers for LTAR	4.40%
Provision of Land and Land-Use Rights to SOEs for LTAR	5.24% ⁴⁹⁴
Provision of Electricity For LTAR	3.37%
Tax Exemptions and Reductions	
Income Tax Reductions for High or New Technology Enterprises (HNTEs)	25.00% ⁴⁹⁵
Tax Offsets for Research and Development (R&D) Under the Enterprise Income Tax Law	
Preferential Income Tax Policy for Enterprises in Northeast Region	
Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China	

⁴⁹² See *Coated Paper from China*.

⁴⁹³ 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) (*IMTDCs from China Final*).

⁴⁹⁴ See *Aluminum Wire and Cable from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 58137 (October 30, 2019) (*AWC from China*).

⁴⁹⁵ The standard income tax rate for corporations in China during the POI was 25 percent. Thus, the highest possible benefit for all income tax reduction or exemption programs combined is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, finding that the six programs, combined, provide a 25 percent benefit).

Reduction in or Exemption from Fixed Assets Investments Orientation Regulatory Tax	
Income Tax Benefits for Domestically-Owned Enterprises Engaging in R&D	
VAT & Tariff Exemptions for Purchases of Fixed Assets under the Foreign Development Fund	9.71% ⁴⁹⁶
Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring	9.71% ⁴⁹⁷
Grants	
GOC and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands	1.27% ⁴⁹⁸
Export Assistance Grants Program	1.27%
Foreign Trade Development Fund Grants Program	1.27%
Grants for Energy Conservation and Emission Reduction	1.27%
State Key Technology Project Fund	1.27%
Grants to Loss-Making SOEs	1.27%
Export Interest Subsidies	1.27%
SME Technology Innovation Fund	1.27%

⁴⁹⁶ 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*).

⁴⁹⁷ *Id.*

⁴⁹⁸ For all grant programs, we assigned a rate of 1.27 percent. 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) (*HPSC from China*).

Special Fund for Energy Savings and Technology Reform	1.27%
Self-Reported Subsidies - Qixia Changyu	
Award for Productive Export Enterprises	0.01%
Enterprise Social Security Subsidy	0.01%
Exhibition Subsidy	1.27% ⁴⁹⁹
Export Credit Insurance Subsidy	1.27%
Foreign Service Development Grant	1.27%
Handling Charge of Individual Tax	1.27%
Immediate Refund of VAT on Comprehensive Utilization of Renewable Resources	1.27%
Insurance premium rebate	1.27%
Insurance Subsidy	1.27%
Interest Subsidy for the Import of Key Equipment Import	1.27%
Job Stability Subsidy	1.27%
Outstanding Contribution Award of Financial Resources Construction	1.27%
Service Charge for Individual Income Tax Collection	1.27%
SME Development Project	1.27%
Special Funds for Industrial Development	1.27%
Subsidy for Elimination of Yellow Label Vehicles	1.27%
Technology Advancement Award	1.27%
Technology Import Interest Subsidy	1.27%
Self-Reported Subsidies - Guangdong Huaxing	

⁴⁹⁹ For all self-reported subsidies, we assigned a rate of 1.27 percent. *See HPSC from China.*

Aggregate Rate for 56 Self-Reported Subsidies*	0.59%
Unemployment Insurance Funds Support Enterprises to Provide Subsidies for Stable Employment	1.27%
"Ankang Cup" Competition Safety Production Awards	1.27%
"Double Five-Thousand" Labor Resettlement and Housing Subsidy	1.27%
(Sci-Tech Information) Support Fund	1.27%
"Immediate Levy, Immediate Incentive" Policy for Property and Land Use Tax	1.27%
2011 House Property Tax Deduction	1.27%
2017 Corporate Contribution Award	1.27%
2017 Personal Income Tax Refund Received from Local Taxation Bureau of Yongqing County	1.27%
Advanced Company	1.27%
Award for First Time to Obtain the Invention Patent Authorization	1.27%
Awards for Breaking the Ice	1.27%
Awards For R&D Organization	1.27%
Awards for Stabilization of Employment by Foreign Trade/Support Fund for Expanding Exports	1.27%
Awards for Top 10 Tax Payer	1.27%
Bonus for Enterprise Above Designated Size	1.27%
Bonus for Large Taxpayer	1.27%
Bonus Funds for the Deepening of Air Pollution Control in Glass Industry	1.27%
Bonus of 2018 Technology Little Giant Received from Science & Technology Bureau of Yongqing County	1.27%
Bonus of Advance Award of Federation of Trade Unions	1.27%

Bonus of Award for 2017 Newly Identified Small and Medium-Sized S&T Enterprises Received from Science & Technology Bureau	1.27%
Bonus of Cleanliness Award Received from Environment Protection Agency of Yongqing County	1.27%
Bonus of Government Award for Outstanding Entrepreneurs	1.27%
Bonus of Safety Management Achievement Exhibition Competition	1.27%
Bonus Received from Yongqing Federation of Trade Unions	1.27%
Books into Grassroots	1.27%
Brand Innovation and Enterprise Listing Support Awards	1.27%
Central Government Funds for the Development of Service Industries	1.27%
Clean Energy Award	1.27%
County Economic Bonus	1.27%
Daye Special Fund for Technological Transformation of Industrial Enterprises	1.27%
Development Funds	1.27%
Difference Between Export Tax Collection and Refund and Support Fund for Processing Fee	1.27%
Disaster Relief Funds for Industrial Enterprises in Typhoon Disaster	1.27%
Economy and Technology Promotion Bureau (Sci-Tech Information) Special Fund	1.27%
Electricity Subsidy	1.27%
Energy Conservation and Utilization Subsidy	1.27%
Energy-Saving Special Fund for Advanced Company	1.27%
Enterprise Award for Meeting the Level 2 Safety Standard	1.27%
Enterprise Income Tax and Vat Fiscal Subsidy	1.27%

Enterprise Safety Production Secondary Standardization Subsidy	1.27%
Enterprise Safety Production Standardization Subsidy	1.27%
Expanding Import & Export Project Fund	1.27%
Expenditure for Innovation Enterprises	1.27%
Employment Service Center Internship Subsidy	1.27%
Export Interest Subsidies	1.27%
Export Tax Rebate Balance Subsidy	1.27%
Family Planning Award	1.27%
Finance Bureau Support Funds	1.27%
Fiscal Awards for Management Improvement	1.27%
Foshan Innovative City Construction Technology Project Fund	1.27%
Foshan Special Fund for Service Trade and Service Outsourcing Industry Development	1.27%
Foshan Special Funds for Application of Robots and Intelligent Equipment	1.27%
Foshan Subsidies for High-Tech Enterprises	1.27%
Fund Allocation for Party Construction from Working Committee of Yongqing Economic Development Zone	1.27%
Fund Allocation for Party Construction Received from Management Committee of Yongqing Industrial Park	1.27%
Fund for "Quality Improving and Efficiency Improving" (Energy-Saving Project)	1.27%
Funds for Technology Project	1.27%
Funds Substituting Subsidies with Rewards of Exhibition of the Level	1.27%
Gaoming District SME Development Fund Award	1.27%

Gaoming Special Funds for Scientific and Technological Innovation	1.27%
Hanjiang District Bureau of Economic and Trade	1.27%
Hanjiang District Bureau of Economy and Information Technology	1.27%
Hanjiang District Commission of Economy and Information Technology	1.27%
Hanjiang District Finance Bureau	1.27%
Hanjiang District Local Taxation Bureau of Putian City	1.27%
Hanjiang District Science and Technology Bureau	1.27%
Headquarter Enterprise Support Funds	1.27%
High-Tech Enterprise Award	1.27%
House Property Tax Deduction	1.27%
Housing Tax Subsidy	1.27%
Housing Tax/Land Use Tax Subsidy	1.27%
Import & Export Interest Subsidies	1.27%
Import Interest Subsidies	1.27%
Incentive for Energy Saving and Emission Reduction	1.27%
Income Tax Subsidy	1.27%
Industrial Competition Award	1.27%
Industrial Development and Guiding Funds	1.27%
Industrial Injury Insurance Safety Production Award	1.27%
Industrial Revitalization and Upgrading Awards	1.27%

Infrastructure Basic Subsidy	1.27%
Infrastructure Construction Subsidies	1.27%
Intellectual Property Patent Subsidy	1.27%
Intellectual Property Transformation Guides Development Funds	1.27%
Labor Union Expense Return Received	1.27%
Labor Union Expense Returns Received in the Fourth Quarter of 2012 and the Fourth Quarter of 2011	1.27%
Land Transfer Fee Returned	1.27%
Land-Use Tax Subsidy	1.27%
Large Tax Payer Rewards	1.27%
Logistics Standardization Pilot Project Pre-Release Pilot Special Funds	1.27%
Nanhai Government Quality Rewards	1.27%
Natural Gas Fiscal Subsidy	1.27%
New Tax Contribution Award	1.27%
Party Membership Dues Refund	1.27%
Patent Subsidies (Technology Patent)	1.27%
People's Party Organization Activity Funds	1.27%
Post Stabilization Subsidies of Social Insurance Fund	1.27%
Primary-Level Emergency Management Exemplary Base Awards	1.27%
Project Funds	1.27%
Project Funds for Brand Innovation and Independent Innovation	1.27%

Provincial Energy-Saving Special Fund	1.27%
Provincial Fiscal Funds for Enterprise R&D	1.27%
Provincial Fiscal Subsidy for Enterprise Research and Development	1.27%
Provincial Science and Technology Development Funds	1.27%
Provincial Special Funds for Energy-Saving Circular Economy	1.27%
Provincial Technology Center	1.27%
Provincial Water-Saving Enterprise Funds Substituting Subsidies with Rewards	1.27%
Provincial-Level Special Guiding Funds for the Prevention and Control of Air Pollution	1.27%
Putian Municipal Leading Group Office for Speeding Up Industry Development	1.27%
Recreation and Sports Subsidies	1.27%
Recreation Subsidies	1.27%
Refund of Land Tax	1.27%
Refund of Service Charges for Withholding Individual Income Tax	1.27%
Return of Part of Local Retained Income Tax	1.27%
Reward	1.27%
Reward for Advanced Company and Advanced Individual in Advanced Area of Energy-Saving	1.27%
Rewards After Collection Corporate Property Tax and Land-Use Tax	1.27%
Rewards for Employing Excellent Fresh Graduates	1.27%
Rewards for Enterprise Skilled Talents Evaluation	1.27%
Rewards for Increasing Production and Increasing Efficiency in Manufacturing Enterprises Above Designated Size	1.27%

Rewards for New Established Enterprises Above Designated Size	1.27%
Rewards for New Project	1.27%
Rewards for Paying More Than Ten Million Tax in 2011	1.27%
Rewards for Paying More Than Twenty Million Tax in 2012	1.27%
Rewards for SME Growth Projects	1.27%
Safety and Special Contribution Award	1.27%
Science and Technology Funds	1.27%
Sci-Tech to Expand Trading and Branding Special Fund - Cultivating Advantageous Enterprises Project Funds	1.27%
Second Class Prize for Safty Production	1.27%
Social Security Bureau Subsidy	1.27%
Solatum for Enterprise Manufacturing During 2017 Spring Festival	1.27%
Special Award for Technical Transformation	1.27%
Special Fund for "Two-New" Product	1.27%
Special Fund for Expanding Exports	1.27%
Special Fund for Foshan Economy and Technology Development	1.27%
Special Fund for Improving Motor Energy Efficiency	1.27%
Special Funds and Support Funds for Patent	1.27%
Special Funds for Party Building	1.27%
Special Funds for the Development of SME Enterprises	1.27%
Special Project Fund	1.27%

Special Support and Reward Funds for the Development of High-Tech Enterprises	1.27%
Special Support for Enterprise Engineering Technology Research Center	1.27%
Special Support Fund for Enterprise Engineering Technology Research Center	1.27%
Special Support Funds for Sci-Tech Enterprise	1.27%
Spring Festival Solatium	1.27%
Subsidies for the Cultivation of High-Tech Enterprises	1.27%
Subsidy for Applying High-Tech Enterprise	1.27%
Subsidy for Energy-Saving Recycling of Waste Motors	1.27%
Subsidy for Founding Dacheng Craftsman's Workshop	1.27%
Subsidy for Improving Motor Energy Efficiency	1.27%
Subsidy for Lowering Electricity Cost and Gas Cost	1.27%
Subsidy for Polluter Automatic Monitoring System Operation	1.27%
Subsidy for Post Stability in 2016	1.27%
Subsidy for Post Stability of Unemployment Insurance	1.27%
Subsidy for R&D Expenditure	1.27%
Subsidy Fund	1.27%
Subsidy Funds for Technical Transformation	1.27%
Support for Programs Related to Economy Development	1.27%
Support Fund for Foshan Industrial Product Quality Promotion	1.27%
Support Funds for Foshan "Made in China 2025" Pilot and Demonstration Enterprises	1.27%

Support Funds for Foshan Nanhai Brand Innovation and Independent Innovation	1.27%
Support Funds for Seci-Tech Enterprise	1.27%
Talent Introduction Award	1.27%
Tax Collection Commission	1.27%
Tax Contribution Award	1.27%
Tax Increase Bonus for Technological Transformation in 2017	1.27%
Tax Reward of Management Committee of Hi-Tech Industrial Park	1.27%
Tax Star of Industrial Enterprise Award	1.27%
Technology Innovation Award	1.27%
Technology Innovation Rewards	1.27%
The Construction Cost of the Special Electric Power Line	1.27%
The First "Saide Cup" Safety Production Knowledge Competition Awards	1.27%
Top 10 Excellent Enterprises	1.27%
Top 10 Growth Companies Bonus	1.27%
Two-New Exemplary Book Fee	1.27%
Unemployment Insurance Funds Support Enterprises to Provide Subsidies for Stable Employment	1.27%
Vat Subsidy	1.27%
Vat/Housing Tax Subsidy	1.27%
Vat/Housing Tax/Land Use Tax Subsidy	1.27%
Waste Gas Desulfurization Project Subsidy	1.27%

Wording Funds for Social Workers and Volunteers	1.27%
Yellow Label Car Subsidy	1.27%
TOTAL RATE	320.53%