



C-570-116
Investigation
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December 7, 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 Affirmative
Determination of the Countervailing Duty Investigation of Forged
Steel Fluid End Blocks from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of forged steel fluid end blocks (fluid end blocks) from the People's Republic of China (China), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). Below is the complete list of issues in this investigation for which we received comments from interested parties.

Program-Specific Issues

Export Buyer's Credit (EBC) Program

Comment 1: Whether to Continue Applying Adverse Facts Available (AFA) to the EBC Program

Provision of Electricity for Less Than Adequate Remuneration (LTAR)

Comment 2: Whether the Provision of Electricity is Countervailable

Comment 3: Whether Commerce Should Revise the Electricity Benchmark

Provision of Steel Ingot for LTAR

Comment 4: Whether to Revise the Import Duty Rate in the Benchmark

Company-Specific Issues

- Comment 5: Whether Commerce Should Use Haimo Technologies Group Corp.’s (Haimo’s) Unconsolidated Sales Value for Its Denominator
- Comment 6: Whether Commerce Should Include Other Revenue in the Sales Values of Qinghe and Lanzhou Chenglin
- Comment 7: Whether Commerce Correctly Calculated Qinghe’s Benefit under the Income Tax Deduction for Research and Development (R&D) Expenses Under the Enterprise Income Tax Law
- Comment 8: Calculation of Qinghe’s Other Subsidies Benefits

II. BACKGROUND

A. Case History

On May 26, 2020, Commerce published its *Preliminary Determination*.¹ The selected mandatory respondents in this investigation are Shanghai Qinghe Machinery Co., Ltd. (Qinghe) and Nanjing Develop Advanced Manufacturing Co., Ltd. (Nanjing Develop). In the *Preliminary Determination*, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we aligned the deadline of the final determination of this countervailing duty (CVD) investigation with that of the final determinations of the companion AD investigations of fluid end blocks from Germany, India, and Italy, which was originally September 29, 2020.² On July 23, 2020, Commerce postponed the deadline of the final determinations in the companion antidumping duty investigations of fluid end blocks from Germany, India, and Italy to December 7, 2020.³

On September 18, 2020, Commerce released its Post-Preliminary Analysis.⁴ During the course of this investigation, travel restrictions were imposed that prevented Commerce personnel from conducting on-site verification. On October 5, 2020, Commerce notified interested parties that it was unable to conduct verification.⁵

¹ See *Forged Steel Fluid End Blocks from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 31457 (May 26, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See *Preliminary Determination* at “Alignment.”

³ See *Forged Steel Fluid End Blocks from the Federal Republic of Germany: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 44513; *Forged Steel Fluid End Blocks from India: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 85 FR 44517; *Forged Steel Fluid End Blocks from Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 31457 (all dated July 23, 2020).

⁴ See Memorandum, “Post-Preliminary Analysis of Countervailing Duty Investigation: Forged Steel Fluid End Blocks from the People’s Republic of China,” dated September 18, 2020 (Post-Preliminary Analysis).

⁵ See Memorandum, “Cancellation of Verification and Setting of Briefing Schedule,” dated October 5, 2020.

Qinghe and, jointly, the Government of China (GOC) and Nanjing Develop timely submitted case briefs concerning case-specific issues on October 19 and 20, 2020, respectively.⁶ On October 27, 2020, the petitioner submitted a rebuttal brief.⁷ On November 4, 2020, all interested parties who had requested a hearing withdrew their requests.⁸

B. Period of Investigation

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

III. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall rely on “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from 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 doing so, Commerce is not required to determine, or make any adjustments to, a countervailing subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁹ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination

⁶ See GOC’s Letter, “Forged Steel Fluid End Blocks from the People’s Republic of China: Government of China’s Case Brief,” dated October 19, 2020 (GOC and Nanjing Develop Case Brief); and Qinghe’s Letter, “Qinghe Administrative Case Brief: Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the People’s Republic of China (C-570- 116),” dated October 20, 2020 (Qinghe Case Brief).

⁷ See Petitioner’s Letter, “Forged Steel Fluid End Blocks from China: Petitioner’s Rebuttal Brief,” dated October 26, 2020 (Petitioner Rebuttal Brief).

⁸ See Petitioner’s Letter, “Forged Steel Fluid End Blocks from China: Petitioner’s Withdrawal of Hearing Request”; GOC and Nanjing Develop’s Letter, “Forged Steel Fluid End Blocks from the People’s Republic of China: Withdrawal of Request for Hearing;” Qinghe’s Letter, “Qinghe Hearing Request Withdrawal: Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the People’s Republic of China (C-570-116),” all dated November 4, 2020.

⁹ See section 776(b)(1)(B) of the Act.

from the countervailing duty investigation, a previous administrative review, or other information placed on the record.¹⁰

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.¹¹ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹²

Finally, under section 776(d) of the Act, when using an adverse inference when selecting from the facts otherwise available, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use.¹³ The statute also makes clear that, when selecting from the facts otherwise available with an adverse inference, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.¹⁴

Commerce relied on facts available, including AFA, for several findings in the *Preliminary Determination* and the Post-Preliminary Analysis. For a description of these decisions, *see* the *Preliminary Determination* and the Post-Preliminary Analysis.¹⁵ For the final determination, Commerce has not made any changes to its preliminary decisions regarding the use of facts otherwise available and AFA. For further discussion of the AFA determination regarding the EBC and electricity for less than adequate remuneration (LTAR) programs, *see* Comments 1 and 2, respectively, in section V below.

IV. SUBSIDIES VALUATION

A. Allocation Period

Commerce made no changes to the allocation period, fifteen years, and the allocation methodology used in the *Preliminary Determination*.¹⁶ No issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology.

¹⁰ *See also* 19 CFR 351.308(c).

¹¹ *See also* 19 CFR 351.308(d).

¹² *See* Statement of Administrative Action, H.R. Doc. No. 316, 103rd Congress, 2d Session (1994) (SAA) at 870.

¹³ *See* section 776(d)(1) of the Act.

¹⁴ *See* section 776(d)(3) of the Act.

¹⁵ *See* PDM at 8-29; *see also* Post-Preliminary Analysis at 3-5.

¹⁶ *See* PDM at 29-30.

B. Attribution of Subsidies

Commerce made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies.¹⁷

C. Denominators

Qinghe submitted comments regarding the denominators used by Commerce in the *Preliminary Determination* and in the Post-Preliminary Analysis.¹⁸ For the final determination, Commerce revised the sales figures used to calculate the program-specific countervailable subsidy rates for Qinghe.¹⁹

D. Loan Interest Rate Benchmarks and Discount Rates

After the publication of the *Preliminary Determination*, Commerce updated its loan interest rate benchmark to include interest rates for 2018 (*i.e.*, the POI). For the final determination, these 2018 interest rates have been used in the calculation of loans and non-recurring subsidies approved in 2018.²⁰

V. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable²¹

We made no changes to our *Preliminary Determination* and our Post-Preliminary Analysis with respect to the methodology used to calculate the subsidy rates for the following programs, except where noted below and for the incorporation of revised denominators for Qinghe, where appropriate.²² For descriptions, analyses, and calculation methodologies for these programs, *see* the *Preliminary Determination* and the Post-Preliminary Analysis. Except where noted below, no issues were raised regarding these programs in the parties' case briefs. The final program rates are as follows:

1. *Export Buyer's Credit Program*

We made no changes to our methodology for determining the AFA rate for this program for Nanjing Develop and Qinghe. For further discussion, *see* Comment 1. The final subsidy rate for this program is 10.54 percent *ad valorem* for Nanjing Develop, and 10.54 percent *ad valorem* for Qinghe.

¹⁷ *Id.* at 30-31.

¹⁸ *See* Qinghe Case Brief at 3-7.

¹⁹ *See* Memorandum, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from China: Final Determination Calculations for Qinghe," dated concurrently with this memorandum (Qinghe Final Calculation Memorandum); *see also* the discussion at Comments 5 and 6.

²⁰ *See* Memorandum, "Revised Loan Interest Rate Benchmarks," dated concurrently with this memorandum.

²¹ *See* Qinghe's Final Calculation Memorandum and "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from China: Final Determination Calculations for Nanjing Develop," dated concurrently with this memorandum (Nanjing's Final Calculation Memorandum).

²² *See* Section IV.C.

2. *Policy Loans to the Fluid End Blocks Program*

We updated the benchmark lending rates used to calculate the final subsidy rates for this program. The final subsidy rate for this program is 0.20 percent *ad valorem* for Nanjing Develop, and 3.19 percent *ad valorem* for Qinghe.

3. *Export Sellers's Credit Program*

We made no changes to our methodology for calculating a subsidy rate for Qinghe under this program. The final subsidy rate for this program is 1.54 percent *ad valorem* for Qinghe.

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

We made no changes to our methodology for calculating a subsidy rate for Qinghe under this program. The final subsidy rate for this program is 1.99 percent *ad valorem* for Qinghe.

5. *Income Tax Deduction for Research and Development (R&D) Expenses Under the Enterprise Income Tax Law*

As discussed in Comment 7, we made changes to the methodology used to calculate the subsidy rate for Qinghe under this program. We made no changes to the calculations for Nanjing Develop. The final subsidy rate for this program is 0.25 percent for Nanjing Develop, and 0.28 percent *ad valorem* for Qinghe.

6. *Import Tariff and Value Added Tax (VAT) Exemptions on Imported Equipment*

We made no changes to our methodology for calculating a subsidy rate for Qinghe and Nanjing Develop under this program. The final subsidy rate for this program is 0.04 percent *ad valorem* for Qinghe. We found no measurable benefit to Nanjing Develop under this program.

7. *Provision of Steel Ingots for LTAR*

While we made no changes to our methodology for calculating subsidy rates under this program, we adjusted the import duty rate in the calculation of the steel ingots benchmark. *See* Comment 4 below. The final subsidy rate for this program is 3.82 percent *ad valorem* for Nanjing Develop. We found no measurable benefit to Qinghe under this program.

8. *Other Subsidies*

As discussed in Comment 8, we made changes to our methodology in calculating a subsidy rate for Qinghe under various self-reported programs. We made no changes to the calculations for Nanjing Develop. The final (total) subsidy rate for these programs is 1.04 percent for Nanjing Develop, and 1.75 percent *ad valorem* for Qinghe.

9. *Electricity for LTAR*

As discussed in Qinghe's Final Calculation Memorandum, for the final determination we included certain additional fees reported by Qinghe.²³ We made no changes to our methodology in calculating a subsidy rate for Nanjing Develop under this program. The final subsidy rate for this program is 0.95 percent for Nanjing Develop, and 0.55 percent *ad valorem* for Qinghe.

B. Programs Determined Not Used or Not to Have Conferred a Measurable Benefit to Nanjing Develop or Qinghe

Commerce made no changes to its *Preliminary Determination* with regard to programs determined not to confer a measurable benefit to either Nanjing Develop or Qinghe during the POI.²⁴

1. Export Loans from Chinese State-Owned Banks
2. Preferential Loans for State-Owned Enterprises (SOEs)
3. Exemptions for SOEs from Distributing Dividends
4. Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization
5. Income Tax Deductions/Credits for Purchase of Special Equipment
6. Tax Incentives for Businesses in the China (Shanghai) Pilot Free Trade Zone
7. Value-Added Tax (VAT) Rebates on Domestically Produced Equipment
8. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring
9. GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands
10. The State Key Technology Project Fund
11. Foreign Trade Development Fund Grants
12. Grants for Energy Conservation and Emission Reduction
13. Grants for the Retirement of Capacity
14. Provision of Land for LTAR to SOEs
15. Provision of Land for LTAR in Economic Development Zones
16. Provision of Steam Coal for LTAR

VI. ANALYSIS OF COMMENTS

A. Program-Specific Issues

Export Buyer's Credit (EBC) Program

Comment 1: Whether to Continue Applying Adverse Facts Available (AFA) to the EBC Program

²³ See Qinghe Final Calculation Memorandum at 4.

²⁴ See PDM at 46.

*GOC and Nanjing Develop's Case Brief:*²⁵

- Commerce should not apply AFA to the EBC program, as the application of AFA is contrary to existing case law from the Court of Appeals for the Federal Circuit (CAFC) and the Court of International Trade (CIT). Additionally, Commerce failed to find specificity for this program, and as a result, the program cannot be considered countervailable.
- Commerce does not recognize that neither of the mandatory respondents benefited from the EBC program, and that both respondents placed non-use certifications on the record. It is unlawful for Commerce to apply AFA to find a contribution when a program was not used.
- The governing statute defines “financial contribution” as “the *direct* transfer of funds, such as grants, loans, and equity infusions, or potential direct transfer of funds or liabilities, such as loan guarantees.”²⁶ In this investigation, there was no transfer of funds, and thus no basis to resort to AFA. Additionally, an application of AFA is only appropriate when the record lacks needed information. In this investigation, no information is missing.
- In *Yama Ribbons*, *Guizhou Tyre I*, *Guizhou Tyre IV*, *Changzhou I*, and *Clearon Corp.*, the CIT decided that Commerce cannot apply AFA to determine an EBC was used if it was in fact unused.²⁷
- The CAFC has held that, “{a}n adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made, *i.e.*, under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.”²⁸ There is no basis in this case for Commerce to find that the GOC failed to cooperate.
- The CIT has held that, when Commerce invokes its authority to use AFA, “the agency must still make the necessary factual findings to satisfy the requirements for countervailability” pursuant to section 776(a)-(c) of the Act. Thus, Commerce cannot lawfully apply AFA to find a financial contribution when a program clearly was not used.

*Qinghe's Case Brief:*²⁹

- Commerce should reverse its preliminary AFA finding with respect to the EBC program. The CIT has repeatedly rejected Commerce’s argument that the GOC’s failure to provide a list of partner banks and 2013 revisions to administrative measures requires the

²⁵ See GOC and Nanjing Develop’s Case Brief at 3-13.

²⁶ *Id.* (citing section 771(5)(D)(i) of the Act).

²⁷ *Id.* (citing *Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334 (CIT 2016) (*Changzhou I*) at 3; *Yama Ribbons and Bows Co., v. United States*, No. 18-00054, 2019 WL 7373856 (CIT) (*Yama Ribbons*); *Guizhou Tyre Co. v. United States*, 415 F. Supp. 3d 1402, Slip Op. 19-171 (CIT 2019) (*Guizhou Tyre IV*); *Guizhou Tyre Co., Ltd. v. United States*, 348 F. Supp. 3d 1261, 1271, Slip Op. 18-140 (CIT 2018) (*Guizhou Tyre I*); *Clearon Corp. v. United States*, 359 F. Supp. 3d 1344, 1357 (CIT 2019) (*Clearon Corp.*)).

²⁸ See GOC’s and Nanjing Develop’s Case Brief at 5 (citing *Nippon Steel Corporation v. United States*, 337 F. 3d 1373, 1383 (Fed. Cir. 2003)).

²⁹ See Qinghe’s Case Brief at 13-19.

application of AFA, most recently in *Clearon Corp. v. United States*.³⁰ Specifically, the CIT found that the information missing from the record was not required in order to determine usage of the EBC program.

- Further, in *Guizhou Tyre II*, the CIT noted that the missing information is only important to understanding the *operation* of the EBC program and not in determining usage.³¹
- Usage of this program could be determined by reviewing the GOC's or Qinghe's statements of non-use, and Qinghe's customer declarations of non-use. The CIT has consistently found that this evidence is sufficient for a determination of non-use, and that Commerce's use of AFA is unlawful.³²
- In *Changzhou V* and *Guizhou Tyre IV*, the CIT rejected Commerce's arguments for the use of AFA regarding this program.³³ Similarly, in *Yama Ribbons*, the CIT rejected Commerce's arguments.³⁴ The facts in the current case support the same conclusion that, in light of substantial evidence, the program was not used by Qinghe or its customers.
- Commerce declined to even attempt to verify these claims of non-use, and by doing so, must accept the non-use statements in order to be in harmony with previous judicial precedent.

*Petitioner's Rebuttal Brief:*³⁵

- Commerce should continue to apply AFA to the EBC program. The GOC failed to provide information regarding the EBC that was requested by Commerce, and no party disputes this failure. This information is critical to Commerce's analysis. Commerce cannot make its determination without all information requested, and respondents should not be allowed to determine whether certain information is relevant to Commerce.
- This program constituted a financial contribution that was specific and conferred a benefit. Commerce requested that the GOC respond to its initial and supplemental questionnaires and provide information regarding the EBC program. The GOC failed to provide this information, and the respondents do not dispute this fact.
- The GOC failed to provide the China Ex-Im Bank's 2013 revision for the EBC program as requested by Commerce, and also failed to provide the names of the intermediary banks that might appear in the records of the recipient of the credit. Such information is critical for Commerce to verify usage, as it is logical that a U.S. customer may not realize a certain bank is operating under China's EBC program. Thus, the GOC's refusal to provide the requested information impeded Commerce's analysis and necessitated the use of AFA.
- In *Passenger Vehicle and Truck Tires from China*, Commerce noted that it cannot "rely on declarations from customers claiming non-use of the {EBC program} because "we are

³⁰ *Id.* at 14 (citing *Clearon Corp. v. United States*, Slip Op. 20-141 (CIT 2020)).

³¹ *Id.* at 16 (citing *Guizhou Tyre Co., Ltd. v. United States*, 399 F.Supp.3d 1346, Slip Op. 19-114 (CIT 2019) (*Guizhou Tyre II*) at 6-7).

³² *Id.* at 17 (citing *Changzhou Trina Solar Energy Co. v. United States*, Court of International Trade, Slip Op 20-108 (CIT 2019) (*Changzhou V*) at 4; *Guizhou Tyre Co. v. United States*, 415 F. Supp. 3d 1335, Slip Op. 19-155 (CIT 2019) (*Guizhou Tyre III*) at 3-6.)

³³ *Id.*

³⁴ *Id.* at 18 (citing *Yama Ribbons*).

³⁵ See Petitioner's Rebuttal Brief at 3-13.

unable to verify the accuracy of these documents as the primary entity that possess {es} such supporting records is the Export Import Bank of China {China Ex-Im Bank}.”³⁶ Commerce applied AFA for similar reasons in *Steel Threaded Rod from China, Fabricated Structural Steel from China*, and *Aluminum Sheet from China*.³⁷ Thus, Commerce’s application of AFA in the current case is consistent with its normal practice.

- Qinghe is erroneous in its argument that the non-use certifications it placed on the record demonstrate non-use of the EBC program. Commerce cannot verify the accuracy of the statements of non-use provided by Qinghe’s customers without fully understanding the scope and administration of the EBC program. Such non-use information can only be verified by examining information maintained at the banks used by the GOC to implement the EBC program. In sum, non-use certifications do not substitute for complete questionnaire responses.
- As Commerce has previously and repeatedly found, and as the GOC’s own description of the program suggests, the EBC provides a financial contribution to the respondents and participating entities within the meaning of section 771(5)(D)(i) of the Act. In the absence of any compelling evidence to the contrary on the record of this case, Commerce should continue to countervail the EBC program in the final determination.

Commerce’s Position: We continue to find that the GOC’s failure to provide requested information prevented Commerce from fully examining the EBC program with respect to usage, and as a result, we are continuing to apply AFA to the EBC program.

Solar Cells Initial Investigation of EBC Program

Commerce first investigated and countervailed the EBC program in the 2012 investigation of solar cells.³⁸ Our initiation was based on, among other information, the China Ex-Im Bank’s 2010 annual report, demonstrating that the credits provided under this program are “medium- and long-term loans, and have preferential, low interest rates. Included among the projects that are eligible for such preferential financing are energy projects.”³⁹ Commerce initially asked the GOC to complete the “standard questions appendix” for the EBC program. The appendix

³⁶ *Id.* (citing *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; 2017*, 85 FR 22718 (April 23, 2020) (*Passenger Vehicle and Truck Tires from China*), and accompanying Issues and Decision Memorandum (IDM) at Comment 3).

³⁷ *Id.* (citing *Carbon and Alloy Steel Threaded Rod from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 8833 (February 18, 2020) (*Steel Threaded Rod from China*), and accompanying IDM at Comment 6); *Certain Fabricated Structural Steel from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 5384 (January 30, 2020) (*Fabricated Structural Steel from China*), and accompanying IDM at Comment 2; *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People’s Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018) (*Aluminum Sheet from China*), and accompanying IDM at Comment 4.

³⁸ 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 Comment 18. Commerce’s determination with respect to the Export Buyer’s Credit Program was initially challenged but the case was dismissed.

³⁹ *Id.*

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.⁴⁰

The GOC provided none of the information requested by Commerce in the ensuing investigation, despite being given multiple opportunities to do so, but simply stated that “{n}one of the respondents or their reported cross-owned companies applied for, used, or benefited from the alleged programs during the POI.”⁴¹ In response to a request from Commerce for information concerning the operation of the EBC program and how we might verify usage of the program, the GOC stated that none of the respondents’ customers had used the program either. The GOC added: “{t}he GOC understands that this program, including the buyer’s credit cannot be implemented without knowledge of the exporters because the program has a substantial impact on the exporter’s financial and foreign exchange business matters.”⁴² 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.⁴³ 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.⁴⁴

Based on the GOC’s responses, Commerce’s understanding was that, under this program, loans were provided directly from the China Ex-Im Bank to the borrowers (*i.e.*, a respondent’s customers), with no involvement of third parties, such as exporters, or third-party banks. Accordingly, Commerce made clear its understanding that the only way to establish non-use of the program was through the GOC and not the respondent companies.⁴⁵ 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

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 60.

⁴³ *Id.* at 60-61.

⁴⁴ *Id.* at 61.

⁴⁵ *Id.*

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.⁴⁶

On this basis, Commerce concluded that usage of the program could not be confirmed at the respondent exporters in a manner consistent with its long-standing verification methods.⁴⁷ 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.⁴⁸

This "completeness" test is an essential element of Commerce's verification methodology. If Commerce were attempting to confirm whether and to what extent a respondent exporter had received loans from a state-owned bank, for example, its first step would be to examine the company's balance sheets to derive the exact amount of lending outstanding during the period of examination. Second, once that figure was confirmed, Commerce would examine subledgers or

⁴⁶ *Id.* at 61-62.

⁴⁷ 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 I*. In *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 255 F. Supp. 3d 1312, 1318 (CIT 2017) (*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. However, the Court found that the 2014 review of solar cells from China at issue in *Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp. 3d 1316 (CIT 2018) (*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 CIT 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.

⁴⁸ The Court agreed with Commerce in *RZBC Group Shareholding Co. v. United States*, 222 F. Supp. 3d 1196, 1201-02 (CIT 2017) (*RZBC Group*), following a remand, finding that Commerce could not verify non-use of the program by examining the respondent-exporter's audited financial statements or other books and records because record evidence demonstrated that the program terms were ambiguous. See *RZBC Group* at 1201-02 (concerning *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid 2012*), and accompanying IDM at Comment 6).

bank statements containing the details of all individual loans. Because Commerce could tie or trace the subledgers or bank statements to the total amount of outstanding lending derived from the balance sheets, it could be assured that the subledgers were complete and that it, therefore, had the entire universe of loan information available for further scrutiny. After examining the subledgers for references to the state-owned banks (for example, “Account 201-02: Short-term lending, Industrial and Commercial Bank of China”), Commerce’s third step would be to select specific entries from the subledger and request to see underlying documentation, such as applications and loan agreements, in order to confirm the accuracy of the subledger details. Thus, confirmation that a complete picture of relevant information is in front of the verification team, by tying relevant books and records to audited financial statements or tax returns, is critical.

In the investigation of solar cells, however, despite Commerce’s repeated requests for information, the GOC failed to offer any guidance as to how Commerce could search for EBC program lending in respondent exporters’ books and records that could be tied to financial statements, tax returns, or other relevant company documents. Therefore, Commerce concluded in that investigation that it could not verify usage of the program at the respondent exporters and instead attempted verification of usage of the program at the China Ex-Im Bank itself because it “possessed the supporting records needed to verify the accuracy of the reported non-use of the EBC program {and} would have complete records of all recipients of export buyer’s credits.” We noted our belief that “{s}uch records could be tested by {Commerce} to check whether the U.S. customers of the company respondents had received export buyer’s credits, and such records could then be tied to the {China} Ex-Im Bank’s financial statements.”⁴⁹ However, the GOC refused to allow Commerce to query the databases and records of the China Ex-Im Bank.⁵⁰ Furthermore, there was no information on the record of the solar cells investigation from the respondent exporters’ customers.

Chlorinated Isos Investigation of EBC Program

Two years later, in the investigation of chlorinated isos,⁵¹ respondents submitted certified statements from all customers claiming that they had not used the EBC program. This appears to have been the first instance of respondents submitting such customer certifications. At that point in time, as explained in detail above, based on the limited information provided by the GOC in earlier investigations, it was Commerce’s understanding that the EBC Program provided medium- and long-term loans and that those loans were provided directly from the China Ex-Im Bank to the borrowers (*i.e.*, the respondent exporters’ customers) *only*. Because the respondents’ customers were participating in the proceeding, verification of non-use appeared to be possible through examining the financial statements and books and records of the U.S. customers for evidence of loans provided directly from the China Ex-Im Bank to the U.S. customers pursuant to verification steps similar to the ones described above. Based on the GOC’s explanation of the program, we had expected to be able to verify non-use of this program through review of the

⁴⁹ See *Solar Cells from China Investigation* IDM at 62.

⁵⁰ *Id.*

⁵¹ 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.

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."⁵²

2013 Amendments to the EBC Program

Our understanding of the operation of the EBC program began to change after the *Chlorinated Isos Investigation* had been completed in September 2014. In *Citric Acid 2012*, Commerce began to gain a better understanding of how the Ex-Im Bank issued disbursement of funds and the corresponding timeline; however, Commerce's attempts to verify the program's details and statements from the GOC concerning the operation and use of the program were thwarted by the GOC.⁵³ In subsequent proceedings, Commerce continued to investigate and evaluate this program.

For example, in the silica fabric investigation conducted in 2016-2017, based on what we had learned in *Citric Acid 2012*, we asked the GOC about certain changes to the EBC program, including changes in 2013 that eliminated the USD 2 million minimum business contract requirement.⁵⁴ In response, the GOC stated that there were three relevant documents pertaining to the EBC program: (1) "Implementing Rules for the Export Buyer's Credit of the 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.⁵⁵ 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."⁵⁶ The GOC further stated that "those internal guidelines do not formally repeal or replace the provisions of the {Administrative Measures} which remain in effect."⁵⁷

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

⁵² *Id.* at 15.

⁵³ See *Citric Acid 2012* IDM at Comment 6 ("{N}otwithstanding the non-use claims of the RZBC Companies and the GOC, we find that the GOC's refusal to allow the verifiers to examine the EXIM Bank database containing the list of foreign buyers that were provided assistance under the program during the POR precluded the Department from verifying the non-use claims made by the RZBC Companies and the GOC.").

⁵⁴ See *Polyester Textured Yarn from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstance*, 84 FR 63845 (November 19, 2019) (*China Yarn*), and accompanying IDM at 24 (citing GOC's Letter, "Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC 7th Supplemental Response," dated September 6, 2016 (Export Buyer's Credit Supplemental Questionnaire Response)).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

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

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

Additional information in the GOC's supplemental questionnaire response also indicated that the loans associated with this program are not limited to direct disbursements through the EX-IM Bank. Specifically, the GOC stated that customers can open loan accounts for disbursements through this program with other banks. The funds are first sent from the EX-IM Bank to the importer's account, which could be at the EX-IM Bank or other banks, and that these funds are then sent to the exporter's bank account. Given the complicated structure of loan disbursements for this program {Commerce's} complete understanding of how this program is administrated is necessary. Thus, the GOC's refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administrated by the EXIM Bank, impeded {Commerce's} ability to conduct its investigation of this program.⁵⁸

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."⁵⁹

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."⁶⁰

The Instant Investigation

In this proceeding, we initiated an investigation of the EBC program based on information in the petition indicating that foreign customers of Chinese exporters have received a countervailable

⁵⁸ 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), and accompanying IDM at 12.

⁵⁹ *Id.* at 62.

⁶⁰ *Id.*

subsidy in the form of preferential export loans from the China Ex-Im Bank.⁶¹ 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 Export-Import Bank { } under the Buyer Credit Facility.”⁶² The Standard Questions Appendix requested various information that Commerce requires in order to analyze the specificity and financial contribution of this program, including the following: translated copies of the laws and regulations pertaining to the program, a description of the agencies and types of records maintained for administration of the program, a description of the program and the program application process, program eligibility criteria, and program use data. The appendix also requested a copy of the September 6, 2016, GOC 7th Supplemental Response in the Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China (Export Buyer’s Credit Supplemental Questionnaire Response).⁶³

Rather than responding to the questions in the Standard Questions Appendix, the GOC repeatedly stated that “none of the responding companies’ U.S. customers applied for, used, or benefited from this program during the POI, therefore, this question is not applicable.”⁶⁴ The GOC also did not provide the Export Buyer’s Credit Supplemental Questionnaire Response.⁶⁵ Further, in the Initial Questionnaire, we asked the GOC to “{p}rovide 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, including the *1995 Implementation Rules*, the *Administrative Measures* and the 2013 Revisions.”⁶⁶ The GOC did not provide the 2013 Revisions as requested.⁶⁷

In our first supplemental questionnaire to the GOC, we again asked the GOC to respond to the items in the Standard Questions Appendix, regardless of the program’s use by the mandatory respondent companies.⁶⁸ Rather than providing the requested information, including the 2013 Revisions, the GOC stated that it did not have the right to access the list of partner/correspondent banks, information regarding the records relating to this program, and applicable interest rates.⁶⁹ Furthermore, while the GOC described the steps it took to confirm the customer lists and customer affidavits of non-use with the mandatory respondents, the GOC failed to identify the

⁶¹ See Memorandum, “Enforcement and Compliance Office of AD/CVD Operations Countervailing Duty Initiation Checklist: Forged Steel Fluid End Blocks from the People’s Republic of China,” dated January 8, 2020 (Initiation Checklist), at 11-12.

⁶² See Commerce’s Letter, “Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the People’s Republic of China: Countervailing Duty Questionnaire,” dated February 4, 2020 (Initial Questionnaire) at II-5 to II-6.

⁶³ *Id.* at II-5.

⁶⁴ See GOC’s Letter, “Forged Steel Fluid End Blocks from the People’s Republic of China: Government of China’s Response to Section II,” dated March 27, 2020 (GOC IQR) at 28-30.

⁶⁵ *Id.*

⁶⁶ See Initial Questionnaire at II-5 (referring to Export Buyer’s Credit Supplemental Questionnaire Response).

⁶⁷ See GOC IQR at 31 and Exhibit II.A.11 and Exhibit II.A.12.

⁶⁸ See Commerce’s Letter, “Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the People’s Republic of China: GOC Supplemental Questionnaire,” dated April 10, 2020 at 5-6.

⁶⁹ See GOC’s Letter, “Forged Steel Fluid End Blocks from the People’s Republic of China: Government of China’s Response to Supplemental Questionnaire,” dated April 24, 2020 at 8-9.

official documents, databases, accounts, or any other official records that were examined to determine there was non-use.⁷⁰

Though the GOC did not submit the Export Buyer's Credit Supplemental Questionnaire Response to the record of this investigation, previous cases where the GOC has provided this information have indicated that the GOC revised the EBC program in 2013 to eliminate the requirement that loans under the program be a minimum of two million U.S. dollars.⁷¹ Moreover, the Export Buyer's Credit Supplemental Questionnaire Response also has indicated that the China Ex-Im Bank may disburse export buyer's credits either directly or through third-party partner and/or correspondent banks.⁷² 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. 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.

The 2013 Revisions are especially significant because the Export Buyer's Credit Supplemental Questionnaire Response has indicated the credits may not be *direct* transactions from the China Ex-Im Bank to U.S. customers of the respondent exporters, but rather, that there can be intermediary banks involved, the identities of which remain unknown to Commerce.⁷³ As noted above, in prior examinations of this program, we found that the China Ex-Im Bank, as a lender, is the primary entity that possesses the supporting information and documentation that are necessary for Commerce to fully understand the operation of this program following the 2013 Revisions, which is a prerequisite to Commerce's ability to verify non-use of the program.⁷⁴ Performing the verification steps outlined above to verify claims of 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 aluminum sheet:

Record evidence indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank. Specifically, the record information indicates that customers can open loan accounts for disbursements through this program with other banks, whereby the funds are first sent to ... the importer's account, which

⁷⁰ *Id.* at 6-8.

⁷¹ *See China Yarn IDM* at 27.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *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").

could be at the China Ex-Im Bank or other banks, and that these funds are then sent to the exporter's bank account.⁷⁵

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,⁷⁶ having a list of the correspondent banks is critical to conducting a verification of non-use at the U.S. customers.

Furthermore, although the respondents reported that their U.S. customers did not use the program, when we asked the respondents to explain in detail the steps they took to determine non-use of the EBC program for its customers, they responded that confirmation of non-use was based solely on affidavits from their customers.⁷⁷ However, while Nanjing Develop's sole customer submitted an affidavit,⁷⁸ not all of Qinghe's customers submitted affidavits stating they did not use this program.⁷⁹

Despite the respondents' assertion that their U.S. customers did not use the EBC program, the customer affidavits are, alone, 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. As noted above, the GOC failed to provide the requested necessary information regarding the EBC program.⁸⁰ It referred Commerce to the mandatory respondents to verify usage.⁸¹ 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 ExIm 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.

⁷⁵ See *Aluminum Sheet from China* and accompanying IDM at 30.

⁷⁶ Commerce no longer attempts to verify usage of the EBC program 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.

⁷⁷ See Nanjing Develop's Letter, "Forged Steel Fluid End Blocks from the People's Republic of China: Nanjing Develop Advanced Manufacturing Co., Ltd.'s Response to Section III," dated March 30, 2020 (Nanjing Develop IQR) at 15 and at Exhibit P.B.4; see also Qinghe's Letter, "Qinghe Response to Initial Questionnaire: Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the People's Republic of China (C-570-116)," dated March 26, 2020 (Qinghe IQR) at 14 and at Exhibit III.B.5c.

⁷⁸ See Nanjing Develop IQR at Exhibit P.B.4.

⁷⁹ See Qinghe IQR at Exhibit III.B.5c.

⁸⁰ See GOC IQR at 35-38.

⁸¹ *Id.* at 31-32.

Without such necessary information, Commerce would have to engage in an unreasonably onerous examination of the business activities and records of the 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 the 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 the identities of the correspondent banks would require Commerce to view the underlying documentation for *all* entries from the subledger *to attempt* to confirm the origin of each loan - *i.e.*, whether the loan was provided from the China Ex-Im Bank *via* an intermediary bank. This would be an 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 EBC program. This is especially true given the GOC's failure to provide other requested information, such as the 2013 Revisions, a sample application, and other documents making up the "paper trail" of a direct or indirect export credit from the China Ex-Im Bank.⁸² Commerce would simply not know what to look for behind each loan in attempting to identify a loan provided by the China Ex-Im Bank via a correspondent bank.

This same sample "paper trail" would be necessary even if the GOC provided the list of correspondent banks. 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 China Ex-Im Bank. In order to do this, Commerce would need to know what underlying documentation to look for in order to determine whether particular subledger entries for HSBC might actually be China Ex-Im Bank financing: specific applications, correspondence, abbreviations, account numbers, or other indicia of China Ex-Im Bank involvement. As explained above, the GOC failed to provide Commerce with any of this information. Thus, even if Commerce were to attempt to verify respondent's non-use of the EBC program notwithstanding its lack of knowledge of which banks are intermediary/correspondent banks by examining each loan received by each of the respondent's U.S. customers, Commerce would still not be able to verify which loans were normal loans versus EBC program loans due to its lack of understanding of what underlying documentation to

⁸² See Initial Questionnaire at II-5. 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 Bank that establish the terms of the assistance provided under the facility." The GOC responded that this question was "not applicable." See GOC IQR at 29.

expect, and whether/how that documentation would indicate China Ex-Im Bank involvement. In effect, companies could provide Commerce with incomplete loan documentation without Commerce understanding that the loan documentation was incomplete. Even if it were complete and identified China Ex-Im Bank involvement, without a thorough understanding of the program, Commerce might not recognize indicia of such involvement.

For all the reasons describe above, Commerce requires the 2013 Revisions, as well as other necessary information concerning the operation of the EBC program, in order to verify usage. Understanding the operation of the program is not, therefore, solely a matter 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.

Thus, Commerce finds it could not *accurately and effectively* verify usage at the respondents’ customers’ facilities, even if it were to have attempted the unreasonably onerous examination of each of its customers’ loans. To conduct verification with the 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 the respondents’ use of the EBC program.

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 the respondents’ U.S. customers actually used the EBC program during the POI.⁸³ 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 find that we must rely on the facts otherwise available, pursuant to sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, to determine whether this program was used by the respondents and conferred a benefit.

Furthermore, pursuant to section 776(b) of the Act, we continue to find that the GOC, by withholding information and significantly impeding this proceeding, failed to cooperate with Commerce by not acting to the best of its ability.⁸⁴ As noted above, the GOC did not 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 China Ex-Im Bank. Such information is essential to understanding how export buyer’s credits flow to/from foreign buyers and the China Ex-Im Bank. Absent the requested information, the GOC’s and the respondents’ claims of non-use of this program are not verifiable. We requested the 2013 Revisions because information indicates that the 2013

⁸³ See *Preliminary Determination* and accompanying PDM at 26-30.

⁸⁴ *Id.* at 29.

Revisions implemented important program changes. For example, the Export Buyer's Credit Supplemental Questionnaire Response has indicated that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank.⁸⁵ Specifically, this document 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 China Ex-Im Bank or third-party banks; and 3) these funds are then sent to the exporter's bank account.⁸⁶ 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.

Thus, as discussed above, the GOC's refusal to provide the 2013 Revisions, setting internal guidelines for how this program is administered by the China Ex-Im Bank, 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 the respondents used and benefited from this program, despite its claims that its U.S. customers had not obtained export buyer's credits from the China Ex-Im Bank during the POI.

Finally, relying on AFA because we do not have complete information, Commerce finds the EBC program to be an export subsidy for this final determination.⁸⁷ 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 China Ex-Im Bank, provide loans at preferential rates for the purchase of exported goods from China.⁸⁸ Moreover, the program was alleged by the petitioner as an example of a possible export subsidy.⁸⁹ Furthermore, Commerce has found this program to be an export subsidy in the past.⁹⁰ Thus, taking all such information into consideration indicates the provision of the export buyer's credits is contingent on exports within the meaning of section 771(5A)(B) of the Act. Moreover, we find that under EBC program, the GOC bestowed a financial contribution pursuant to section 771(5)(D) of the Act.

Provision of Electricity for LTAR

Comment 2: Whether the Provision of Electricity is Countervailable

*GOC's and Nanjing Develop's Case Brief:*⁹¹

- Commerce should not countervail electricity purchased by the mandatory respondents.
- The GOC rejects any characterization of the electrical system in China as being state-controlled.

⁸⁵ See *China Yarn* and accompanying IDM at 31.

⁸⁶ *Id.*

⁸⁷ See *Preliminary Determination PDM* at 29.

⁸⁸ See, e.g., GOC IQR at Exhibit II.A.11 and Exhibit II.A.12.

⁸⁹ See *Initiation Checklist* at 11-12.

⁹⁰ 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.

⁹¹ See *GOC and Nanjing Develop Case Brief* at 5-7.

- In its initial questionnaire response, the GOC explained that electricity prices in China are based on market principles and are determined by provincial governments within their jurisdictions, and not the National Development and Reform Commission (NDRC).
- The facts on the record show that retail prices for electricity are set according to purchasing cost, transmission prices, transmission losses and government surcharges, regardless of a particular firm’s participation in a specific sector.
- Within the AFA framework, Commerce cannot use an adverse inference in deciding that specificity exists without providing a reason or referencing the facts that it has taken into consideration.
- In *Changzhou IV*, the CIT decided that Commerce cannot simply rely on its Initiation Checklist to satisfy the specificity requirement.⁹²
- The GOC strongly opposes the investigation of Provision of Electricity for LTAR program and demands that Commerce correct the determination that the provision of electricity is specific.

*Petitioner’s Rebuttal Brief:*⁹³

- Consistent with record evidence and recent practice, Commerce should continue to apply AFA pursuant to section 776 of the Act with respect to this program and should continue to find the provision of electricity for LTAR is specific within the meaning of section 771(5A) of the Act.
- The GOC ignores its own failure to provide sufficient information for Commerce to fully analyze this program.
- The GOC failed to provide requested information (*e.g.*, Provincial Price Proposals) regarding the roles of provinces, the NDRC, and cooperation between the provinces and the NDRC in electricity price adjustments.
- Notices 748 and 3105 direct the reduction of the electricity sales price with a specific emphasis on electricity prices for industry, undermining the GOC’s claim that the NDRC no longer controls electricity prices and demonstrating that electricity price reductions are specific to certain industries under section 771(5A)(D)(iii)(I) of the Act.
- The CIT recently affirmed Commerce’s analysis with respect to Notice 748, explaining that “Notice 748 supports Commerce’s determination that the NDRC is still involved in price setting in some capacity as Article 6 directs provinces to report their plans to the NDRC.”⁹⁴
- Furthermore, the GOC failed to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves. The CIT has previously upheld that, without this information, Commerce “is unable to determine whether the price variations {among the provinces} were due to impermissible regional subsidization.”⁹⁵

⁹² *Id.* at 6-7 (citing to *Changzhou Trina Solar Energy Co. v. United States*, 2019 Court of International Trade, Slip. Op. 2019-137, (CIT 2019) (*Changzhou IV*) at 32.)

⁹³ See Petitioner Rebuttal Brief at 14-19.

⁹⁴ *Id.* at 16 (citing to *Canadian Solar, Inc. v. United States*, Slip. OP. 2020-149 (CIT 2020) (*Canadian Solar*) at 18).

⁹⁵ *Id.* at 17 (citing to *Canadian Solar* at 15-19).

- Commerce has applied AFA with respect to this program in prior cases with nearly identical records,⁹⁶ and the CIT has consistently affirmed Commerce’s resort to AFA.⁹⁷

Commerce’s Position:

For the final determination, we continue to find that the GOC did not provide the necessary information Commerce requested pertaining to whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D)(iii) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E)(iv) of the Act, and whether such a provision was specific within the meaning of section 771(5A)(D) of the Act.⁹⁸

As we explained in the *Preliminary Determination*, the GOC did not provide complete responses to Commerce’s questions regarding the provision of electricity for LTAR.⁹⁹ Furthermore, we explained in the *Preliminary Determination* that the various questions posed to the GOC throughout the course of this investigation requested information needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act and whether such a provision was specific within the meaning of section 771(5A) of the Act.¹⁰⁰ Consequently, in the *Preliminary Determination*, we relied on facts available pursuant to section 776(a)(2)(A) of the Act because the GOC withheld information that was requested of it for our analysis and applied AFA pursuant to section 776(b) of the Act because the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information.¹⁰¹ Consistent with the Act and our practice, Commerce is continuing to apply AFA with respect to the provision of electricity for LTAR in the final determination of this investigation.¹⁰²

As detailed in the *Preliminary Determination*, Commerce requested information regarding the derivation of electricity prices at the provincial level, the procedure for adjusting retail electricity tariffs, and the role of the NDRC and the provincial governments in this process.¹⁰³ Specifically, Commerce asked how increases in cost elements led to retail price increases, the derivations of those cost increases, how cost increases are calculated, and how cost increases impacted the final electricity prices.¹⁰⁴ The GOC provided electricity tariff schedules; however, the GOC failed to

⁹⁶ *Id.* at 17 (citing to *Countervailing Duty Investigation of Certain Aluminum Foil from the People’s Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018) (*Aluminum Foil from China*), and accompanying IDM at 23).

⁹⁷ *Id.* at 18 (citing to *Jiangsu Zhongji Lamination Materials Co. v. United States*, 405 F. Supp. 3d 1317, 1338 (September 18, 2019); *Changzhou IV* at 31-32; and *Canadian Solar* at 15-19).

⁹⁸ *See* PDM at 22-26.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *See, e.g., Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 58175 (December 11, 2017), and accompanying IDM at Comment 2; *see also Cast Iron Soil Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 6770 (February 28, 2019), and accompanying IDM at Comment 4.

¹⁰³ *See* PDM at 22-23.

¹⁰⁴ *See* Initial Questionnaire at Section II: Electricity Appendix.

explain, in detail, how the prices in the electricity tariff schedules were derived, including the specific factors or information relied upon by the NDRC.¹⁰⁵

Commerce additionally requested that the GOC explain, for each province in which a respondent or cross-owned company is located, how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the Provincial Price Proposals, and how cost element increases and final price increases were allocated across the province and across tariff end-user categories.¹⁰⁶ As explained in detail in the *Preliminary Determination*, the GOC failed to fully explain the respective roles and nature of the cooperation between the NDRC and the provincial governments in deriving and implementing electricity price adjustments. The GOC's refusal to answer Commerce's questions completely with respect to the relationship between the NDRC and the provinces in deriving electricity price adjustments, and its failure to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves, leaves Commerce unable to carry out a complete specificity and financial contribution analysis.¹⁰⁷ Further, despite the GOC's claim that the responsibility for setting prices within each province has moved from the NDRC to the provincial governments, record evidence indicates that the NDRC continues to play a major role in setting and adjusting prices, and the GOC failed to fully explain the roles and nature of the cooperation between the NDRC and provinces in deriving electricity price adjustments.¹⁰⁸ In addition, as noted above, the GOC failed to explain both the derivation of price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves.

As a result of the GOC's refusal to provide the requested information and unwillingness to cooperate, Commerce was unable to determine whether the electricity rates included in the electricity schedules submitted by the GOC were calculated based on market principles. Accordingly, Commerce applied facts available with an adverse inference to the determination of the appropriate benchmark. Specifically, because the GOC provided the provincial electrical tariff schedules, Commerce relied on this information as facts available and, in making an adverse inference, Commerce identified the highest rates among these schedules for each reported electrical category and used those rates as the benchmarks in the benefit calculations.¹⁰⁹

While the GOC and Nanjing Develop assert that Commerce did not make the necessary findings to classify electricity as specific, the GOC's failure to cooperate means that both our specificity determination and our benchmark determination must rely on the facts available on the record, subject to adverse inferences. As we explained in the *Preliminary Determination*, we attempted to obtain information on how Chinese provincial schedules are calculated and why they differ, which could have contributed to Commerce's analysis of an appropriate benchmark for the benefit calculation in this program.¹¹⁰ The GOC's failure to provide complete responses to our questions warrants the application of AFA in this case with respect to the selection of an electricity benchmark. The fact that the GOC refused to answer Commerce's questions

¹⁰⁵ See GOC IQR at 91; see also PDM at 25.

¹⁰⁶ See Initial Questionnaire at Section II: Electricity Appendix.

¹⁰⁷ See PDM at 25.

¹⁰⁸ See PDM at 25; see also GOC IQR at Exhibits II.F.3-2 and II.F.3-3.

¹⁰⁹ See PDM at 26.

¹¹⁰ *Id.* at 23.

completely with respect to the roles and nature of cooperation between the NDRC and provinces in deriving electricity price adjustments, and failed to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves, means that Commerce is unable to carry out a full specificity analysis. The GOC has failed to explain the reason for these differences in this and previous cases, claiming without support that the provincial governments set the rates for each province in accordance with market principles.¹¹¹

For the reasons stated above, we continue to find this program countervailable and rely on our findings in the *Preliminary Determination* that the GOC's provision of electricity confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively.¹¹² The GOC failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments.

Comment 3: Whether Commerce Should Revise the Electricity Benchmark

*Qinghe's Case Brief:*¹¹³

- Commerce should revise its benchmark used in the *Preliminary Determination* and use the highest monthly provincial price for each electricity category instead of the highest annual price for each category. This revision would make Commerce's methodology more consistent with Commerce's normal calculation for adequate remuneration for inputs.
- There were five different electricity tariffs in effect at different times in each province, each with a different peak, valley, and normal price for each period. In the *Preliminary Determination*, Commerce selected and applied a monthly valley rate across the entire POI. That rate, applied uniformly to the entire POI, exceeded the valley rate in several months of the year.
- Commerce should correct this inconsistency by revising the electricity benchmark to use only the highest *monthly* electricity price in each category. The selection of the highest monthly price for a benchmark that is applied to all months in the POI is unreasonable and inaccurately inflates the benefit calculated for the recipient. This methodology creates a benefit using a non-existent price and should not be used.

*Petitioner's Rebuttal Brief:*¹¹⁴

- In the *Preliminary Determination*, Commerce used AFA to select the highest electricity rates for each category as the benchmark for measuring the benefit received from this program. Qinghe's argument to revise this benchmark is meritless. Commerce's

¹¹¹ See, e.g., *Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 56582 (November 29, 2017), and accompanying IDM at Comment 9.

¹¹² See PDM at 26.

¹¹³ See Qinghe's Case Brief at 2 and 10-11.

¹¹⁴ See Petitioner's Rebuttal Brief at 19.

methodology for this program is consistent with previous cases and Qinghe cites no other practice or precedent to support its argument.

- Qinghe’s argument that Commerce should use the highest monthly electricity price in each category demonstrates a misunderstanding of Commerce’s benchmarking practice. The CIT previously explained in *Changzhou III*, “Commerce’s goal in setting a benchmark rate is to best approximate the market rate of electricity, not to choose the rate respondents were most likely to pay.”¹¹⁵ Qinghe’s argument should be rejected based simply on the CIT’s decision.
- Commerce also applied AFA with regard to the provision of electricity for LTAR in *Fabricated Structural Steel from China*, where the highest rates for each category were selected and used.¹¹⁶ Additionally, in *Aluminum Foil from China*, Commerce again selected the highest electricity rates on the record of the investigation for the applicable rate and user categories in constructing the benchmark.¹¹⁷
- In *Crystalline Silicon Photovoltaic Cells from China*, despite the CIT remanding other parts of Commerce’s electricity for LTAR analysis, it affirmed that “Commerce acted in accordance with the law in using the highest of all provincial rates on the record to calculate the benchmark.” Thus, Commerce should not revise its methodology for the final determination.¹¹⁸

Commerce’s Position:

In the *Preliminary Determination*, Commerce determined this program to be countervailable based, in part, on the application of AFA.¹¹⁹ We explained our methodology for constructing a benchmark for the electricity for LTAR program as follows:

For determining the existence and amount of any benefit under this program, we selected the highest non-seasonal provincial rates in China for each electricity category (*e.g.*, “large industry,” “general industry and commerce”) and “base charge” (either maximum demand or transformer capacity) used by the respondents. Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a category.¹²⁰

This benchmarking methodology, which selects the highest monthly rates in each category and applies them to all months in the POI, reflects an adverse inference drawn as a result of the GOC’s failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.¹²¹ As we stated in the *Preliminary Determination*,

¹¹⁵ *Id.* (citing *Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp. 3d 1316, 1343 (CIT 2018) (*Changzhou III*)).

¹¹⁶ *Id.* (citing *Fabricated Structural Steel from China* and accompanying IDM at Comment 2).

¹¹⁷ *Id.* (citing *Aluminum Foil from China*).

¹¹⁸ *Id.* (citing *Changzhou III*).

¹¹⁹ See *Preliminary Determination* and accompanying PDM at 22-26.

¹²⁰ See Memorandum, “Nanjing Develop Calculations for the Preliminary Determination” (Nanjing Develop Preliminary Calculation Memorandum); see also Memorandum, “Qinghe Calculations for the Preliminary Determination” (Qinghe Preliminary Calculation Memorandum), both dated May 18, 2020.

¹²¹ See *Aluminum Foil from China* and accompanying IDM at 63; see also Sec. 776(b) of the Act.

the GOC failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and the cost of electricity, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments.¹²²

Therefore, in the *Preliminary Determination*, we drew an adverse inference and as a result, we selected the benchmarking methodology in question. For this final determination, we continue to find that the GOC withheld information that was requested of it. Accordingly, we continue to apply facts available with an adverse inference for this program and made no changes to our benchmark methodology.¹²³

Provision of Steel Ingot for LTAR

Comment 4: Whether to Revise the Import Duty Rate in the Benchmark

Qinghe's Case Brief.¹²⁴

- In the *Preliminary Determination*, Commerce used the normal import tariff rate of 11 percent, as reported by the GOC. However, Commerce has consistently used the “most favored nation” (MFN) import duty rates in its tier two benchmark calculations.¹²⁵
- Commerce made the same mistake it makes here in the preliminary results of an administrative review of multilayered wood flooring from China and corrected that mistake in the final results.¹²⁶
- Commerce has applied the MFN rate in numerous cases in the past.¹²⁷

¹²² See PDM at 22-26.

¹²³ *Id.*

¹²⁴ See *Qinghe Case Brief* at 8-10.

¹²⁵ *Id.* (citing to *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from China*), and accompanying IDM at Comment 20).

¹²⁶ *Id.* (citing to *Multilayered Wood Flooring from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2016*, 84 FR 38221 (August 6, 2019), and accompanying IDM at Comment 9).

¹²⁷ *Id.* at 9-10 (citing to *Certain Plastic Decorative Ribbon from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 29096 (June 22, 2018), and accompanying PDM at 116 (unchanged in *Certain Plastic Decorative Ribbon from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 1064 (February 1, 2019)); *Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination*, 83 FR 17651 (April 23, 2018), and accompanying PDM at n.282 (unchanged in *Aluminum Sheet from China*); *Fine Denier Polyester Staple Fiber from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 51396 (November 6, 2017), and accompanying PDM at n.202 (unchanged in *Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination*, 83 FR 3120 (January 23, 2018)); *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 44562 (September 25, 2017), and accompanying PDM at n.260 (unchanged in Final); *Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 37844 (August 14, 2017), and accompanying PDM at n.301 (unchanged in *Aluminum Foil from China*).

- Consistent with its practice, Commerce should use the MFN rate of two percent in the steel ingot benchmark.

Commerce’s Position:

We agree with Qinghe. For the *Preliminary Determination*, we incorrectly used the general import duty rates in our steel ingot benchmark price calculations.¹²⁸ Commerce’s practice is to use MFN rates, because these rates reflect the general tariff rates applicable to world trade.¹²⁹ Therefore, we have used the MFN rate of two percent to calculate the benchmark price for steel ingot for the final determination.¹³⁰

B. Company-Specific Issues

Comment 5: Whether Commerce Should Use Haimo’s Unconsolidated Sales Value for Its Denominator

*Qinghe’s Case Brief:*¹³¹

- Commerce correctly cited the parent company rule at 19 CFR 351.525(b)(6)(iii) in attributing subsidies received by Haimo, but incorrectly used Haimo’s unconsolidated sales value instead of its consolidated sales value per the regulation. Haimo provided its consolidated sales value in its initial questionnaire response, a figure which ties to its income statement. Thus, Commerce did not follow its intended methodology.¹³²
- Commerce has consistently used the consolidated sales of parent companies to calculate the benefits of subsidies received by a parent company, and should use Haimo’s reported consolidated sales for the final determination.¹³³
- In *Coated Paper from China*, Commerce rejected arguments that it should not use the consolidated sales of a parent company in calculating subsidies it received.¹³⁴ In *Aluminum Foil from China* and *Shrimp from China*, Commerce also used consolidated revenue for the parent company and corrected an error in the preliminary determination where unconsolidated revenue was used.¹³⁵

Commerce’s Position: We agree with Qinghe that for subsidies received by its parent company Haimo, we should have used the consolidated sales value provided by Qinghe as the denominator in our subsidy rate calculations. Section 351.525(b)(6)(iii) of Commerce’s regulations states, “If the firm that received a subsidy is a holding company, including a parent

¹²⁸ See Nanjing Develop Preliminary Calculation Memorandum and Qinghe Preliminary Calculation Memorandum.

¹²⁹ See *Aluminum Extrusions from China* and accompanying IDM at Comment 20.

¹³⁰ See GOC IQR at 123.

¹³¹ See Qinghe Case Brief at 2-6.

¹³² *Id.*

¹³³ *Id.* at 2-6.

¹³⁴ *Id.* at 5-6 (citing *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010), and accompanying IDM at Comment 35 (*Coated Paper from China*)).

¹³⁵ *Id.* (citing *Aluminum Foil from China; Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*)).

company with its own operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries.”¹³⁶ Thus, for the final determination, we revised our calculations to use the consolidated sales figure provided by Qinghe for Haimo.¹³⁷

Comment 6: Whether Commerce Should Include Other Revenue in the Sales Values of Qinghe and Lanzhou Chenglin

*Qinghe’s Case Brief:*¹³⁸

- Commerce did not include Qinghe’s and Lanzhou Chenglin’s “other operating revenue” in each company’s respective sales denominators at the *Preliminary Determination*. The “other operating revenue” figures were correctly reported in Qinghe’s initial questionnaire response. The exclusion of the “other operating revenue” incorrectly inflated the benefit amounts for each company.¹³⁹
- Commerce should only exclude values from the denominator if they are related to service or royalty income. In Qinghe’s case, there is no evidence that the other operating income for each company consists of service or royalty income. As a result, Commerce should include “other operating revenue” in each company’s sales denominator.¹⁴⁰

*Petitioner’s Rebuttal Brief:*¹⁴¹

- Commerce was correct to exclude Qinghe’s and Lanzhou Chenglin’s “other operating revenue” from each company’s sales denominator. Qinghe failed to provide an adequate explanation for its “other operating revenue” figures. As a result of this lack of clarity, Commerce properly treated the figures as related to service or royalty income and excluded them. Qinghe’s simple assertions that the figures are not related to service or royalty income are insufficient. Commerce should continue to exclude Qinghe and Lanzhou Chenglin’s “other operating income.”

Commerce’s Position: We agree with Qinghe that, for the calculation of the benefit of subsidies received by Qinghe and Lanzhou Chenglin, we should include “other operating revenue” in each company’s sales denominator. Absent evidence that the revenue in question is related to service or royalty income, we find no basis to exclude “other operating revenue.”¹⁴² Thus, for the final determination, we adjusted each company’s sales denominator to include “other operating revenue.”¹⁴³

¹³⁶ 19 CFR 351.525(b)(6)(iii).

¹³⁷ See Qinghe’s Final Calculation Memo.

¹³⁸ See Qinghe’s Case Brief at 6-7.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ See Petitioner’s Case Brief at 21-22.

¹⁴² 19 CFR 351.525(b)(3).

¹⁴³ See Qinghe Final Calculation Memo.

Comment 7: Whether Commerce Correctly Calculated Qinghe’s Benefit Under the Income Tax Deduction for Research and Development (R&D) Expenses Under Enterprise Income Tax Law

*Qinghe’s Case Brief:*¹⁴⁴

- Commerce incorrectly calculated this program’s benefit in the *Preliminary Determination*. Commerce simply calculated the benefit using the total amount of tax deducted under this program instead of using the total amount of tax deducted, multiplied by the applicable tax rate.
- As stated in the Qinghe IQR, the tax rate applicable to Qinghe is 15 percent rather than 25 percent which Commerce used in its preliminary calculation. Commerce should correct its calculation by deriving the benefit using the total amount of tax deducted multiplied by 15 percent.¹⁴⁵

*Petitioner’s Rebuttal Brief:*¹⁴⁶

- Qinghe is incorrect that Commerce made a mistake in not multiplying the total deduction amount granted under this program by the applicable tax rate. In the *Preliminary Determination*, Commerce was correct to find that the amount deducted from Qinghe’s taxes *i.e.*, the amount by which taxable income was reduced, constituted the benefit conferred. Qinghe met the eligibility criteria for this program and received a 50 percent deduction from its taxable income, which Commerce correctly found to be the benefit received.
- The benefit of a tax deduction is the amount of the overall taxable income reduced by the deduction. Because the deduction has already reduced the total tax base upon which the tax rate is applied, it is not reasonable to then apply a tax rate to that reduced tax base. Yet, if Commerce determines that it must use Qinghe’s tax base as reduced by the deduction, it should apply the applicable tax rate of 25 percent and not 15 percent as argued by Qinghe.

Commerce’s Position: We agree with Qinghe that we should have applied the applicable tax rate to the amount of Qinghe’s tax deduction to calculate the benefit for this program, Income Tax Deduction for R&D Expenses Under Enterprise Income Tax Law, in the *Preliminary Determination*. We agree with the petitioner that we should multiply Qinghe’s total tax deduction by the prevailing 25 percent tax rate.

Commerce’s regulations at 19 CFR 351.503(e) stipulate that in calculating the benefit, “{Commerce} will not consider the tax consequences of the benefit.” Qinghe’s corporate tax rate would be 25 percent absent the “Income Tax Reductions for HNTes” program. Therefore, consistent with past proceedings,¹⁴⁷ we are not taking into consideration the “Income Tax

¹⁴⁴ See Qinghe Case Brief at 7-8.

¹⁴⁵ *Id.* at 7-8 (citing Qinghe IQR).

¹⁴⁶ See Petitioner’s Rebuttal Brief at 22-23.

¹⁴⁷ See *Aluminum Foil from China* IDM at Comment 21.

Reductions for HNTes” program, which reduces the corporate tax rate from 25 to 15 percent. As stated in the *CVD Preamble*, “the impact of the benefit under one subsidy program should not be considered in calculating the benefit under a separate program.”¹⁴⁸

Thus, for the final determination, we calculated Qinghe’s benefit based on the amount of Qinghe’s taxable income as reduced by the program, and we applied the applicable tax rate that Qinghe would have paid on its R&D expenses absent this program, which is 25 percent.

Comment 8: Calculation of Qinghe’s Other Subsidies Benefits

Qinghe’s Case Brief:¹⁴⁹

- Commerce made two errors in its calculations of the Other Subsidies in its Post-Preliminary Determination. First, Commerce twice counted the grant, “Pension subsidy from High-tech zone management committee” that was received by Haimo.
- Second, Commerce incorrectly calculated the POI benefit for one of Qinghe’s grants, “Returned Tax”. Because the grant passed the 0.5 percent test, the amount of the grant should have been allocated across the AUL period and the amount allocated to the POI should have been used in the benefit calculation rather than the full grant amount.

Commerce’s Position: We agree with Qinghe and revised our calculations for the final determination accordingly.¹⁵⁰

VII. RECOMMENDATION

We recommend approving all of the above positions.

If these 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

12/7/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

¹⁴⁸ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

¹⁴⁹ See Qinghe’s Case Brief at 11-12.

¹⁵⁰ See Qinghe’s Final Calculation Memo.

