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Investigation  
POI: 01/01/2019-12/31/2019  
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OF III: KJ/EBG

March 15, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting 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 in the Countervailing Duty Investigation of Certain  
Non-Refillable Steel Cylinders from the People's Republic of  
China

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## I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain non-refillable steel cylinders (non-refillable cylinders) from the People's Republic of China (China), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). The petitioner in this investigation is Worthington Industries (the petitioner). The mandatory respondents subject to this investigation are Ningbo Eagle Machinery & Technology Co., Ltd. (Ningbo Eagle) and Wuyi Xilinde Machinery Manufacture Co., Ltd. (Wuyi Xilinde). As a result of our analysis, we made changes to the subsidy rate calculations for Wuyi Xilinde, the adverse facts available (AFA) rate assigned to firms that failed to respond to Commerce's quantity and value (Q&V) questionnaire, and the all-others rate. The net subsidy rate for Ningbo Eagle remains unchanged. Below is the complete list of issues in this investigation for which we received comments from interested parties.

- Comment 1:** Countervailability of the Export Buyer's Credits (EBC) Program
- Comment 2:** Countervailability of the Provision of Electricity for Less Than Adequate Remuneration (LTAR) Program
- Comment 3:** Whether a Basis Exists for Commerce to Countervail "Other" Subsidies
- Comment 4:** Whether to Apply Total AFA to Wuyi Xilinde Concerning the Provision of Cold-Rolled Steel (CRS) for LTAR Program
  
- Comment 5:** Whether Commerce Should Adjust the Inland Freight Rate Used in Wuyi Xilinde's Benefit Calculation under the Provision of CRS from LTAR Program

- Comment 6:** Whether Commerce Should Adjust the Benchmark Interest Rate Used to Measure the Benefit to Wuyi Xilinde Under the Policy Loans to the Non-Refillable Steel Industry Program
- Comment 7:** Whether Commerce Used an Incorrect Benefit Amount in the Net Subsidy Rate Calculations for Wuyi Xilinde Under the Subsidy to Loan Interests for Shanghai Cooperative Enterprise and Subsidy to Unemployment Insurance Payment Programs
- Comment 8:** Whether Commerce Should Revise the Benefit Calculation for Wuyi Xilinde Under the Income Tax Deductions for Research and Development (R&D) Expenses Program
- Comment 9:** Whether Commerce Committed a Ministerial Error in Wuyi Xilinde’s Benefit Calculation for the Policy Loans to the Non-Refillable Containers Industry Program
- Comment 10:** Whether Commerce Committed a Ministerial Error in Wuyi Xilinde’s Benefit Calculation for the Export Oriented Grants Program

## II. BACKGROUND

### A. Case History

On August 28, 2020, Commerce published the *Preliminary Determination* in the *Federal Register*.<sup>1</sup> The preliminary calculations Commerce released for Wuyi Xilinde inadvertently included business proprietary data from another interested party in connection with the subsidy rate calculated for Wuyi Xilinde under the provision of CRS for LTAR program. On August 28, 2020, Commerce placed revised calculations for Wuyi Xilinde on the record of the investigation that did not include non-Wuyi Xilinde specific data.<sup>2</sup> On September 2, 2020, Commerce received a timely-filed ministerial error allegation submission from Wuyi Xilinde alleging that Commerce had committed two ministerial errors in the *Preliminary Determination* regarding the benefits Wuyi Xilinde received under the Policy Loans to Non-Refillable Containers Industry and Export Oriented Grants programs.<sup>3</sup> We received no ministerial error allegations regarding Ningbo Eagle. On October 9, 2020, we issued the Ministerial Error Decision Memorandum in which we determined that we made ministerial errors regarding the benefit calculation for the two aforementioned programs.<sup>4</sup> However, after correcting for the two ministerial errors and accounting for the error addressed in the Revised Preliminary Calculations for Wuyi Xilinde Memorandum, Wuyi Xilinde’s total subsidy rate lowered to 17.99 percent *ad valorem*, which

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<sup>1</sup> See *Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 53323 (August 28, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> See Memorandum, “Preliminary Calculations for Wuyi Xilinde Machinery Manufacture Co., Ltd., (Wuyi Xilinde),” dated August 28, 2020 (Revised Preliminary Calculations for Wuyi Xilinde Memorandum).

<sup>3</sup> See Wuyi Xilinde’s Letter, “Ministerial Errors Contained in Preliminary Determination,” dated September 2, 2020 (Wuyi Xilinde Ministerial Error Allegations Submission).

<sup>4</sup> See Memorandum, “Response to Ministerial Error Allegations in the Preliminary Determination,” dated October 9, 2020 (Ministerial Error Memorandum).

pursuant to 19 CFR 351.224(g) did not meet the threshold for a “significant” ministerial error and, thus, did not require the issuance of an amended preliminary determination.<sup>5</sup>

On September 28, 2020, the Government of China (GOC) and Ningbo Eagle, respectively, requested a hearing in this investigation.<sup>6</sup> Subsequently, the GOC and Ningbo Eagle withdrew their hearing requests.<sup>7</sup>

On November 3, 2020, we notified counsel to Ningbo Eagle that Commerce intended to issue to the company a questionnaire in lieu of verification.<sup>8</sup> On November 5, 2020, Commerce issued the verification questionnaire to Ningbo Eagle,<sup>9</sup> which submitted its response on November 12, 2020.<sup>10</sup> On November 13, 2020, we notified counsel to Wuyi Xilinde that Commerce intended to issue the company a questionnaire in lieu of verification. On November 16, 2020, Commerce issued a questionnaire in lieu of verification to Wuyi Xilinde,<sup>11</sup> to which it responded on November 23, 2020.<sup>12</sup>

On December 14, 2020, the petitioner, Ningbo Eagle, Wuyi, and the GOC, submitted case briefs.<sup>13</sup> On December 22, 2020, the petitioner and Wuyi Xilinde submitted rebuttal briefs.<sup>14</sup>

## **B. Period of Investigation**

The period of investigation (POI) is January 1, 2019, through December 31, 2019.

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<sup>5</sup> *Id.* at 3.

<sup>6</sup> See GOC’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Request for Hearing,” dated September 28, 2020; see also Ningbo Eagle’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Hearing Request,” dated September 28, 2020.

<sup>7</sup> See GOC’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Withdrawal of Request for Hearing,” dated January 8, 2021; see also Ningbo Eagle’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Withdrawal of Hearing Request,” dated January 13, 2021.

<sup>8</sup> See Memorandum, “Countervailing Duty Investigation of Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Telephone Notification Regarding Issuance of a Questionnaire in Lieu of Verification,” dated November 3, 2020.

<sup>9</sup> See Commerce’s Letter, “Countervailing Duty Investigation of Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Verification Questionnaire,” dated November 5, 2020.

<sup>10</sup> See Ningbo Eagle’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Verification Questionnaire Response,” dated November 12, 2020.

<sup>11</sup> See Commerce’s Letter, “Verification Questionnaire for Wuyi Xilinde,” dated November 16, 2020 (Wuyi Xilinde Verification QNR).

<sup>12</sup> See Wuyi Xilinde’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic China: Submission of Wuyi Xilinde’s Verification Response,” dated November 23, 2020 (Wuyi Xilinde Verification QNR Response).

<sup>13</sup> See Petitioner’s Letter, “Case Brief of Petitioner,” dated December 14, 2020 (Petitioner Case Brief); see also Ningbo Eagle’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Case Brief,” dated December 14, 2020 (Ningbo Eagle Case Brief); Wuyi Xilinde’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic China: Ministerial Error Comments in Lieu of a Case Brief,” dated December 14, 2020 (Wuyi Xilinde Case Brief); and GOC’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Case Brief,” dated December 14, 2020 (GOC Case Brief).

<sup>14</sup> See Petitioner’s Letter, “Petitioner’s Rebuttal Brief,” dated December 21, 2020 (Petitioner Rebuttal Brief); see also Wuyi Xilinde’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic China: Submission of Comments in Rebuttal to Petitioner’s Administrative Case Brief,” dated December 21, 2020 (Wuyi Xilinde Rebuttal Brief).

### III. SCOPE COMMENTS

In the *Preliminary Determination*, we explained that the petitioner submitted comments on the scope of the CVD investigation and companion antidumping duty (AD) investigation and that Commerce would issue its preliminary decision regarding the scope of the CVD and AD investigations in the preliminary determination of the AD investigation.<sup>15</sup> On October 23, 2020, Commerce issued the Preliminary Scope Decision Memorandum in which it determined to modify the language of the scope as it regards non-refillable cylinders filled with compressed air.<sup>16</sup> We received no comments from interested parties regarding the Preliminary Scope Decision Memorandum. Thus, the scope of the investigation, as contained in the Preliminary Scope Decision Memorandum, remains unchanged.

### IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard ISO 11118 and otherwise meeting the description provided below (non-refillable steel cylinders). The subject non-refillable steel cylinders are portable and range from 300-cubic inch (4.9 liter) water capacity to 1,526-cubic inch (25 liter) water capacity. Subject non-refillable steel cylinders may be imported with or without a valve and/or pressure release device and unfilled at the time of importation. Non-refillable steel cylinders filled with pressurized air otherwise meeting the physical description above are covered by this investigation.

Specifically excluded are seamless non-refillable steel cylinders.

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise may also enter under HTSUS statistical reporting numbers 7310.29.0025 and 7310.29.0050. Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

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<sup>15</sup> See *Preliminary Determination* PDM at 5.

<sup>16</sup> See Memorandum, “Antidumping and Countervailing Duty Investigations on Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Preliminary Scope Decision Memorandum,” dated October 23, 2020 (Preliminary Scope Decision Memorandum) at 7-8.

## **V. SUBSIDIES VALUATION**

### **A. Allocation Period**

Commerce made no changes to the allocation period, 12 years, and the allocation methodology used in the *Preliminary Determination*.<sup>17</sup> No issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology.

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

Commerce made no changes to the attribution methodology applied in the *Preliminary Determination*.<sup>18</sup> Therefore, pursuant to 19 CFR 351.525(b)(6)(i) and (ii), we continue to attribute subsidies received by Wuyi Xilinde solely to Wuyi Xilinde. Concerning Ningbo Eagle, as explained in the *Preliminary Determination*, it is a trading company that exports, but does not produce, the subject merchandise, and during the POI, Ningbo Eagle exported to the United States non-refillable cylinders that were produced only by Jinhua Sinoblue Machinery Manufacturing Co., Ltd. (Sinoblue), which submitted a questionnaire response in this investigation.<sup>19</sup> Though Ningbo Eagle and Sinoblue are not cross-owned affiliates, pursuant to 19 CFR 351.525(c), we continue to attribute subsidies received by Sinoblue to Ningbo Eagle.

### **C. Denominators**

Commerce made no changes to the denominators used in the *Preliminary Determination*.<sup>20</sup>

### **D. Loan Interest Rate Benchmarks and Discount Rates**

Commerce made no changes to the interest and discount rate sources of information relied upon in the *Preliminary Determination*.<sup>21</sup>

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

### **A. Application of AFA: Non-Responsive Companies**

In the *Preliminary Determination* Commerce determined that the seven companies identified in the Petition did not respond to Commerce's Q&V questionnaire thereby warranting the application of a total AFA rate to the companies.<sup>22</sup> In the final determination, we continue to apply a total AFA rate to these companies. In assigning the total AFA rate to the seven companies that failed to submit a response to the Q&V questionnaire, we continue to utilize the methodology (hereinafter referred to as the AFA hierarchy) as described in the *Preliminary Determination*. As explained in the *Preliminary Determination*, the AFA hierarchy relies, in

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<sup>17</sup> *Id.* at 6-7.

<sup>18</sup> *Id.* at 7-9.

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

<sup>20</sup> *Id.* at 9.

<sup>21</sup> *Id.* at 32-35.

<sup>22</sup> *Id.* at 11-13.

part, on the subsidy program rates calculated for the mandatory respondents.<sup>23</sup> As explained below, certain subsidy program rates for Wuyi Xilinde have changed since the issuance of the *Preliminary Determination* and these changes have, in turn, resulted in the total AFA rate assigned to the seven companies at issue to change, as well. For information on the rates used as AFA, *see* the Final AFA Calculations Memorandum.<sup>24</sup>

#### **B. Application of AFA: EBC Program**

In the *Preliminary Determination*, we determined that the use of AFA was warranted in determining the countervailability of the EBC program because the GOC did not provide the requested information needed for Commerce to analyze this program fully.<sup>25</sup> Thus, we preliminarily determined as AFA, that the program constitutes a financial contribution pursuant to section 771(5)(D) of the Act and provides a benefit pursuant to section 771(5)(E) of the Act that is contingent on exports within the meaning of sections 771(5A)(A) and (B) of the Act.<sup>26</sup> Our decision to apply AFA to this program remains unchanged. For further discussion, *see* Comment 1.

#### **C. Application of AFA: Provision of Electricity for LTAR**

In the *Preliminary Determination*, we determined that the use of AFA was warranted in determining the countervailability of the Provision of Electricity for LTAR program because the GOC did not provide the requested information needed for Commerce to analyze this program fully.<sup>27</sup> Thus, we preliminarily determined that the program constituted a financial contribution within the meaning of section 771(5)(D) of the Act that is specific within the meaning of section 771(5A) of the Act.<sup>28</sup> We also preliminarily determined to draw an adverse inference in selecting the benchmark for determining the existence and amount of the benefit. In the *Preliminary Determination*, we relied upon electricity usage and rates paid by the mandatory respondents during the POI to calculate their respective net subsidy rates under the program.<sup>29</sup> Our decision to apply AFA to this program and our subsidy calculations remain unchanged.

#### **D. Application of AFA: CRS Producers Are “Authorities”**

In the *Preliminary Determination*, we found that the majority government-owned enterprises, as well as the non-majority government-owned domestic producers of the CRS from which Sinoblue and Wuyi Xilinde purchased CRS, were “authorities” within the meaning of section 771(5)(B) of the Act, and that a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act, was provided.<sup>30</sup> We also preliminarily

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<sup>23</sup> *Id.* at 15-16.

<sup>24</sup> *See* Memorandum, “Countervailing Duty Investigation on Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Final AFA Calculations Memorandum,” dated concurrently with this Issues and Decision Memorandum (IDM) (Final AFA Calculations Memorandum).

<sup>25</sup> *See Preliminary Determination* PDM at 20-23.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 23-26.

<sup>28</sup> *Id.*

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

<sup>30</sup> *Id.* at 26-27.

determined to apply AFA under section 776(a) and (b) of the Act to find that the non-majority government-owned domestic producers of the CRS purchased by Sinoblue and Wuyi Xilinde were “authorities” within the meaning of section 771(5)(B) of the Act, and that a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act, was provided.<sup>31</sup> Our findings from the *Preliminary Determination* remain unchanged.

#### **E. Application of AFA: CRS Is Specific**

In the *Preliminary Determination*, we found that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we found that an adverse inference was warranted in the application of facts available pursuant to section 776(b)(1) of the Act.<sup>32</sup> In drawing an adverse inference, we preliminarily found that the GOC’s provision of CRS was specific within the meaning of section 771(5A)(D)(iii) of the Act. Our findings from the *Preliminary Determination* remain unchanged.

#### **F. Application of AFA: CRS Market Is Distorted**

In the *Preliminary Determination*, we found that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we found that an adverse inference was warranted in the application of facts available pursuant to section 776(b)(1) of the Act.<sup>33</sup> Accordingly, as AFA, we preliminarily determined that the GOC’s involvement in the CRS market in China results in the significant distortion of the prices of CRS, such that they could not be used as a tier one benchmark under 19 CFR 351.511(a)(2)(i), and hence, the use of external benchmarks, as described under 19 CFR 351.511(a)(2)(ii), was warranted to calculate the benefit for the provision of CRS for LTAR.<sup>34</sup> Our findings from the *Preliminary Determination* remain unchanged.

#### **G. Application of AFA: Other Subsidies**

As explained in the *Preliminary Determination*, Sinoblue and Wuyi Xilinde reported in their questionnaire responses that they received certain “Other Subsidies” during the POI and over the AUL.<sup>35</sup> In the *Preliminary Determination*, we explained that the GOC failed to act to the best of its ability by not providing information necessary to perform our analyses of financial contribution and specificity for the other subsidy programs reported by the respondents. Consequently, in the *Preliminary Determination*, we applied an adverse inference to find the other subsidy programs at issue that were self-reported by Sinoblue and Wuyi Xilinde constituted a financial contribution, pursuant to section 771(5)(D) of the Act, and were specific, within the meaning of section 771(5A) of the Act.<sup>36</sup> Where such subsidies appear to be contingent upon export performance, we found these subsidies to be specific within the meaning of sections 771(5A)(A) and (B) of the Act.<sup>37</sup> In the *Preliminary Determination*, we relied upon

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<sup>31</sup> *Id.* at 28-29.

<sup>32</sup> *Id.* at 29-30.

<sup>33</sup> *Id.* at 30-31.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 31-32.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

the benefit information reported by Sinoblue and Wuyi Xilinde for the “other subsidy” programs at issue.<sup>38</sup> Our findings from the *Preliminary Determination* with respect to these programs remain unchanged.

## VII. ANALYSIS OF PROGRAMS

We made no changes to our *Preliminary Determination* or the calculations contained in the Ministerial Error Memorandum with respect to the methodology used to calculate the subsidy rates for the following programs, except where noted below. For descriptions, analyses, and calculation methodologies for these programs, *see* the *Preliminary Determination*, the Ningbo Eagle Preliminary Calculations Memorandum (which is unchanged in this final determination),<sup>39</sup> and the Wuyi Xilinde Final Calculations Memorandum.<sup>40</sup> Except where noted below, no issues were raised regarding these programs in the parties’ case briefs. The final program rates are as follows.

### A. Programs Determined to Be Countervailable

#### 1. EBC Program

We continue to find this program to be countervailable and have made no changes to our methodology for determining the AFA rate for this program.<sup>41</sup> For further discussion, *see* Comment 1 below. For Ningbo Eagle, Wuyi Xilinde, and the non-responsive companies, we continue to apply an AFA rate of 10.54 percent *ad valorem*.

#### 2. Provision of Electricity for LTAR

We continue to find this program to be countervailable and have made no changes to our methodology for calculating the subsidy rate for this program.<sup>42</sup> For further discussion, *see* Comment 2 below. Accordingly, the net subsidy rates for Ningbo Eagle and Wuyi Xilinde are 0.27 and 0.25 percent *ad valorem*, respectively.<sup>43</sup>

Consistent with Commerce’s AFA rate selection methodology, we continue to assign the highest calculated rate for the mandatory respondents to determine a subsidy rate of 0.27 percent *ad valorem* for the non-responsive companies.

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<sup>38</sup> *Id.* at 40-41 and 47-49.

<sup>39</sup> *See* Memorandum, “Countervailing Duty Investigation on Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Preliminary Determination Calculations for Ningbo Eagle Machinery & Technology Co., Ltd.,” dated August 28, 2020 (Ningbo Eagle Preliminary Calculations Memorandum).

<sup>40</sup> *See* Memorandum, “Countervailing Duty Investigation on Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Final Determination Calculations for Wuyi Xilinde Machinery Manufacture Co., Ltd.,” dated concurrently with this IDM (Wuyi Xilinde Final Calculations Memorandum).

<sup>41</sup> *See Preliminary Determination* PDM at 37-38.

<sup>42</sup> *Id.* at 38-39.

<sup>43</sup> *See* Ningbo Eagle Preliminary Calculations Memorandum (unchanged in final determination); *see also* Wuyi Xilinde Final Calculations Memorandum.

### 3. Provision of CRS for LTAR

We continue to find this program to be countervailable and have made no changes to our methodology for calculating the subsidy rate under this program. The final subsidy calculations for Ningbo Eagle for this program remain unchanged from the *Preliminary Determination*.<sup>44</sup> For Wuyi Xilinde we made changes to the freight rates utilized in the benefit calculation under this program.<sup>45</sup> *See* Comment 5 for further discussion. Accordingly, the net subsidy rates for Ningbo Eagle and Wuyi Xilinde are 14.53 and 5.60 percent *ad valorem*, respectively.<sup>46</sup>

Consistent with Commerce's AFA rate selection methodology, we are assigning the highest calculated rate for the mandatory respondents to determine a subsidy rate of 14.53 percent *ad valorem* for the non-responsive companies.

### 4. "Other Assistance" – Grants Self-Reported by Sinoblue

We continue to find the following programs to be countervailable and have made no changes to our methodology for determining the subsidy rate for each program. The net subsidy rates for the programs self-reported by Sinoblue and attributed to Ningbo Eagle remain unchanged.<sup>47</sup>

- Social Insurance Refund for Distressed Industrial Enterprises – 0.08 percent *ad valorem*
- Grant for Transformation and Upgrading of Small and Micro Enterprises to Enterprises Above Designated Size – 0.49 percent *ad valorem*

Consistent with Commerce's AFA rate selection methodology, we are assigning the rates for the aforementioned programs to the non-responsive companies, which are the highest rates calculated for identical programs in this investigation.

### 5. Policy Loans to Non-Refillable Cylinders Industry

We continue to find this program to be countervailable.<sup>48</sup> For certain loans received by Wuyi Xilinde we made changes to the benchmark used in the benefit calculation. *See* Comment 6. Accordingly, the net subsidy rate for Wuyi Xilinde is 0.23 percent *ad valorem*.<sup>49</sup> Ningbo Eagle did not use this program.

Consistent with Commerce's AFA rate selection methodology, we are assigning a countervailable subsidy rate of 0.23 percent *ad valorem* to the non-responsive companies, which is the highest rate calculated for an identical program in this investigation.

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<sup>44</sup> *See Preliminary Determination* PDM at 39-40.

<sup>45</sup> *See* Wuyi Xilinde Final Calculations Memorandum.

<sup>46</sup> *See* Ningbo Eagle Preliminary Calculations Memorandum, unchanged in final determination; *see also* Wuyi Xilinde Final Calculations Memorandum.

<sup>47</sup> *See Preliminary Determination* PDM at 40-41; *see also* Ningbo Eagle Preliminary Calculations Memorandum, unchanged in final determination; and Wuyi Xilinde Final Calculations Memorandum..

<sup>48</sup> *See Preliminary Determination* PDM at 40-44.

<sup>49</sup> *See* Wuyi Xilinde Preliminary Calculations Memorandum; *see also Preliminary Determination* PDM at 41-42.

6. Income Tax Reduction for High or New Technology Enterprises (HNTEs)

We continue to find this program to be countervailable, and we made no changes to the subsidy rate calculated under this program.<sup>50</sup> Accordingly, the net subsidy rate for Wuyi Xilinde is 0.36 percent *ad valorem*.<sup>51</sup> Ningbo Eagle did not use this program.

Consistent with Commerce's AFA rate selection methodology, we are assigning a countervailable subsidy rate of 0.25 percent *ad valorem* to the non-responsive companies, which is the highest rate calculated for an identical program in this investigation.

7. Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law

We continue to find this program to be countervailable, and we made no changes to the subsidy rate calculated under this program.<sup>52</sup> Accordingly, the net subsidy rates for Wuyi Xilinde is 0.35 percent *ad valorem*.<sup>53</sup> For further discussion, see Comment 8. Ningbo Eagle did not use this program.

Consistent with Commerce's AFA rate selection methodology, we are assigning a countervailable subsidy rate of 0.25 percent *ad valorem* to the non-responsive companies, which is the highest rate calculated for an identical program in this investigation.

8. Export Assistance Grants

We continue to find this program to be countervailable, and we made no changes to the subsidy rate calculated under this program.<sup>54</sup> Accordingly, the net subsidy rate for Wuyi Xilinde is 0.23 percent *ad valorem*.<sup>55</sup> Ningbo Eagle did not use this program.

Consistent with Commerce's AFA rate selection methodology, we are assigning a countervailable subsidy rate of 0.23 percent *ad valorem* to the non-responsive companies, which is the highest rate calculated for an identical program in this investigation.

9. "Other Assistance" – Grants Self-Reported by Wuyi Xilinde

We continue to find the following programs self-reported by Wuyi Xilinde to be countervailable and the following net subsidy rates to be unchanged, except for the net subsidy rates calculated under the Shanghai Cooperative Enterprise and Subsidy to Unemployment Insurance Payment programs.<sup>56</sup> For the two aforementioned programs we made changes to the net subsidy rate calculation based on comments received from interested parties.<sup>57</sup> See Comment 7.

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<sup>50</sup> See *Preliminary Determination PDM* at 44-45.

<sup>51</sup> See Wuyi Xilinde Final Calculations Memorandum.

<sup>52</sup> See *Preliminary Determination PDM* at 45-46.

<sup>53</sup> See Wuyi Xilinde Final Calculations Memorandum.

<sup>54</sup> See *Preliminary Determination PDM* at 46-47.

<sup>55</sup> See Wuyi Xilinde Final Calculations Memorandum.

<sup>56</sup> See *Preliminary Determination PDM* at 47-48.

<sup>57</sup> See Wuyi Xilinde Final Calculations Memorandum.

- Land Use Performance Award from Finance Bureau of Wuyi County – 0.17 percent *ad valorem*
- Big and Strong Enterprise Award from Finance Bureau of Wuyi County – 0.09 percent *ad valorem*
- Jinhua Industrial Design Competition Award from Finance Bureau of Wuyi County – 0.01 percent *ad valorem*
- Award to Municipal Industrial Design Center from Finance Bureau of Wuyi County – 0.01 percent *ad valorem*
- Award to Enterprise that Paid Much Taxes from Finance Bureau of Wuyi County – 0.06 percent *ad valorem*
- Award to High and New Technology Enterprise from Science and Technology Bureau of Wuyi County – 0.04 percent *ad valorem*
- Subsidy to Loan Interests for Shanghai Cooperative Enterprise from Finance Bureau of Wuyi County – 0.09 percent *ad valorem*
- Subsidy to Unemployment Insurance Payment from Human Resources and Social Security Bureau of Wuyi County – 0.11 percent *ad valorem*
- Subsidy for Participating in Guangzhou Hardware Trade Fair Exhibition from Finance Bureau of Wuyi County – 0.01 percent *ad valorem*
- Subsidy for Technology Reform from Finance Bureau of Wuyi County – 0.04 percent *ad valorem*
- Research and Development Expenses Award from Science and Technology Bureau of Wuyi County – 0.08 percent *ad valorem*

Consistent with Commerce’s AFA rate selection methodology, we are assigning the rates for the aforementioned programs to the non-responsive companies, which is the highest rate calculated for an identical program in this investigation.

## **B. Programs Determined Not to Confer Measurable Benefits During the POI**

Based on the record evidence, we determine that the benefits from the following programs were fully expensed prior to the POI, or are less than 0.005 percent *ad valorem* when attributed to the respondent’s applicable sales as discussed in the “Attribution of Subsidies” section above. Consistent with Commerce’s practice,<sup>58</sup> we have not included the following programs in our final subsidy rate calculations for the mandatory respondents.

### **1. Wuyi Xilinde’s Not Measurable Programs**<sup>59</sup>

- Award for Provincial Industrial New Products from Finance Bureau of Wuyi County
- Award to “Hidden Champion” Enterprise from Finance Bureau of Wuyi County
- Energy Saving Special Fund from Finance Bureau of Wuyi County
- Enterprise Brand Building Award from Finance Bureau of Wuyi County

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<sup>58</sup> See, e.g., *Certain Steel Wheels from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012) at Income Tax Reductions for Firms Located in the Shanghai Pudong New District.

<sup>59</sup> See Wuyi Xilinde Final Calculations Memorandum.

- Enterprise Innovation Award for Replacing People by Robots for 2014 from Finance Bureau of Wuyi County
- Municipal High-Technology Research and Development Award from Finance Bureau of Wuyi County
- Municipal Patent Demonstration Enterprise from Finance Bureau of Wuyi County
- Patent Award from Finance Bureau of Wuyi County
- Reduction of Land Use Tax and House Property Tax from Local Taxation Bureau of Wuyi County
- Refund of House Property Tax from Local Taxation Bureau of Wuyi County
- Refund of Land Use Tax and House Property Tax from Local Taxation Bureau of Wuyi County
- Scientific and Technological Innovation Award from Management Committee of Wuyi Economic Development Zone of Zhejiang Province
- Small and Medium-Sized Enterprise Development Award from Finance Bureau of Wuyi County
- Social Contribution Award from Finance Bureau of Wuyi County
- Subsidy for Declaring Individual Income Tax from Local Taxation Bureau of Wuyi County
- Subsidy for Enterprise Meeting the Safety Production Standard from Finance Bureau of Wuyi County
- Subsidy for Export-Oriented Economy Development in Under-Developed Area from Finance Bureau of Wuyi County
- Subsidy from Science and Technology Bureau from Science and Technology Bureau of Wuyi County
- Subsidy to Eliminate Heavy-Polluting Vehicles from Finance Bureau of Wuyi County
- Subsidy under WZB (09) No. 59 Policy from Finance Bureau of Wuyi County
- Technical Innovation Award from Finance Bureau of Wuyi County

2. Sinoblue's Not Measurable Programs<sup>60</sup>

- Grant for Technical Reform
- Refund for Water Conservancy Construction Fund

**C. Programs Determined To Be Not Used by the Mandatory Respondents**

- GOC and Sub-Central Grants, Loans, and Other Incentives for Development of Famous Brands and China Top Brands
- Special Fund for Energy Savings Technology Reform
- SME International Market Exploration/Development Fund
- SME Technology Innovation Fund
- Export Loans from Chinese State-Owned Banks
- Export Seller's Credit
- Export Credit Guarantees

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<sup>60</sup> See Ningbo Eagle Preliminary Calculations Memorandum, unchanged in final determination.

- Income Tax Exemption for Research and Development Expenses in Shenjia Economic Development Zone
- Preferential Income Tax Policy for Enterprises in the Northeast Region
- Import Tariff and Value-Added Tax (VAT) Exemptions for FIE and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
- VAT Refunds for FIEs Purchasing Domestically Produced Equipment
- Provision of Hot-Rolled Steel for LTAR
- Provision of Land for LTAR in Shenjia Economic Development Zone
- Provision of Land and/or Land Use Rights to State-Owned Enterprises for LTAR

## VIII. ANALYSIS OF COMMENTS

### Comment 1: Countervailability of the EBC Program

#### *The GOC's Case Brief*<sup>61</sup>

- Commerce has falsely presumed that the respondents, or their U.S. customers, used the EBC program based on a preliminary finding that the GOC failed to cooperate to the best of its ability by refusing to provide unnecessary documentation. However, the GOC cooperated to the best of its ability.<sup>62</sup> The GOC's "not applicable" answers are sufficiently responsive to Commerce's questions as none of the U.S. customers or the respondents used the EBC program.<sup>63</sup>
- The U.S. Court of Appeals for the Federal Circuit (Federal Circuit) 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 the Department 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."<sup>64</sup>
- Further, there is sufficient and verifiable evidence on the record to conclude non-use of the program by the respondents.<sup>65</sup> Commerce cannot apply AFA to find a financial contribution when a program was not used.
- The U.S. Court of International Trade (CIT) has rejected the approach taken by Commerce in this investigation. The Court has held that when Commerce invokes its authority to use AFA it must still make the necessary factual findings to satisfy the requirements of countervailability.<sup>66</sup>

<sup>61</sup> See GOC Case Brief at 3-10.

<sup>62</sup> *Id.* at 7 (citing GOC's Letter, "Certain Non-Refillable Steel Cylinders from the People's Republic of China: Government of China's Response to Initial Questionnaire," dated July 2, 2020 (GOC IQR) at 19-28.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 8 (citing *Nippon Steel Corporation v. United States*, 337 F. 3d 1373, 1383 (Fed. Cir. 2003) (*Nippon*)).

<sup>65</sup> *Id.* at 4 (citing Wuyi Xilinde's Letter, "Certain Non-Refillable Steel Cylinders from the People's Republic of China: Submission of Wuyi Xilinde's Section III Response," dated July 2, 2020 (Wuyi Xilinde IQR) at 15 and Exhibit 11; and Ningbo Eagle's Letter, "Certain Non-Refillable Steel Cylinders from the People's Republic of China: Section III Questionnaire Response," dated July 2, 2020 (Ningbo Eagle IQR) at 10 and Exhibit 8).

<sup>66</sup> *Id.* at 5 (citing sections 776(a)-(b) of Tariff Act of 1930, as amended (the Act); *Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334, 1350 (CIT 2016) (*Changzhou I*); see also *Yama Ribbons and Bows Co., v. United States*, No. 18-00054, 2019 WL 7373856 (CIT 2019) (*Yama Ribbons*); *Guizhou Tyre Co. v. United States*, 415 F. Supp. 3d 1402 (CIT 2019); *Guizhou Tyre Co. v. United States*, 389 F. Supp. 3d 1315 (CIT 2019); and *RZBC*

- Under the EBC program, the financial contribution is in the form of a loan or credit and the benefit is a preferential interest rate. The loan/credit and preferential interest rate are provided to the U.S. customer/foreign importer, not the respondents. There is no transfer of the loan/credit to the Chinese respondents, nor a financial contribution meeting the statutory definition and, thus, there is no basis to resort to AFA.
- The issue is not whether Commerce has a full understanding of the EBC program, but rather, as the CIT stated in *Yama Ribbons*, whether the respondents used or benefitted from the program.<sup>67</sup> Here, the information on the record shows that neither the respondents nor their customers applied for, used, or benefitted from the EBC program.<sup>68</sup>
- Moreover, the application of AFA is only warranted when information is missing from the record, which is not the case here. That is, there has to be a “gap” such that Commerce must make an adverse inference in order to reach its determination.<sup>69</sup> However, based on the record, no such gap exists.
- Further, Commerce chose not to verify non-use of the EBC program. Therefore, Commerce may not use AFA to find use of the program.

#### *Ningbo Eagle’s Case Brief*<sup>70</sup>

- Commerce improperly applied AFA to determine that Ningbo Eagle’s customers used the EBC program, disregarding evidence that those customers did not do so.<sup>71</sup>
- Commerce’s finding that Ningbo Eagle benefitted and used the EBC program is a violation of the statute and case law precedents that prohibit the application of adverse inferences against cooperating respondents when no necessary information is missing from the record.<sup>72</sup>

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*Group Shareholding Co. v. United States*, No. 15-00022, 2016 WL 3880773 (CIT 2016) at \*5 (“{the Department}’s obligation when drawing an adverse inference based on a lack of cooperation by a foreign government is to avoid collaterally impacting respondents to the extent practicable by examining the record for replacement information.”))

<sup>67</sup> *Id.* at 6 (citing *Yama Ribbons*, 2019 WL 7373856 at \*4; *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 352 F. Supp. 3d 1316, 1326 (CIT 2018) (*Changzhou III*) (“{The Department} . . . did not explain why the GOC’s failure to explain {the EBC} program was necessary to assess claims of non-use and why other information accessible to respondents was insufficient to fill whatever gap was left by the GOC’s refusal to provide internal bank records.”); *Changzhou Trina Solar Energy Co., Ltd. v. United States*, No.17-00246, 2018 WL 6271653 (CIT 2018) at \*3 (noting that “prior to applying AFA, {the Department} must first demonstrate that the GOC’s failure to provide information left a gap in the record and subsequently explain how using facts available with an adverse inference reasonably leads to a given conclusion”); *Guizhou Tyre Co., Ltd. v. United States*, 348 F. Supp. 3d 1261, 1271 (CIT 2018) (*Guizhou Tyre I*) (noting that where Plaintiffs certified the non-use of the program by its customers, “{the Department} improperly conflate[d] the program’s operation with its use” when it applied AFA); and *Clearon Corp. v. United States*, 359 F. Supp. 3d 1344, 1357 (CIT 2019) (holding {the Department}’s application of AFA was not supported by substantial evidence and contrary to law where “Heze and the GOC provided a good deal of evidence that Heze’s U.S. and non-U.S. customers did not use the Export Buyer’s Credit Program—evidence that, in accordance with the Department’s past practice, was sufficient to demonstrate non-use.”))

<sup>68</sup> *Id.* at 4 (citing Wuyi Xilinde IQR at 15 and Exhibit 11; Ningbo Eagle IQR at 10 and Exhibit 8; and GOC IQR at 18-22).

<sup>69</sup> *Id.* at 9-10 (citing *Guizhou Tyre I*, 348 F. Supp. 3d 1270; and *Guizhou Tyre Co. v. United States*, Slip Op. 19 – 171, December 26, 2019 (CIT 2019)).

<sup>70</sup> See Ningbo Eagle Case Brief at 1-6.

<sup>71</sup> *Id.* at 1 (citing Ningbo Eagle IQR at 10 and Exhibit 8; GOC IQR at 13-22; and GOC’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Government of China’s Response to Supplemental Questionnaire and Subsequent Addendums,” dated July 23, 2020 (GOC First SQR) at 1-4).

<sup>72</sup> *Id.* at 2 (citing sections 776(a) and (b) of the Act; and *Nippon*, 337 F. 3d 1382).

- The CIT has held repeatedly that the 2013 internal revisions and identities of partner/correspondent banks do not consist of “necessary information.”<sup>73</sup>
- Commerce cannot ignore the GOC’s response and Ningbo Eagle’s response with its and its customer’s statement of non-use of the EBC program and focus solely on the information that the GOC did not supply, which is not “necessary information.”
- Commerce has not identified any “gap” in the record which would trigger the lawful use of facts available or AFA when taking into account the information that Ningbo Eagle and the GOC supplied.
- Commerce chose not to verify the non-use statement of Ningbo Eagle’s U.S. customer or the responses filed by Ningbo Eagle and the GOC. Therefore, the information submitted to Commerce must be accepted as accurate.

*The Petitioner’s Rebuttal Brief*<sup>74</sup>

- The GOC did not cooperate to the best of its ability and withheld substantial information from Commerce, notwithstanding Commerce’s repeated requests for information on the EBC program.<sup>75</sup> Most critically, the GOC refused to provide either the 2013 Revisions or the list of partner banks authorized to distribute program funds, which Commerce has determined are necessary for understanding how the EBC program operates.<sup>76</sup>
- It is the purview of Commerce – not the GOC – to determine the information needed to conduct its investigation. The courts have affirmed this aspect of Commerce’s authority.<sup>77</sup>
- A respondent fails to act to the best of its ability to cooperate with Commerce when it has not “put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation.”<sup>78</sup> The GOC was required to prepare an “accurate and complete record in response to questions plainly asked by Commerce.”<sup>79</sup>
- The absence of information on the record regarding how the EBC program operates precluded Commerce from analyzing the program and being able to verify the respondents’ claims of non-use.<sup>80</sup>
- The GOC’s failure to cooperate hindered Commerce’s investigation of the EBC program, warranting the application of AFA, under the law,<sup>81</sup> to find that the respondents received benefits under the program.

<sup>73</sup> *Id.* at 2-5 (citing, e.g., *Changzhou Trina III*, 352 F. Supp. 3d 1327; *Changzhou Trina Solar Energy Co. v. United States*, 2019 CIT LEXIS 138; Slip Op. 2019-137 (November 8, 2019) (*Changzhou IV*) at 6 and 11; *Guizhou Tyre I*, 348 F. Supp. 3d 1270 – 71; and *Clearon Corp. v. United States*, 2020 CIT LEXIS 149, Slip Op. 2020-141 at 32-33).

<sup>74</sup> See Petitioner Rebuttal Brief at 3-17).

<sup>75</sup> *Id.* at 5-8 (citing *Preliminary Determination PDM* at 20-22).

<sup>76</sup> *Id.* at 8-15 (citing, e.g., *Forged Steel Fluid End Blocks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 80020 (December 11, 2020) (*Fluid End Blocks Investigation*), and accompanying IDM at Comment 1).

<sup>77</sup> *Id.* at 13 (citing *Maverick Tube Corp. v. United States*, 857 F.3d 1353, 1360-61 (Fed. Cir. 2017); and *PPG Indus., Inc. v. United States*, 978 F.2d 1232, 1238 (Fed. Cir. 1992) (finding that, as a general rule, the Department has the discretion and “authority to determine the extent of investigation and information it needs . . .”).

<sup>78</sup> *Id.* at 7 (citing *Nippon*, 337 F.3d 1382).

<sup>79</sup> *Id.* (citing *Tung Mung Dev. Co., Ltd. v. United States*, 25 CIT 752, 788-89 (2001) (citing *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1571-72 (Fed. Cir. 1990))).

<sup>80</sup> *Id.* at 4 (citing *Preliminary Determination PDM* at 22).

<sup>81</sup> *Id.* at 7-8 (citing sections 776(a)-(b) of the Act).

- The Federal Circuit has held that in the context of a CVD proceeding, a government’s failure to cooperate is a legitimate basis to apply an adverse inference that nonetheless affects a cooperating respondent that has benefitted from subsidies from that government.<sup>82</sup>

**Commerce’s Position:** Consistent with the *Preliminary Determination* and Commerce’s practice, we continue to find that the record of this investigation does not support a finding of non-use of the EBC program. Below we discuss the evolution of Commerce’s treatment of this program.

### *Solar Cells Initial Investigation of EBC Program*

Commerce first investigated and countervailed the EBC program in the *Solar Cells Investigation*.<sup>83</sup> Our initiation was based on, among other information, the Export-Import Bank of China’s (China Ex-Im Bank) 2010 annual report, demonstrating that the credits provided under this program are “medium and long-term loans, and have preferential, low interest rates. Included among the projects that are eligible for such preferential financing are energy projects.”<sup>84</sup> Commerce initially asked the GOC to complete the Standard Questions Appendix for the EBC program. The appendix requests, among other information, a description of the program and its purpose, a description of the types of relevant records the government maintains, the identification of the relevant laws and regulations, and a description of the application process (along with sample application documents). The Standard Questions Appendix is intended to help Commerce understand the structure, operation, and usage of the program.<sup>85</sup>

The GOC provided none of the information requested by Commerce in the ensuing investigation, despite being given multiple opportunities to do so, but simply stated that “{n}one of the respondents or their reported cross-owned companies applied for, used, or benefitted from the alleged programs during the POI.”<sup>86</sup> 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.”<sup>87</sup> Although asked, the GOC provided no additional information concerning exactly how an exporter’s financial and foreign exchange matters would be affected. Commerce then gave the GOC another opportunity to

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<sup>82</sup> *Id.* at 16 (citing *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F. 3d 1365, 1372 (Fed. Cir. 2014) (a “collateral impact on a cooperating party does not render the application of adverse inferences in a CVD investigation improper”) (citing *KYD, Inc.*, 607 F. 3d at 768)); *see also* *Mueller Comercial de Mexico, S. de R.L. de C.V. v. United States*, 753 F. 3d 1227, 1236 (Fed. Cir. 2014)).

<sup>83</sup> *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells Investigation*), and accompanying IDM at Comment 18. While Commerce’s determination with respect to the EBC program was initially challenged, the case was dismissed.

<sup>84</sup> *Id.* at 59.

<sup>85</sup> *Id.*

<sup>86</sup> *See Solar Cells Investigation* IDM at 59.

<sup>87</sup> *Id.* at 60.

provide the information requested.<sup>88</sup> The GOC again refused to provide sample application documents, regulations, or manuals governing the approval process, and instead provided only a short description of the application process which gave no indication of how an exporter might be involved in the provision of export buyer's credits, how it might have knowledge of such credits, or how such credits might be reflected in a company's books and records.<sup>89</sup>

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.<sup>90</sup> Additionally, Commerce concluded that even if the respondent company might have some knowledge of loans provided to its customers through its involvement in the application process, such information is not of the type Commerce would examine to verify that the claim of non-use at issue was complete and accurate:

{E}ven if the {respondent exporter} might have been involved in, or might have received some notification of, its customer's application for receiving such export credits, such information is not the type of information that {Commerce} needs to examine in order to verify that the information is complete and accurate. For verification purposes, {Commerce} must be able to test books and records in order to assess whether the questionnaire responses are complete and accurate, which means that we need to tie information to audited financial statements, as well as to review supporting documentation for individual loans, grants, rebates, *etc.* If all a company received was a notification that its buyers received the export credits, or if it received copies of completed forms and approval letters, we have no way of establishing the completeness of the record because the information cannot be tied to the financial statements. Likewise, if an exporter informs Commerce that it has no binder (because its customers have never applied for export buyer's credits), there is no way of confirming that statement unless the facts are reflected in the books and records of the respondent exporter.<sup>91</sup>

On this basis, Commerce concluded that usage of the program could not be confirmed by the respondent exporters in a manner consistent with its long-standing verification methods.<sup>92</sup> These

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<sup>88</sup> *Id.* at 60-61.

<sup>89</sup> *Id.* at 61.

<sup>90</sup> *See Solar Cells Investigation* IDM at 61.

<sup>91</sup> *Id.* at 61-62.

<sup>92</sup> Commerce provided a similar explanation in the 2014 investigation of solar products from China. *See Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products Investigation*), 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 Investigation* 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 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

methods are comparable to those of an auditor, attempting to confirm usage or claimed non-usage by examining books and records which can be traced to audited financial statements, or other credible official company documents, such as tax returns, that provide a credible and complete picture of a company's financial activity for the period under examination. A review of ancillary documents, such as applications, correspondence, emails, *etc.*, provides no assurance to Commerce that it has seen all relevant information.<sup>93</sup>

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

In the investigation of solar cells, however, despite Commerce’s repeated requests for information, the GOC failed to offer any guidance as to how Commerce could search for 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.”<sup>94</sup>

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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 IDM).

<sup>93</sup> 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).

<sup>94</sup> See *Solar Cells Investigation* IDM at 62.

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.”<sup>95</sup> However, the GOC refused to allow Commerce to query the databases and records of the China Ex-Im Bank.<sup>96</sup> Furthermore, there was no information on the record of the solar cells investigation from the respondent exporters’ customers.

### *Chlorinated Isos Investigation of EBC Program*

Two years later, in the *Chlorinated Isos Investigation*,<sup>97</sup> 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 participating U.S. customers’ subledgers themselves. Therefore, despite being “unable to conduct a complete verification of non-use of this program at China Ex-Im, . . . {w}e conducted verification . . . in the United States of the customers of {the respondents}, and confirmed through an examination of each selected customer’s accounting and financial records that no loans were received under this program.”<sup>98</sup>

### *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.<sup>99</sup> In subsequent proceedings, Commerce continued to investigate and evaluate this program.

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<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> See *Chlorinated Isocyanurates from the People’s Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos Investigation*), and accompanying IDM.

<sup>98</sup> See *Chlorinated Isos Investigation* IDM at 15.

<sup>99</sup> See *Citric Acid 2012* IDM at Comment 6 (“{N}otwithstanding the non-use claims of the RZBC Companies and the GOC, we find that the GOC’s refusal to allow the verifiers to examine the 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.”)

For example, in the *Silica Fabric Investigation*<sup>100</sup> 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 U.S. dollar two million minimum business contract requirement.<sup>101</sup> 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 China Ex-Im on September 11, 1995 (referred to as “1995 Implementation Rules”); (2) “Rules Governing Export Buyer’s Credit of the Export-Import Bank of China” which were issued by China Ex-Im on November 20, 2000 (referred to as “2000 Rules Governing Export Buyer’s Credit” or “Administrative Measures”); and (3) 2013 internal guidelines of China Ex-Im.<sup>102</sup> According to the GOC, “{t}he Export-Import Bank of China has confirmed to the GOC that its 2013 guidelines are internal to the bank, non-public, and not available for release.”<sup>103</sup> The GOC further stated that “those internal guidelines do not formally repeal or replace the provisions of the {Administrative Measures} which remain in effect.”<sup>104</sup>

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

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

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

Additional information in the GOC’s supplemental questionnaire response also indicated that the loans associated with this program are not limited to direct disbursements through the Ex-Im Bank. Specifically, the GOC stated that

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<sup>100</sup> See *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017) (*Silica Fabric Investigation*), and accompanying IDM at Comment 17.

<sup>101</sup> See Petitioner’s Letter, “Non-Refillable Steel Cylinders from the People’s Republic of China – Petitioner’s Comments and Submission of New Factual Information to Rebut, Clarify or Correct the Government of the People’s Republic of China’s Supplemental Questionnaire Response,” dated July 29, 2020 (Petitioner July 29<sup>th</sup> Factual Information) at Attachment 1 containing the GOC 7<sup>th</sup> Supplemental Response (public version) (known as, Export Buyer’s Credit Supplemental Questionnaire Response), dated September 6, 2016, filed in the *Silica Fabric Investigation*.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

customers can open loan accounts for disbursements through this program with other banks. The funds are first sent from the Ex-Im Bank to the importer's account, which could be at the Ex-Im Bank or other banks, and that these funds are then sent to the exporter's bank account. Given the complicated structure of loan disbursements for this program {Commerce's} complete understanding of how this program is administrated is necessary. Thus, the GOC's refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administrated by the Ex-Im Bank, impeded {Commerce's} ability to conduct its investigation of this program.<sup>105</sup>

Further, we determined that we could not rely on declarations from customers claiming non-use of the program because "we are unable to verify the accuracy of these documents as the primary entity that possesses such supporting records is the Export Import Bank of China."<sup>106</sup> Additionally, we explained that "we now have information on the record that demonstrates the GOC updated certain measures of the program, but the GOC refused to provide the updated measures{,}" and "{b}ecause the GOC withheld critical information regarding this program, we are unable to determine how the program now operates, and, thus, we cannot verify ACIT's declarations as submitted."<sup>107</sup>

### *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 receive a countervailable subsidy in the form of preferential export loans from the China Ex-Im Bank.<sup>108</sup> In the Initial Questionnaire, we asked the GOC to respond to the Standard Questions Appendix "with regard to all types of financing provided by the China ExIm under the Buyer Credit Facility."<sup>109</sup> The Standard Questions Appendix requested various information that Commerce requires in order to analyze the specificity and financial contribution of this program, including 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 usage data. In the Initial Questionnaire, we also asked the GOC to provide a list of all partner/correspondent banks involved in the disbursement of funds under the EBC program; a copy of the September 6, 2016, GOC 7<sup>th</sup> 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); and original and translated copies of any laws, regulations, or other governing documents cited by the GOC in the Export Buyer's Credit Supplemental

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<sup>105</sup> See *Silica Fabric Investigation* IDM at 12.

<sup>106</sup> *Id.* at 62.

<sup>107</sup> *Id.*

<sup>108</sup> See Memorandum, "Initiation Checklist: Certain Non-Refillable Steel Cylinders from the People's Republic of China," dated April 16, 2020 (Initiation Checklist) at 11.

<sup>109</sup> See Commerce's Letter, "Countervailing Duty Investigation of Certain Non-Refillable Steel Cylinders from the People's Republic of China: Countervailing Duty Questionnaire," dated May 11, 2020 (Initial Questionnaire) at Section II, page 5-6.

Questionnaire Response, including the *1995 Implementation Rules*, the *Administrative Measures* and the 2013 Revisions.<sup>110</sup>

Rather than responding to the questions, 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.”<sup>111</sup> The GOC also did not provide the Export Buyer’s Credit Supplemental Questionnaire Response; laws/regulations cited in the Export Buyer’s Credit Supplemental Questionnaire Response, or a list of all partner/correspondent banks involved in the disbursement of funds under the program.<sup>112</sup>

In the first supplemental questionnaire, we again asked the GOC to provide the requested program information regardless of its non-use statements.<sup>113</sup> Rather than providing the requested information, the GOC reiterated its statement that “none of the responding companies’ U.S. customers applied for, used, or benefited from this {EBC} program during the POI, therefore this question is not applicable.”<sup>114</sup> Furthermore, while the GOC described the steps it took to confirm the respondents’ U.S. customer lists, the GOC failed to identify the official documents, databases, accounts, or any other official records that were examined to determine non-use by the customers.<sup>115</sup>

Because the GOC did not provide the Export Buyer’s Credit Supplemental Questionnaire, the petitioner submitted the document on the record of the investigation.<sup>116</sup> The Export Buyer’s Credit Supplemental Questionnaire indicates that the GOC revised the EBC program in 2013 to eliminate the requirement that loans under the program be a minimum of \$2 million.<sup>117</sup> The Export Buyer’s Credit Supplemental Questionnaire Response also indicates that the China Ex-Im Bank may disburse export buyer’s credits either directly or through third-party partner and/or correspondent banks.<sup>118</sup>

Information on the 2013 Revisions and the role of third-party banks is necessary and critical to Commerce’s understanding of the EBC program and for any determination of whether the “manufacture, production, or export” of a respondent’s merchandise has been subsidized. For instance, if the program continues to be limited to \$2 million contracts between a mandatory respondent and its customer, this is an important limitation to the universe of potential loans under the program and can assist us in targeting our verification of non-use. However, if the program is no longer limited to \$2 million contracts, this increases the difficulty of verifying loans without any such parameters, as discussed further below.<sup>119</sup> Therefore, by refusing to

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<sup>110</sup> *Id.* at Section II, page 6.

<sup>111</sup> *See* GOC IQR at 18-20.

<sup>112</sup> *Id.* at 20.

<sup>113</sup> *See* Commerce’s Letter, “Countervailing Duty Investigation of Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Supplemental Questionnaire,” dated July 9, 2020 at 3.

<sup>114</sup> *See* GOC First SQR at 1-4.

<sup>115</sup> *Id.* at 2; *see also* GOC IQR at 21.

<sup>116</sup> *See* Petitioner July 29<sup>th</sup> Factual Information at Attachment 1.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> The GOC is the only party which could provide the identities of the correspondent banks that the China Ex-Im Bank utilizes to disburse funds under the EBC Program. There is no indication on the record that other parties had access to information regarding the correspondent banks utilized by the China Ex-Im Bank.

provide the requested information, and instead providing unverifiable assurances for the program, the GOC impeded Commerce's ability to understand how this program operates and how it can be verified.

Additionally, the 2013 Revisions are significant because, as noted, the Export Buyer's Credit Supplemental Questionnaire Response indicates that 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.<sup>120</sup> As discussed above, in prior examinations of this program, Commerce 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.<sup>121</sup>

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 *Aluminum Sheet Investigation*:

Record evidence indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank. Specifically, the record information indicates that customers can open loan accounts for disbursements through this program with other banks, whereby the funds are first sent to ... the importer's account, which could be at the China Ex-Im Bank or other banks, and that these funds are then sent to the exporter's bank account.<sup>122</sup>

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 and bank statements) of the U.S. customer. Thus, if Commerce cannot verify claims of non-use at the GOC,<sup>123</sup> having a list of the correspondent banks is critical to conducting a verification of non-use at the U.S. customers.

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<sup>120</sup> See Petitioner July 29<sup>th</sup> Factual Information at Attachment 1.

<sup>121</sup> 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 Isocyanurates 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 27466, (June 15, 2017), and accompanying 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").

<sup>122</sup> See *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018) (*Aluminum Sheet Investigation*), and accompanying IDM at 30.

<sup>123</sup> 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.

With regard to the respondents, we asked them to explain in detail the steps that they took to determine non-use of the EBC program by their U.S. customers. Ningbo Eagle responded that confirmation of non-use was based on email correspondence.<sup>124</sup> Wuyi Xilinde responded that confirmation on non-use was based on affidavits or certificates from its customers.<sup>125</sup>

Despite the respondents' assertion that their U.S. customers did not use the EBC program, email correspondence and customer affidavits/certificates 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 the 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.<sup>126</sup> It referred Commerce to the mandatory respondents and their U.S. customers to verify usage.<sup>127</sup> 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 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 and bank statements) of either the exporter or the U.S. customer.

Without such necessary information, Commerce would have to engage in an unreasonably onerous examination of the business activities and records of 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 (*i.e.*, 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

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<sup>124</sup> See Ningbo Eagle IQR at 10, Exhibit 7, and Exhibit 8.

<sup>125</sup> See Wuyi Xilinde IQR at 15, Exhibit 10, and Exhibit 11.

<sup>126</sup> See GOC IQR at 18-22.

<sup>127</sup> *Id.* at 22.

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.<sup>128</sup> 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, such as, specific applications, correspondence, abbreviations, account numbers, or other indicia of China Ex-Im Bank involvement. However, as noted, the GOC failed to provide Commerce with any of this information. Thus, even if Commerce were to attempt to verify respondents’ non-use of the EBC program notwithstanding its lack of knowledge of which banks are intermediary or correspondent banks by examining each loan received by each of the respondents’ U.S. customers, Commerce would still not be able to verify which loans were normal loans versus EBC loans due to its lack of understanding of what underlying documentation to 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.

Thus, because the GOC failed to provide Commerce with information necessary to identify a paper trail of direct or indirect export credits from the China Ex-Im Bank, we would not know what to look for behind each loan in determining which loan was provided by the China Ex-Im Bank via a correspondent bank under the EBC program. This necessary information is missing from the record because such disbursement information is only known by the originating bank, the China Ex-Im Bank, which is a government-controlled bank.<sup>129</sup> Without cooperation from the China Ex-Im Bank and/or the GOC, we cannot know the banks that could have disbursed export buyer’s credits to a company respondent’s customers. Therefore, there are gaps in the record because the GOC refused to provide the requisite disbursement information.

Additionally, despite company certifications of non-use, Commerce finds that it is not possible to determine whether export buyer’s credits were received with respect to the export of non-refillable cylinders because the potential recipients of export buyer’s credits are not limited to the

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<sup>128</sup> See Initial Questionnaire at Section II, page 6. 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 19.

<sup>129</sup> See *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014), and accompanying IDM at 31 (confirming that the GOC solely owns the China Ex-Im Bank).

customers of the company respondents, as they may be received by third-party banks and institutions, as explained above. Again, Commerce would not know what indicia to look for in searching for usage or even what records, databases, or supporting documentation we would need to examine to effectively conduct the verifications (*i.e.*, without a complete set of laws, regulations, application and approval documents, and administrative measures, Commerce would not even know what books and records the China Ex-Im Bank maintains in the ordinary course of its operations). Essentially, Commerce is unable to verify in a meaningful manner what little information there is on the record indicating non-use, pursuant to section 776(a)(2)(D) of the Act, with the exporters, U.S. customers, or at the China Ex-Im Bank itself, given the refusal of the GOC to provide the 2013 Revisions and a complete list of correspondent/partner/intermediate banks.

Commerce finds that the missing information concerning the operation and administration of the EBC program is necessary because its absence prevents complete and effective verification of the customers' certifications of non-use. A very similar rationale has been accepted by the CIT in its review of *Solar Products Investigation*. Specifically, in *Changzhou I*,<sup>130</sup> given similar facts, the CIT found that Commerce reasonably concluded it could not verify usage of the EBC program at the exporter's facilities absent an adequate explanation from the GOC of the program's operation (*i.e.*, "absent a well-documented understanding of how an exporter would be involved in the application of its customer for an export buyer credit and what records the exporter might retain, we would have no way of knowing whether the records we review at a company verification necessarily include any applications or compliance records that an exporter might have ...").<sup>131</sup>

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

At the very least, even when Commerce has no means of limiting the universe of transactions before it begins verification, Commerce knows what it is looking for when it begins selecting documents or transactions for review. When, because of the GOC's failure to provide complete information, there are no such parameters, or there is no guidance as to what indicia Commerce should look for, it is unreasonable to expect Commerce to hunt for a needle in a haystack with the added uncertainty that Commerce might not even be able to identify the needle when it was found.

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<sup>130</sup> See *Changzhou I*, 195 F. Supp. 3d at 1355 (citing *Solar Cells Investigation* IDM at 91-94).

<sup>131</sup> *Id.*

As an illustrative example, in the context of a VAT and import duty exemption, Commerce has met with the GOC to discuss how that program works, and in such instances the GOC has been fully cooperative.<sup>132</sup> Therefore, Commerce knows what documents it should see when VAT and import duties are paid and when they are exempted. It knows, in other words, when it has a complete document trace. The GOC, in fact, provides sample documents to help Commerce understand the paper flow pursuant to the program. Commerce can also simply ask to see a VAT invoice or a payment to the Chinese customs service to verify whether VAT and duties were charged and paid. By contrast, we simply do not know what to look for when we examine a loan to determine whether the China Ex-Im Bank was involved, or whether the given loan was provided under the EBC program, for the reasons explained above. For all the reasons described 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 usage.

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.<sup>133</sup> 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.<sup>134</sup> 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 Commerce 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.

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<sup>132</sup> See, e.g., *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008), unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM at 10 (“At the verification of Princeway’s questionnaire responses ... the GOC presented corrections regarding the reported exempted import duties for imported equipment.”)

<sup>133</sup> See *Preliminary Determination* PDM at 20-23.

<sup>134</sup> *Id.* at 22.

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 their claims that their 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 continues to find the EBC program to be an export subsidy for this final determination.<sup>135</sup> 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) demonstrate 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.<sup>136</sup> Moreover, the program was alleged by the petitioner as a possible export subsidy.<sup>137</sup> Furthermore, Commerce has found this program to be an export subsidy in the past.<sup>138</sup> 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)(A) and (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.

## **Comment 2: Countervailability of the Provision of Electricity for LTAR Program**

### *The GOC's Case Brief*<sup>139</sup>

- The electrical system in China is not state-controlled. Electricity prices in China are based on market principles and are determined by provincial governments within their jurisdictions, not the National Development and Reform Commission (NDRC).<sup>140</sup>
- The record shows that retail prices for electricity are set according to purchasing cost, transmission prices, transmission losses, and government surcharges, regardless of a company's participation in a specific sector.<sup>141</sup>
- Specificity is the first step in determining whether a subsidy program falls within the law. Even when applying AFA, Commerce must explain how the program is specific.<sup>142</sup>
- Commerce cannot use an adverse inference in deciding that specificity exists without providing a reason or referencing the facts that were considered to determine specificity.<sup>143</sup>
- Commerce cannot rely on its Initiation Checklist to satisfy the specificity requirement.<sup>144</sup>

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<sup>135</sup> See *Preliminary Determination* PDM at 23.

<sup>136</sup> See GOC IQR at Exhibits II.B.11 and II.B.12.

<sup>137</sup> See Initiation Checklist at 11.

<sup>138</sup> See, e.g., *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 17382 (April 25, 2019), and accompanying IDM at Comment 16.

<sup>139</sup> See GOC Case Brief at 10-12.

<sup>140</sup> *Id.* at 11 (citing GOC IQR at 45-46 and referenced exhibits).

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 11 (citing *Changzhou III*, 352 F. Supp. 3d 1342); see also *Changzhou I*, 195 F. Supp. 3d 1349).

<sup>143</sup> *Id.* at 11-12 (citing *Changzhou Trina Solar Energy Co. v. United States*, 264 F. Supp. 3d 1325, 1330 (CIT 2017)).

<sup>144</sup> *Id.* at 12 (citing *Changzhou IV*, 2019 LEXIS 138 Slip Op. 2019-137 at 32).

- For the final determination, Commerce must correct its finding that the provision of electricity is specific.

*The Petitioner's Rebuttal Brief*<sup>145</sup>

- The GOC's assertion that China's electrical system is not "state-controlled" is contradicted by record evidence and Commerce's prior findings that the NDRC documents submitted by the GOC do not substantiate the GOC's contentions.<sup>146</sup>
- There is no new evidence that calls into question the validity of Commerce's findings that the GOC, through the NDRC, continues to control the Chinese electricity market.
- The information requested by Commerce is critical to understanding how electricity prices in China are set. Absent such information, Commerce cannot properly analyze specificity, *i.e.*, whether provincial electricity tariffs benefit select industries within a province, or certain provinces pay less than the underlying costs required in a market-based system.
- Commerce has consistently found that AFA is warranted for the Provision of Electricity for LTAR and has repeatedly rebuffed claims made by the GOC regarding specificity.<sup>147</sup>
- The GOC's reliance on certain legal precedent is misplaced. In two cases cited by the GOC, the Court was evaluating Commerce's findings in the third administrative review of solar cells from China, not an original investigation.<sup>148</sup> The Court ultimately sustained Commerce's AFA analysis and specificity finding for this program.<sup>149</sup>
- Further, the Court established a distinction between the underlying record in the *Changzhou Trina* cases and Commerce's subsequent investigations, in particular the *Aluminum Foil Investigation*.<sup>150</sup>
- Commerce's AFA determination that the Provision of Electricity for LTAR is specific within the meaning of section 771(5A) of the Act is appropriate.

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<sup>145</sup> See Petitioner Rebuttal Brief at 17-22.

<sup>146</sup> *Id.* at 18 (citing GOC IQR at 45-46, Exhibit II.E.10 (NDRC Notice 748), Exhibit II.E.11 (NDRC Notice 3105), and Exhibit II.E.12 (NDRC Notice 2015-3169); *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 Investigation*), and accompanying IDM at Comment 23; and *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) (*Mechanical Tubing Investigation*), and accompanying IDM at Comment 2.

<sup>147</sup> *Id.* at 20-21 (citing *Fluid End Blocks Investigation* IDM at Comment 2; *Certain Collated Steel Staples from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 85 FR 33626 (June 2, 2020), and accompanying IDM at Comment 4; and *Steel Propane Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 29159 (June 21, 2019), and accompanying IDM at Comment 14).

<sup>148</sup> *Id.* at 21 (citing *Changzhou III*, 352 F. Supp. 1342; and *Changzhou IV*, Slip Op. 19-137 at 23).

<sup>149</sup> *Id.* (citing *Changzhou Trina Solar Energy Co. v. United States*, Slip Op. 20-108, Consol. Ct. No. 17-00198 (CIT 2020) at 25 ("Commerce identified the gap in the record, noted the factual bases it relied upon, and explained the adverse inference it drew based on those facts. Commerce's determination is reasonable based on the record and supported by substantial evidence. The court sustains Commerce's finding that the provision of electricity for less than adequate remuneration is a regionally specific subsidy."))

<sup>150</sup> *Id.* at 21-22 (citing *Jiangsu Zhongji Lamination Materials Co. v. United States*, 405 F. Supp. 3d 1317, 1338 (CIT 2019) ("Given that record evidence suggests that the GOC controls electricity pricing, the GOC's failure to provide information regarding how electricity pricing is set prevented Commerce from determining specificity. Accordingly, Commerce's use of AFA to find specificity is supported by substantial evidence.))

**Commerce's Position:** For the final determination, we continue to find that the GOC did not provide the necessary information which Commerce requested pertaining to whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act.<sup>151</sup>

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.<sup>152</sup> 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.<sup>153</sup> 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 we applied AFA pursuant to section 776(b) of the Act because the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information.<sup>154</sup> Consistent with the Act and our practice,<sup>155</sup> Commerce is continuing to apply AFA with respect to the provision of electricity for LTAR in this final determination. 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.<sup>156</sup> 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.<sup>157</sup> The GOC provided electricity tariff schedules; however, the GOC failed to explain, in detail, how the prices in the electricity tariff schedules were derived, including the specific factors or information relied upon by the NDRC.<sup>158</sup> Commerce additionally requested the GOC to 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.<sup>159</sup>

As explained 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

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<sup>151</sup> See *Preliminary Determination* PDM at 23-26.

<sup>152</sup> *Id.* at 23-26.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> See, e.g., *Mechanical Tubing Investigation* 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.

<sup>156</sup> See *Preliminary Determination* PDM at 24-26.

<sup>157</sup> See Initial Questionnaire at Section II, Electricity Appendix.

<sup>158</sup> See GOC IQR at Exhibit II.E.13 and Exhibit II.E.13-5; see also *Preliminary Determination* PDM at 24-26.

<sup>159</sup> See Initial Questionnaire at Section II, Electricity Appendix.

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.<sup>160</sup> 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.<sup>161</sup> 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.<sup>162</sup>

While the GOC argues that Commerce did not undertake the necessary analysis to find electricity 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 electricity tariffs 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.<sup>163</sup> 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 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.<sup>164</sup>

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

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<sup>160</sup> See *Preliminary Determination* PDM at 24-26.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 26 and 37-38.

<sup>163</sup> *Id.* at 24-26.

<sup>164</sup> 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.

financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively.<sup>165</sup>

**Comment 3:** Whether a Basis Exists for Commerce to Countervail “Other” Subsidies

*GOC’s Case Brief*<sup>166</sup>

- Commerce’s instruction in the Initial Questionnaire for mandatory respondents to report their receipt of “other” subsidies prejudices responding parties by placing undue burdens upon them and distracting from the proper focus of the proceeding.
- In the *Preliminary Determination*, Commerce improperly assigned subsidy rates to the mandatory respondents based on their responses to the “other subsidy” question in the Initial Questionnaire.
- An investigation of self-reported programs may only commence after Commerce determines there is sufficient evidence that each of the programs constitutes a financial contribution, confers a benefit, and is specific as described under the statute.
- Commerce is not precluded from engaging in additional investigations during the course of a proceeding and incorporating additional subsidy findings into its final determination. However, Commerce must first examine the new subsidy allegation from the petitioner and determine whether sufficient evidence exists to initiate an investigation of the allegation.<sup>167</sup>
- Concerning subsidies discovered by Commerce during the course of a proceeding, Commerce will only include such subsidies in its investigation if sufficient time remains before the date of the final determination or final results,<sup>168</sup> and the regulations provide that Commerce may defer the examination of newly discovered subsidy practices to the subsequent segment of the proceeding if it determines that insufficient time remains to examine them in the current segment of the proceeding.<sup>169</sup>
- Thus, Commerce’s regulations reinforce the idea that discovery of an apparent subsidy practice is not the means to an end. There still must be evidence to give rise to the appearance of a subsidy. Moreover, “discovery” is not a substitute for investigation. Rather, discovery must be followed by notice to the parties of Commerce’s intent to include the discovered practice in the “ongoing proceeding”, and then proceed to “examination” or “consideration”.
- Commerce’s decision to pre-emptively investigate “other” subsidies in this proceeding is contrary to law. By extension, there was no basis for Commerce to countervail the “other subsidies” reported by the mandatory respondents or assign the subsidy rates calculated for the mandatory respondents to the firms that did not respond to Commerce’s Q&V questionnaire.
- Commerce was immediately in error when it made its “other” subsidy request in the Initial Questionnaire. Such a request represents an investigation in the absence of any properly framed allegation by the petitioner or other findings by Commerce supported by evidence, initiation, or notice thereof, all contrary to the U.S. statute, Commerce’s regulations, and its practice. It stands to reason that an impermissible investigation into unspecified “other” subsidies, where the term “subsidy” itself is a term of art and inherently subjective, cannot be the basis for the application of facts available, let alone AFA.

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<sup>165</sup> See *Preliminary Determination* PDM at 26.

<sup>166</sup> See *GOC Case Brief* at 12-16.

<sup>167</sup> See 19 CFR 351.301(c)(2)(iv)(A).

<sup>168</sup> See 19 CFR 351.311(b).

<sup>169</sup> See 19 CFR 351.311(c).

- Under such circumstances, it cannot be said that the details of “other” subsidies, whatever that may mean, constitutes “necessary information” within the scope of Commerce’s investigation or the meaning of the facts available statute.
- Commerce made no such discovery, provided no advance notice of its intent to include discovered practices in the ongoing proceedings, and engaged in no investigation once notice was given.
- Commerce must focus any findings on those matters that are the subject of a proper investigation - one that was supported by evidence concerning the existence of particular countervailable subsidies for which there was a formal initiation or notice given. Any action to countervail “other” subsidies outside the scope of Commerce’s proper investigation would be contrary to U.S. law and the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement). For these reasons, Commerce should assign no subsidy margin to “other subsidies” reported by the mandatory respondents.

*The Petitioner’s Rebuttal Brief*<sup>170</sup>

- The GOC’s claim that Commerce was required to initiate investigations into the other reported subsidies is incorrect and has been rejected repeatedly by Commerce<sup>171</sup> and affirmed by the Courts.<sup>172</sup>
- The GOC’s claim that Commerce is precluded from asking questions concerning other forms of government assistance provided to/received by producers of the subject merchandise is without merit.
- The Court has also affirmed Commerce’s authority to examine subsidies discovered during a proceeding.<sup>173</sup>
- Given that the GOC similarly refused to provide the requested information on program specificity in this investigation,<sup>174</sup> the Court’s finding is equally applicable here. Accordingly, Commerce should reject the GOC’s baseless claims and should continue to countervail the responding companies’ self-reported grants in the final determination.

**Commerce’s Position:** We disagree with the GOC that Commerce unlawfully examined “other subsidies” without first finding that the initiation standard had been satisfied. Commerce has addressed these and similar arguments numerous times in the past.<sup>175</sup> Investigations into potentially countervailable subsidies are initiated in one of two ways. First, an investigation can

<sup>170</sup> See Petitioner Rebuttal Brief at 22-24.

<sup>171</sup> *Id.* at 23 (citing *Certain Collated Steel Staples from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 85 FR 33626 (June 2, 2020) (*Steel Staples from China*), and accompanying IDM at Comment 2); see also *Certain Glass Containers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 31141 (May 22, 2020) (*Glass Containers from China*), and accompanying IDM at Comment 5.

<sup>172</sup> *Id.* (citing *Jiangsu Zhongji Lamination Materials Co. v. United States*, 405 F. Supp. 3d 1317, 1342-1343 (CIT 2019) (*Jiangsu Zhongji*)).

<sup>173</sup> *Id.* (citing *Jiangsu Zhongji*, 405 F. Supp. 3d. at 1343)).

<sup>174</sup> See *Preliminary Determination PDM* at 31.

<sup>175</sup> See, e.g., *Steel Staples from China* IDM at Comment 2; see also *Glass Containers from China* IDM at Comment 5; *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017), and accompanying IDM at 16-21; and *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*, April 23, 2020 (85 FR 22718), and accompanying IDM at Comment 8.

be self-initiated by Commerce.<sup>176</sup> Second, when a domestic interested party files a petition for the imposition of countervailing duties on behalf of an industry, and the petition: (1) alleges the elements necessary for the imposition of a countervailing duty pursuant to section 701(a) of the Act; and (2) “is accompanied by information reasonably available to the petitioner supporting those allegations{,}” Commerce will initiate an investigation into whether countervailing duties should be imposed.<sup>177</sup>

After an investigation has been initiated through one of the above mechanisms, section 775 of the Act and 19 CFR 351.311(b) mandate that Commerce examine practices or programs discovered during the course of that investigation, and any subsequent review, if they appear to provide a countervailable subsidy. Indeed, if, after the commencement of an investigation, Commerce “discovers a practice which appears to be a countervailable subsidy”<sup>178</sup> that was not included in the petition, Commerce “shall include the practice, subsidy, or subsidy program in the proceeding{.}”<sup>179</sup> Pursuant to section 775 of the Act, Commerce has an affirmative obligation to seek information on, and include in a proceeding, all subsidy practices that might benefit the subject merchandise.<sup>180</sup>

Commerce disagrees with the suggestion by the GOC that our procedures do not conform to section 775 of the Act and 19 CFR 351.311. Contrary to the GOC’s argument, the so-called “other subsidies” question in the questionnaire is Commerce’s means of effectuating the provisions of section 775 of the Act. Commerce need not passively wait to stumble upon other potential subsidies.<sup>181</sup> Instead, seeking out such information more effectively fulfills Congress’s intent to include all potential subsidies within a proceeding. Regarding the notice requirement in 19 CFR 351.311(d), the record contains ample notification of our intent to investigate “other subsidies.” Specifically, our Initial Questionnaire requested details concerning whether the GOC provides and the mandatory respondents received any other forms of assistance and to provide detailed information regarding those assistance programs.<sup>182</sup>

Moreover, Commerce’s question regarding “all other assistance” is not vague and does not exceed Commerce’s information-collecting authority.<sup>183</sup> Commerce has broad discretion to determine which information is relevant to its determination and to request that information.<sup>184</sup>

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<sup>176</sup> See section 702(a) of the Act.

<sup>177</sup> See section 702(b) of the Act

<sup>178</sup> See section 775 of the Act.

<sup>179</sup> *Id.*

<sup>180</sup> See *Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334, 1341 (CIT 2016) (*Trina Solar 2016*) (holding that Commerce has “independent authority, pursuant to {section 775 of the Act}, to examine additional subsidization in the production of subject merchandise,” and this “broad investigative discretion” permits Commerce to require respondents to report additional forms of governmental assistance); see also *Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d 1141, 1150, n. 12 (CIT 2000) (*Allegheny I*) and section 775 of the Act.

<sup>181</sup> See *Trina Solar 2016*, 195 F. Supp. 3d at 1346.

<sup>182</sup> See Initial Questionnaire at Section II at 14 and Section III at 17.

<sup>183</sup> See *Trina Solar 2016*, 195 F. Supp. 3d at 1346 (“Commerce’s inquiry concerning the full scope of governmental assistance provided by the {Government of China} and received by the Respondents in the production of subject merchandise was within the agency’s independent investigative authority pursuant to {sections 702}(a) and {775 of the Act}, this inquiry was not contrary to law.”)

<sup>184</sup> See, e.g., *Acciai Speciali Termi S.p.A. v. United States*, 26 CIT 148, 167 (February 1, 2002) (sustaining

Commerce pursues information regarding “other assistance” expressly to satisfy the intent of the CVD law, to investigate and catalogue all potentially countervailable subsidies, and to consolidate all relevant subsidies into a single investigation.<sup>185</sup> Consistent with U.S. law, Commerce is not precluded from inquiring about other assistance to make determinations.<sup>186</sup> Commerce “has independent investigative authority” to ask questions about other governmental assistance, beyond the subsidies alleged by the petitioner.<sup>187</sup>

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

{O}ur CVD laws are consistent with our WTO obligations. Moreover, it is the Act and {Commerce’s} regulations that have direct legal effect under U.S. law, and not the WTO Agreements or WTO reports. In this regard, WTO reports “do not have any power to change U.S. law or to order such a change.”<sup>188</sup>

Further, we disagree with the GOC’s argument that it was wrong for Commerce to assign under AFA the net subsidy rates of the “other subsidies” programs calculated for the mandatory respondents to the firms that did not respond to Commerce’s Q&V questionnaire. Commerce has rejected this argument in past CVD proceedings. For example, in *Aluminum Extrusions from China*, Commerce:

included newly initiated and self-reported programs in the AFA rate calculations for the non-cooperative mandatory respondents, except for those programs that would not have been available to the non-cooperative respondents or those programs found not to exist . . . . We find this approach prevents non-cooperative respondents that no longer participate from successfully avoiding being associated with newly alleged subsidy programs and subsidies discovered during the course of the investigation.<sup>189</sup>

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Commerce’s application of adverse inferences when respondent engaged in “willful non-compliance” with requests for information); *see also PAM, S.p.A. v. United States*, 495 F. Supp. 2d 1360, 1369 (CIT 2007) (sustaining Commerce’s application of adverse inferences when respondent’s judgment that the information requested was irrelevant).

<sup>185</sup> *See Trina Solar 2016*, 195 F. Supp. 3d at 1342-43.

<sup>186</sup> *Id.*, 195 F. Supp. 3d. at 1345-46.

<sup>187</sup> *Id.*, 195 F. Supp. 3d at 1346.

<sup>188</sup> *See Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at Comment 1 (internal citations omitted); *see also Oil Country Tubular Goods from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 11504 (March 27, 2019), and accompanying IDM at Comment 1.

<sup>189</sup> *See 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 8.

Here, due the failure of the recipient firms to respond to the Q&V questionnaire, we have no information or basis to conclude that the net subsidy rates for the “other subsidies” programs at issue would not have been available to them. Therefore, we have resorted to AFA and assigned the net subsidy rates calculated for the mandatory respondents to the firms that failed to respond to the Q&V questionnaire.

In sum, given that we acted consistently with our statutory authority, WTO obligations, and practice, in investigating the programs at issue, we made no changes to the *Preliminary Determination* with respect to “other subsidies.”

**Comment 4:** Whether to Apply Total AFA to Wuyi Xilinde Concerning the Provision of CRS for LTAR Program

*The Petitioner’s Case Brief*<sup>190</sup>

- In its verification questionnaire, Commerce instructed Wuyi Xilinde to tie the total value of its POI CRS purchases (exclusive of VAT), as reported in Exhibit 14 of its initial questionnaire response, to its 2019 general ledger and year-end financial statement using screenshots and narrative descriptions of the reconciliation.<sup>191</sup>
- In response to Commerce’s verification questionnaire, Wuyi Xilinde included its sub-ledger for purchases of CRS, which, in turn, contained a notation for “Estimated Materials Warehouse-In” that identifies values of goods that are “received but their invoices are not issued.”<sup>192</sup>
- In its verification questionnaire response, Wuyi Xilinde further explained that it reported its CRS purchases for the POI based on “the information in the VAT invoices actually issued by the suppliers, regardless of the estimated materials warehouse-in and the write-off of those estimations.”<sup>193</sup>
- Thus, Wuyi Xilinde’s verification questionnaire response demonstrates that the CRS purchases it reported to Commerce failed to account for the variations that existed between the warehouse materials estimates and the “write-off” of those estimates.
- Proprietary information contained in the Wuyi Xilinde verification questionnaire response reveals the difference between the quantity and value of CRS invoiced during the POI versus the quantity and value it received during the POI.<sup>194</sup>
- Wuyi Xilinde is correct in stating in its verification questionnaire response that its CRS purchases, as recorded in its sub-ledger, general ledger, and trial balance sheet, reconcile. That is because those accounts incorporate the value of estimated material for CRS as well as write-offs of those estimations.
- However, the quantity and value of CRS reported in the Wuyi Xilinde IQR do not account for estimated materials and write-off values of CRS, and as a result, do not reconcile to the volume and value of CRS recorded in Wuyi Xilinde’s sub-ledger, general ledger, and trial balance.<sup>195</sup>

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<sup>190</sup> See Petitioner Case Brief at 2-9.

<sup>191</sup> See Petitioner Case Brief at 4 (citing Wuyi Xilinde Verification QNR at 3; and Wuyi Xilinde’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic China: Submission of Wuyi Xilinde’s Section III Response,” dated July 2, 2020, (Wuyi Xilinde IQR)).

<sup>192</sup> See Petitioner Case Brief at 5 (citing Wuyi Xilinde Verification QNR Response at 5).

<sup>193</sup> *Id.* (citing Wuyi Xilinde Verification QNR Response at 5).

<sup>194</sup> See Petitioner Case Brief at 6 (citing Wuyi Xilinde Verification QNR Response at Exhibit 7).

<sup>195</sup> See Petitioner Case Brief at 6-7 (citing Wuyi Xilinde IQR at Exhibit 14 and Wuyi Xilinde Verification QNR Response at Exhibit 7).

- Thus, record information demonstrates Wuyi Xilinde failed to properly account for the value of estimated material and write-offs of CRS it received during the POI that were not invoiced during the POI.
- Wuyi Xilinde failed to act to the best of its ability when it inaccurately reported its POI purchases of CRS, which warrants the application of adverse inferences, as described under section 776(b) of the Act.
- While it is not clear why Wuyi Xilinde significantly underreported its CRS purchases, the statute’s “best of its ability” standard does not require Commerce to determine Wuyi Xilinde’s intent in its failure to provide “full and complete” answers to inquiries, given that “inattentiveness and carelessness” are grounds for an AFA finding.<sup>196</sup>
- In *PC Strand from Turkey*, Commerce issued a verification questionnaire in which it instructed the respondent to reconcile its purchases of steel wire rod during the POI with its year-end financial statement.<sup>197</sup> The respondent’s verification questionnaire response in the Turkish case reported a total value for its steel wire rod purchases that differed from the total value it reported in its questionnaire response. Commerce determined that the application of AFA was warranted because the respondent’s “unexplained discrepancies are sufficient to call into question the entirety of {its} reported purchases of steel wire rod” in its questionnaire response.<sup>198</sup>
- The facts of *PC Strand from Turkey* are analogous to the instant investigation in that Wuyi Xilinde failed to reconcile the CRS purchases booked in its raw material sub-ledger with the information submitted in Exhibit 14 of its initial questionnaire response.
- Accordingly, Commerce should assign an AFA rate to Wuyi Xilinde under the Provision of CRS from LTAR program.

*Wuyi Xilinde’s Rebuttal Brief*<sup>199</sup>

- The application of AFA to Wuyi Xilinde in connection with the Provision of CRS for LTAR program is not warranted.
- Wuyi Xilinde has complied fully with all the instructions and information requests contained in Commerce’s questionnaires and verification questionnaire.
- Wuyi Xilinde reported and reconciled all the CRS it purchased during the POI, in accordance with the instructions contained in the Initial Questionnaire and verification questionnaire.

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<sup>196</sup> See Petitioner Case Brief at 7 (citing *Tianjin Machinery Imp. & Exp. Corp v. United States*, 353 F. Supp. 2d 1294, 1305 (Court of International (CIT) 2004) (*Tianjin Machinery*)).

<sup>197</sup> See *Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 85 FR 80005 (December 11, 2020) (*PC Strand from Turkey*) and accompanying IDM at Comment 2.

<sup>198</sup> *Id.* (citing *PC Strand from Turkey* IDM at Comment 2).

<sup>199</sup> See *Wuyi Xilinde Rebuttal Brief* at 2-5.

- At the outset of the investigation Commerce expressly instructed Wuyi Xilinde to:

. . . report each purchase of the input during the POI. By each purchase, we are referring to each line item on a VAT invoice that corresponds to a unique price and/or quantity. For an example, see the attached reporting template.

Report all purchases with invoice dates that reflect actual deliveries during the POI.<sup>200</sup>

- Accordingly, in its initial questionnaire response, Wuyi Xilinde reported each purchase of CRS noting the specific invoice number, invoice date, volume, value exclusive of VAT, and VAT amount paid in each line item of the input template.<sup>201</sup> Wuyi Xilinde based the information in Exhibit 14 on the purchase invoices issued by its suppliers during the POI.
- The CRS purchase information contained in Exhibit 14 of the Wuyi Xilinde IQR is reflected in the monthly quantities and values recorded on the debit side of Wuyi Xilinde's sub-ledger of raw materials for CRS.<sup>202</sup>
- Under 19 CFR 351.511(a)(2), Commerce considers a benefit to be conferred where a firm pays less for its inputs than a market determined price.
- Whether the price Wuyi Xilinde paid was less than a market determined price is determined in this case by comparing the price paid by Wuyi Xilinde to its Chinese CRS suppliers with Commerce's determined benchmark price for CRS.
- The prices that Wuyi Xilinde paid to its Chinese CRS suppliers are indicated on the VAT invoices.
- However, the price of materials that were placed in Wuyi Xilinde's inventory during the POI, but were not yet invoiced by the suppliers, could not be determined because the exact purchase price could not be determined or paid in the absence of the VAT invoice.
- Since the as of yet unknown price of these transactions cannot be compared to a benchmark price, these transactions were properly not included in the calculation of Wuyi Xilinde's LTAR benefit for cold-rolled steel. These transactions will be properly reported in the POR in which the VAT invoice was received by Wuyi Xilinde.
- The petitioner appears to have conflated LTAR reporting required in CVD proceedings with reporting requirements in AD proceedings.
- In AD proceedings, Commerce requires the respondents report their factors of production (FOPs) based on total production and consumed materials during the period under examination, regardless of when those FOPs were purchased or invoiced.
- In contrast, Wuyi Xilinde accurately reported its CRS purchases based on the VAT invoices that it received during the POI. Further, these CRS purchases reconcile to its sub-ledger and financial statement.<sup>203</sup>
- Thus, the application of AFA to Wuyi Xilinde is not warranted.

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<sup>200</sup> See Wuyi Xilinde Rebuttal Brief at 3 (citing Initial Questionnaire at 13-14).

<sup>201</sup> *Id.* (citing Wuyi Xilinde IQR at Exhibit 14).

<sup>202</sup> See Wuyi Xilinde Rebuttal Brief at 3 (citing Wuyi Xilinde Verification QNR Response at Exhibit 7 at 2-5).

<sup>203</sup> See Wuyi Xilinde Rebuttal Brief at 5 (citing Wuyi Xilinde Verification QNR Response at Exhibit 7).

**Commerce's Position:** We disagree with the petitioner that the application of AFA is warranted with respect to Wuyi Xilinde's use of the Provision of CRS for LTAR program. Under 19 CFR 351.511(b), Commerce will normally consider an LTAR benefit as having been received as of the date on which the firms pays or in the absence of payment, was due to pay for the government-provided good. Thus, in the Initial Questionnaire, Commerce instructed the respondents to report their CRS purchases based on the VAT invoices issued during the POI.<sup>204</sup> Wuyi Xilinde's initial questionnaire response adhered to this reporting requirement.<sup>205</sup> Therefore, we disagree with the petitioner that Commerce sought information from the mandatory respondents on the volume of CRS that entered their respective inventories during the POI. Rather, in accordance with 19 CFR 351.511(b) and as our instructions in the Initial Questionnaire make clear, we sought information concerning the CRS that the mandatory respondents purchased during the POI according to the respective VAT invoices. The petitioner has not demonstrated that Wuyi Xilinde failed to properly follow the Initial Questionnaire instructions or was otherwise uncooperative.

Further, Wuyi Xilinde traced the CRS purchases reported in its initial questionnaire response to its financial records in the in-lieu-of-verification questionnaire response. For example, Wuyi Xilinde tied specific purchased amounts, as listed by invoice number in its initial questionnaire response, to the original invoices.<sup>206</sup> Further, Wuyi Xilinde tied its total payments to a CRS supplier for the month of February 2019, as specified by Commerce in the Wuyi Xilinde Verification QNR, to its sub-ledger and bank statements, and then demonstrated how the total amount paid to that supplier traced to the total CRS payments Wuyi Xilinde made to all CRS suppliers during the month of February.<sup>207</sup> Additionally, Wuyi Xilinde demonstrated how its total CRS purchases for February tied to its total CRS purchases for the year as listed in its general ledger.<sup>208</sup> Lastly, Wuyi Xilinde traced its total CRS purchases for the year from its trial balance, to its general ledger, and to its 2019 year-end balance sheet.<sup>209</sup>

We find that the facts of *PC Strand from Turkey* are distinct from the facts of the instant investigation. In the Turkish case, the wire rod purchases, both in terms of total amounts and individual purchase amounts, reported in the respondent's questionnaire response differed significantly from the purchases listed in its books and records.<sup>210</sup> Moreover, in that case, the respondent did not provide an explanation for the discrepancy.<sup>211</sup> In contrast, in the instant investigation, as explained above, Wuyi Xilinde has demonstrated, both in terms of individual transactions and on an aggregate basis, how the CRS purchases listed in its initial questionnaire response tie to the CRS that was invoiced during the POI.

Therefore, we find that Wuyi Xilinde has fully complied with Commerce's requests for information regarding its purchases of CRS during the POI, successfully reconciled its reported

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<sup>204</sup> See Initial Questionnaire at 13-14 and excel template.

<sup>205</sup> See Wuyi Xilinde IQR at Exhibit 14.

<sup>206</sup> See Wuyi Xilinde Verification QNR Response at Exhibits 8-T and 9-T.

<sup>207</sup> *Id.* at Exhibit 6-T.

<sup>208</sup> *Id.* at 7-T.

<sup>209</sup> *Id.*

<sup>210</sup> See *PC Strand from Turkey* IDM at Comment 2.

<sup>211</sup> *Id.*

CRS purchases to its books and records and has not otherwise been uncooperative. Thus, the application of AFA, as proposed by the petitioner, is not warranted.

**Comment 5:** Whether Commerce Should Adjust the Inland Freight Rate Used in Wuyi Xilinde’s Benefit Calculation under the Provision of CRS from LTAR Program

*The Petitioner’s Case Brief*<sup>212</sup>

- In the *Preliminary Determination*, Commerce relied upon the inland freight rate Wuyi Xilinde reported in its questionnaire response for purposes of calculating a delivered benchmark price for CRS. However, record evidence demonstrates that this figure does not represent Wuyi Xilinde’s actual inland freight charges.
- In the verification questionnaire, Commerce instructed Wuyi Xilinde to revise the reported freight data to reflect monthly transportation expenses to the nearest seaport incurred during the POI as originally requested.<sup>213</sup>
- In its verification questionnaire response, Wuyi Xilinde provided the same inland freight expense amount that it provided in its initial questionnaire response, which was an estimated freight expense amount for the port nearest its factory<sup>214</sup> rather than providing freight expense information reflective of the port for which it actually incurred transportation expenses during the POI.<sup>215</sup>
- In the final determination, Commerce should base Wuyi Xilinde’s benchmark inland freight calculation for CRS on Wuyi Xilinde’s actual transportation expenses and not on estimations of its freight expenses.

*Wuyi Xilinde’s Rebuttal Brief Argument*<sup>216</sup>

- Commerce instructed Wuyi Xilinde to report the “per-metric ton freight expenses for transporting cold-rolled steel from the nearest seaport to the firm’s factory.”<sup>217</sup>
- Wuyi Xilinde followed Commerce’s instructions by reporting the inland freight charges it actually incurred and then adjusting them downward to reflect the inland freight charges associated with the seaport nearest to Wuyi Xilinde’s factory.
- Thus, Commerce should continue to use the adjusted inland freight amount that Wuyi Xilinde report to Commerce in its Initial Questionnaire and verification questionnaire responses.

**Commerce’s Position:** In the Initial Questionnaire, Commerce instructed the mandatory respondents to report inland freight incurred on imports of CRS in the following manner:

Please provide a worksheet that shows your firm’s per-metric ton freight expenses for transporting cold-rolled steel from the nearest seaport to your firm’s factory complexes for each month of the POI. Provide supporting documentation for the months of March and October.

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<sup>212</sup> See Petitioner Case Brief at 9-10

<sup>213</sup> *Id.* at 10 (citing Wuyi Xilinde Verification QNR at 4).

<sup>214</sup> *Id.* at 9-10 (citing Wuyi Xilinde IQR at Exhibit 15 and Wuyi Xilinde Verification QNR Response at 7-8).

<sup>215</sup> *Id.* (citing Wuyi Xilinde Verification QNR Response at Exhibits 3 and 16).

<sup>216</sup> See Wuyi Xilinde Rebuttal Brief at 5.

<sup>217</sup> *Id.* at 5 (citing Initial Questionnaire at Section III, at 14).

If your firm did not incur these expenses, please provide the same information for shipping a closely related input product or finished product to or from the nearest seaport during the POI.<sup>218</sup>

Commerce solicits this information in the initial CVD questionnaire in the event it relies upon a company-specific tier-one or world market tier-two benchmark price under 19 CFR 351.511(a)(2)(i) and (ii), in which case it must account for the inland freight expenses that would have been incurred to transport the input in question to the respondent's factory, as provided under 19 CFR 351.511(a)(2)(iv). Because we have determined in this investigation to rely upon a tier-two benchmark, the addition of an inland freight expense to the benchmark is required.

In its initial questionnaire response, Wuyi Xilinde provided an adjusted inland freight figure for the CRS benchmark.<sup>219</sup> Thus, in our verification questionnaire, we instructed Wuyi Xilinde to report freight data that reflects monthly transportation expenses to the nearest seaport incurred during the POI as originally requested in the Initial Questionnaire.<sup>220</sup> In its verification questionnaire response, Wuyi Xilinde continued to propose the use of the adjusted inland freight figure explaining that "In order to fulfill the requirement of Commerce, Wuyi Xilinde provided a calculation worksheet showing the per-metric ton freight expenses for transporting cold-rolled steel from the nearest seaport to the firm's factory based on the information in contracts for purchasing cold-rolled steel."<sup>221</sup>

Upon review of the information on the record, we find it was not necessary for Wuyi Xilinde to report an adjusted inland freight amount. Under 19 CFR 351.511(a)(2)(iv), Commerce's goal is to utilize an inland freight amount that reflects what the respondent paid or would pay if it imported the product at issue. Proprietary information on the record indicates that Wuyi Xilinde paid inland freight on a per metric ton basis to transport CRS from a location at a Chinese port to its factory.<sup>222</sup> While this particular port was not the port closest to Wuyi Xilinde's factory, the expenses associated with this port area reflect what Wuyi Xilinde actually paid, on a per metric ton basis, to transport CRS from a port location to its factory. Thus, because actual transportation expenses, described under 19 CFR 351.511(a)(2)(iv), are available on the record, an additional downward adjustment to these expenses, as proposed by Wuyi Xilinde, are not necessary or appropriate. Therefore, in the final determination, we have added the unadjusted, per metric ton inland freight expense, as indicated in Wuyi Xilinde's source documents, to the tier-two benchmark for CRS.<sup>223</sup>

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<sup>218</sup> See Initial Questionnaire, Section III at 14.

<sup>219</sup> See Wuyi Xilinde IQR at Exhibit 15.

<sup>220</sup> See Wuyi Xilinde Verification QNR at 4.

<sup>221</sup> *Id.* at 7-8 and Exhibits 10-T and 11-7.

<sup>222</sup> See Wuyi Xilinde Verification QNR Response at Exhibits 10-T and 11-7.

<sup>223</sup> See Wuyi Xilinde Verification QNR Response at Exhibits 10-T and 11-7; see also Wuyi Xilinde Final Calculations Memorandum.

**Comment 6:** Whether Commerce Should Adjust the Benchmark Interest Rate Used to Measure the Benefit to Wuyi Xilinde Under the Policy Loans to the Non-Refillable Steel Industry Program

*The Petitioner's Case Brief*<sup>224</sup>

- In the *Preliminary Determination*, Commerce properly countervailed loans that Wuyi Xilinde had outstanding during the POI under the Policy Loans to the Non-Refillable Steel Industry program.
- However, in conducting the requisite benefit calculations, Commerce failed to select the proper benchmark interest rate to compare with Wuyi Xilinde's outstanding loans.
- Under 19 CFR 351.505(a)(2)(i), Commerce will use a loan benchmark that matches the structure, currency, and maturity of the government loan(s) in question.
- In the *Preliminary Determination*, Commerce, applied a short-term interest rate benchmark to four government loans whose durations required the use of a long-term interest benchmark.<sup>225</sup>
- Commerce should correct these unintentional errors in the final determination.

Wuyi Xilinde did not rebut this argument from the petitioner's case brief.

**Commerce's Position:** We agree with the petitioner that we inadvertently compared a short-term benchmark interest rate to long-term interest rates charged on four government loans that Wuyi Xilinde received under the Policy Loans to the Non-Refillable Steel Industry program. Consistent with 19 CFR 351.505(a)(2)(i), we should have compared the interest rates charged on the government loans in question to a benchmark interest rate with a similar long-term maturity date. We have corrected the inadvertent error in the final determination.<sup>226</sup>

**Comment 7:** Whether Commerce Used an Incorrect Benefit Amount in the Net Subsidy Rate Calculations for Wuyi Xilinde Under the Subsidy to Loan Interests for Shanghai Cooperative Enterprise and Subsidy to Unemployment Insurance Payment Programs

*The Petitioner's Case Brief*<sup>227</sup>

- Commerce correctly countervailed Wuyi Xilinde's use of the Subsidy to Loan Interests for Shanghai Cooperative Enterprise and Subsidy to Unemployment Insurance Payment programs. However, it used the wrong benefit amounts when calculating the net subsidy rates for these programs.
- These inadvertent errors were caused by incorrect references in certain cells of the underlying Excel spreadsheet, and, therefore, should be corrected in Commerce's final calculations.<sup>228</sup>
- Commerce should correct these inadvertent errors in the final calculations by linking to the correct benefit amounts in the net subsidy rate calculation.

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<sup>224</sup> See Petitioner Case Brief at 11-12.

<sup>225</sup> See Petitioner Case Brief at 11-12 (citing Revised Preliminary Calculations for Wuyi Xilinde Memorandum at the Loans-Wuyi tab).

<sup>226</sup> See Wuyi Xilinde Final Calculations Memorandum.

<sup>227</sup> See Petitioner Case Brief at 12.

<sup>228</sup> See Petitioner Case Brief at 12 (citing Revised Preliminary Calculations for Wuyi Xilinde Memorandum at the Benefit tab).

Wuyi Xilinde did not rebut this argument from the petitioner's case brief.

**Commerce's Position:** We agree with the petitioner. In the *Preliminary Determination*, the numerator of our net subsidy rate calculation for the two programs at issue inadvertently linked to the incorrect benefit amounts. We have corrected these inadvertent errors in the final determination.<sup>229</sup>

**Comment 8:** Whether Commerce Should Revise the Benefit Calculation for Wuyi Xilinde Under the Income Tax Deductions for R&D Expenses Program

*The Petitioner's Case Brief*<sup>230</sup>

- Pursuant to the Enterprise Income Tax Law, enterprises in select high-technology sectors are eligible for an additional 50 percent deduction from taxable income for R&D expenditures that do not form part of the company's intangible assets value, or to amortize these expenses at 150 percent when considered part of the beneficiary's intangible assets.
- Although its stated intention was to calculate the benefit from this tax deduction using the standard corporate income tax rate of 25 percent,<sup>231</sup> Commerce instead based Wuyi Xilinde's benefit on the preferential corporate income tax rate of 15 percent.
- To correct this error, Commerce should multiply the income tax deduction Wuyi Xilinde received under this program in connection with the tax return it filed during the POI by the standard corporate tax rate of 25 percent rather than reduced 15 percent income tax rate that Wuyi Xilinde paid during the POI.

*Wuyi Xilinde's Rebuttal Brief*<sup>232</sup>

- Wuyi Xilinde is a High and New Technology Enterprise and is, thus, subject to a reduced income tax rate of 15 percent, rather than the standard income tax rate of 25 percent.
- Commerce correctly calculated the benefits under the Income Tax Reduction for High or New Technology Enterprises program by multiplying Wuyi Xilinde's Taxable Income Amount with the difference of the standard tax rate and reduced tax rate, as demonstrated in Wuyi Xilinde's initial questionnaire response.<sup>233</sup>
- Proprietary information from Wuyi Xilinde's tax return, as originally provided in its initial questionnaire response, demonstrates that the petitioner's proposed methodology is unreasonable.<sup>234</sup>

**Commerce's Position:** We agree with the petitioner that we should use the 25 percent tax rate to calculate the benefit for this program rather than the 15 percent tax rate used in the *Preliminary Determination*. Despite our stated intention in the *Preliminary Determination* to use the 25 percent tax rate in the benefit calculation of this program,<sup>235</sup> in the *Preliminary*

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<sup>229</sup> See Wuyi Xilinde Final Calculations Memorandum.

<sup>230</sup> See Petitioner Case Brief at 12-13.

<sup>231</sup> See *Preliminary Determination* PDM at 46.

<sup>232</sup> See Wuyi Xilinde Rebuttal Brief at 5-7.

<sup>233</sup> *Id.* at 6 (citing Wuyi Xilinde IQR at Exhibit 12).

<sup>234</sup> *Id.* at 6-7 (citing Wuyi Xilinde IQR at Exhibit 4 and 13.1).

<sup>235</sup> See *Preliminary Determination* PDM at 46.

*Determination*, we used a corporate tax rate of 15 percent.<sup>236</sup> Under 19 CFR 351.503(e), when calculating the benefit, “we will not consider the tax consequences of the benefit.” Wuyi Xilinde’s corporate tax rate would be 25 percent absent the Income Tax Reduction for High or New Technology Enterprises program.<sup>237</sup> Therefore, consistent with past proceedings,<sup>238</sup> we are not taking into consideration the Income Tax Reduction for High or New Technology Enterprises program, which reduces the corporate tax rate from 25 to 15 percent. As stated in the preamble to the regulations, “the impact of the benefit under one subsidy program should not be considered in calculating the benefit under a separate program.”<sup>239</sup> Accordingly, pursuant to Commerce’s regulation, we have revised the benefit calculation and used the 25 percent tax rate to calculate the benefit for Wuyi Xilinde under the Income Tax Deductions for R&D Expenses program.<sup>240</sup>

**Comment 9:** Whether Commerce Committed a Ministerial Error in Wuyi Xilinde’s Benefit Calculation for the Policy Loans to the Non-Refillable Containers Industry Program

*Wuyi Xilinde’s Case Brief*<sup>241</sup>

- Reiterating points made in the Wuyi Xilinde Ministerial Error Allegations Submission, Wuyi Xilinde states that in the preliminary calculation of the subsidy benefit under the policy loan program, Commerce inadvertently typed in the wrong formula that resulted in Commerce overstating Wuyi Xilinde’s benefit.
- Correcting for this ministerial error results in a substantial decrease in the benefit and net subsidy rate calculated for Wuyi Xilinde under this program.

The petitioner did not rebut this argument from Wuyi Xilinde’s case brief.

**Commerce’s Position:** Wuyi Xilinde raised this same point in its ministerial error allegations.<sup>242</sup> As explained in the Ministerial Error Memorandum, we agree that in our preliminary calculations we inadvertently inserted an incorrect formula into Wuyi Xilinde’s benefit under this program.<sup>243</sup> We have corrected the inadvertent error in the final calculations.

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<sup>236</sup> See Memorandum, “Countervailing Duty Investigation on Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Preliminary Determination Calculations for Wuyi Xilinde Machinery Manufacture Co., Ltd.,” August 24, 2020.

<sup>237</sup> See *Preliminary Determination PDM* at 44.

<sup>238</sup> See, e.g., *Polyester Textured Yarn from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 84 FR 63845 (November 19, 2019), and accompanying IDM at Comment 11.

<sup>239</sup> See *Countervailing Duties*, 63 FR 65348, 65362 (November 25, 1998).

<sup>240</sup> See Wuyi Xilinde Final Calculations Memorandum.

<sup>241</sup> See Wuyi Xilinde Case Brief at 2.

<sup>242</sup> See Wuyi Xilinde Ministerial Error Allegations Submission.

<sup>243</sup> See Ministerial Error Memorandum at 2.

**Comment 10:** Whether Commerce Committed a Ministerial Error in Wuyi Xilinde’s Benefit Calculation for the Export Oriented Grants Program

- Reiterating points made in the Wuyi Xilinde Ministerial Error Allegations Submission, Wuyi Xilinde states that in the preliminary calculation of the subsidy benefit for export-oriented grants received in 2018, Commerce inadvertently linked to the overall amount of the benefit that was remaining in the benefit stream instead of the benefit that was allocated to 2019.

The petitioner did not rebut this argument from Wuyi Xilinde’s case brief.

**Commerce’s Position:** Wuyi Xilinde raised this same point in its ministerial error allegations.<sup>244</sup> As explained in the Ministerial Error Memorandum, we agree that we inadvertently linked to the incorrect cell in Wuyi Xilinde’s preliminary calculations, which resulted in the use of an incorrect benefit amount in the numerator of the subsidy program at issue.<sup>245</sup> We have corrected the inadvertent error in the final calculations by linking to the correct spreadsheet cell (*i.e.*, the spreadsheet cell containing the benefit amount of the Export-Oriented grant allocated to 2019).

## **IX. CALCULATION OF THE ALL-OTHERS RATE**

Sections 703(d) and 705(c)(5) of the Act state that Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the all-others rate by weight-averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. We therefore calculated a weighted-average all-others rate using the mandatory respondents’ publicly ranged U.S. export sales value for the subject merchandise. On that basis, we are assigning 21.28 percent as the *ad valorem* all-others rate.<sup>246</sup>

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<sup>244</sup> See Wuyi Xilinde Ministerial Error Allegations Submission.

<sup>245</sup> See Ministerial Error Memorandum at 2.

<sup>246</sup> See Memorandum, “Countervailing Duty Investigation on Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Final All-Others Rate Calculations Memorandum,” dated concurrently with this IDM.

**X. RECOMMENDATION**

We recommend approving all 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

3/15/2021

X 

\_\_\_\_\_  
Christian Marsh

Signed by: CHRISTIAN MARSH

\_\_\_\_\_  
Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance