

**FINAL RESULTS OF REDETERMINATION  
PURSUANT TO COURT REMAND**

*Clearon Corp. v. United States*  
Court No. 17-00171, Slip Op. 20-141 (CIT October 8, 2020)

**I. SUMMARY**

The Department of Commerce (Commerce) prepared these Final Results of Redetermination in accordance with the opinion and remand order of the U.S. Court of International Trade (the Court) in *Clearon Corp. v. United States*, Court No. 17-00171, Slip-Op. 20-141 (CIT October 8, 2020) (*Remand Order*). These final remand results concern the final results of the 2014 administrative review of the countervailing duty (CVD) order on chlorinated isocyanurates (chlorinated isos) from the People’s Republic of China (China).<sup>1</sup> On remand, the Court ordered parties to confer and jointly devise a procedure by which Commerce can conduct verification of Heze Huayi Chemical Co., Ltd.’s (Heze Huayi) and its customers’ declarations of non-use with respect to the Export Buyer’s Credit Program, or, alternatively, for Commerce to find, based on existing record evidence, that neither Heze Huayi nor its customers used or received a benefit under the program. Specifically, the Court remanded the *Final Results* for Commerce to:

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<sup>1</sup> See *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) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM); see also *Chlorinated Isocyanurates from the People’s Republic of China: Countervailing Duty Order*, 79 FR 67424 (November 13, 2014) (*Order*).

- (1) issue a revised redetermination that complies in all respects with the Court's Opinion and *Order*, based on determinations that are supported by substantial record evidence, and that is in all respects in accordance with law;
- (2) confer with parties and agree upon a verification procedure to apply in this case; and
- (3) verify Heze Huayi's claims of non-use and, based on the results of verification, determine whether Heze Huayi received a benefit under the program; or in the alternative, find, based on the existing record evidence, that neither Heze Huayi nor its customers used or received a benefit under the program.<sup>2</sup>

As set forth in detail below, Commerce has complied with the *Remand Order* by finding, under respectful protest,<sup>3</sup> that based on the existing record evidence, neither Heze Huayi nor its customers used or received a benefit under the program.

## II. BACKGROUND

On January 7, 2016, Commerce published a notice of initiation of administrative review covering the period of review (POR) February 4, 2014 through December 31, 2014 (the first administrative review).<sup>4</sup> Subsequently, Commerce issued questionnaires to mandatory respondents Hebei Jiheng Chemical Company Co., Ltd (Jiheng), Heze Huayi, and the Government of China (GOC).<sup>5</sup> In the *Final Results*, Commerce determined that the use of adverse facts available (AFA) under sections 776(a) and (b) of the Tariff Act of 1930 (the Act) was warranted in determining the countervailability of the Export Buyer's Credit Program, because the GOC had failed to provide the necessary information Commerce required to analyze the program.<sup>6</sup> Specifically, Commerce relied on AFA to find that this program meets the financial contribution and specificity requirements of sections 771(5) and 771(5A) of the Act.<sup>7</sup>

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<sup>2</sup> See *Remand Order* at 23-24.

<sup>3</sup> See *Viraj Group, Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 736 (January 7, 2016).

<sup>5</sup> Jiheng is not a party to this action.

<sup>6</sup> See *Final Results* IDM at Comment 2.

<sup>7</sup> *Id.* at 13-14.

Commerce also determined that it could not rely on statements of non-use provided by Jiheng and Heze Huayi and their customers because of the GOC's failure to provide the necessary information with respect to the operation of the program.<sup>8</sup> Consistent with Commerce's CVD AFA hierarchy, Commerce selected the highest calculated rate for the same or similar program as the AFA rate for this program, in accordance with section 776(d) of the Act and Commerce's established practice.<sup>9</sup> On January 25, 2019, this rate selection was sustained by the Court in the *Clearon I*.<sup>10</sup>

However, in *Clearon I*, the Court also remanded the *Final Results* to Commerce with four specific instructions: (1) explain why certain requested information "is necessary to make a determination of whether the 'manufacture, production, or export' of {Heze Huayi's} merchandise has been subsidized, pursuant to {section 701(a) of the Act}," and "{i}n doing so, Commerce shall tie its inquiries to {Heze Huayi}, its products, and/or its customers;" (2) "either provide an adequate answer relating to why the information it seeks 'to fully understand the operation of the program' fills a gap as to {Heze Huayi's} products and their sale, or rely on the information it has on the record;" (3) "comply with the statute by tying its facts available and adverse facts available determinations to Heze Huayi, its products, or its customers;" and (4) "support with substantial evidence its necessary conclusion that there were gaps in the record evidence that could only be filled with the GOC's responses to its questionnaires."<sup>11</sup>

In the *Clearon I Remand*, dated May 16, 2019, Commerce continued to find that, without the information that the GOC withheld about the operation of the Export Buyer's Credit Program, the use of facts available was required because "necessary" information was missing

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 14.

<sup>10</sup> See *Clearon Corp. v. United States*, 359 F. Supp. 3d 1344, 1361-62 (CIT 2019) (*Clearon I*).

<sup>11</sup> *Id.*, 359 F. Supp. 3d at 1363.

from the record, under section 776(a) of the Act.<sup>12</sup> Commerce further found that the application of an adverse inference was justified because the GOC failed to cooperate with Commerce’s information requests to “the best of its ability.”<sup>13</sup>

Using AFA, Commerce thus determined that Heze Huayi used and benefitted from the Export Buyer’s Credit Program, and we continued to use 0.87 percent as the AFA rate for the program.<sup>14</sup> Commerce found that the information withheld by the GOC was “necessary” because without a complete understanding of how the program operates, Commerce could not, without undue burden, verify the declarations by Heze Huayi and its customers that they did not use or benefit from the program during the POR.<sup>15</sup>

In response to the Court’s first instruction, Commerce explained why it was necessary to know whether the China Export Import Bank uses third-party banks to disburse/settle export buyer’s credits, stating that conducting “a thorough verification of Heze Huayi’s customers’ non-use of this program without understanding the identity of these correspondent banks would be unreasonably onerous, if not impossible.”<sup>16</sup> Next, Commerce addressed why it needed to know about interest rates during the POR, stating that it was “necessary for verifying whether a loan was received under this program by matching the reported interest rate for this program with interest rates in the books and records of Heze Huayi’s customers during verification, but is also necessary for calculating a benefit.”<sup>17</sup> Commerce then addressed why it needed to know whether the Export Buyer’s Credit Program is limited to specified business contracts, because this information “is necessary to narrow the scope of the verification and identify which export

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<sup>12</sup> See *Final Results of Redetermination Pursuant to Court Remand, Clearon Corp. v. United States* Court No. 17--00171, Slip Op. 19-13 (CIT January 25, 2019) (*Clearon I Remand*) at 38 and Comment 2.

<sup>13</sup> *Id.* at 29-30.

<sup>14</sup> *Id.* at 40.

<sup>15</sup> *Id.* at 24.

<sup>16</sup> *Id.* at 27-28.

<sup>17</sup> *Id.* at 28.

buyer's credit loans are being examined during verification proceedings.”<sup>18</sup> Finally, with respect to why Commerce needed to know what amendments were made to the Export Buyer's Credit Program in 2013, Commerce stated that “{t}his information is necessary and critical to our understanding of the program and for any determination of whether the ‘manufacture, production, or export’ of Heze Huayi's merchandise has been subsidized.”<sup>19</sup>

In response to the Court's second and fourth instructions, Commerce explained that:

{T}he Court ordered Commerce to provide an adequate answer, supported by the record, as to why it needed the requested information to fill a gap as to Heze Huayi's products and their sale. These issues have the same underlying rationale as the first issue in that Commerce does not know what to look for in Heze Huayi's books and records if it does not know the bank names or interest rates. This program has gaps on the record because the GOC refused to provide requested information about the Export Buyer's Credit Program's bank disbursement, interest rates, or possible limitations regarding business contracts.<sup>20</sup>

Finally, in response to the Court's third instruction, directing Commerce to tie the application of AFA to Heze Huayi, Commerce explained that:

{B}y refusing to provide information regarding the operation, disbursement, and allocation of funds of the Export Buyer's Credit Program after it implemented changes, the GOC withheld information requested by Commerce pursuant to 776(a)(2)(A) of the Act. As a result, the GOC significantly impeded the review pursuant to section 776(a)(2)(C) of the Act. Accordingly, Commerce continued to determine that application of facts available to Heze Huayi regarding this program is warranted pursuant to sections 776(a)(1) and (2)(A), (C) of the Act because we are unable to rely on the information provided by Heze Huayi due to our lack of an understanding of the Export Buyer's Credit Program. Further, by failing to provide the necessary information after repeated requests, the GOC failed to cooperate to the best of its ability to comply with Commerce's request for information because it refused to provide information regarding the operation, disbursement, and allocation of funds of the Export Buyer's Credit Program after it implemented changes. Accordingly, the

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<sup>18</sup> *Id.* at 28-29.

<sup>19</sup> *Id.* at 13-14.

<sup>20</sup> *Id.* at 29.

application of an adverse inference to facts available to Heze Huayi is warranted pursuant to section 776(b)(2) of the Act. As noted above, Commerce may allow an adverse inference against a government to impact an otherwise cooperative respondent, when the government is the holder of the missing necessary information, as is the case here.<sup>21</sup>

On October 8, 2020, the Court again remanded Commerce’s decision with respect to the Export Buyer’s Credit Program, as further explained in the *Clearon I Remand*. The Court noted that it had rejected Commerce’s position that information about the operation of the Export Buyer’s Credit Program is necessary for it to verify a respondent’s claimed non-use of the program based on similar factual records in the *Guizhou Tyre Co. v. United States*<sup>22</sup> and *Jiangsu Zhongji Lamination Materials Co. v. United States*<sup>23</sup> line of cases. The Court explained its rejection of Commerce’s rationale in *Guizhou Tyre*, noting that Commerce’s “(flawed) reasoning has remained unwavering’ despite many opinions issued by the Court ‘urging Commerce to correct the repeated blatant deficiencies in its adverse facts available analyses of

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<sup>21</sup> *Id.* at 29-30.

<sup>22</sup> See *Guizhou Tyre Co. v. United States*, 348 F. Supp. 3d 1261, 1270 (CIT 2018) (noting that, although “information as to the functioning of the Program was missing, this finding was rendered immaterial by responses from both Guizhou and {China} as to the Program’s use. This defect proves fatal to Commerce’s imposition of AFA”); *Guizhou Tyre Co. v. United States*, 399 F. Supp. 3d 1346, 1353 (CIT 2019) (noting that “Commerce has failed to demonstrate why the 2013 {Export Buyer’s Credit Program} rule change {allegedly impacting the functioning of the program} is relevant to verifying claims of non-use, and how that constitutes a ‘gap’ in the record”); *Guizhou Tyre Co. v. United States*, 415 F. Supp. 3d 1402, 1405 (CIT 2019) (sustaining Commerce’s conclusion that “Plaintiffs did not use the {Export Buyer’s Credit Program} based on the record evidence”); see also *Guizhou Tyre Co. v. United States*, 389 F. Supp. 3d 1315, 1329 (CIT 2019) (noting that “{Commerce’s} decision to apply AFA as to the Export Buyer’s Credit Program based on an alleged lack of cooperation was unlawful because Commerce demonstrated no gap in the record, the respondents submitted evidence of non-use of the Program, and the Department’s findings of unverifiability of necessary information {were} unsupported by record evidence”); *Guizhou Tyre Co. v. United States*, 415 F. Supp. 3d 1335, 1343 (CIT 2019) (noting that “{t}here is evidence in the record that squarely detracts from Commerce’s inference that Plaintiffs used and benefited from the {Export Buyer’s Credit Program}. Commerce may not simply declare that the evidence cannot be verified and therefore, a gap exists. That is not how it works. Commerce must attempt verification *in order to conclude* that a gap exists related to that inquiry”) (*Guizhou Tyre*); *Guizhou Tyre Co. v. United States*, 447 F. Supp. 3d 1373, 1374 (CIT 2020) (sustaining Commerce’s conclusion “that the factual record in this case indicates that there was no use of the {Export Buyer’s Credit Program} by Guizhou”).

<sup>23</sup> See *Jiangsu Zhongji Lamination Materials Co. v. United States*, 405 F. Supp. 3d 1317, 1333 (CIT 2019) (remanding because “Commerce again does not explain why a complete understanding of the operation of the program is necessary to verify non-use of the program”); and *Jiangsu Zhongji Lamination Materials Co. v. United States*, No. 18-00089, 2020 WL 1456531, at \*3 (CIT Mar. 24, 2020) (sustaining Commerce’s uncontested remand results, in which Commerce decided to recalculate plaintiff’s final net countervailing duty rate excluding the Export Buyer’s Credit Program).

the {Export Buyer’s Credit Program}.”<sup>24</sup> The Court further explained that in *Guizhou Tyre*, “Commerce had failed to make a finding that a ‘gap’ in the record existed with respect to the required statutory elements of a countervailing duty determination,”<sup>25</sup> highlighting that “Commerce may not simply declare that the evidence cannot be verified and therefore, a gap exists... Commerce must attempt verification *in order to conclude* that a gap exists related to that inquiry” (emphasis in original).<sup>26</sup>

In the *Remand Order*, the Court emphasized that Commerce’s duty was to determine whether the Export Buyer’s Credit Program provided a benefit to Heze Huayi, requiring a finding as to whether “a specific financial contribution occurred, and a benefit was therefore conferred,”<sup>27</sup> and that in not verifying the information provided by Heze Huayi, “Commerce did not analyze whether the missing information actually created a gap that mattered to {Heze Huayi’s} case.”<sup>28</sup> The Court further stated that “it is not clear that any of the missing information was ‘necessary’ to Commerce’s central statutory inquiry, *i.e.*, to determine whether the Export Buyer’s Credit Program provided a benefit to {Heze Huayi}.”<sup>29</sup>

Noting that the *Clearon I Remand* set out the steps of Commerce’s usual non-use verification method,<sup>30</sup> the Court instructed Commerce and Heze Huayi “to confer and jointly devise a procedure... by which {Commerce} can conduct verification of the declarations of non--use.”<sup>31</sup> Alternatively, the Court stated that Commerce may find, based on existing record

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<sup>24</sup> See *Remand Order* at 20 (citing *Guizhou Tyre*, 415 F. Supp. 3d at 1341).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 21 (citing *Guizhou Tyre*, 415 F. Supp. 3d at 1341).

<sup>27</sup> *Id.* at 22 (citing *Guizhou Tyre*, 415 F. Supp. 3d at 1342).

<sup>28</sup> *Id.* at 22.

<sup>29</sup> *Id.* at 23.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

evidence,” that neither {Heze Huayi} nor its customers used or received a benefit under the program.”<sup>32</sup>

### III. ANALYSIS

Pursuant to the Court’s instructions, Commerce has further considered the record evidence regarding the non-use certifications provided by Heze Huayi’s U.S. customers. In the *Final Results* and *Clearon I Remand*, Commerce found that the Export Buyer’s Credit Program was countervailable and applied AFA to respondent Heze Huayi.<sup>33</sup> However, the Court found that Commerce’s application of AFA to the Export Buyer’s Credit Program was not supported by record evidence. Upon reexamination of this program and record evidence, and under respectful protest, we now find non-use of the program by Heze Huayi. Specifically, in light of the Court’s *Remand Order* and despite our view that this information cannot be verified without additional information related to the functioning of the program, we find that the declarations submitted by Heze Huayi from its customers stating non-use are evidence that neither Heze Huayi nor its customers used the program. Our findings with respect to the financial contribution and specificity determinations made in the *Final Results* remain unchanged.

### IV. INTERESTED PARTY COMMENTS

On December 9, 2020, Commerce released the draft results of redetermination to all interested parties and invited parties to comment on the draft results of redetermination.<sup>34</sup> Heze Huayi submitted comments on December 14, 2020.<sup>35</sup> Heze Huayi agreed with the conclusion in

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<sup>32</sup> *Id.*

<sup>33</sup> See *Final Results* IDM at Comment 2; see also *Clearon I Remand* at Comment 2.

<sup>34</sup> See Commerce’s Draft Results of Redetermination Pursuant to Court Remand in *Clearon Corp. v. United States*, Court No. 17-00171, Slip Op. 20-141 (CIT October 8, 2020), dated December 9, 2020.

<sup>35</sup> See Heze Huayi’s Letter, “Chlorinated Isocyanurates from the People’s Republic of China from the People’s Republic of China: Comment on Second Draft Remand Determination,” dated December 14, 2020.



our draft remand results that the Export Buyer's Credit Program was not used during the POR. No other party commented on the draft results of redetermination.

## V. FINAL RESULTS OF REDETERMINATION

In this final redetermination, Commerce makes no changes to the draft redetermination and finds, under respectful protest, that there was no use of the Export Buyer's Credit Program with respect to Heze Huayi in this review. Commerce is removing the subsidy rate for the Export Buyer's Credit Program from Heze Huayi's final CVD subsidy rate, which results in a 1.04 percent rate for Heze Huayi. Should the Court affirm these final results of redetermination, Commerce intends to publish notice of amended final results and issue appropriate liquidation instructions to U.S. Customs and Border Protection. However, Commerce does not intend to alter the cash deposit rate because the cash deposit rate for Heze Huayi has been amended in a subsequent segment of the proceeding.<sup>36</sup>

Dated: January 4, 2021

1/4/2021

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Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

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<sup>36</sup> See *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2017, 85 FR 71312, 71313 (November 9, 2020).