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November 20, 2020

MEMORANDUM TO: Joseph A. Laroski Jr.
Deputy Assistant Secretary
for Policy and Negotiations

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2017 Countervailing Duty Administrative Review of Multilayered
Wood Flooring from the People's Republic of China

I. SUMMARY

On February 6, 2020, the Department of Commerce (Commerce) published the *Preliminary Results* in this administrative review of the countervailing duty (CVD) order on multilayered wood flooring (MLWF) from the People's Republic of China (China) covering the period of review (POR) January 1, 2017 through December 31, 2017.¹

Having analyzed the case and rebuttal briefs submitted by interested parties since the *Preliminary Results*, we have made changes for the final results. We recommend that you approve the positions described in the "Discussion Comments" section of this memorandum.

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

- Comment 1: Whether Commerce Properly Selected Jiangsu Guyu as a Mandatory Respondent
- Comment 2: Whether Jiangsu Guyu is Affiliated with Jiangsu Shengyu Flooring Co., Ltd. (Shengyu) and Siyang County Shunyang Wood Co., Ltd. (Shunyang)
- Comment 3: Whether Poplar Core Sheets are Veneers
- Comment 4: Whether Poplar Core Sheet Suppliers are Authorities
- Comment 5: Whether to Apply Partial Adverse Facts Available (AFA) to Jiangsu Guyu's Wood Products
- Comment 6: Whether to Adjust the Plywood Benchmark
- Comment 7: Whether to Adjust the Ocean Freight Benchmark
- Comment 8: Whether to Adjust the Electricity Calculation

¹ See *Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Intent to Rescind Review, in Part; 2017*, 85 FR 6908 (February 6, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



Comment 9: Whether to Apply AFA to the Export Buyer's Credit Program (EBC Program)
Comment 10: Whether to Limit Countervailability Findings to Subsidies Alleged in the Petition

II. BACKGROUND

Following publication of the *Preliminary Results*, the petitioner,² the Government of the People's Republic of China (GOC), Baroque Timber Industries (Zhongshan) Co., Ltd. (Baroque Timber), and Jiangsu Guyu International Trading Co., Ltd. (Jiangsu Guyu) submitted timely case briefs on March 13, 2020.³ Additionally, on March 13, 2020, we received a case brief from Fine Furniture (Shanghai) Limited and Double F Limited (collectively, Fine Furniture) and letters from other interested parties supporting arguments made by the mandatory respondents and the GOC.⁴ On March 19, 2020, pursuant to 19 CFR 351.302(d), we rejected Jiangsu Guyu's case brief as it contained untimely new factual information, and instructed Jiangsu Guyu to resubmit a redacted case brief, which it did on March 19, 2020.⁵ On March 24, 2020, the petitioner, the GOC, Baroque Timber and Jiangsu Guyu submitted timely rebuttal briefs.⁶ Also on March 24, 2020, we received letters from various interested parties supporting the rebuttal case briefs of the mandatory respondents and the GOC.⁷ We are conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

² The petitioner is the American Manufacturers of Multilayered Wood Flooring.

³ See GOC's Letter, "GOC's Affirmative Case Brief: Multilayered Wood Flooring from the People's Republic of China," dated March 13, 2020 (GOC's Case Brief); see also Baroque Timber's Letter, "Baroque Timber—Administrative Case Brief," dated March 13, 2020 (Baroque Timber's Case Brief); Jiangsu Guyu's Letter, "Case Brief," dated March 13, 2020; and Petitioner's Letter, "Case Brief," dated March 13, 2020 (Petitioner's Case Brief).

⁴ See Fine Furniture's Letter, "Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China," dated March 13, 2020 (Fine Furniture's Case Brief); see also Struxtur, Inc. and Evolution's Flooring, Inc.'s Letter, "Case Brief"; Jiangsu Senmao Bamboo and Wood Industry Co., Ltd., Sino-Maple (Jiangsu) Co., Ltd., and Jiangsu Keri Wood Co., Ltd.'s Letter, "Case Brief"; and Metropolitan Hardwood Floors, Inc., Floor & Décor Holdings, Inc., and Galleher Corp.'s Letter, "Case Brief," each dated March 13, 2020.

⁵ See Commerce's Letter, "2017 Countervailing Administrative Review of Multilayered Wood Flooring from the People's Republic of China: Rejection of New Information in Case Brief," dated March 19, 2020; see also, Jiangsu Guyu's Letter, "Multilayered Wood Flooring from the People's Republic of China: Resubmittal of Case Brief," dated March 19, 2020 (Jiangsu Guyu's Case Brief)

⁶ See GOC's Letter, "Government of China's Rebuttal Brief: Multilayered Wood Flooring from the People's Republic of China" (GOC's Rebuttal Brief); Petitioner's Letter, "Multilayered Wood Flooring from the People's Republic of China: Rebuttal Brief" (Petitioner's Rebuttal Brief); Baroque Timber's Letter, "Baroque Timber-Rebuttal Brief: 2017 Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from China" (Baroque Timber's Rebuttal Brief); and Jiangsu Guyu's Letter, "Multilayered Wood Flooring from the People's Republic of China: Rebuttal Case Brief" (Jiangsu Guyu's Rebuttal Brief), each dated March 24, 2020.

⁷ See Fine Furniture's Letter, "Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China;" Letter from Struxtur, Inc. and Evolution's Flooring, Inc., "Rebuttal Brief;" Letter from Jiangsu Senmao Bamboo and Wood Industry Co., Ltd., Sino-Maple (Jiangsu) Co., Ltd., and Jiangsu Keri Wood Co., Ltd., "Rebuttal Brief;" and Letter from Metropolitan Hardwood Floors, Inc., Floor & Décor Holdings, Inc., and Galleher Corp., "Rebuttal Brief," each dated March 24, 2020.

III. SCOPE OF THE ORDER⁸

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)⁹ in combination with a core.¹⁰ The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, *e.g.*, “engineered wood flooring” or “plywood flooring.” Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.*, without a finally finished surface to protect the face veneer from wear and tear) or “prefinished” (*i.e.*, a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, ultra-violet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes). The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard, high-density fiberboard (HDF), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.*, circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product. Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer

⁸ See *Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Order*, 76 FR 76693 (December 8, 2011) (*Order*); see also *Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders*, 77 FR 5484 (February 3, 2012) (*Amended Order*); and *Multilayered Wood Flooring from the People's Republic of China: Final Clarification of the Scope of the Antidumping and Countervailing Duty Orders*, 82 FR 27799 (June 19, 2017).

⁹ A “veneer” is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

¹⁰ Commerce Interpretive Note: Commerce interprets this language to refer to wood flooring products with a minimum of three layers.

sheet not made of wood, a decorative paper layer, a core-layer of HDF, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States¹¹ (HSUS): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.3175; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4160; 4412.31.4175; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5225; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.0640; 4412.32.0665; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2625; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3225; 4412.32.5600; 4412.32.5700; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; 4418.74.2000; 4418.74.9000; 4418.75.4000; 4418.75.7000; 4418.79.0100; and 9801.00.2500.

While HSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

IV. INTENT TO RESCIND THE REVIEW, IN PART

In the *Preliminary Results*, Commerce preliminarily determined that Anhui Boya Bamboo Ltd., Anhui Yaolong Bamboo and Wood Products Co. Ltd., Armstrong Wood products (Kunshan) Co. Ltd., Changzhou Hawd Flooring Co. Ltd., Dalian Shengyu Science and Technology Development Co. Ltd., Hunchun Forest Wolf Wooden Industry Co. Ltd., Jiashan On-Line Lumber Co. Ltd., Kingman Floors Co. Ltd., Yingyi-Nature (Kunshan) Wood Industry Co. Ltd., and Zhejiang Shiyou Timber Co Ltd. made no subject merchandise shipments during the POR.¹² We received no information to contradict this determination. Therefore, Commerce continues to determine that these companies made no shipments of subject merchandise during the POR, and

¹¹ On October 31, 2018, we added the following HS numbers to update the ACE Case Reference File: 4412.33.0640, 4412.33.0665, 4412.33.0670, 4412.33.2625, 4412.33.2630, 4412.33.3225, 4412.33.3235, 4412.33.3255, 4412.33.3275, 4412.33.3285, 4412.33.5700, 4412.34.2600, 4412.34.3225, 4412.34.3235, 4412.34.3255, 4412.34.3275, 4412.34.3285, 4412.34.5700, 4418.74.2000, 4412.74.9000, 4418.75.4000, and 4418.75.7000. See Memorandum, "Multilayered Wood Flooring from the People's Republic of China (C-570-971): Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File," dated October 31, 2018.

¹² See PDM at 5.

will issue appropriate liquidation instructions that are consistent with our “automatic assessment” clarification, for these final results.¹³

V. PERIOD OF REVIEW

The POR is January 1, 2017 through December 31, 2017.

VI. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce made no changes to the allocation period and the allocation methodology used in the *Preliminary Results*. No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the allocation period or the allocation methodology for the respondent companies. For a description of the allocation period and methodology used for these final results, see the *Preliminary Results* and accompanying PDM at 8.

B. Attribution of Subsidies

Commerce made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies. For a description of the methodologies used for these final results, see the *Preliminary Results* and accompanying PDM at 23-24.

C. Benchmarks and Interest Rates

The petitioner, the respondents, and interested party Fine Furniture submitted comments regarding the benchmark rate for the plywood input. Based on our analysis of these comments, we have revised the benchmark used to calculate the benefit for the Provision of Plywood for Less than Adequate Remuneration (LTAR) program. For a description of the changes made, see Comment 6. No other issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the other benchmarks and interest rates used in our program-specific subsidy rate calculations.

D. Denominators

Commerce made no changes to the denominators used in the *Preliminary Results*. No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the appropriate denominators. For a description of the denominators used for these final results, see the *Preliminary Results* and accompanying PDM at 10.

¹³ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 4, 2011).

VII. CHANGES SINCE THE PRELIMINARY RESULTS

See the “Analysis of Comments” section below for summaries of the comments and Commerce’s position on the issues raised in the case and rebuttal briefs. As a result of our analysis, we have made changes to the plywood benchmark calculation for the Provision of Plywood for LTAR program. For a further discussion of these changes, see Comment 6.

VIII. USE OF FACTS OTHERWISE AVAILABLE

A. Legal Standard

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

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

Section 776(b) of the Act provides that Commerce may use an adverse inference (*i.e.*, AFA) in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, Commerce is not required to determine, or make any adjustments to, a net subsidy margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.¹⁴ Secondary information is defined as information derived from the petition that gave rise to the investigation, the determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁵

¹⁴ See also 19 CFR 351.308(d).

¹⁵ See Statement of Administrative Action (SAA), H.R. Doc. No. 316, 103rd Congress, 2d Session (1994) at 870.

Finally, under section 776(d) of the Act,¹⁶ Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.

B. Application of Facts Otherwise Available

Commerce relied on “facts otherwise available” for several findings in the *Preliminary Results*.¹⁷ For a description of these decisions, see *Preliminary Results* and accompanying PDM at 16-26. Commerce continues to use facts available, in part, for these final results for Baroque Timber and Jiangsu Guyu. Also, as described below, Commerce continues to apply AFA to the GOC for certain programs under sections 776(a) and (b) of the Act. We further explain these decisions in Comments 4, 5, 8 and 9.

IX. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

Commerce made changes to its preliminary methodology with respect to the plywood benchmark calculation for the Provision of Plywood for LTAR program¹⁸ For further details, see Comment 6 below and Baroque Timber Final Calculation Memorandum¹⁹ and Jiangsu Guyu Final Calculation Memorandum.²⁰ For the descriptions, analyses, and calculation methodologies regarding these programs, see the *Preliminary Results*.²¹ Except where noted below, the parties did not raise any issues regarding these programs in their case briefs.

The final program rates are as follows:²²

1. *Provision of Veneers for LTAR*

Commerce made no changes to the *Preliminary Results* regarding this program.

Baroque Timber:	0.11 percent <i>ad valorem</i>
Jiangsu Guyu:	112.23 percent <i>ad valorem</i>

¹⁶ Section 776(c) of the Act requires that a rate being used be corroborated, unless the CVD rate was “applied in a separate segment of the same proceeding.”

¹⁷ See PDM at 7-8.

¹⁸ See section VI.C above.

¹⁹ See Memorandum, “Final Results Calculations for Baroque Timber Industries (Zhongshan) Co., Ltd.,” dated concurrently with this memorandum (Baroque Timber Final Calculation Memorandum).

²⁰ See Memorandum, “Final Results Calculations for Jiangsu Guyu International Trading Co., Ltd.,” dated concurrently with this memorandum (Jiangsu Guyu Final Calculation Memorandum).

²¹ See PDM at 8-16.

²² See Baroque Timber Final Calculation Memorandum; see also Jiangsu Guyu Final Calculation Memorandum.

2. *Provision of Fiberboard for LTAR*

Commerce made no changes to the *Preliminary Results* regarding this program.

Baroque Timber:	0.32 percent <i>ad valorem</i>
Jiangsu Guyu:	0.02 percent <i>ad valorem</i>

3. *Provision of Plywood for LTAR*

As discussed in Comment 6, we made changes to the program rate for Baroque Timber and Jiangsu Guyu.

Baroque Timber:	10.26 percent <i>ad valorem</i> ²³
Jiangsu Guyu:	7.13 percent <i>ad valorem</i> ²⁴

4. *Provision of Electricity for LTAR*

Commerce made no changes to the *Preliminary Results* regarding this program.

Baroque Timber:	0.47 percent <i>ad valorem</i>
Jiangsu Guyu:	0.23 percent <i>ad valorem</i>

5. *Policy Loans to the Wood Flooring Industry*

Commerce made no changes to the *Preliminary Results* regarding this program.

Baroque Timber:	0.30 percent <i>ad valorem</i>
Jiangsu Guyu:	0.84 percent <i>ad valorem</i>

6. *Provision of Land-Use Rights to Certain Industrial Zones for LTAR*

Commerce made no changes to the *Preliminary Results* regarding this program.

Baroque Timber:	0.51 percent <i>ad valorem</i>
Jiangsu Guyu:	0.71 percent <i>ad valorem</i>

7. *Export Buyers' Credit*

Commerce made no changes to the *Preliminary Results* regarding this program.

Baroque Timber:	0.84 percent <i>ad valorem</i>
Jiangsu Guyu:	0.84 percent <i>ad valorem</i>

²³ See Baroque Timber Final Calculation Memorandum at 2-4.

²⁴ See Jiangsu Guyu Final Calculation Memorandum at 2.

8. Other Subsidies

We continue to find that the respondents received the following non-recurring grants during the POR or average useful life period.

a. Grants

Baroque Timber

- 1) Project Grant
- 2) Personal Income Tax Return
- 3) Steady Growth Export 2017
- 4) Export Credit Insurance 2017
- 5) High Tech Enterprise Reward 2017
- 6) Attorney's Fee (Special Funds for Business Development in 2011 to Support the Transformation and Upgrading of International Trade)
- 7) Incentives for Growth in International Trade
- 8) Science and Technology Plan Project Support Grants
- 9) High-Tech Enterprise Award - Riverside Plywood

Baroque Timber: 0.38 percent *ad valorem* for the above-listed programs

Jiangsu Guyu

- 1) Loan Interest Subsidy
- 2) Talent Grant
- 3) Science and Technology Bureau County Supporting Fund
- 4) 2016 Incentive Fund
- 5) 2016 Award Fund
- 6) 2015 Chile Exhibition Grant
- 7) 2016 American Exhibition, German Exhibition Grant
- 8) 2016 Award Fund
- 9) Foreign Trade Import and Export Supplement Award
- 10) Financial Subsidy
- 11) Sinosure Export Credit Insurance Subsidy
- 12) 2016 Foreign Economic and Trade Development Fund
- 13) 2017 US Exhibition Grant
- 14) 2017 German Exhibition Grant

Jiangsu Guyu: 0.92 percent *ad valorem* for the above-listed programs

b. Direct Taxes

Baroque Timber

- 1) Income Tax Reduction for High or New Technology Enterprises
- 2) Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law

Baroque Timber: 0.90 percent *ad valorem* for the above-listed programs

B. Program Determined Not to Confer a Countervailable Benefit

- 1) Provision of Water for LTAR.²⁵

C. Programs Determined Not to Confer a Measurable Benefit

As explained in the *Preliminary Results*, respondents self-reported certain grants for which we found no measurable benefit under our practice, either because they do not pass the “0.5 percent test” provided in CFR 351.524(b)(2) and thus are “expensed” to the pre-POR year of receipt, or they are less than 0.005 percent *ad valorem* in the POR. We continue to make the same findings for these grants as enumerated below.

Riverside Plywood²⁶

- 1) Position Maintenance Subsidy
- 2) Staff’s Maternity Allowance and Nutrition Fee
- 3) Staff’s Maternity Allowance
- 4) 2016 Local Tax Withholding Agency Fee Refund

Baroque Timber

- 1) Funding for Party Member’s Activities
- 2) Product Certification
- 3) Equipment Upgrade Subsidy
- 4) City Engineering Center Award
- 5) Patent Award
- 6) Policy Reduction
- 7) Unemployment Survey

²⁵ See PDM at 41.

²⁶ In the PDM, Commerce noted that Riverside Plywood’s “Incentives for Growth in International Trade 2016” subsidy program did not confer a measurable benefit. However, as detailed in Commerce’s preliminary results calculations, Commerce did find that this subsidy conferred a measurable benefit. Commerce clarifies for these final results, that Riverside Plywood’s “Incentives for Growth in International Trade 2016” subsidy program did confer a measurable benefit. See PDM at 42; see also Memorandum, “Preliminary Results Calculations for Baroque Timber Industries (Zhongshan) Co., Ltd.,” dated January 31, 2020 at 3 and Attachment 2.

Suzhou

- 1) 2008 Grant

Jiangsu Guyu

- 1) 2010 Supporting Enterprise Development Award
- 2) Export Credit Insurance Subsidy
- 3) Financial Subsidy
- 4) 2012 SME International Market Development Fund
- 5) Sinosure 2012 Subsidy
- 6) 2014 Enterprise Foreign Trade Work Reward Fund
- 7) 2015 American Exhibition, German Exhibition Subsidy
- 8) Foreign Trade Steady Growth Funds
- 9) Special Funds for Business Development
- 10) Export Credit Insurance
- 11) Funds for SME International Market Development Projects in the second half of 2015
- 12) Preferential Income Tax Policy for Small Enterprises with Low Profits

Shengyu

- 1) Technology Special Fee
- 2) Wood Industry Park Subsidies
- 3) The Second Batch of Technological Innovations in 2011
- 4) Develop High Wear-Resistant Floor Bonus
- 5) Financial Allocation
- 6) Zhongxing Town Subsidy
- 7) Finance Bureau Grant
- 8) Accounting Center Fund
- 9) 2012 Provincial Industrial Information Production
- 10) 2013 County-Level Science and Technology Plan Project Fund
- 11) 2013 Business Development Special Fund
- 12) 2012 Provincial Industrial and Information Fund
- 13) Treasury Centralized Payment
- 14) 2013 Technology Enrichment Plan
- 15) Technology Innovation Volume Grant
- 16) Brand-name Product Reward
- 17) Transfer Project Funds
- 18) Forestry Loan Discount
- 19) 2013 Provincial Research Funding
- 20) 2012 Forestry Loan Interest
- 21) 2015 Outstanding Contribution Award
- 22) Incentive Policy Funds Cross-file Upgrade
- 23) Reward Policy Fund Patent Grant
- 24) Transformation and Upgrading of Transformation Funds
- 25) 2013 Forestry Loan Interest

- 26) Accounting Center Fund
- 27) Finance Bureau Grant

D. Programs Determined Not to Be Used by Baroque Timber or Jiangsu Guyu

- 1) Value-Added Tax (VAT) and Tariff Exemptions on Imported Equipment
- 2) Income Tax Subsidies for Foreign Investment Enterprises (FIEs) Based on Geographic Location
- 3) Certification of National Inspection-Free on Products and Reputation of Well Known Firm – Jiashan County
- 4) International Market Development Fund Grants for Small and Medium Enterprises
- 5) GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands (“Famous Brands”)
- 6) Minhang District Little Giant Enterprise Support
- 7) Minhang District Pujiang Town Enterprise Support
- 8) Technology Innovation Support
- 9) Support for Developing a National Technology Standard
- 10) Jinzhou New District 2012 Technology Innovation Award
- 11) Jinzhou District 2013 New and High Technology Research & Development Plan Industrialization Special Fund
- 12) 2005 Enterprise Development Special Funds Awarded to Penghong Wood
- 13) Technical Innovation Fund from Linyi Bureau of Finance
- 14) Local Income Tax Exemption and Reductions for “Productive” FIEs
- 15) Provision of Electricity at LTAR for FIEs and “Technology Advanced” Enterprises by Jiangsu Province
- 16) Program of Loan Interest Discount
- 17) Program of Provincial Famous Brand and New Product
- 18) Program of VAT Refunds for Production and Processing Comprehensive Utilization Products by Using Three Leftover Materials and Down-Graded Small Woods
- 19) Patent Application Support
- 20) Patent Fund
- 21) Provision of Standing Timber for LTAR
- 22) Provision of Formaldehyde for LTAR
- 23) Provision of Urea for LTAR
- 24) Provision of Particleboard for LTAR
- 25) Provision of Sawn Wood and Continuously Shaped Wood for LTAR
- 26) Provision of Land-Use Rights to State-Owned Enterprises (SOEs) for LTAR
- 27) Provision of Export Credits – Export Sellers’ Credits
- 28) Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment
- 29) Preferential Loans to SOEs

X. ANALYSIS OF COMMENTS

Comment 1: Whether Commerce Properly Selected Jiangsu Guyu as a Mandatory Respondent

Fine Furniture's Case Brief:

- Commerce disregarded claims made by interested parties during the respondent selection phase regarding the unreliability of the U.S. Customs and Border Protection (CBP) data. There is sufficient information on the record showing obvious inaccuracies in the CBP data that render them unreliable to determine the largest exporters of subject merchandise into the United States.
- Both the petitioner and Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. (Senmao) commented on the degree of error in the CBP data. The degree of error in the CBP data was so large that the only reasonable determination was for Commerce to disregard the CBP with respect to Jiangsu Guyu.
- Commerce refused to disregard the CBP data for Jiangsu Guyu, claiming that there is a lack of data to support the interested parties' claim and that the interested parties did not provide information regarding the data collection methodology or other documentation.²⁷ The U.S. Court of International Trade (CIT) has found that it is unreasonable for Commerce to ignore facial evidence of CBP errors.²⁸ Here, Commerce ignored the errors in the CBP data and refused to issue quantity and value (Q&V) questionnaires to confirm the inaccuracy of the CBP data. Further, there was sufficient time for Commerce to issue Q&V questionnaires to the largest exporters identified in the CBP data.
- To remedy this error, Commerce must rescind the respondent selection of Jiangsu Guyu and proceed with Baroque Timber as the sole mandatory respondent for the final results.

Jiangsu Guyu's Case Brief:

- Commerce erred selecting Jiangsu Guyu as a mandatory respondent based on inaccurate and unreliable CBP data. Various interested parties identified the inaccuracies and requested that Commerce issue Q&V questionnaires to use in selecting respondents. Commerce declined to do so. Accordingly, the CVD administrative review should be void *ab initio*.

²⁷ See Fine Furniture's Case Brief at 4 (citing Commerce's Letter, "Countervailing Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China: Respondent Selection," dated May 21, 2019 (Respondent Selection Memo) at 5).

²⁸ *Id.* (citing *Husteel Co. v. United States*, 98 F. Supp. 3d 1315, 1327 n.8 (CIT 2015) (*Husteel*), finding that where "Commerce wishes to rely on CBP data for respondent selection, it is unreasonable for Commerce to ignore evidence on the face of that data suggesting that the actual number of potential respondents is likely less than the number of companies separately listed").

Petitioner's Rebuttal Brief:

- Although Jiangsu Guyu and Fine Furniture contend Commerce erred selecting Jiangsu Guyu as a mandatory respondent based on perceived flaws in the CBP data, Commerce properly considered the potential CBP data issues and relied on its established unit conversion methodology to ensure uniform units of measure among potential respondents.²⁹
- The CIT has upheld Commerce's practice of relying on CBP data and not issuing Q&V questionnaires to select mandatory respondents as long as the CBP data are not unusable.³⁰ Here, the respondents were unable to point to any record evidence that would belie Commerce's decision to select Baroque Timber and Jiangsu Guyu as mandatory respondents.
- The respondents' arguments rest entirely on the premise that the CBP data are inaccurate and not that the ultimate result of selecting Jiangsu Guyu is itself unrepresentative of the Chinese industry. If Commerce de-selected Jiangsu Guyu, the only subsidy rate calculated for Chinese exporters of subject merchandise would be that of Baroque Timber, which would result in a subsidy rate far more un-representative of the Chinese industry.
- The case law cited by Fine Furniture is unpersuasive and not relevant to the respondent's arguments. Although Fine Furniture asserts that *Husteel* stands for the proposition that Commerce cannot ignore evidence of CBP data errors, the CIT's reasoning is inapposite in this case.³¹ The issue in *Husteel* was whether Commerce erred in selecting the number of respondents to examine.³² Here, the argument is that Commerce should have selected a different respondent, not that it should have selected a different number of respondents.

Commerce's Position:

As we stated in our Respondent Selection Memo, section 777A(e)(1) of the Act directs Commerce to calculate individual subsidy rates for each known exporter and producer of the subject merchandise. However, section 777A(e)(2) of the Act gives Commerce discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies.³³ Because Commerce initiated this administrative review with respect to 170 companies, it was not practicable or feasible to individually examine all of them. Under section 777A(e)(2)(A) of the Act, the statute allows Commerce to limit examination of exporters or producers to those accounting for the largest volume of subject merchandise exported during the POR that can reasonably be examined. The statute is silent as to how Commerce must determine which producers or exporters account for the largest volume of subject merchandise.³⁴ Therefore,

²⁹ See Petitioner's Rebuttal Brief at 22.

³⁰ *Id.* at 23 (citing *Pakfood Pub. Co. v. United States*, 753 F. Supp. 2d 1334, 1344-45 (CIT 2011) and *Ad Hoc Shrimp Trade Action Comm. v. United States*, 828 F. Supp. 2d 1345, 1351-55 (CIT 2012) (*Ad Hoc Shrimp*)).

³¹ *Id.* at 24 (citing Fine Furniture's Case Brief at 4 and *Husteel*, 98 F. Supp. 3d 1327 n.8).

³² *Id.* (citing *Husteel*, 98 F. Supp. 3d 1325-29).

³³ See, e.g., Respondent Selection Memo.

³⁴ See *U.S. Steel Corp. v. United States*, 621 F.3d 1351, 1357 (CAFC 2010) ("The court must, as we do, defer to Commerce's reasonable construction of its governing statute where Congress leaves a gap in the construction of the

Commerce has discretion to choose which particular method to use when determining which respondents account for the largest volume of subject merchandise. Commerce notes that our practice in selecting respondents in administrative reviews has been to examine CBP data of subject entries and select respondents accounting for the largest volume of exports of subject merchandise, as directed by section 777A(e)(2)(A) of the Act.³⁵ Accordingly, pursuant to section 777A(e)(2)(A) of the Act, we selected the largest exporters for individual review, thereby reviewing the exporters accounting for the largest volume of subject merchandise that could be reasonably examined.³⁶

We disagree with Fine Furniture that record evidence rendered the CBP data unusable for respondent selection purposes. Our analysis indicates that less than 0.05 percent of the entries in the CBP data lacked quantity and/or unit of measure. Additionally, we recognize that the CBP data were reported in m² for some entries and m³ for other entries.³⁷ To address this longstanding issue with the CBP data and to ensure a uniform unit of measure, we converted the CBP data reported in square meters to cubic meters by relying on a conversion methodology that has been used in previous administrative reviews of wood flooring since the first administrative review.³⁸

Further, it is Commerce's practice in this proceeding to accept certified Q&V data submitted by individual companies identified in the CBP data, limited to information submitted by a company for itself, and to substitute those certified Q&V amounts for the company-specific CBP data in our ranking for respondent selection.³⁹ In the instant review, only one company, Jiaxing Hengtong Wood Co., Ltd. (Jiaxing Hengtong), submitted Q&V data during the respondent selection comment period.⁴⁰

While Fine Furniture contends that the CBP data demonstrate that entries made by certain companies far exceed a reasonable quantity for a single entry,⁴¹ no evidence (*e.g.*, Q&V data, Infodrive data, *etc.*) was placed on the record at the time of respondent selection which contradicted the CBP data or otherwise demonstrated that the CBP dataset was unreliable in its entirety. As the respondent selection data are used only to rank the exporters under review by

statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by the agency's generally conferred authority and other statutory circumstances.") (citations and quotation marks omitted).

³⁵ See, *e.g.*, *Certain Lined Paper Products from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review*, 73 FR 58540 (October 7, 2008), unchanged in *Certain Lined Paper Products from the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review*, 74 FR 17160 (April 14, 2009) (*Lined Paper*).

³⁶ See Respondent Selection Memo at 6.

³⁷ *Id.* at 5.

³⁸ See, *e.g.*, Memorandum, "Countervailing Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China: Respondent Selection: 2016," dated June 4, 2018 at 2; see also Memorandum, "Countervailing Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China: Respondent Selection: 2015," dated April 3, 2017 (Respondent Selection Memo 2015) at 2, and Memorandum, "Countervailing Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China: Respondent Selection: 2014," dated August 5, 2016 (Respondent Selection Memo 2014) at 2.

³⁹ See, *e.g.*, Respondent Selection Memo 2015 at 2 and Respondent Selection Memo 2014 at 2.

⁴⁰ See Jiaxing Hengtong's Letter, "Comments on CBP Data and Respondent Selection," dated March 21, 2019 at 3.

⁴¹ See Fine Furniture's Case Brief at 4.

volume of shipments during the POR so that Commerce can make a selection determination under section 777A(e)(2)(B) of the Act early in the review, Commerce does not and cannot require that the data be flawless.⁴²

We disagree that we should have issued Q&V questionnaires in this review. Selecting respondents from CBP data generally is an accurate and reliable method, because the data are compiled from actual entries of merchandise subject to the *Order*, and are based on information required by and provided to the U.S. government authority responsible for permitting goods enter into the United States (*i.e.*, CBP). Further, because the CBP data are readily available to Commerce at the outset of each segment of the proceeding, using the CBP data for respondent selection is more administratively practicable. Relying on Q&V responses requires significant resources to send and track the delivery of the questionnaires and responses, and to aggregate and analyze the numerous responses. Further, our intended respondent selection methodology was clearly stated in the *Initiation Notice*.⁴³ Interested parties were invited to comment on the respondent selection methodology, and their comments were addressed in the Respondent Selection Memo. Fine Furniture and Jiangsu Guyu have not provided any compelling arguments that have not already been addressed that would cause Commerce to abandon its preferred practice of relying on CBP data in respondent selection in favor of issuing Q&V questionnaires.

Additionally, we find Fine Furniture's reliance on *Husteel* unpersuasive.⁴⁴ As noted by the petitioner, the CIT in *Husteel* addressed whether Commerce erred in selecting the number of respondents to examine, not whether the CBP data were unreliable for use in respondent selection.⁴⁵ Rather, as noted by the petitioner, the CIT has upheld Commerce's practice of relying on CBP data and not issuing Q&V questionnaires to select mandatory respondents as long as the CBP data are not unusable.⁴⁶

Finally, as noted by the petitioner, no party has argued that Jiangsu Guyu is unrepresentative of the Chinese wood-flooring industry. That is, no party argued that the subject merchandise Jiangsu Guyu exported to the United States was atypical of the subject merchandise entered into the United States by other exporters. Consequently, for the reasons stated above, we continue to find that the CBP data are a reliable source for determining the respondents in this review and find it inappropriate to de-select Jiangsu Guyu for the final results.

Comment 2: Whether Jiangsu Guyu is Affiliated with Shengyu and Shunyang

Jiangsu Guyu's Case Brief:

- Jiangsu Guyu's affiliates, Shengyu and Shunyang, do not meet the requirement of cross-ownership established in Commerce's CVD questionnaire:

⁴² See Final Results of Remand Redetermination Pursuant to Court Remand, in *Ad Hoc Shrimp*, available at <https://enforcement.trade.gov/remands/11-106.pdf>.

⁴³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 9297 (March 14, 2019) (*Initiation Notice*).

⁴⁴ See Fine Furniture's Case Brief at 4.

⁴⁵ See *Husteel*, 98 F. Supp. 3d 1325-29.

⁴⁶ See, *e.g.*, *Ad Hoc Shrimp*, 828 F. Supp. 2d 1351-55.

“Cross-ownership exists between two companies where one company can use or direct the individual assets of another company in essentially the same ways it can use its own assets. Normally, such a relationship exists between two companies where one company holds, directly or indirectly, a majority voting interest in the other. In addition, if two companies are both cross-owned by a third party, the two companies themselves would be considered cross-owned (for example, cross-ownership exists between two companies owned by the same parent).”⁴⁷

- A familial relationship exists between Shengyu’s and Shunyang’s shareholders.⁴⁸ This relationship does not allow these shareholders to direct that one company use or direct the individual assets of another company in essentially the same ways it can use its own assets. Additionally, neither company holds, directly or indirectly, a majority voting interest in the other.⁴⁹
- A simple family relationship between shareholders is not enough to establish that either of these companies are legally or operationally in a position to exercise restraint or direction over the other so as to control them within the meaning of section 771(33) of the Act.⁵⁰
- If Commerce continues to find Shengyu and Shunyang as cross-owned affiliates of Jiangsu Guyu, Commerce should use the total sales of all cross-owned entities as the denominator in the calculation of the subsidy rate.⁵¹

Petitioner’s Rebuttal Brief:

- Jiangsu Guyu asserts that Shengyu and Shunyang are not cross-owned affiliates in its case brief; however, throughout the review, Jiangsu Guyu reported in its questionnaire responses that Shengyu and Shunyang are cross-owned affiliates.⁵²
- The record demonstrates that Shunyang supplies a key input to Shengyu and that the familial relationship is not just a “simple family relationship between shareholders of Shunyang and Shengyu.”⁵³
- Jiangsu Guyu’s characterization of its familial relationships in its case brief is inconsistent with the information it provided throughout this review.⁵⁴

⁴⁷ See Jiangsu Guyu’s Case Brief at 7 (citing Commerce’s Letter, “2017 Countervailing Duty Administrative Review of Multilayered Wood Flooring from the People’s Republic of China: Countervailing Duty Questionnaire,” dated May 24, 2019 (Commerce CVD Questionnaire) at Section III-3).

⁴⁸ *Id.*; see also Jiangsu Guyu’s Letter, “Response to Section III Identifying Affiliated Companies: Multilayered Wood Flooring from the People’s Republic of China,” dated June 21, 2019 (Jiangsu Guyu’s AQR) at 3 and Exhibit 1.

⁴⁹ *Id.* at 7.

⁵⁰ *Id.* at 2 and 7.

⁵¹ *Id.* at 16.

⁵² See Petitioner’s Case Brief at 20-21 (citing Jiangsu Guyu’s AQR at 2-3; Jiangsu Guyu’s Letter, “Response to Section III: Multilayered Wood Flooring from the People’s Republic of China,” dated July 15, 2019 (Jiangsu Guyu’s IQR) at 1; and Jiangsu Guyu’s Letter, “Response to Section III Supplemental Questionnaire,” dated September 30, 2019 (Jiangsu Guyu’s SQR) at 1-3).

⁵³ *Id.* at 21-22 (citing Jiangsu Guyu’s Case Brief at 7 and Jiangsu Guyu’s AQR at Exhibit 2).

⁵⁴ *Id.* at 21.

Commerce Position:

Commerce continues to find that Jiangsu Guyu, Shengyu, Shunyang, and Shanghai Woyuan Industrial Co., Ltd. (Woyuan) are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of common ownership. Additionally, we continue to find that Shunyang is a cross-owned input supplier; thus, pursuant to 19 CFR 351.525(b)(6)(iv), Commerce will continue to attribute subsidies received by Shunyang to the combined sales of the products produced by Shengyu and Shunyang.⁵⁵

Throughout this review, Jiangsu Guyu has consistently reported that Shengyu and Shunyang are cross-owned affiliates.⁵⁶ In Commerce's initial questionnaire, we requested that Jiangsu Guyu report all affiliated and cross-owned companies within the meaning of the relevant statutory and regulatory provisions.⁵⁷ Jiangsu Guyu reported to Commerce those companies with which it knew it was affiliated or cross-owned.⁵⁸ In its case brief, for the first time in this review, Jiangsu Guyu argued that Shengyu and Shunyang are not cross-owned, because there exists only a "simple family relationship between shareholders;" and therefore, one company is not in a position to control the other.⁵⁹ However, Commerce preliminarily determined that, in accordance with 19 CFR 351.525(b)(6)(vi), cross-ownership existed between Jiangsu Guyu, Shengyu and Shunyang, because these companies can use or direct the individual assets of the other corporation(s) in essentially the same ways they can use their own assets. This standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations, and we subsequently found that Jiangsu Guyu's responses supported this standard. During our analysis, we examined the aspects of potential affiliation/cross-ownership between these companies, including familial relationships, ownership, and shareholder interests. Based on our examination of the record, we preliminarily found that cross-ownership existed between Jiangsu Guyu, Shengyu, Shunyang, and Woyuan, and that nothing on the record of this review indicated otherwise.

Furthermore, the *Preamble* to Commerce's regulations clarifies Commerce's cross-ownership standard.⁶⁰ According to the *Preamble*, relationships captured by the cross-ownership definition include those where:

“{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy

⁵⁵ Commerce notes that Jiangsu Guyu initially bracketed the names of its cross-owned affiliates (*i.e.*, Shengyu, Shunyang and Woyuan) in its affiliation response, and treated this information as business proprietary information. However, Commerce issued Jiangsu Guyu a supplemental questionnaire, asking it to unbracket this information and treat it as public information. In response to Commerce's request, Jiangsu Guyu agreed to unbracket and treat as public information the names of its cross-owned affiliates. See Commerce's Letter, "Affiliated Companies Questionnaire Response," dated September 9, 2019 at 4; *see also* Jiangsu Guyu's SQR at 3.

⁵⁶ See Jiangsu Guyu's AQR at 2-3; *see also* Jiangsu Guyu's SQR at 1-3.

⁵⁷ See, *e.g.*, 771(33)(A)-(G) of the Act; *see also* Commerce CVD Questionnaire at Section III 3-4, and 19 CFR 351.525(b).

⁵⁸ See Jiangsu Guyu's AQR at 1-4.

⁵⁹ See Jiangsu Guyu's Case Brief at 7.

⁶⁰ See *Countervailing Duties, Final Rule*, 63 FR 65348 (November 25, 1998) (*Preamble*).

benefits)...Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.”⁶¹

This definition further supports finding cross-ownership between Jiangsu Guyu, Shengyu, and Shunyang. Accordingly, we find that the record of this review supports finding that Jiangsu Guyu, Shengyu, Shunyang, and Woyuan are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of common ownership; and therefore, Commerce will continue to find for these final results, that Shengyu and Shunyang are Jiangsu Guyu’s cross-owned affiliates.

Jiangsu Guyu also argues in its case brief that, should Commerce continue to treat Shengyu and Shunyang as Jiangsu Guyu’s cross-owned affiliates, Commerce should use the total sales of all cross-owned entities as the denominator in the calculation of the subsidy rate. However, 19 CFR 351.525(b)(iv) clearly states:

If there is cross-ownership between an input supplier and a downstream producer, and production of the input producer is primarily dedicated to the production of the downstream product, {Commerce} will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).⁶²

The record demonstrates that Shengyu is a parent company that also produces subject merchandise. Pursuant to 19 CFR 351.525(b)(6)(iii), Commerce attributed subsidies received by Shengyu to the consolidated sales of the parent company (*i.e.*, Shengyu) and its subsidiaries (*i.e.*, Jiangsu Guyu, Shunyang and Woyuan).⁶³ Furthermore, Jiangsu Guyu reported that Shunyang supplied Shengyu with an input for the production of subject merchandise.⁶⁴ Accordingly, pursuant to 19 CFR 351.525(b)(iv), Commerce will continue to find for these final results, that subsidies received by Shunyang will be attributed to the combined sales of the input and downstream products produced by both Shengyu and Shunyang.

Comment 3: Whether Poplar Core Sheets are Veneers

Fine Furniture’s Case Brief:

- Commerce’s interpretation of veneer is misplaced. The fact that poplar core sheets are “thin slice{s} of wood” does not make them veneers in the multilayered wood flooring industry. If Commerce intended to include “all thin slice{s} of wood” under the veneers

⁶¹ *Id.*, 63 FR at 65401.

⁶² *See* 19 CFR 351.525(b)(iv).

⁶³ *See* Jiangsu Guyu’s AQR at 1.

⁶⁴ *Id.* at 3.

for LTAR program, then Commerce would have included plywood under the scope of veneers for LTAR program as well.⁶⁵

- Poplar core sheets are a distinct product, separate from veneers. The petitioner should make a separate subsidy allegation on core sheets as it did for plywood and veneers.⁶⁶
- There are various differences between veneers and poplar core sheets such as type of wood, application, density and pricing.⁶⁷
- The petitioner did not allege a subsidy program on poplar core sheets for LTAR or any species of core sheets.⁶⁸ It was only after Jiangsu Guyu's response to Commerce's new subsidy allegation (NSA) questionnaire that the petitioner argued for the inclusion of poplar core sheets under the definition of veneers.⁶⁹
- The petitioner's benchmark data do not cover poplar core sheets, indicating that the petitioner did not foresee that Commerce would include poplar core sheets in the benchmark for veneers.⁷⁰ The only instance where the "poplar" species appears is in the petitioner's plywood benchmark.⁷¹
- The petitioner supports the inclusion of poplar core sheets within the veneers for LTAR program because Jiangsu Guyu's purchase price of poplar core sheets increases the CVD margin exponentially.⁷²
- Commerce used improper benchmark data to calculate the benefit for Jiangsu Guyu's purchases of poplar core sheets because the benchmark data used only contain data for veneers and not poplar core sheets. Commerce is required to select benchmarks that are comparable to the good at issue and normally relies on data reflecting the "narrowest category of products encompassing the input whenever possible."⁷³ Accordingly, Commerce should re-open the record for new benchmark information for poplar core sheets.

Jiangsu Guyu's Case Brief:

- The scope of the *Order* defines "veneer" as "a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch." However, not all veneers are the same because there are veneers that are created for the exterior of multilayered wood flooring, and there are other veneer sheets, like poplar core sheets, that are created for the core of multilayered wood flooring.⁷⁴
- The scope of the *Order* states, "Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s) in combination with a core. The several

⁶⁵ See Fine Furniture's Case Brief at 6.

⁶⁶ *Id.*

⁶⁷ *Id.* at 6-7.

⁶⁸ *Id.* at 7.

⁶⁹ *Id.* (citing the Petitioner's Letter, "Comments on Jiangsu Guyu's New Subsidy Allegations Questionnaire Response," dated November 21, 2019).

⁷⁰ *Id.* at 8 (citing the Petitioner's Letter, "Other Factual Information and Benchmark Pricing Information," dated September 3, 2019 (Petitioner's Benchmark Data I) at 3).

⁷¹ *Id.* (citing the Petitioner's Letter, "Other Factual Information and Benchmark Pricing Information Regarding New Subsidy Allegations," dated November 13, 2019 (Petitioner's Benchmark Data II) at 3).

⁷² *Id.* at 10.

⁷³ *Id.* at 9 (citing *Changzhou Trina Solar Energy Co. v. United States*, Slip Op. 18-31, March 27, 2018 (CIT 2018)).

⁷⁴ See Jiangsu Guyu's Case Brief at 8.

layers, along with the core, are glued or otherwise bonded together to form a final assembled product.” Commerce’s determination that Shunyang’s poplar core sheets are veneers means that Jiangsu Guyu’s multilayered wood flooring has virtually no core; and therefore, is made entirely of face-grade hard veneers.⁷⁵

- Commerce misinterpreted Jiangsu Guyu’s multilayered wood as a type of wood flooring that is composed of several slices of wood used for exterior layers, which is closer to out-of-scope solid wood flooring than in-scope multilayered wood flooring.⁷⁶
- Commerce calculated a total preliminary subsidy rate of 123.26 percent for Jiangsu Guyu, where 112.23 percent of that total is attributable to veneers. However, Commerce’s calculation is contrary to Jiangsu Guyu’s actual composition (*i.e.*, face veneer, core, back veneer) and costs for its multilayered wood flooring. Commerce’s calculation more accurately reflects solid wood flooring rather than multilayered wood flooring.⁷⁷
- Commerce fails to consider that poplar is not used by Jiangsu Guyu as a face-grade veneer. Jiangsu Guyu’s poplar core sheets are used for plywood core in wood flooring, because it is an unattractive softer wood with imperfections that are not a visible part of multilayered wood flooring; and therefore less expensive than face-grade veneers. Additionally, poplar is a softwood and face veneers are made of solid higher density wood (harder wood) slices that can better withstand exposure to wear and tear, and contact with floor substrate.⁷⁸
- For the *Preliminary Results*, Commerce calculated a 7.47 percent rate for Jiangsu Guyu under the provision of plywood for LTAR program. However, Commerce erred in counting internally consumed plywood, because Shunyang purchased poplar core sheets as materials to produce plywood and then sold the plywood to Shengyu, as core material to produce multilayered wood flooring. Commerce’s calculation is in effect double counting the plywood and veneer inputs by countervailing both Shunyang’s veneer purchases (*i.e.* poplar core sheets) and Shengyu’s plywood purchases from Shunyang.⁷⁹
- Commerce unreasonably applied the veneer benchmark to Shunyang’s poplar core sheet inputs, because the benchmark applied to poplar core sheets, which is used to make plywood, is higher than the actual benchmark for the finished plywood.⁸⁰

Petitioner’s Rebuttal Brief:

- Shunyang’s “poplar sheets” are wood veneers. Plywood is made from face veneers, back veneers, and core or inner veneers and multilayered wood flooring is produced with plywood cores made of veneers, including those made with poplar wood.⁸¹
- Jiangsu Guyu’s argument that poplar wood is a softwood species and therefore cannot be a face veneer is misplaced. The scope of the *Order* states, “{a}ll multilayered wood

⁷⁵ *Id.* at 9.

⁷⁶ *Id.* at 10.

⁷⁷ *Id.* at 9 (citing *Preliminary Results* at 6909, and accompanying PDM at 34-35).

⁷⁸ *Id.* at 10-11.

⁷⁹ *Id.* at 15-16.

⁸⁰ *Id.* at 10.

⁸¹ See Petitioner’s Case Brief at 5 (citing Petitioner’s Letter, “Multilayered Wood Flooring from the People’s Republic of China: New Subsidy Allegations, dated August 12, 2019 (Petitioner’s New Subsidy Allegations) at Exhibit 1 at page 4-2 – 4-5).

flooring is included within the definition of subject merchandise, without regard to...wood species used for the face, back, and inner veneers; core composition; and face grade.”⁸²

- The core of multilayered wood flooring may be made of a series of wood veneers and those veneers may be comprised of hardwood or softwood species. The scope states, “{t}he core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer...”⁸³
- All veneers are covered under the veneers for LTAR program, regardless of price, density or whether it is used as the outer or inner layer for multilayered wood flooring.⁸⁴
- Poplar veneers, such as the poplar sheets purchased by Shunyang, have always been intended to be covered by the veneers for LTAR program. The veneers for LTAR program is not limited to a specific species or type of veneer. The petitioner is not required to list every type of veneer for it to be covered under the veneers for LTAR program.⁸⁵
- Jiangsu Guyu did not provide enough information for the record for Commerce to trace which of Shunyang’s poplar core sheet purchases were used to produce plywood for Shengyu, and which of Shengyu’s plywood purchases were produced from poplar sheets purchased by Shunyang.⁸⁶

Commerce’s Position:

We agree with the petitioner that Shunyang’s poplar sheets are classifiable as veneers based on the scope language. Jiangsu Guyu first reported Shunyang’s poplar sheet purchases in its NSA questionnaire, where it claimed that Shunyang’s poplar sheets had a different density, thickness and use than the four inputs outlined in the NSA (*i.e.*, plywood, sawn wood and continuously shaped wood, particleboard and fiberboard).⁸⁷ Subsequently, Commerce issued a supplemental questionnaire providing Jiangsu Guyu a second opportunity to clarify: (1) how it used Shunyang’s poplar sheets in the assembly of multilayered wood flooring and (2) to provide a detailed description of how its poplar core sheets differed from veneers.⁸⁸ In its response, Jiangsu Guyu reported that its poplar core sheets were limited to the assembly of plywood or for the core of multilayered wood flooring.⁸⁹ Jiangsu Guyu also reported that Shunyang’s poplar sheets are thin slices of wood “rotary cut” from poplar wood, which is a softer wood with a lower density than veneers.⁹⁰ In determining whether Shunyang’s poplar sheets were veneers, Commerce first looked at the scope of the *Order*. In reviewing the scope, Commerce found that the plain language of the scope explicitly defines a veneer as, “...a *thin slice of wood, rotary cut* {emphasis added}, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when

⁸² *Id.* (citing PDM at 6).

⁸³ *Id.* at 7 (citing PDM at 6).

⁸⁴ *See* Petitioner’s Rebuttal Brief at 6.

⁸⁵ *Id.* at 7.

⁸⁶ *Id.* at 9.

⁸⁷ *See* Jiangsu Guyu’s Letter, “Response to New Subsidy Allegations: Multilayered Wood Flooring from the People’s Republic of China,” dated November 8, 2019 (Jiangsu Guyu’s NSA Response) at 1-2.

⁸⁸ *See* Commerce’s Letter, “Second Supplemental Questionnaire,” dated December 18, 2019 at 3.

⁸⁹ *See* Jiangsu Guyu’s Letter, “Response to Second Supplemental Questionnaire,” dated January 8, 2020 (Jiangsu Guyu’s Second SQR) at 2.

⁹⁰ *Id.*; *see also* Jiangsu Guyu’s NSA Response at 1-2 and Exhibit NSA-4.

assembled.”⁹¹ Accordingly, Commerce preliminarily determined that Shunyang’s poplar sheets are veneers because Shunyang’s poplar sheets are rotary cut thin slices of wood.⁹² Therefore, Commerce included Shunyang’s poplar core sheet purchases in the calculation of subsidy rate for the provision of veneers for LTAR program.⁹³

In its case brief, Fine Furniture argued that if Commerce intended to include “all thin slice{s} of wood” within the veneers for LTAR program, then Commerce would have included plywood under the scope of veneers for LTAR program.⁹⁴ However, this argument relies on false equivalence, because plywood and veneers are two distinct wood inputs with separate definitions and benchmarks.⁹⁵ Additionally, the scope identifies plywood as assembled veneers (*e.g.*, multiple veneers glued together), and veneers as thin slices of wood (*e.g.*, individual plies).⁹⁶ In other words, plywood can be composed of multiple veneers, but plywood is not equivalent to a veneer. Specifically, plywood is made from face veneers, back veneers, and core or inner veneers.⁹⁷ Furthermore, Fine Furniture does not cite to any information on the record which demonstrates that veneers and plywood are equivalent or can be used interchangeably in the production of multilayered wood flooring.

Fine Furniture also argued in its case brief that the petitioner did not intend to cover poplar sheets in the veneers for LTAR program because: (1) the petitioner did not allege a subsidy program on poplar core sheets or any species of core sheets, and (2) the petitioner’s veneer benchmark data do not cover the poplar wood species.⁹⁸ However, Fine Furniture’s arguments are misguided because the veneers for LTAR program is not limited to a specific species or type of veneer as defined within the scope of the *Order*.⁹⁹ Additionally, the petitioner is not required to provide every type of potential veneer species in its benchmark submission, and nothing on the record of this review suggests that either the petitioner or Commerce intended to exclude poplar sheets from the veneer for LTAR program. Furthermore, Fine Furniture’s argument that the petitioner’s benchmark data did not contain the poplar species is irrelevant, because, as noted by Fine Furniture, the petitioner did provide in its benchmark submission HS code 4408.90, which clearly covers veneer sheets of “other species.”¹⁰⁰

Jiangsu Guyu and Fine Furniture argued that Shunyang’s poplar sheets are not veneers, because the poplar sheets are made from a low density softer wood that is unattractive and less expensive

⁹¹ See PDM at 6 and footnote 28.

⁹² *Id.* at 34.

⁹³ *Id.*

⁹⁴ See Fine Furniture’s Case Brief at 6.

⁹⁵ See Petitioner’s Case Brief at 5 (citing Petitioner’s New Subsidy Allegations at Exhibit 1 at page 4-2 – 4-5); see also PDM at 6 and footnote 28; and generally Baroque Timber’s Letter, “Benchmark Data Submission,” dated August 12, 2019 (Baroque Timber’s Benchmark I); Baroque Timber’s Letter, “Second Benchmark Data Submission,” dated November 13, 2019 (Baroque Timber’s Benchmark II); Petitioner’s Benchmark Data I; and Petitioner’s Benchmark Data II.

⁹⁶ See PDM at 6 and footnote 28.

⁹⁷ See Petitioner’s Case Brief at 5 (citing Petitioner’s New Subsidy Allegations at Exhibit 1 at page 4-2 – 4-5).

⁹⁸ See Fine Furniture’s Case Brief at 7-8.

⁹⁹ See Petitioner’s Rebuttal Brief at 7; see also “Scope of the *Order*” section above, which states, “All multilayered wood flooring is included within the definition of subject merchandise, without regard to...wood species used for the face, back and inner veneers; core composition; and face grade.”

¹⁰⁰ *Id.* at 7-8 (citing Fine Furnitures’s Case Brief at 7-8 and Baroque Timber’s Benchmark II at Exhibit 2).

than face-grade veneers.¹⁰¹ Jiangsu Guyu further argued that poplar sheets are used for the core because it is not a visible part of multilayered wood flooring, and therefore, can contain imperfections;¹⁰² whereas face-grade veneers are a visible part of multilayered wood flooring and more expensive, because face-grade veneers need to be a harder wood that can better withstand exposure to wear and tear, and contact with floor substrate.¹⁰³ However, these arguments seem to be focused on the common usage of the term “veneer” by the industry, and common usage does not supersede the plain language of the scope, which states that the core of multilayered wood flooring may be composed of hardwood or softwood veneers: “{t}he core of multilayered wood flooring may be *composed of a range of materials, including but not limited to hardwood or softwood veneer*, particleboard, medium-density fiberboard, high-density fiberboard (HDF), stone and/or plastic composite, or strips of lumber placed edge-to-edge.” (Emphasis added.) Additionally, subject merchandise is not limited by wood species, core composition or face grade:

“All multilayered wood flooring is included within the definition of subject merchandise, without regard to: dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade.” (Emphasis added.)

In its case brief, Jiangsu Guyu argued that not all veneers are the same, and that some veneers, like Shunyang’s poplar sheets, are specifically used for plywood cores.¹⁰⁴ Furthermore, Jiangsu Guyu argued that Commerce’s determination that Shunyang’s poplar sheets are veneers means that its multilayered wood flooring has no core; and therefore, is made of face-grade hardwood veneers.¹⁰⁵ Jiangsu Guyu further claimed that flooring made of face-grade veneers is more like out-of-scope solid wood flooring than in-scope multilayered wood flooring. However, the scope of the *Order* clearly states, “{m}ultilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s) in combination with a core. The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product.”¹⁰⁶ To further clarify this definition, the scope as described above under, “Scope of the *Order*,” at footnote 10, states that Commerce interprets this language to refer to “wood flooring products with a minimum of three layers.” In other words, wood flooring with three or more layers is considered in-scope merchandise (*i.e.*, multilayered wood flooring), not solid flooring. Therefore, wood flooring with a face veneer, core veneer and back veneer is considered subject merchandise.

Accordingly, Commerce finds that poplar core sheets are not a distinct product from veneers; and the petitioner is not required to make a separate allegation on core sheets. Furthermore, Commerce finds that veneers are not limited by wood species, grade, core composition or type (*i.e.*, hardwood or softwood). Therefore, as dictated by the scope of the *Order*, Commerce finds

¹⁰¹ *Id.* at 10-11; *see also* Fine Furniture’s Case Brief at 7.

¹⁰² *See* Jiangsu Guyu’s Case Brief at 10-11.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 8.

¹⁰⁵ *Id.* at 9-10.

¹⁰⁶ *Id.*

that Shunyang's poplar sheets are veneers and subject to the provision of veneers for LTAR program.

Jiangsu Guyu and Fine Furniture also argued, in their respective case briefs, that Commerce used incorrect benchmark data to calculate the benefit for Shunyang's purchases of poplar core sheets, because the data do not contain data for poplar core sheets.¹⁰⁷ Accordingly, Jiangsu Guyu requested Commerce to re-open the record to all interested parties to provide additional benchmark data.¹⁰⁸ However, Commerce denied this request,¹⁰⁹ because prior to the preliminary determination, Commerce already extended the benchmark submission deadline by two-weeks.¹¹⁰ Additionally, prior to the preliminary determination, Commerce issued multiple questionnaires to Jiangsu Guyu, to which Jiangsu Guyu responded, regarding its wood inputs.¹¹¹ Jiangsu Guyu and Fine Furniture argued that Jiangsu Guyu did not provide benchmark data for poplar wood during the accepted time frame, because it understood that poplar core sheets were used for plywood, not veneers.¹¹² Therefore, it was not until the *Preliminary Results* that Jiangsu Guyu and Fine Furniture recognized that Shunyang's poplar sheets could be veneers.¹¹³ However, Commerce's initial questionnaire included the provision of veneers for LTAR program and the scope of the *Order* explicitly contains a definition of veneer.¹¹⁴ As stated above, Jiangsu Guyu reported that its poplar wood sheets are thin slices of wood that are "rotary cut," which is nearly identical to the language that is used to define veneers in the scope.¹¹⁵ Accordingly, we find that all parties had ample notice of the definition of veneer being applied in this proceeding, and it is not necessary to allow all interested parties an opportunity to submit new factual information, notwithstanding Jiangsu Guyu misinterpretation of the definition of veneer in preparing its questionnaire response. Furthermore, Commerce finds that the veneer benchmark data that was timely submitted by the petitioner and Baroque Timber, the other mandatory respondent in this review, are sufficient and usable in our calculation of the provision of veneers for LTAR program, because it includes data for "other species" of wood, and is not limited to certain reported species.

Lastly, Jiangsu Guyu cannot substantiate its claim that Commerce is double counting internally-consumed plywood in the plywood for LTAR calculation.¹¹⁶ In its NSA questionnaire response, Jiangsu Guyu reported that during the POR, Shengyu purchased plywood and Shunyang purchased poplar sheets for the assembly of plywood.¹¹⁷ Jiangsu Guyu claims in its case brief that Commerce is double counting the subsidized inputs by countervailing both Shunyang's veneer purchases (*i.e.*, poplar sheets) that is used to produce plywood and Shengyu's plywood

¹⁰⁷ *Id.* at 14-15; *see also* Fine Furniture's Case Brief at 8.

¹⁰⁸ *See* Jiangsu Guyu's Letter, "Request to Open the Record for New Factual Information," dated March 6, 2020.

¹⁰⁹ *See* Commerce's Letter, "Denial of New Factual Information Submission Request," dated March 10, 2020.

¹¹⁰ *See* Memorandum, "Extension Request for New Subsidy Allegations and Benchmark Information," dated August 1, 2019.

¹¹¹ *See, e.g.*, Jiangsu Guyu's IQR; *see also* Jiangsu Guyu's NSA Response and Jiangsu Guyu's Second SQR.

¹¹² *See* Jiangsu Guyu Case Brief at 14-15; *see also* Fine Furniture Case Brief at 10-11.

¹¹³ *Id.*

¹¹⁴ *See* Commerce CVD Questionnaire at Section I-2 and Section III-13.

¹¹⁵ *See* PDM at 6 and footnote 28, "A 'veneer' is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled."

¹¹⁶ *See* Guyu's Case Brief at 15-16.

¹¹⁷ *See* Jiangsu Guyu's NSA Response at 1 and at Exhibit NSA-4.

purchases from Shunyang.¹¹⁸ However, Jiangsu Guyu did not provide any record evidence to support this claim, and it is not possible for Commerce to trace which of Shunyang's poplar sheet purchases were used to produce plywood for Shengyu and which of Shengyu's plywood purchases were produced from Shunyang's poplar sheet purchases. Accordingly, for these final results, Commerce will continue to countervail both Shunyang's poplar sheet purchases and Shengyu's plywood purchases.

Comment 4: Whether Poplar Core Sheet Suppliers are Authorities

The GOC's Case Brief

- The GOC cooperated to the best of its ability and Commerce may only apply AFA if it finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information.¹¹⁹
- Commerce did not make a finding that Shunyang's poplar core sheets were "veneers," until the *Preliminary Results*, and the GOC was never asked by Commerce to provide any information regarding Shunyang's poplar core sheet suppliers.¹²⁰
- If Commerce had requested that the GOC provide information on Shunyang's suppliers of poplar core sheets, the GOC would have noted that, as reported by Jiangsu Guyu, all such suppliers are private individual farmers, and the Standard Input Producer Appendix is not applicable to private individual farmers.¹²¹
- Commerce's Public Bodies Memorandum and the 2012 Update to the Public Bodies Memorandum focus on whether "enterprises" are authorities not private individual farmers. Specifically, the 2012 Update of the Public Bodies Memorandum limits its findings to enterprises:

"This includes the findings that (1) any enterprise in China in which the government has a full or controlling ownership interest is a public body; (2) enterprises in China in which the government has significant ownership that are also subject to certain government industrial plans may be public bodies; and (3) certain enterprises that have little or no formal government ownership are public bodies if Commerce determines that the government exercises meaningful control over them."¹²²
- Commerce has developed a practice of presuming that Chinese companies who are input suppliers are "authorities." The GOC has an impossible burden of proof regarding the involvement of the Chinese Communist Party (CCP) in such suppliers, where it has to identify "any owners, members of the board of directors, or managers who were government or CCP officials."¹²³

¹¹⁸ *Id.*

¹¹⁹ *See* GOC's Case Brief at 4.

¹²⁰ *Id.* at 5-6.

¹²¹ *Id.* at 6.

¹²² *Id.* at 8 (citing Public Bodies Analysis Memoranda, dated January 31, 2020 (Public Bodies Analysis Memoranda) at Attachment I, "Update of the Public Bodies Analysis of State-Invested Enterprises in China for Countervailing Duty Purposes" at 28).

¹²³ *Id.* at 8 (citing PDM at 19-20).

- Commerce has not made a finding that material information is missing from the record regarding the identity or status of these private individual farmers as private parties or “authorities.”¹²⁴
- Commerce has preliminarily determined on the basis of AFA that Shunyang’s input suppliers are authorities because there is a “gap” in the record and the GOC withheld information concerning these suppliers. Commerce cannot ignore the facts on the record which demonstrate Shunyang’s poplar core sheet suppliers are not corporations or enterprises. Commerce has chosen not to verify this information and therefore presumes Shunyang’s poplar core sheet suppliers are authorities. Therefore, there is no “gap” regarding the nature and identity of these suppliers as private parties (*i.e.*, not authorities).¹²⁵
- In *Guizhou Tyre Co. v. United States*, the CIT explained that in order to rely on AFA Commerce must make “an initial finding...that material information was missing from the record.”¹²⁶ In this review, Commerce has not made a finding that it is missing “material information” in order to determine whether private individual farmers are “authorities.” Commerce only made a finding regarding the other suppliers who are enterprises.¹²⁷

Jiangsu Guyu’s Case Brief

- Commerce has evidence on the record that Jiangsu Guyu purchased poplar core sheets from private individual farmers. However, despite this evidence, Commerce treated poplar core sheet suppliers, who are private individual farmers and natural persons, as “entities” and “companies.”¹²⁸
- Commerce cited its Public Bodies Analysis Memoranda, noting that “an entity with significant CCP presence on its board or in management or in party committees may be controlled, such that it possesses, exercises, or is vested with governmental authority.” However, Commerce’s assumption is based entirely on the concept of “entities” as “enterprises” and the GOC’s control over them, as well as on corporate governance and industrial policy as it concerns those enterprises.¹²⁹
- The Public Bodies Analysis Memoranda do not focus on natural persons. Instead, they reference enterprises and government control over them. For example, the first memorandum is titled, “Update of the Public Bodies Analysis of State-Invested Enterprises in China for Countervailing Duty Purposes.”¹³⁰
- The Public Bodies Analysis Memoranda cover entities which Commerce believes are controlled by the CCP, these include: Central Entities, Local Entities (Congress and Committees), Villagers’ Committees, and Ministries. There is no mention of individuals

¹²⁴ *Id.* at 9.

¹²⁵ *Id.*

¹²⁶ *Id.* (citing *Guizhou Tyre Co. v. United States*, 348 F. Supp. 3d, 1261, 1270 (CIT 2018) (*Guizhou Tyre Co. v. United States*)).

¹²⁷ *Id.* at 9.

¹²⁸ See Jiangsu Guyu’s Case Brief at 4.

¹²⁹ *Id.*

¹³⁰ *Id.* at 4-5.

or natural persons, because individuals, like the poplar farmers, are not public bodies or entities.¹³¹

- The title indicates that the Public Bodies Analysis Memoranda focuses on “public bodies.” The CIT has recognized that the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, which resulted in Congress passing section 771(5)(B) of the Act, clarifies that Congress intended “the term ‘person’ to identify the commercial entity, such as a firm or industry, to which the government or public body provides a financial contribution.”¹³² Additionally, in accordance with 701(a)(1) of the Act instructs that if “the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States” then “a countervailing duty shall be imposed upon such merchandise.” An individual private poplar farmer does not meet either of these definitions nor is the farmer an “enterprise” as described by Commerce’s Public Bodies Analysis Memoranda.¹³³

The Petitioner’s Case Brief

- A small, family run farm is just as much an enterprise as a large, publicly corporation, and can be just as captured by the GOC or the CCP as any other entity through many of the same ways discussed in Commerce’s Public Body Analysis Memoranda.¹³⁴
- The information provided by Jiangsu Guyu and the GOC does not establish Shunyang’s poplar sheet suppliers as individual farmers that are free from government control.¹³⁵
- Jiangsu Guyu only asserts that Shunyang’s poplar sheet suppliers are individuals and provides no documentation regarding these suppliers.¹³⁶
- The record of this review does not support the respondents’ characterization of Shunyang’s poplar sheet suppliers as being private individual farmers. Jiangsu Guyu’s failure to provide this information makes it impossible for Commerce or other interested parties to verify which suppliers are controlled by the GOC or CCP.¹³⁷
- Jiangsu Guyu failed to report its poplar purchases until several months after it submitted its initial questionnaire response. This should not excuse the GOC from providing information regarding Jiangsu Guyu’s poplar sheet suppliers.¹³⁸
- Commerce’s initial questionnaire instructed the GOC to coordinate with respondents to “obtain a complete list of each company’s input producers, including the producers of inputs purchased by the respondent through a supplier.”¹³⁹

¹³¹ *Id.* at 5.

¹³² *Id.* at 6 (citing *Beijing Tianhai Indus. Co. v. United States*, 52 F. Supp. 3d 1351, 1363 (CIT 2015) and SAA, H.R. Doc. 103-316, at 925 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4239)).

¹³³ *Id.* at 6.

¹³⁴ See Petitioner’s Rebuttal Brief at 11.

¹³⁵ *Id.* at 12.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 13.

¹³⁹ *Id.* (citing GOC’s Letter, “Initial Questionnaire Response,” dated July 15, 2019 (GOC’s IQR) at 62).

- It is not necessary for Commerce to ask the GOC for information regarding Shunyang's poplar sheet suppliers given the GOC's failure to provide the requested information in its initial questionnaire response.¹⁴⁰

Commerce's Position:

We continue to find that each of the individual private farmers which supplied Shunyang with poplar sheets are "authorities" within the meaning of section 771(5)(B) of the Act. As discussed in the *Preliminary Results* under "Certain Producers of Fiberboard, Plywood and Veneers are 'Authorities,'" Commerce requested information from the GOC regarding whether any individual owners, board members, or senior managers were government or CCP officials and the role of any CCP primary organization within the companies.¹⁴¹ Specifically, we sought information from the GOC that would allow us to determine whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.¹⁴² Furthermore, we asked the GOC to: (1) provide information about the involvement of the CCP in any input supplier identified by the mandatory respondents and their cross-owned affiliates (*i.e.*, Shunyang), including whether individuals in management positions are CCP members, in order to evaluate whether the input suppliers are "authorities" with the meaning of section 771(5)(B) of the Act; and (2) identify any owners, members of the board of directors, or managers of the input suppliers who were government or CCP officials during the POR.¹⁴³

In its response, the GOC stated that it is "unable to require the CCP, the People's Congress, the CPPCC, or the other entities as mentioned in the question to provide the information as required by {Commerce} because they are not government agencies."¹⁴⁴ Additionally, the GOC reported that the veneer suppliers of the mandatory respondents are all private companies, and provided only basic ownership structure registration information on some of the veneer suppliers.¹⁴⁵ The GOC also provided the Enterprise Credit Information Publicity System (ECIPS) registration number for some of the reported veneer suppliers, and stated that the "{ECIPS}" was established requiring the authorities for administrations for industry and commerce to publish details regarding the registration, filings, supervision, and administration of enterprises and other entities. Therefore, the information obtained from ECIPS is authoritative evidence of the ownership structure of enterprises in China."¹⁴⁶ The GOC further reported that in providing this information, the GOC is not withholding necessary information and that the ECIPS information is sufficient and conclusive information from which Commerce can make a reasonable and supportable determination regarding the status of each producer.¹⁴⁷ However, the GOC only provided the ECIPS registration number for some of the reported veneer suppliers and the GOC did not provide any articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, and articles of association, as requested by Commerce.¹⁴⁸

¹⁴⁰ *Id.*

¹⁴¹ See PDM at 19 (citing Commerce CVD Questionnaire at II-27 to II-29)

¹⁴² See Commerce CVD Questionnaire at II-27 to II-29.

¹⁴³ *Id.*

¹⁴⁴ See GOC's IQR at 86.

¹⁴⁵ See GOC's IQR at 65 and at Exhibit 50.

¹⁴⁶ *Id.* at 65-66 and at Exhibit 51.

¹⁴⁷ *Id.* at 66.

¹⁴⁸ *Id.* at 65 and at Exhibit 51.

Furthermore, the GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources; and the GOC's responses in prior CVD proceedings demonstrate that it is, in fact, able to access information similar to what we requested.¹⁴⁹ Additionally, pursuant to section 782(c) of the Act, if the GOC could not provide any of the requested information, it should have promptly explained to Commerce what attempts it made to obtain this information, and proposed providing this information in an alternative form.¹⁵⁰ Therefore for the *Preliminary Results*, we determined 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 AFA was warranted pursuant to section 776(b) of the Act. As AFA, we preliminarily determined that the producers from whom respondents purchased veneers and for whom the GOC failed to provide complete information necessary for our financial contribution and specificity analysis were "authorities" within the meaning of section 771(5)(B) of the Act.

In their case briefs, the GOC and Jiangsu Guyu argued that Commerce did not make a finding that Shunyang's poplar core sheets were "veneers," until the *Preliminary Results*, and that the GOC was never asked by Commerce to provide any information regarding Shunyang's poplar core sheet suppliers. In other words, the GOC could not provide this information because it was unaware that Shunyang's poplar sheets were veneers and it was not asked by Commerce to provide this information. However, Commerce had provided the GOC and Jiangsu Guyu with the definition of veneer¹⁵¹ and issued multiple questionnaires regarding Jiangsu Guyu wood inputs and Shunyang's poplar veneer sheets.¹⁵² Additionally, Jiangsu Guyu unexpectedly reported its poplar veneer sheets in its NSA response out of "an abundance of caution," claiming that Shunyang's poplar sheets were not part of the four NSA inputs (*i.e.*, plywood, sawn wood and continuously shaped wood, particleboard and fiberboard).¹⁵³ Subsequently, Commerce issued a supplemental questionnaire asking Jiangsu Guyu to clarify the nature of its poplar sheets, and asked Jiangsu Guyu to specifically differentiate its poplar core sheets from veneers. Jiangsu Guyu responded that its poplar core sheets were thin slices of wood "rotary cut," which, as stated above, matches the definition of veneers provided by Commerce in the initial questionnaire. Furthermore, in Commerce's initial questionnaire, we clearly stated that:

{T}he GOC should respond to the following questions if any of the mandatory company respondents purchased the input from Chinese producers, either directly or through a supplier, during the POR, regardless of whether the respondents claim they did not use the input to produce the subject merchandise. Please coordinate immediately with the company respondents to obtain a complete list of

¹⁴⁹ See, e.g., *High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying Issues and Decision Memorandum (IDM) at 13.

¹⁵⁰ Section 782(c)(1) of the Act states, "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."

¹⁵¹ See Commerce CVD Questionnaire at Section I-2 and Section III-13.

¹⁵² *Id.* at Section III-13; see also Jiangsu Guyu First SQ at 7-8; and Jiangsu Guyu's Second SQ at 3-4

¹⁵³ See Jiangsu Guyu's NSA Response at 1-2.

each company's input producers, including the producers of inputs purchased by the respondent through a supplier.¹⁵⁴

Accordingly, the responsibility to coordinate and provide input supplier information for all inputs under review is with the GOC and Jiangsu Guyu, not Commerce. It is not Commerce's responsibility to coordinate the GOC's and Jiangsu Guyu's responses, and there is no statute or requirement that obligates Commerce to issue multiple questionnaires to ensure that the GOC is properly coordinating its responses with the mandatory respondents. Furthermore, the record contains Shunyang's poplar core sheet purchases, which included its supplier information,¹⁵⁵ and the GOC had the information it needed to provide Commerce with our requested input supplier information. Therefore, Commerce finds that the record of this review contains sufficient information for Jiangsu Guyu and the GOC to recognize that Shunyang's rotary cut thin slices of poplar wood sheets are veneers and thus provide Commerce's requested input supplier information on Shunyang's poplar sheet suppliers.

The GOC and Jiangsu Guyu also argued that individual private farmers are not enterprises and therefore cannot be captured by the CCP. In their arguments, the GOC and Jiangsu Guyu claimed that the Public Bodies Analysis Memoranda focus on "enterprises," not individuals, because the memoranda do not discuss or use the terms "individual" or "private citizen(s)."¹⁵⁶ However, neither the GOC nor Jiangsu Guyu has presented evidence demonstrating that individuals cannot be entities subject to government control and vested with government authority. Additionally, the Update of the *2012 Public Bodies Analysis of State-Invested Enterprises in China for Countervailing Duty Purposes Memorandum* states:

This memorandum uses the term "state-invested enterprise" or "SIE" where possible. By "state-invested enterprise," Commerce means enterprises in which the government of China has an ownership stake *of any size*.¹⁵⁷ (Emphasis added.)

The Public Bodies Analysis Memoranda also contain "The Relevance Of The Chinese Communist Party For The Limited Purpose Of Determining Whether Particular Enterprises Should Be Considered To Be 'Public Bodies' Within The Context Of A Countervailing Duty Investigation" memorandum, where Commerce determined the CCP exercises "ultimate control *over citizens* and resources, including authority over issues and resources as varied as family and economic planning, as well as the military."¹⁵⁸ (Emphasis added.)

Furthermore, as explained in the *Preliminary Results*, we understand that the CCP exerts significant control over economic activities in China.¹⁵⁹ Moreover, Jiangsu Guyu only reported

¹⁵⁴ See Commerce CVD Questionnaire at Section II-10.

¹⁵⁵ See Jiangsu Guyu's NSA Response at Exhibit NSA-3.

¹⁵⁶ See Jiangsu Guyu's Case Brief at 4; see also GOC's Case Brief at 6-8.

¹⁵⁷ See Public Bodies Analysis Memoranda at Attachment I, "Update of the 2012 Public Bodies Analysis of State-Invested Enterprises in China for Countervailing Duty Purposes," dated February 27, 2019 at 2.

¹⁵⁸ See Public Bodies Analysis Memoranda at Attachment III, "The Relevance Of The Chinese Communist Party For The Limited Purpose Of Determining Whether Particular Enterprises Should Be Considered To Be 'Public Bodies' Within The Context Of A Countervailing Duty Investigation," dated May 18, 2012 at 33.

¹⁵⁹ *Id.*

that its poplar sheet suppliers were “individuals” and provided minimal information for Commerce to verify its claims. In addition, as noted above, we find no evidence to support the proposition that individuals cannot be authorities. Therefore, Commerce continues to find, as AFA, that all producers that supplied poplar sheet to Jiangsu Guyu are authorities within the meaning of section 771(5)(B) of the Act.

Comment 5: Whether to Apply Partial AFA to Jiangsu Guyu’s Wood Products

Petitioner’s Case Brief

- Jiangsu Guyu failed to properly report its use of poplar sheet veneers in its initial questionnaire response. Jiangsu Guyu reported its poplar sheet veneers, four months later, in response to Commerce’s NSA questionnaire.¹⁶⁰
- Jiangsu Guyu argues that its poplar core sheets are not veneers; however, based on Jiangsu Guyu’s description of its poplar core sheets and the definition of veneers provided by the scope of the *Order*, it is clear that Jiangsu Guyu’s poplar sheets are veneers.¹⁶¹
- Jiangsu Guyu’s identification of its wood inputs is unreliable, because it does not acknowledge that its poplar sheets are veneers, which calls into question whether Jiangsu Guyu has properly identified, described and reported all of its wood inputs that would be relevant to this proceeding.¹⁶²
- Jiangsu Guyu’s reporting is unreliable and warrants AFA because it provided late unsolicited information.¹⁶³ Accordingly, Commerce should follow the AFA hierarchy and apply the highest calculated rate in this proceeding for each of Jiangsu Guyu’s wood inputs for LTAR (*i.e.*, veneers, cut timber, plywood, and sawn wood and continuously shaped wood).
- Commerce should continue to consider the rate preliminarily calculated for Jiangsu Guyu’s receipt of veneers for LTAR as a calculated rate. For programs for which there is not a calculated rate on the record of this proceeding (*i.e.*, plywood, sawn wood and continuously shaped wood, particleboard, and fiberboard), Commerce should apply the highest calculated rate for a similar program in this proceeding such as *PET Resin from China*.¹⁶⁴
- Commerce can also follow *Aluminum Extrusions from China* and apply the single highest per-unit benefit for a reported purchase of each wood input and multiply that benefit by the total amount of each wood input purchased.¹⁶⁵

¹⁶⁰ See Petitioner’s Case Brief at 2-3.

¹⁶¹ *Id.* at 5-7.

¹⁶² *Id.* at 14-15.

¹⁶³ *Id.* at 14.

¹⁶⁴ *Id.* at 15 (citing *Certain Polyethylene Terephthalate Resin From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 13337 (March 14, 2016) (*PET Resin from China*), and accompanying IDM at 57-59).

¹⁶⁵ *Id.* at 15-16 (citing *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 17 and 36).

Jiangsu Guyu's Rebuttal Case Brief:

- Commerce should not apply partial AFA to Jiangsu Guyu because Jiangsu Guyu fully responded to all of Commerce's questionnaires and fully cooperated with all of Commerce's requests for information.¹⁶⁶
- There are no gaps in the record. Jiangsu Guyu timely responded to Commerce's initial questionnaire, two supplemental questionnaires, and the NSA questionnaire. Furthermore, Shunyang's purchases of poplar core sheets are on the record of this review.¹⁶⁷
- The SAA states that Commerce, "must make their determinations based on all evidence on the record, weighing the record evidence to determine that which is most probative of the issue under consideration."¹⁶⁸
- Commerce cannot discard all evidence related to the existence (or lack thereof) of the three elements of a countervailable subsidy merely because Jiangsu Guyu considers, with good reason, that poplar core sheets were used as the plywood core, rather than a face-grade veneer in multilayered wood flooring.¹⁶⁹

Commerce's Position:

We disagree that circumstances warrant applying partial AFA to Jiangsu Guyu for each of the wood input for LTAR programs in this proceeding (*i.e.*, veneers, cut timber, plywood, sawn wood and continuously shaped wood, particle board, and fiberboard). For the preliminary results, we relied on AFA, in part, due to the GOC's lack of response to Commerce's questions regarding Jiangsu Guyu's input producers.¹⁷⁰ Specifically, we sought information that would allow us to determine whether Jiangsu Guyu's (and its cross-owned affiliates Shengyu and Shunyang) input producers were "authorities;" within the meaning of section 771(5)(B) of the Act. In particular, we stated,

{B}y failing to respond to the questionnaire, the GOC withheld information requested of it regarding the CCP's role in the ownership and management of Baroque Timber's (including Riverside Plywood) and Guyu's (including Shengyu and Shunyang) input suppliers. As we explained in the Additional Documents Memorandum, we understand the CCP to exert significant control over economic activities in China. Thus, Commerce finds, as it has in prior CVD proceedings, that the information requested regarding the role of CCP officials and CCP committees in the management and operations of Baroque Timber's (including Riverside Plywood) and Guyu's (including Shengyu and Shunyang) input suppliers are necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act.¹⁷¹

¹⁶⁶ See Jiangsu Guyu's Rebuttal Brief at 4-5.

¹⁶⁷ *Id.* at 6.

¹⁶⁸ *Id.* at 7 (citing SAA, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199).

¹⁶⁹ *Id.* at 8.

¹⁷⁰ See PDM at 20.

¹⁷¹ *Id.* (citing Public Bodies Analysis Memoranda and *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 78799 (December 31, 2014), and accompanying IDM at Comment 5 (*Citric Acid 2012*)).

In applying AFA, we found that the Provision of Veneers for LTAR program constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, and that this program is specific within the meaning of 771(5A)(D) of the Act.¹⁷² However, with regard to benefit, Jiangsu Guyu (and its cross-owned affiliate Shunyang) had provided the necessary information to preliminarily determine the amount of the benefit to the extent the respondents' veneer purchases were for LTAR.¹⁷³ Additionally, despite the application of AFA with regard to the GOC's responses as to financial contribution and specificity, it is Commerce's practice to use the respondents' actual reported prices and quantities of the purchased good to measure the amount of the benefit.¹⁷⁴

The petitioner argues that Jiangsu Guyu's reporting is unreliable because Jiangsu Guyu failed to properly report its poplar sheets as veneers. The petitioner also asserts that because Jiangsu Guyu's wood input reporting is unreliable, Commerce should apply AFA to Jiangsu Guyu for all wood input for LTAR programs in this proceeding. Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from the facts otherwise available when a party fails to cooperate by not acting to the "best of its ability" to comply with a request for information. However, the record of this proceeding demonstrates that Jiangsu Guyu acted to the best of its ability and responded to all of Commerce's questionnaires and requests for information. In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."¹⁷⁵ Therefore, according to the Federal Circuit, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. While the Federal Circuit noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.¹⁷⁶ The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.¹⁷⁷ In this case, Jiangsu Guyu responded to all of Commerce's questionnaires and demonstrated that: (1) it was familiar with its records, (2) it was prompt and comprehensive in its reporting, and (3) it maintained adequate record keeping. Furthermore, the circumstances here do not warrant discarding Jiangsu Guyu's (and its cross-owned affiliates Shengyu and Shunyang) entire response with respect to the wood input LTAR programs, because Jiangsu Guyu reported Shunyang's poplar sheets in its NSA questionnaire response. Although Jiangsu Guyu misinterpreted the definition of veneer and misclassified its poplar core sheet purchases as a result of this misinterpretation, Commerce finds that Jiangsu

¹⁷² *Id.* at 34.

¹⁷³ See Jiangsu Guyu's NSA Response at Exhibit NSA-3.

¹⁷⁴ See, e.g., *Polyester Textured Yarn from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 19040 (May 3, 2019), and accompanying PDM at 33-35, unchanged in *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).

¹⁷⁵ See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-1383 (Fed. Cir. 2003) (*Nippon Steel*).

¹⁷⁶ *Id.* at 1382.

¹⁷⁷ *Id.*

Guyu provided sufficient information for Commerce to determine that Shunyang's poplar core sheets were veneers. Therefore, Commerce continues to find that the record of this proceeding contains all the necessary information needed for Commerce to calculate Jiangsu Guyu's (and its cross-owned affiliate Shunyang's) benefit for the provision of veneer for LTAR program. Accordingly, for these final results, Commerce is not applying partial AFA to Jiangsu Guyu for each of the wood input for LTAR programs in this proceeding.

Comment 6: Whether to Adjust the Plywood Benchmark

Fine Furniture's Case Brief:

- Commerce should reconsider and revise the benchmark for plywood by excluding data within HS subheadings 4412.94 "Blockboard, laminboard and battenboard (not bamboo, and other than plywood consisting only of sheets of wood each ply 6mm or thinner)," and 4412.99 "Plywood; with at least one outer ply of non-coniferous wood, not containing particle board,"¹⁷⁸ because these categories are broad and cover wood products that are not plywood.
- By including these HS categories in the benchmark rate, Commerce fails to make the benchmark specific to plywood.¹⁷⁹ In other proceedings, Commerce has excluded HS categories that include products not specific to the input subject to a subsidy rate.¹⁸⁰

Jiangsu Guyu's Case Brief:

- Commerce used the incorrect average density for plywood. Commerce used the density of 620 kg/m³, when it should have used 664 kg/m³ as reported by Jiangsu Guyu.¹⁸¹

Baroque Timber's Case Brief:

- Commerce has an obligation to calculate CVD rates as accurately as possible¹⁸² and Commerce should not use HS categories that consist of products that Baroque Timber did not purchase to calculate the plywood subsidy benefit. It is Commerce's practice to

¹⁷⁸ See Fine Furniture's Case Brief at 13 (citing Baroque Timber's Letter, "Benchmark Rebuttal: 2017 Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China (C-570-971)," dated November 25, 2019 (Baroque Timber's Benchmark Rebuttal) at Exhibit 3).

¹⁷⁹ *Id.* (citing *Final Results of Countervailing Duty New Shipper Review: Certain Softwood Lumber Products from Canada*, 70 FR 56640 (September 28, 2005), and accompanying IDM at Comment 1 (*Lumber NSR*)).

¹⁸⁰ *Id.* (citing *e.g., Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2017), and accompanying IDM at Comment 16).

¹⁸¹ See Jiangsu Guyu's Case Brief at 16 (citing Jiangsu Guyu's Second SQR at Exhibit 2-1).

¹⁸² See Baroque Timber's Case Brief at 2 (citing *MacLean-Fogg Co. v. United States*, 100 F. Supp. 3d 1349, 1356 (CIT 2015)).

select the most product-specific benchmark possible for use in its LTAR calculations¹⁸³ and it has rejected non-specific HS categories in favor of more specific benchmarks.¹⁸⁴

- Commerce should adjust the import duty rates to exclude import duties for HS categories not used in the benchmark calculation. Accordingly, Commerce should only use import duty rates applicable to HS categories 4412.33.00, 4412.34.10, 4412.34.90, and 4412.39.00 for the plywood benchmark.¹⁸⁵
- Baroque Timber reported in its NSA questionnaire response that none of its plywood purchases have tropical wood layers. Commerce should not use HS category 4412.31 which covers, “Plywood; consisting only of sheets of wood (not bamboo), each ply 6mm or thinner, with at least one outer ply of tropical wood.”¹⁸⁶
- Commerce erred in including HS category 4412.94 which covers, “Blockboard, laminboard and battenboard (not bamboo, and other than plywood consisting only of sheets of wood each ply 6mm or thinner),” because Baroque Timber does not use blockboard, laminboard or batten board. Commerce does not identify any record evidence that demonstrates blockboard, laminboard or battenboard is plywood that can be used to produce subject merchandise.¹⁸⁷
- Imports into China under HS 4412.99 are laminated wood not plywood, and Baroque Timber does not use laminated wood for the production of subject merchandise.¹⁸⁸

Petitioner’s Rebuttal Case Brief:

- Commerce should reject the respondents’ arguments to exclude what they consider to be non-product-specific HS categories from Baroque Timber’s plywood benchmark.¹⁸⁹
- The petitioner provided UN Comtrade monthly export data for plywood under HS category 4412 which covers plywood, including any plywood not covered by any of the other six-digit HS categories. Commerce relied on this data in initiating an investigation into this program, which included HS 4412.94 and HS 4412.99.¹⁹⁰
- HS category 4412.94 includes boards made from plywood and the plywood for the LTAR program covers all wood boards.¹⁹¹
- In *Kitchen Racks CVD AR*, Commerce rejected arguments that steel strip could not be used to manufacture kitchen racks (*i.e.*, the subject merchandise) because there was no evidence on the record that steel strip could not be used in its production and that benefits

¹⁸³ *Id.* at 3 (citing *e.g.*, *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination*, 75 FR 59209 (September 27, 2010) ((finding a species-specific benchmark for timber to be more appropriate than a generic timber value) and *Lumber NSR*).

¹⁸⁴ *Id.* at 3-4 (citing *Magnesia Carbon Bricks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010), and accompanying IDM at Comment 7).

¹⁸⁵ *Id.* at 8.

¹⁸⁶ *Id.* at 5.

¹⁸⁷ *Id.* at 5-6.

¹⁸⁸ *Id.* at 6.

¹⁸⁹ See Petitioner’s Rebuttal Brief at 14.

¹⁹⁰ *Id.* at 14-15.

¹⁹¹ *Id.* at 16 (citing Petitioner’s New Subsidy Allegations at 8-18).

conferred by the steel strip LTAR are tied to non-subject merchandise.¹⁹² Commerce made a similar finding in *Steel Cylinders*.¹⁹³ Here, the respondents have failed to show that the types and species of plywood they wish to exclude could not be used to produce the subject merchandise.¹⁹⁴

- The “substantiated record evidence” does not demonstrate that the prices of the types and species of wood Baroque Timber wishes to exclude from the plywood benchmark are not comparable to all other types and species of plywood.¹⁹⁵ Further, Commerce has explained that under 19 CFR 351.511(a)(2)(i),¹⁹⁶ the legal requirements governing its selection of benchmarks does not require perfection.¹⁹⁷
- Commerce should continue to use a comprehensive plywood benchmark that covers all wood types and species in order to accurately measure the benefits received by Chinese producers from the plywood LTAR program. Allowing individual species, types, grades, or sizes of a particular product to be excluded from a benchmark opens Commerce’s benchmark calculations up to gamesmanship.¹⁹⁸

Commerce’s Position:

In the *Preliminary Results*, we used world export data from UN Comtrade for Harmonized Schedule (HS) categories 4412.33, 4412.39, 4412.34, 4412.10 (in part), 4412.14, 4412.31, 4412.32, 4412.29, 4412.94, and 4412.99 to value plywood.¹⁹⁹ Commerce’s practice is normally to rely on data reflecting the narrowest category of products encompassing the input product.²⁰⁰ Additionally, when selecting benchmark prices for input purchases, Commerce is required only to select benchmarks that are comparable merchandise, not identical.²⁰¹

We agree with Baroque Timber and Fine Furniture that HS 4412.94 “Blockboard, laminboard and battenboard (not bamboo, and other than plywood consisting only of sheets of wood each ply

¹⁹² *Id.* at 17 (citing *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review*, 77 FR 21744 (April 11, 2012) (*Kitchen Racks CVD AR*) and accompanying IDM at 30-31).

¹⁹³ *Id.* (citing *High Pressure Steel Cylinders from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 83 FR 63471 (December 10, 2018) (*Steel Cylinders*) and accompanying IDM at 16-17).

¹⁹⁴ *Id.* at 19.

¹⁹⁵ *Id.* (citing *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009), and accompanying IDM at Comment 12).

¹⁹⁶ *Id.* at 19.

¹⁹⁷ *Id.* at 17 (citing *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 4, 2017), and accompanying IDM at 110).

¹⁹⁸ *Id.* at 19.

¹⁹⁹ See *Preliminary Results* and accompanying PDM at 15.

²⁰⁰ See e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34828 (July 23, 2018), and accompanying IDM at Comment 3; see also *Certain Uncoated Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 81 FR 3110 (January 2, 2016), and accompanying IDM at 25-26.

²⁰¹ See *Beijing Tianhai Industry Co., Ltd. v United States*, 52 F.Supp.3d 1351, 1369 (CIT 2015), citing *Archer Daniels Midland Co. v. United States*, 968 F.Supp.2d 1269, 1278 (2014) (*Beijing Tianhai*) (“Commerce ... is required only to select benchmarks that are comparable, not identical.”) See also 19 CFR 351.511(a)(2)(ii).

6mm or thinner)” should not be included in the plywood benchmark calculation. The description of HS 4412.94 does not reflect a plywood input used for the production of wood flooring, but rather reflects products “other than plywood” and not identical or comparable to the input used by the mandatory respondents.²⁰² Information on the record demonstrates that blockboard and battenboards are typically constructed of large pieces of wood or blocks that are unlike plywood which is constructed from thin layers, or veneers, of wood.²⁰³ While the petitioner contends we should continue to include this HS category in the plywood benchmark calculation because it was used to support the plywood for LTAR NSA, we note that information subsequently placed on the record demonstrates that HS 4412.94 covers products unlike the inputs used by the respondents in the production of multi-layered wood flooring. Therefore, we find this HS category is not reflective of products comparable to the plywood input used in wood flooring production by the mandatory respondents and we have removed it from the calculation of the plywood input benchmark used to calculate the plywood for LTAR program benefit for Baroque Timber and Jiangsu Guyu.

We further agree with Baroque Timber that we should not include HS 4412.31 “Plywood; consisting only of sheets of wood (not bamboo), each ply 6mm or thinner, with at least one outer ply of tropical wood,” in its plywood benchmark. Baroque Timber argues that Commerce should exclude this HS code as it does not purchase plywood with tropical plies and provided sample documentation supporting its claim.²⁰⁴ While we generally agree with the petitioner that perfection is not required when selecting benchmark information,²⁰⁵ as noted above, Commerce’s practice is normally to rely on data reflecting the narrowest category of products encompassing the input product.²⁰⁶ The record contains several HS categories of plywood which are considered comparable to the plywood input used by the mandatory respondents. Moreover, the petitioner’s contentions of benchmark gamesmanship are unfounded. Record information related to wood types and species stands in favor of selecting benchmarks which, in accordance with Commerce practice, are the narrowest category of products encompassing the input product used by the respondents. Therefore, because there is sufficient plywood benchmark information and there is sufficient evidence supporting Baroque Timber’s claim that it does not purchase plywood with tropical plies, we have not included HS 4412.31 in the plywood benchmark calculation for Baroque Timber. However, the record with regard to Jiangsu Guyu’s plywood purchases does not support differentiating HS 4412.31 in the same manner and, thus, we have continued to include it in the plywood benchmark calculation for Jiangsu Guyu.

²⁰² *Id.*

²⁰³ See Baroque Timber’s Benchmark Rebuttal at Exhibit 3a.

²⁰⁴ See Baroque Timber’s Benchmark Rebuttal II at 2 and Exhibit 1a; see also Baroque Timber’s Benchmark II at Exhibit 2, where Baroque Timber provides HS Code 4412.31.26.20, which identifies tropical wood as Dark Red Meranti, Light Red Meranti, White Lauan, Sipo, Limba, Okoumé, Obeche, Acajou d’Afrique, Sapelli, Virola, Mahogany, Palissandre de Para, Palissandre de Rio or Palissandre de Rose.

²⁰⁵ See Petitioner’s Rebuttal Brief at 17 (citing *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 4, 2017), and accompanying IDM at 110).

²⁰⁶ See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34828 (July 23, 2018), and accompanying IDM at Comment 3; see also *Certain Uncoated Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 81 FR 3110 (January 2, 2016), and accompanying IDM at 25-26.

We disagree with Baroque Timber's and Fine Furniture's contention that HS 4412.99 ("Plywood; with at least one outer ply of non-coniferous wood, not containing particle board") should not be included in the plywood benchmark because it is a laminated wood not used in production.²⁰⁷ As an initial matter, there is a distinction between laminated flooring as described in the scope and wood laminate. As the scope of this *Order* describes, laminated flooring includes layers other than wood. Baroque Timber reports that plywood is constructed with layers consisting of "a single ply or of two or more plies laminated with their grain direction parallel."²⁰⁸ In other words, all plywood is a laminate structure which uses thin layers of wood to form plywood. While Baroque Timber asserts that imports into China under HS 4412.99 are categorized as laminated wood of the type not used as an input into the production of wood flooring,²⁰⁹ Baroque Timber has not provided evidence to support this contention. The Chinese description of the four-digit HS 4412, *i.e.*, "{p}lywood, veneered panels and similar laminated wood,"²¹⁰ also suggests that plywood is, or can be, laminated. Additionally, the UN Comtrade description of HS 4412.99 explicitly excludes particle board, differentiating it from other potential wood flooring inputs. Therefore, based on the description of HS 4412.99, we find that this HS code covers products that are comparable to the plywood input used by the mandatory respondents. Thus, we have continued to include this HS code in the calculation of the plywood input benchmark.

We agree with Baroque Timber that we should adjust the import duty rates to exclude import duties for HS categories not used in the benchmark calculation. Consistent with our practice,²¹¹ we will average the import duties for the plywood HS categories used by Baroque Timber and Jiangsu Guyu for these final results.²¹²

Finally, we disagree with Jiangsu Guyu's contention that we used an incorrect average density conversion for plywood. As an initial matter, we did not use the 620 kg/m³ density conversion in Jiangsu Guyu's plywood for LTAR benefit calculation as Jiangsu Guyu had already converted its plywood purchases from cubic meters to kilograms.²¹³ Secondly, Baroque Timber submitted plywood density information in its benchmark submission,²¹⁴ the average of which is 620 kg/m³, which we used in Baroque Timber's plywood for LTAR benefit calculation.²¹⁵ Therefore, as there is no need to convert Jiangsu Guyu's reported plywood purchases from cubic meters to kilograms and no evidence that we incorrectly averaged the density information submitted by Baroque Timber, we are making no changes to the plywood densities used in the final results.

²⁰⁷ See Baroque Timber's Case Brief at 6-7.

²⁰⁸ See Baroque Timber's Benchmark Rebuttal at Exhibit 4c, at 11-5.

²⁰⁹ See Baroque Timber's Case Brief at 6-7 (citing GOC's Letter, "New Subsidy Allegations Questionnaire Response of the Government of the People's Republic of China," dated November 8, 2019 (GOC's NSA Response) at Exhibit NSA-5).

²¹⁰ See GOC's NSA Response at Exhibit NSA-5.

²¹¹ See *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2011, 79 FR 108 (January 2, 2014), and accompanying IDM at Comment 13.E.

²¹² See Baroque Timber Final Calculation Memorandum; see also Jiangsu Guyu Final Calculation Memorandum.

²¹³ See Memorandum, "Preliminary Results Calculations for Jiangsu Guyu International Trading Co., Ltd. (Guyu)," dated January 31, 2020.

²¹⁴ See Baroque Timber's Benchmark I at Exhibit 2.

²¹⁵ See Memorandum, "Preliminary Results Calculations for Baroque Timber Industries (Zhongshan) Co., Ltd.," dated January 31, 2020.

Comment 7: Whether to Adjust the Ocean Freight Benchmark

Petitioner's Case Brief:

- Commerce should use the petitioner's ocean freight benchmark information rather than the freight information from Baroque Timber and Jiangsu Guyu, as the petitioner's information provides a more accurate representation of the full delivered price.²¹⁶
- Commerce's established practice is to compare delivered prices with delivered prices in its benchmark calculations.²¹⁷ World market prices are inclusive of related costs, including shipping (*i.e.*, import charges and all duties and taxes).²¹⁸
- In the *Preliminary Results*, Commerce relied on Jiangsu Guyu's reported inland freight in benchmarking the company's ocean freight costs.²¹⁹ However, there is no basis for Commerce to use inland freight information to benchmark ocean freight costs, especially when there is sufficient ocean freight information on the record.²²⁰
- The ocean freight benchmark data provided by Baroque Timber is specific to steel coils and other steel products. Further, Descartes freight information provided by Baroque Timber includes quotes for only shipments from the United States to China, does not include additional freight charges, and the charges do not vary from month to month.²²¹
- Alternatively, Commerce should use the ocean freight rate information provided by Baroque Timber to benchmark ocean freight costs for both respondents. The freight information provided by Jiangsu Guyu is specific to inland freight and far inferior to the ocean freight information provided by the petitioner or Baroque Timber for the purposes of benchmarking ocean freight costs. If Commerce does use the information from Baroque Timber, then Commerce should include customs clearance, inspection and port handling rates. These adjustments are consistent with Commerce's approach in

²¹⁶ See Petitioner's Case Brief at 18 (citing Petitioner's Letter, "Other Factual Information and Benchmark Pricing Information," dated September 3, 2109 at Exhibit 2-A).

²¹⁷ *Id.* at 19 (citing *Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012), and accompanying IDM at 76-77; and *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009), and accompanying IDM at 13).

²¹⁸ *Id.*

²¹⁹ *Id.* at 20 (citing Memorandum, "Preliminary Results Calculations for Jiangsu Guyu International Trading Co., Ltd.," dated January 31, 2020 at 4-5).

²²⁰ *Id.* at 20.

²²¹ *Id.* at 21.

antidumping duty proceedings where it adds customs clearance and inspection costs to adjust the price of market economy input purchases.²²²

Baroque Timber's Rebuttal Brief

- The petitioner is incorrect when it argues that the ocean freight benchmarks it submitted are far superior than the Descartes benchmarks because the petitioner's benchmarks are not rates for 2017.²²³ The petitioner offers no explanation or justification for the construction of ocean freight rates when 2017 data are available on the record.²²⁴
- Commerce has a statutory obligation to take prevailing market conditions into account when selecting benchmarks.²²⁵ The ocean freight benchmark data provided by the petitioner do not reflect a prevailing 2017 price that a firm would pay.²²⁶
- Commerce has previously rejected constructed ocean freight data and should do so here.²²⁷

The GOC's Rebuttal Brief

- The petitioner has not advanced information sufficient to change Commerce's analysis and therefore there is no reason why Commerce should change its preliminary calculations regarding the benchmark for ocean freight, departing from its prior practice.²²⁸
- While the petitioner contends that Commerce should upwardly adjust Baroque Timber's ocean freight benchmarks to fully account for customs and border costs, Baroque Timber has previously explained that “{t}he ocean freight rates Baroque Timber provided in its Benchmark submission {already} include these charges.”²²⁹ If Commerce were to include these costs, it would be double counting such costs.²³⁰

Commerce's Position:

For these final results, Commerce has continued to use the 2017 Descartes data that were used in the *Preliminary Results*. We disagree with the petitioner that the 2015 Maersk data (indexed to the POR), reflecting shipping prices for goods similar to respondents' and inclusive of various surcharges, would be more appropriate. It is Commerce's practice not to use non-

²²² *Id.* at 23-24 (citing *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 23272 (April 20, 2016), and accompanying IDM at 27-28).

²²³ See Baroque Timber's Rebuttal Brief at 1 (citing Petitioner's Case Brief at 17).

²²⁴ *Id.* at 1-2.

²²⁵ *Id.* at 2 (citing section 771(5)(E)(iv) of the Act).

²²⁶ *Id.* at 2.

²²⁷ *Id.* at 3 (citing *High Pressure Steel Cylinders from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 83 FR 63471 (December 10, 2018), and accompanying IDM at Comment 5).

²²⁸ See GOC's Rebuttal Brief at 3-4.

²²⁹ *Id.* at 4 (citing Baroque Timber's Letter, "Baroque Response to Petitioner's Pre-Preliminary Comments: 2017 Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China (C-570-971)," dated January 31, 2020 at 7).

²³⁰ *Id.* at 5.

contemporaneous data when contemporaneous data for benchmarking purposes are otherwise available.²³¹ Because the record contains useable ocean freight data contemporaneous with the POR, we find there is no reason to rely on the non-contemporaneous data provided by the petitioner. Additionally, we disagree with the petitioner’s contention that we should adjust the Descartes data with the surcharges from the Maersk data. As Baroque Timber notes, Commerce has declined to construct the ocean freight benchmark when the contemporaneous data contain no surcharges.²³² While the ocean freight quotes submitted by the petitioner demonstrate that such surcharges may be included in them, they do not demonstrate that such surcharges are always charged. The fact that the ocean freight quotes submitted by Baroque Timber do not include such surcharges suggests that the surcharges may or may not be charged by shipping companies depending on the circumstances of the shipment. Because we cannot discount the probity of the ocean freight quotes submitted by Baroque Timber, and the ocean freight quotes submitted by the petitioner are not contemporaneous, we have continued to rely on the ocean freight benchmark used in the *Preliminary Results*, including inland freight in accordance with 19 CFR 351.511(a)(2)(iv).

Comment 8: Whether to Adjust the Electricity Calculation

Fine Furniture’s Case Brief:

- Commerce’s use of AFA to find that the provision of electricity was specific within section 771(A) of the Act and to calculate the benchmark based on the highest electricity rate on the record is flawed and must be corrected for the final results.²³³
- Commerce did not make the necessary findings for classifying electricity as specific under sections 771(5A) and 776(a) of the Act. Commerce merely stated that “information necessary to our analysis of . . . specificity is not available on the record” and therefore drew an inference based on AFA.²³⁴
- While the statute allows Commerce to make AFA determinations, the statute does not provide Commerce with the authority to skip important elements of its analysis merely because of an adverse inference.²³⁵
- Commerce cannot use an adverse inference in deciding that specificity exists without providing a reason or referencing the facts that it has taken into consideration to determine specificity.²³⁶ Commerce has completely failed to provide information on

²³¹ See *Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015), and accompanying IDM at 19.

²³² See *Carbon and Alloy Steel Threaded Rod from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 8833 (February 18, 2020), and accompanying IDM at Comment 5.

²³³ See *Fine Furniture’s Case Brief* at 14.

²³⁴ *Id.* at 15 (citing PDM at 23).

²³⁵ *Id.* (citing *Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp. 3d 1316, 1342 (CIT 2018) (*Trina Solar 2018*) (“AFA is not a magic phrase that permits Commerce to skip an analysis of the record.”); and *Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334, 1349 (CIT 2016) (*Trina Solar 2016*) (rejecting Commerce’s finding that various programs “are ‘specific in accordance with {771(5A)},” because Commerce’s determination was “a sweeping legal conclusion lacking any factual foundation”).

²³⁶ *Id.* at 16 (citing *Changzhou Trina Solar Energy Co. v. United States*, 264 F. Supp. 3d 1325, 1330 (CIT 2017) (When applying AFA, Commerce “must still make the necessary factual findings to satisfy the requirements for countervailability.”)).

whether it considers the electricity rate a domestic subsidy and any factual basis for its finding.²³⁷

- Commerce’s selection of the highest rates in all of China is nonsensical, even under AFA, because it “selected the highest non-seasonal provincial rates in China during the POR for each applicable user category.”²³⁸
- The mandatory respondent’s factories cannot be located in multiple different provinces at the same time. The law does not permit Commerce to apply strictly punitive measures, even under AFA, and there is no way to view the application of penalty benchmarks to a respondent as if it were located simultaneously in various different places in China as anything but punitive.²³⁹

Petitioner’s Rebuttal Brief:

- Commerce should reject Fine Furniture’s argument as Commerce’s electricity for LTAR benchmark calculations are consistent with its prior practice and the agency’s discretion in using AFA.²⁴⁰
- Although Fine Furniture insists Commerce’s methodology is punitive, the courts have recognized the role of deterrence in the application of AFA.²⁴¹
- Commerce should continue to find the GOC has significantly impeded this review by failing to provide requested information and failing to cooperate to the best of its ability and in doing so, continue to apply AFA with respect to the electricity for LTAR program for the final results.²⁴²

Commerce’s Position:

For the final results, we continue to find that the GOC did not provide the necessary information Commerce requested pertaining to whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D)(iii) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E)(iv) of the Act, and whether such a provision was specific within the meaning of section 771(5A)(D) of the Act.²⁴³

As we explained in the *Preliminary Results*, the GOC did not provide complete responses to Commerce’s questions regarding the provision of electricity for LTAR.²⁴⁴ Furthermore, we explained in the *Preliminary Results* that the various questions posed to the GOC throughout the course of this review requested information needed to determine whether the provision of

²³⁷ *Id.* at 16.

²³⁸ *Id.* at 17-18 (citing PDM at 37).

²³⁹ *Id.* at 18.

²⁴⁰ *See* Petitioner’s Rebuttal Brief at 35.

²⁴¹ *Id.* (citing *Maverick Tube Corp. v. United States*, 857 F.3d 1353, 1360 (Fed. Cir. 2017) (quoting *F.lli De Cecco Di Filippo Fara S. Martin S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000)) and *Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1348 (Fed. Cir. 2016) (rejecting the argument that the Department’s application of AFA “impermissibly ‘rest{s} wholly (100%) on deterrence (punishment)’” and explaining that “{t}he legislative history belies Nan Ya’s argument”)).

²⁴² *Id.* at 36.

²⁴³ *See* PDM at 21-23.

²⁴⁴ *Id.* at 21.

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.²⁴⁵ Consequently, in the *Preliminary Results*, we relied on facts available pursuant to section 776(a)(2)(A) of the Act, because the GOC withheld information that was requested of it for our analysis and applied AFA pursuant to section 776(b) of the Act because the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information.²⁴⁶ Consistent with the Act and our practice, Commerce is continuing to apply AFA with respect to the provision of electricity for LTAR in the final results of this review.²⁴⁷

As detailed in the *Preliminary Results*, 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 National Development and Reform Commission (NDRC) and the provincial governments in this process.²⁴⁸ 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.²⁴⁹ 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.²⁵⁰

Commerce additionally requested that the GOC explain, for each province in which a respondent or cross-owned company is located, how increases in labor costs, capital expenses, and transmission and distribution costs are factored into Price Proposals, and how cost element increases and final price increases were allocated across the province and across tariff end-user categories.²⁵¹ As explained in detail in the *Preliminary Results*, the GOC failed to fully explain the respective roles and nature of the cooperation between the NDRC and the provincial governments in deriving and implementing electricity price adjustments. The GOC's refusal to answer Commerce's questions completely with respect to the relationship between the NDRC and the provinces in deriving electricity price adjustments, and its failure to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves, leaves Commerce unable to carry out a complete specificity and financial contribution analysis.²⁵² 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.²⁵³ In addition, as

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ See, e.g., *Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 58175 (December 11, 2017), and accompanying IDM at Comment 2; see also *Cast Iron Soil Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 6770 (February 28, 2019), and accompanying IDM at Comment 4.

²⁴⁸ See PDM at 21.

²⁴⁹ See Commerce CVD Questionnaire at Section II: Electricity Appendix.

²⁵⁰ See GOC's IQR at 21-23.

²⁵¹ See Commerce CVD Questionnaire at Section II: Electricity Appendix.

²⁵² See PDM at 22-23; see also GOC's IQR at 19-20.

²⁵³ See PDM at 22-23; see also GOC's IQR at Exhibits 2 and 4.

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.²⁵⁴

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.²⁵⁵

While Fine Furniture argues that Commerce did not make the necessary findings to classify electricity as specific, the GOC's failure to cooperate means that both our specificity determination and our benchmark determination must rely on the facts available on the record, subject to adverse inferences. As we explained in the *Preliminary Results*, we attempted to obtain information on how Chinese provincial schedules are calculated and why they differ, which could have contributed to Commerce's analysis of an appropriate benchmark for the benefit calculation in this program.²⁵⁶ The GOC's failure to provide complete responses to our questions warrants applying 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.²⁵⁷

For the reasons stated above, we continue to find this program countervailable and rely on our findings in the *Preliminary Results* that the GOC's provision of electricity confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively.²⁵⁸ The GOC failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments.

Further, we find that the fact that Commerce countervailed the provision of electricity in past segments of this proceeding weighs in favor of continuing to countervail it here. In *Magnola Metallurgy, Inc. v. United States*, the Federal Circuit affirmed that Commerce need not make

²⁵⁴ See GOC's IQR at 20-22 and Exhibit 2 and 4; see also GOC's SQR at 5.

²⁵⁵ See PDM at 36-37.

²⁵⁶ *Id.* at 23.

²⁵⁷ 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.

²⁵⁸ See PDM at 21-23.

a *de novo* specificity determination in each successive administrative review after finding a program specific in a prior segment of the proceeding.²⁵⁹ Rather, Commerce can properly require new evidence before changing a prior affirmative specificity determination.²⁶⁰ This follows from section 751(a)(1)(B) of the Act, which states that the purpose of an administrative review is to “review and determine the amount of any net countervailable subsidy,” not to determine whether there is a countervailable subsidy in the first place.²⁶¹ Here, the GOC presented no evidence that would call into question our earlier finding of specificity. Therefore, for the final results, we continue to apply facts available with an adverse inference with regard to this program, including in our selection of the benchmark for determining the existence and amount of the benefit.²⁶²

Comment 9: Whether to Apply AFA to the EBC Program

GOC’s Case Brief:

- Commerce ignored evidence of non-use of the EBC Program in this proceeding and ignored directives from the CIT to avoid imposition of AFA rates under similar circumstances in other proceedings.²⁶³
- Commerce has verifiable information which permit it to reach a finding that the EBC Program was not used by the mandatory respondents. In *Yama*, the CIT explained the core of the relevant analysis: “Commerce appears to have lost sight of the issue, which was not whether Commerce had a ‘complete and reliable understanding of the program,’ ... but whether Yama did, or did not, use or benefit from that program {the EBC Program}.”²⁶⁴ In this review, all relevant parties, including the GOC, have asserted non-use of the EBC Program by the mandatory respondents or their U.S. customers.²⁶⁵
- Commerce has misrepresented the GOC’s attitude as uncooperative. In the PDM, Commerce explains that the screenshots of the data queries into the China Export-Import Bank (China Ex-Im Bank) system were “not fully translated” and that that there was “no way to confirm what variables were used in the data query.”²⁶⁶ The GOC provided over 60 screen shots showing the results of searches into the China Ex-Im Bank system, providing a screenshot as a translated template for the remaining screenshots.²⁶⁷ Further, the GOC explained that the variables used in the search were the names of the U.S. customers, as it reported that the “screenshots of each individual search conducted by the Ex-Im Bank in its database” were “for each of the U.S. customers.”²⁶⁸ To use the EBC

²⁵⁹ See *Magnola Metallurgy, Inc. v. United States*, 508 F. 3d 1349 (Fed. Cir. 2007).

²⁶⁰ *Id.* at 1354-55.

²⁶¹ Compare section 751(a)(1)(A) of the Act to section 705(a)(1) of the Act.

²⁶² See section 776(b)(4) of the Act.

²⁶³ See GOC’s Case Brief at 10-11.

²⁶⁴ See GOC’s Case Brief at 11 (citing *Yama Ribbons and Bows Co. v. United States*, Slip Op. 19-173, December 30, 2019 (CIT 2019) (*Yama*) at 12).

²⁶⁵ *Id.* (citing GOC’s IQR at 36).

²⁶⁶ *Id.* at 13.

²⁶⁷ *Id.* (citing GOC’s Letter, “Government of China’s Supplemental Questionnaire Response,” dated October 28, 2019 (GOC’s SQR) at Exhibit SQ-4).

²⁶⁸ *Id.* (citing GOC’s SQR at 7).

Program, the borrower (importer) must open an account with the China Ex-Im Bank.²⁶⁹ If any of the companies had used the EBC Program, a search of the China Ex-Im Bank “Credit Management System” would have shown a result.²⁷⁰

- Commerce also alleges that the GOC “did not provide a trace showing the step-by-step process” undertaken to determine non-use of the EBC Program.²⁷¹ However, the foregoing renders Commerce’s conclusion baseless that the GOC did not provide a step-by-step process to determine non-use of the EBC Program because the GOC did explain the process.²⁷²
- Commerce further contends that the GOC did not “explain how the screenshots would be dispositive to show that the companies participated in the {EBC Program}.”²⁷³ The GOC explained that these screenshots are dispositive because on one hand, the China Ex-Im Bank database contains all users of the EBC Program, regardless of whether the China Ex-Im Bank partnered with any other bank;²⁷⁴ and on the other hand, because under applicable rules, a user of the EBC Program is required to open a loan account with the China Ex-Im Bank.²⁷⁵
- The GOC cooperated with Commerce’s requests for information. The GOC’s response that Commerce’s questions concerning the China Ex-Im Bank’s partner/correspondent banks were “not applicable” are sufficiently responsive to Commerce’s questions as none of the U.S. customers of the mandatory respondents used the EBC Program.²⁷⁶
- For Commerce to rely on AFA, there must be a gap in the record such that Commerce must make an inference in order to reach a determination. No such gap exists in this case and Commerce may not use AFA to find use of the EBC Program. In a series of decisions related to *Guizhou Tyre*, the CIT has consistently found that Commerce cannot apply AFA in situations where the requisite gap needed to make an adverse inference was not present, such as a situation where the responding parties unequivocally claimed no use and Commerce declined to verify those claims.²⁷⁷

Baroque Timber’s Case Brief:

- Commerce should find the EBC Program not used. While Commerce has made the same determination in this case as it has in every other recent decision on this program, the CIT rejects it in every case on which Commerce’s decision has been appealed.
- Even if the 2013 revisions and a list of the China Ex-Im Bank’s partner banks were critical to some “understanding” of the program, the information was only critical to

²⁶⁹ *Id.* at 14 (citing GOC’s SQR at 6 and GOC’s IQR at Exhibit 38, Implementing Rules for the Export Buyer’s Credit of the Ex-Im Bank, Article III(2) (“{t}he borrower shall open a loan account with the Export-Import Bank of China”)).

²⁷⁰ *Id.* at 14.

²⁷¹ *Id.* at 13.

²⁷² *Id.* at 14-15 (citing GOC’s IQR at 8 and GOC’s SQR at 6-7).

²⁷³ *Id.* at 13.

²⁷⁴ *Id.* at 15 (citing GOC’s IQR at 38).

²⁷⁵ *Id.* (citing GOC’s IQR at 6 and Exhibit 38).

²⁷⁶ *Id.* at 16 (citing *Yama* at 18-19).

²⁷⁷ *Id.* at 17-18 (citing *Guizhou Tyre Co. v. United States*, Slip Op. 19-171, December 26, 2019 (CIT 2019) (*Guizhou Tyre III*)).

understanding the operation of the program and not to establishing usage of this program or verification of that usage.²⁷⁸

- While Commerce notes that it requested the 2013 Administrative Measures Revisions, and that they were not provided, this is irrelevant to whether Commerce could have established usage in the course of a China Ex-Im Bank verification.²⁷⁹
- Commerce failed to make a rational connection between the information requested (a list of third-party banks) and the conclusion that without this information Commerce cannot determine or verify use.²⁸⁰
- In recent CIT decisions regarding this issue, the CIT has found that statements of non-use in the GOC questionnaire responses, mandatory respondent statements of non-use, and customer declarations of non-use are sufficient to demonstrate non-use and the Commerce's AFA findings are unlawful.²⁸¹ The facts in this case support the identical conclusion the CIT has made in other cases; that is, Commerce's decision to value EBC Program payments based on AFA in the face of substantial record evidence that this program was not used by Baroque Timber or its customers is not supported by substantial evidence.

Fine Furniture's Case Brief:

- Commerce must remove the subsidy rate for the EBC Program based on the mandatory respondent's evidence of non-use.²⁸²
- The mandatory respondents fully cooperated by responding to Commerce's questionnaires regarding this program. There is no contrary information on the record regarding the accuracy of the customer declarations indicating non-use.²⁸³
- The proper course is for Commerce to apply a zero percent CVD margin for this program as it is the trend on remand when this issue is reviewed by the CIT.²⁸⁴
- In applying AFA to the EBC Program, Commerce invented a benefit that the record confirms does not exist. Failure to consider record evidence demonstrating non-use runs contrary to Commerce's statutory obligation to "not decline to consider information that is submitted by an interested party and is necessary to the determination."²⁸⁵

²⁷⁸ See Baroque Timber's Case Brief at 9 (citing *Guizhou Tyre Co. v United States*, Slip Op. 19-114, August 21, 2019 (CIT 2019) (*Guizhou Tyre II*) at 6-7 (finding with respect to the EBC Program, that "once again, the Department has failed to demonstrate how knowledge of the 2013 revisions -whatever they may be - is integral to their ability to verify claims of non-use at all").

²⁷⁹ *Id.* (citing *Guizhou Tyre II* at 7 (finding "the Department has failed to demonstrate why information about EBC Program and the 2013 rule change is relevant to verifying demonstrative claims of non-use," citing *Clearon Corp.*, 359 F. Supp. 3d 1344, 1349 (CIT 2019))).

²⁸⁰ *Id.* at 10 (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962) (explaining that agencies must "articulate a rational connection between the facts found and the choice made").

²⁸¹ *Id.* at 11-12 (citing *Changzhou Trina Solar Energy Co., Ltd. v. United States*, Slip Op. 19-137, November 8, 2019 (CIT 2019) at 4 and *Guizhou Tyre III* at 3-6).

²⁸² See Fine Furniture's Case Brief at 18.

²⁸³ *Id.* at 19.

²⁸⁴ *Id.* at 20 (citing *e.g.*, Redetermination Pursuant to Court Remand Order, *Jiangsu Zhongji Lamination Materials Co., Ltd. v. United States*, Slip Op. 19-122, September 18, 2019 (CIT 2019); and Redetermination Pursuant to Court Remand Order, *Changzhou Trina Solar Energy Co., Ltd. v. United States*, Slip Op. 19-137, November 8, 2019 (CIT 2019)).

²⁸⁵ *Id.* (citing 19 CFR 351.308(e)).

- The CIT has consistently recognized that while “foreign governments are in the best position to provide information regarding the administration of their alleged subsidy programs ... respondent companies, on the other hand, will have information pertaining to the existence and amount of the benefit conferred on them by the program.”²⁸⁶ Here, record evidence demonstrates the mandatory respondents received no benefit under this program.²⁸⁷
- The CIT has also established that Commerce is obligated to limit the impact of an AFA determination to the party that has failed to comply with Commerce’s request for information.²⁸⁸ Here, the mandatory respondents have submitted statements of non-use directly relevant to the level of benefit received under the EBC Program, which should be considered sufficient regardless of what Commerce concludes with respect to the GOC’s level of cooperation.²⁸⁹
- Mandatory respondents’ records and their customer’s records would reflect the receipt of funds if such funds were received. The receipt of those funds, or their absence, could be verified in the usual way. Commerce’s ability to identify credits is not contingent on knowing the specific process or procedure a bank undertook to establish no participation of the mandatory respondents in the EBC Program.²⁹⁰

Petitioner’s Rebuttal Brief:

- Commerce appropriately applied AFA to the EBC Program and should continue to do so for the final results. The respondents do not contest that the GOC failed to provide information Commerce found to be necessary to determine use of the EBC Program.²⁹¹
- The respondents point to the submission of declarations of non-use as evidence that the EBC Program was definitively not used by them. However, even with these declarations, critical evidence remains missing from the record. As it has in numerous other proceedings,²⁹² Commerce has found that it is not possible to determine the full extent to which the EBC Program was used by the respondents without additional information from the GOC, which it failed to provide.²⁹³

²⁸⁶ *Id.* (citing *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1297 (CIT 2010), *affd* in part and *rev’d* in part on other grounds, 678 F.3d 1268 (CAFC 2012)).

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 21 (citing *Fine Furniture v. United States*, 865 F. Supp. 2d 1254, 1263 (CIT 2012) (noting that evidence properly entered into the record is relevant for determining neutral facts available) and *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1344-45 (CIT 2013) (remanding Commerce’s continued reliance of a tier-two benchmark predicated on an AFA finding that an authority was providing a certain input without considering record evidence submitted by a cooperating respondent supporting the selection of a tier-one benchmark)).

²⁸⁹ *Id.* at 21.

²⁹⁰ *Id.* at 22.

²⁹¹ See Petitioner’s Rebuttal Brief at 25-26.

²⁹² *Id.* at 26 (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; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 42-44; and *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 26954 (June 11, 2018), and accompanying IDM at Comment 1.

²⁹³ *Id.* at 27.

- The GOC's refusal to cooperate in this case is not surprising and Commerce has found it futile to continue information requests regarding this program.²⁹⁴ Commerce further found that, notwithstanding certifications of non-use from the respondents, the GOC's failure to provide requested information rendered such certifications unverifiable and, thus, the application of AFA was appropriate.²⁹⁵
- In the previous administrative review in this proceeding, Commerce continued to apply AFA to the EBC Program despite the fact that the respondent's reported the program was not used, because the GOC did not provide the information requested by Commerce which would provide Commerce an understanding of how the program operates.²⁹⁶ Here, the GOC again failed to provide the requested information and Commerce appropriately applied AFA.²⁹⁷
- While Commerce should follow its practice and continue to apply AFA to the EBC Program, because of issues raised in ongoing court appeals regarding this program, Commerce should state which subsidy elements, *i.e.*, financial contribution, benefit, specificity, it is basing on AFA and why customer certifications are insufficient to overcome the need to apply AFA.²⁹⁸
- Despite the mandatory respondents' contentions in this proceeding, the CIT in *Guizhou Tyre*²⁹⁹ has not found that Commerce cannot apply AFA to the EBC Program under circumstances such as those present in this review. Rather, the CIT held in *Guizhou Tyre*, and in *Trina Solar 2018* that the Department needed only to explain in sufficient detail its reasoning behind its application of AFA.³⁰⁰ Here, Commerce thoroughly explained its rationale for applying AFA to the GOC, why it cannot verify the respondents' use of the EBC Program, and why it required the requested information and documentation of the program.³⁰¹
- While *Baroque Timber* points to numerous court cases where the CIT has remanded Commerce's EBC Program determination,³⁰² these cases are often factually distinguishable and Commerce need only provide further explanation. Moreover, as these cases are still in litigation, Commerce should follow prior practice and continue to apply AFA to the EBC Program.³⁰³

Commerce Position:

²⁹⁴ *Id.* at 28-29 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent To Rescind, in Part; 2014*, 82 FR 2317 (January 9, 2017), and accompanying PDM at 31).

²⁹⁵ *Id.*

²⁹⁶ *Id.* at 29 (citing *Multilayered Wood Flooring from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2016*, 84 FR 38221 (August 6, 2019), and accompanying IDM at Comment 4).

²⁹⁷ *Id.* at 28.

²⁹⁸ *Id.* at 31.

²⁹⁹ *Id.* at 31 (citing generally *Guizhou Tyre Co. v. United States*).

³⁰⁰ *Id.* at 31-32 (citing *Guizhou Tyre Co. v. United States* at 1326 and *Trina Solar 2018*, 352 F. Supp. 3d 1327-28).

³⁰¹ *Id.* at 32.

³⁰² *Id.* at 33 (citing *Baroque Timber's Case Brief* at 12-14).

³⁰³ *Id.* at 33-34.

Consistent with the *Preliminary Results* and Commerce's practice, we continue to find that the record of the instant review does not support a finding of non-use of the EBC Program for Baroque Timber and Jiangsu Guyu.³⁰⁴ We next describe the evolution of Commerce's treatment of this program.

Solar Cells from China Initial Investigation of the EBC Program

Commerce first investigated and countervailed the EBC Program in the 2012 investigation of *Solar Cells from China*.³⁰⁵ Our initiation was based on, among other information, the China Ex-Im Bank's 2010 annual report, demonstrating that the credits provided under this program are "medium- and long-term loans, and have preferential, low interest rates. Included among the projects that are eligible for such preferential financing are energy projects."³⁰⁶ 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.³⁰⁷

The GOC provided none of the information requested by Commerce in the ensuing investigation, despite being given multiple opportunities to do so, and instead simply stated that "{n} one of the respondents or their reported cross-owned companies applied for, used, or benefited from the alleged programs during the POI."³⁰⁸ 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."³⁰⁹ Although asked, the GOC provided no additional information concerning exactly how an exporter's financial and foreign exchange matters would be affected. Commerce then gave the GOC another opportunity to provide the information requested.³¹⁰ The GOC again refused to provide sample application documents, regulations, or manuals governing the approval process, and instead provided only a

³⁰⁴ See *Preliminary Results* PDM at 23-29; see also *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Certain Solar Products from China*), and accompanying IDM at Comment 16; and *Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018) (*Aluminum Foil from China*), and accompanying IDM at Comment 6.

³⁰⁵ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules; from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China*), and accompanying IDM at 9 and Comment 18. While Commerce's determination with respect to the EBC Program was initially challenged, the case was dismissed.

³⁰⁶ See *Solar Cells from China* IDM at 59.

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.* at 60.

³¹⁰ *Id.* at 60-61.

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.³¹¹

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.³¹² Additionally, Commerce concluded that, even if the respondent company might have some knowledge of loans provided to its customers through its involvement in the application process, such information is not the type Commerce would examine to verify that the claim of non-use at issue was complete and accurate:

{E}ven if the {respondent exporter} might have been involved in, or might have received some notification of, its customer's application for receiving such export credits, such information is not the type of information that the Department needs to examine in order to verify that the information is complete and accurate. For verification purposes, the Department must be able to test books and records in order to assess whether the questionnaire responses are complete and accurate, which means that we need to tie information to audited financial statements, as well as to review supporting documentation for individual loans, grants, rebates, *etc.* If all a company received was a notification that its buyers received the export credits, or if it received copies of completed forms and approval letters, we have no way of establishing the completeness of the record because the information cannot be tied to the financial statements. Likewise, if an exporter informs Commerce that it has no binder (because its customers have never applied for export buyer's credits), there is no way of confirming that statement unless the facts are reflected in the books and records of the respondent exporter.³¹³

On this basis, Commerce concluded that usage of the program could not be confirmed at the respondent exporters in a manner consistent with its long-standing verification methods.³¹⁴

³¹¹ *Id.* at 61.

³¹² *Id.*

³¹³ *Id.* at 61-62.

³¹⁴ 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) (*Certain Solar Products from China*), and accompanying IDM at 93. This was affirmed by the Court *Trina Solar 2016*, 195 F. Supp. 3d at 1350. In *Trina Solar 2017*, the Court noted that the explanation from *Solar Products from China* constituted "detailed reasoning for why documentation from the GOC was necessary" to verify non-use. See *Changzhou Trina Solar Energy Co. v. United States*, 255 F. Supp. 3d 1312, 1318 (CIT 2017) (*Trina Solar 2017*). However, the Court found that the 2014 review of solar cells from China at issue in *Trina Solar 2018* was distinguishable because the respondents submitted customer certifications of non-use, and Commerce had "failed to show why a full understanding" of the program was necessary to verify non-use. See *Trina Solar 2018*; *Certain Solar Products from China* IDM at 10 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and*

These methods are comparable to those of an auditor, attempting to confirm usage or claimed non-usage by examining books and records which can be traced to audited financial statements, or other credible official company documents, such as tax returns, that provide a credible and complete picture of a company's financial activity for the period under examination. A review of ancillary documents, such as applications, correspondence, emails, *etc.*, provides no assurance to Commerce that it has seen all relevant information.³¹⁵

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

In the *Solar Cells from China* investigation, however, despite Commerce’s repeated requests for information, the GOC failed to offer any guidance as to how Commerce could search for EBC Program lending in the respondent exporters’ books and records that could be tied to financial statements, tax returns, or other relevant company documents. Therefore, Commerce concluded in that investigation that it could not verify usage of the program at the respondent exporters and instead attempted verification of usage of the program at the China Ex-Im Bank itself because it “possessed the supporting records needed to verify the accuracy of the reported non-use of the EBC program {and} would have complete records of all recipients of export buyer’s credits.”³¹⁶ 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

Partial Rescission of Countervailing Duty Administrative Review; 2014, 82 FR 32678 (July 17, 2017) (amended by Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2014, 82 FR 46760 (October 6, 2017), and accompanying IDM)). The Court in *Guizhou Tyre Co. v. United States* reached a similar conclusion concerning the 2014 review of tires from China. *See Guizhou Tyre Co. v. United States* at 1261; *see also Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2014, 82 FR 18285 (April 18, 2017), and accompanying IDM.*

³¹⁵ The Court agreed with Commerce in *RZBC 2017*, following a remand, finding that Commerce could not verify non-use of the program by examining the respondent-exporter’s audited financial statements or other books and records because record evidence demonstrated that the program terms were ambiguous. *See RZBC Group Shareholding Co. v. United States*, 222 F. Supp. 3d 1196, 1201-02 (CIT 2017) (*RZBC 2017*); *see also Citric Acid 2012 IDM* at Comment 6).

³¹⁶ *See Solar Cells from China IDM* at 62.

records could then be tied to the {China} Ex-Im Bank's financial statements."³¹⁷ However, the GOC refused to allow Commerce to query the databases and records of the China Ex-Im Bank.³¹⁸ Furthermore, there was no information on the record of *Solar Cells from China* from the respondent exporters' customers.

Chlorinated Isos Investigation of the EBC Program

Two years later, in the investigation of *Chlorinated Isos*,³¹⁹ respondents submitted certified statements from all customers claiming that they had not used the EBC Program. This was the first instance of respondents submitting such customer certifications. At that point in time, as explained in detail above, based on the limited information provided by the GOC in earlier investigations, it was Commerce's understanding that the EBC Program provided medium- and long-term loans and that those loans were provided directly from the China Ex-Im Bank to the borrowers (*i.e.*, the respondent exporters' customers) *only*. Because the respondents' customers 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."³²⁰

2013 Amendments to the EBC Program

Our understanding of the operation of the EBC Program began to change after *Chlorinated Isos* was completed in September 2014. In *Citric Acid 2012*, Commerce began to gain a better understanding of how the Ex-Im Bank disbursed funds under the program and the corresponding timeline; however, Commerce's attempts to verify the program's details, and to obtain accurate statements concerning the operation and use of the program, were thwarted by the GOC.³²¹ In subsequent proceedings, Commerce continued to investigate and evaluate this program.

For example, in the *Silica Fabric Investigation* conducted in 2016-2017, based on what we had learned in *Citric Acid 2012*, we asked the GOC about certain changes to the EBC Program, including changes in 2013 that eliminated the USD 2 million minimum business contract

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ See *Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos*), and accompanying IDM at 15.

³²⁰ *Id.*

³²¹ 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.")

requirement.³²² In response, the GOC stated that there were three relevant documents pertaining to the EBC Program: (1) “Implementing Rules for the Export Buyer’s Credit of the {China Ex-Im Bank}” which were issued by the China Ex-Im Bank on September 11, 1995 (referred to as “1995 Implementation Rules”); (2) “Rules Governing Export Buyer’s Credit of the {China Ex-Im Bank}” which were issued by the China Ex-Im Bank on November 20, 2000 (referred to as “2000 Rules Governing Export Buyer’s Credit” or “Administrative Measures”); and (3) 2013 internal guidelines of the China Ex-Im Bank.³²³ According to the GOC, “{t}he {China Ex-Im Bank} has confirmed to the GOC that . . . its 2013 guidelines are internal to the bank, non-public, and not available for release.”³²⁴ The GOC further stated that “those internal guidelines do not formally repeal or replace the provisions of the {Administrative Measures} which remain in effect.”³²⁵

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 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

³²² 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.

³²³ *Id.*

³²⁴ *Id.*

³²⁵ *Id.*

program is administrated by the EX-IM Bank, impeded {Commerce's} ability to conduct its investigation of this program.³²⁶

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.”³²⁷

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.”³²⁸

The Instant Review

As stated in the *Preliminary Results*, we requested a list of all partner/correspondent banks involved in the disbursement of funds under the EBC Program.³²⁹ Instead of providing the requested information, the GOC stated that our question was not applicable.³³⁰ We also asked the GOC to submit the *Administrative Measures* that were revised in 2013, but the GOC refused.³³¹ Though the GOC provided some information, it was unresponsive to a majority of our requests, preventing Commerce from analyzing the function of the program, as discussed below.

In our Initial Questionnaire, we requested that the GOC provide the information requested in the Standard Questions Appendix “with regard to all types of financing provided by the China Ex-Im under the Buyer Credit Facility.”³³² The Standard Questions Appendix requested various information that Commerce requires in order to analyze the specificity and financial contribution of this program, including the following: translated copies of the laws and regulations pertaining to the program; a description of the agencies and types of records maintained for administration of the program; a description of the program and the application process; program eligibility criteria; and program usage data. Rather than respond to the questions in the Standard Questions Appendix, the GOC stated it had confirmed that “none of the U.S. customers of the mandatory respondents or their cross-owned affiliates applied for, used, benefited from or accrued assistance from Export Buyers Credits from the Ex-Im Bank. Therefore, the GOC understands that this question is not applicable.”³³³

In its initial CVD questionnaire response, the GOC provided the 2000 *Administrative Measures*, which confirmed that the Ex-Im Bank strictly limits the provision of export buyer’s credits to

³²⁶ *Id.* at 12.

³²⁷ *Id.* at 62.

³²⁸ *Id.*

³²⁹ See *Preliminary Results* PDM at 23-26.

³³⁰ *Id.*

³³¹ *Id.*

³³² See Commerce CVD Questionnaire Section II at 6.

³³³ See GOC’s IQR at 36.

business contracts exceeding USD 2 million.³³⁴ Also, in its initial CVD questionnaire response, the GOC provided a copy of its *7th Supplemental Response in the Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China*.³³⁵ Information in that document indicates that the GOC revised this program in 2013 to eliminate this minimum requirement.³³⁶ Thus, we requested in our Initial CVD Questionnaire that the GOC also provide original and translated copies of any laws, regulations or other governing documents cited by the GOC in the Export Buyer's Credit Supplemental Questionnaire Response.³³⁷ This request included the 2013 *Administrative Measures* revisions to the EBC Program. In its response, the GOC failed to provide the 2013 Revisions.³³⁸ We, therefore, again requested that the GOC provide the 2013 Revisions.³³⁹ In response, the GOC stated that the 2013 guidelines are internal to the Ex-Im Bank, non-public, and not available for release; the GOC further claimed to have no authority to force the Ex-Im Bank to provide a copy of the 2013 guidelines, and indicated that they would therefore not be provided.³⁴⁰ Through its response to Commerce's initial and supplemental questionnaires, the GOC twice refused to provide the requested information concerning the 2013 program revisions, which is necessary for Commerce to analyze how the program functions.

We continue to find that the GOC's responses with respect to the EBC Program are deficient in two key respects. First, as we found in the *Silica Fabric Investigation*,³⁴¹ where we asked the GOC about the amendments to the EBC Program,³⁴² we continue to find that the GOC has refused to provide the requested information concerning the 2013 program revisions, which is necessary for Commerce to analyze how the program functions. We requested information regarding the 2013 revisions to the *Administrative Measures*, and information on the partner/correspondent banks that are involved in the disbursement of funds under this program, because our prior knowledge of this program demonstrates that the 2013 revisions effected important program changes. Specifically, the 2013 revisions (which the GOC refers to as "internal guidelines") appear to be significant and have impacted a major condition in the provision of loans under the program, *i.e.*, by eliminating the \$2 million minimum business contract requirement identified in the 2000 *Administrative Measures*.³⁴³

This information is necessary and critical to our understanding of the program and for any determination of whether the "manufacture, production, or export" of the respondents' merchandise has been subsidized. For instance, if the program continues to be limited to \$2 million contracts between a mandatory respondent and its customer, this is an important limitation to the universe of potential loans under the program and can assist us in targeting our

³³⁴ *Id.* at Exhibit 37.

³³⁵ See GOC's IQR at Exhibit 36; see also *Silica Fabric Investigation* IDM at Comment 17.

³³⁶ *Id.*

³³⁷ See Commerce CVD Questionnaire Section II at 6.

³³⁸ See GOC's IQR at 9-10.

³³⁹ See Commerce's Letter, "Multilayered Wood Flooring from the People's Republic of China: 2017 Countervailing Duty Administrative Review," dated October 19, 2019 (GOC First Supplemental) at 4.

³⁴⁰ See GOC's SQR at 4.

³⁴¹ See *Silica Fabric Investigation* IDM at Comment 17.

³⁴² See GOC's SQR at Exhibit 37 (containing the GOC's September 6, 2016 7th SQR in the *Silica Fabric Investigation*).

³⁴³ See *Silica Fabric Investigation* IDM at 12 and 61.

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.³⁴⁴ Therefore, by refusing to provide the requested information, and instead providing unverifiable assurances that other rules regarding the program remained in effect, the GOC impeded Commerce's ability to understand how this program operates and how it can be verified. Further, as to the GOC's concerns regarding the non-public nature of the 2013 revisions, Commerce has well-established rules governing the handling of business proprietary information in its proceedings.

Second, Commerce's understanding of the EBC Program changed after Commerce began questioning the GOC's earlier indication that loans provided pursuant to the EBC Program were between the GOC and the borrower *only*, essentially a *direct* deposit from the China Ex-Im Bank to the foreign buyer. In particular, in the *Silica Fabric Investigation*, Commerce identified that the rules implementing the EBC Program appeared to indicate that the China Ex-Im Bank's payment was instead disbursed to U.S. customers via an intermediary Chinese bank, thereby contradicting the GOC's response to the contrary.³⁴⁵ Thus, Commerce asked the GOC to provide the same information it provided in the *Silica Fabric Investigation* regarding the rules implementing the EBC Program, as well as any other governing documents (discussed above). Commerce also asked a series of questions regarding the method of transferring funds from the China Ex-Im Bank to Chinese exporters on behalf of U.S. customers via the credits at issue:

- Notwithstanding the GOC's statement in its IQR that none the mandatory respondents or their cross-owned affiliates used the Export Buyer's Credit program, please respond to all items in the Standard Questions Appendix as it regards to this program.³⁴⁶
- Please provide a list of all partner banks/correspondent banks involved in the disbursement/settlement of export buyer's credits.³⁴⁷

Although the GOC provided certain documents,³⁴⁸ the GOC provided non-responsive answers to Commerce's specific questions, stating in response to our request for the 2013 revised *Administrative Measures* that "{Commerce} has been provided with sufficient and verifiable information which permit {Commerce} to conduct an effective verification and to reach a finding that the program was not used during the POR and thus, that this question is not material in this case."³⁴⁹

With regard to our request for a list of partner/correspondent banks that are involved in the disbursement of funds through the program, the GOC stated that "{the} GOC has no authority or right to force the Ex-Im Bank to reveal details of other transactions because those are

³⁴⁴ 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.

³⁴⁵ See *Silica Fabric Investigation* IDM at 12.

³⁴⁶ See GOC First Supplemental at 4.

³⁴⁷ *Id.*

³⁴⁸ See GOC's SQR at Exhibits SQ-3 and SQ-4.

³⁴⁹ *Id.* at 4.

confidential commercial information belonging to Ex-Im Bank. Therefore, this question is not applicable.”³⁵⁰

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

Provide the original Provincial Price Proposals with English translation for each province in which a mandatory respondent or any reported “cross-owned” company is located for applicable tariff schedules that were in effect during the POI.³⁵¹

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

As the GOC noted above, given that during the POR the electricity prices within the jurisdiction of each province were established by the relevant pricing authorities at the provincial level, the NDRC no longer requested “Provincial Price Proposals” for review. During the POR, the NDRC only requested that the established electricity price of the different provinces be reported for its records. See Exhibit 2, Exhibit 4 and Exhibit 5.³⁵²

No such information was provided with respect to this EBC Program. Thus, the GOC failed to provide the requested information and instead concluded that such information was not applicable to our examination of this program. However, it is for Commerce, not the GOC, to determine whether the information provided is sufficient for Commerce to make its determinations.³⁵³

Accordingly, we continue to find the GOC’s responses deficient and unresponsive to our request for necessary information with respect to the operation of the EBC Program. This information is necessary to our understanding of the program and for any determination of whether the “manufacture, production, or export” of the company respondents’ merchandise has been subsidized. As noted above, based on the information obtained in the *Silica Fabric Investigation*, Commerce’s understanding of how the EBC Program operated (*i.e.*, how funds were disbursed under the program) has changed.³⁵⁴ Specifically, the record indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank.³⁵⁵

³⁵⁰ *Id.* at 5.

³⁵¹ See Commerce CVD Questionnaire at Electricity Appendix.

³⁵² See GOC’s IQR at 15.

³⁵³ See *ABB Inc. v. United States*, 355 F. Supp. 3d 1206, 1222 (CIT 2018) (*ABB*) (“Commerce prepares its questionnaires to elicit information that it deems necessary to conduct a review, and the respondent bears the burden to respond with all of the requested information and create an adequate record.”).

³⁵⁴ See GOC’s SQR at Exhibit 36 (containing the GOC’s September 6, 2016 7th SQR in the *Silica Fabric Investigation*).

³⁵⁵ *Id.*

For instance, it appears that: (1) customers can open loan accounts for disbursements through this program with other banks; (2) the funds are first sent from the China Ex-Im Bank to the importer's account, which could be at the China Ex-Im Bank or other banks; and (3) these funds are then sent to the exporter's bank account.³⁵⁶ Given the complicated structure of loan disbursements which can involve various banks for this program, Commerce's complete understanding of how this program is administrated is necessary to verify claims of non-use.³⁵⁷ Thus, the GOC's refusal to provide the 2013 revisions, which provide internal guidelines for how this program is administrated by the China Ex-Im Bank, as well as other requested information, such as key information and documentation pertaining to the application and approval process, and partner/correspondent banks, impeded Commerce's ability to conduct its investigation of this program and to verify the claims of non-use by the company respondents' customers.³⁵⁸

This missing information was especially significant because the available record evidence indicates that, under the EBC Program, credits are not direct transactions from the China Ex-Im Bank to the U.S. customers of the respondent exporters; rather, there can be intermediary banks involved,³⁵⁹ the identities of which the GOC has refused to provide to Commerce. In *Chlorinated Isos from China*, based on our understanding of the program at that time, verification of non-use appeared to be possible through examining the financial statements and books and records of U.S. customers for evidence of loans provided directly from the China Ex-Im Bank to the U.S. customer.³⁶⁰ However, based on our more recent understanding of the program in the *Silica Fabric Investigation* discussed above, performing the verification steps to make a determination of whether the "manufacture, production, or export" of the company respondents' merchandise has been subsidized would therefore require knowing the names of the intermediary banks; it would be their names, not the name "China Ex-Im Bank," that would appear in the subledgers of the U.S. customers if they received the credits. Commerce recently addressed this issue in *Aluminum Sheet from China*,³⁶¹ stating:

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.³⁶²

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ We note that Commerce cannot verify non-use of the EBC Program without a complete set of administrative measures on the record that would provide necessary guidance to Commerce in querying the records and electronic databases of the China Ex-Im Bank.

³⁵⁹ See GOC's SQR at Exhibit 36 (containing the GOC's September 6, 2016 7th SQR in the *Silica Fabric Investigation*).

³⁶⁰ See *Chlorinated Isos* IDM at 15.

³⁶¹ See *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018) (*Aluminum Sheet from China*), and accompanying IDM.

³⁶² See *Aluminum Sheet from China* IDM at 30.

In other words, there will not necessarily be an account in the name “China Ex-Im Bank” in the books and records (*e.g.*, subledger, tax return, bank statements) of the U.S. customer. Thus, if we cannot verify claims of non-use at the GOC,³⁶³ having a list of the correspondent banks is critical for us to perform verification at the U.S. customers.

Without such information, it would be unreasonably onerous for Commerce to comb through the business activities of the company respondents’ customers without any guidance as to how to simplify the process or any guidance as to which loans or banks should be subject to scrutiny as part of a verification for each company. A careful verification of the company respondents’ customers’ non-use of this program without understanding the identity of these correspondent banks would be extremely difficult, if not impossible. Because Commerce does not know the identities of these banks, Commerce’s second step of its typical non-use verification procedures (*i.e.*, examining the company’s subledgers for references to the party making the financial contribution) could not by itself demonstrate that the U.S. customers did not use the program (*i.e.*, by examining whether there were any correspondent banks in the subledger). Nor could the second step be used to narrow down the company’s lending to a subset of loans likely to be the export buyer’s credits (*i.e.*, loans from the correspondent banks). Thus, verifying non-use of the program without knowledge of the correspondent banks would require Commerce to view the underlying documentation for *all* entries from the subledger *to attempt* to confirm the origin of each loan—*i.e.*, whether the loan was provided from the China Ex-Im Bank via an intermediary bank. This would be an extremely onerous undertaking for any company that received more than a small number of loans.

Furthermore, Commerce’s typical non-use verification procedures (*i.e.*, selecting *specific* entries from the subledger and requesting to see underlying documentation, such as applications and loan agreements) would be of no value. This step might serve merely to confirm whether banks were correctly identified in the subledger—not necessarily whether those banks were correspondent banks participating in the EBC Program. This is especially true given the GOC’s failure to provide other requested information, such as the 2013 revisions, a sample application, and other documents making up the “paper trail” of a direct or indirect export credit from the China Ex-Im Bank, discussed above. Commerce would simply not know what to look for behind each loan in attempting to identify a loan provided by the China Ex-Im Bank via a correspondent bank.

This same sample “paper trail” would be necessary even if the GOC provided the list of correspondent banks. For instance, assuming that one of the correspondent banks is HSBC, Commerce would need to know how to differentiate ordinary HSBC loans from loans originating from, facilitated by, or guaranteed by the China Ex-Im Bank. In order to do this, Commerce would need to know what underlying documentation to look for in order to determine whether particular subledger entries for HSBC might actually be China Ex-Im Bank financing: specific applications; correspondence; abbreviations; account numbers; or other indicia of China Ex-Im Bank involvement. As explained above, the GOC failed to provide Commerce with any of this information. Thus, even were Commerce to attempt to verify respondents’ non-use of the EBC

³⁶³ *Id.* at Comment 2 (noting that Commerce no longer attempts to verify usage with the GOC given the inadequate information provided in its questionnaire responses such as, in particular, the GOC’s refusal to provide the 2013 revisions to the administrative rules).

Program, notwithstanding its lack of knowledge of which banks are intermediary/correspondent banks, by examining *each* loan received by *each* of the respondents' U.S. customers, Commerce still would not be able to verify which loans were normal loans versus EBC Program loans due to its lack of understanding of what underlying documentation to expect to review, and whether/how that documentation would indicate China Ex-Im Bank involvement. In effect, companies could provide Commerce with incomplete loan documentation without Commerce understanding that the loan documentation was incomplete.

Even if such documentation were complete, and identified China Ex-Im Bank involvement, without a thorough understanding of the program, Commerce might not recognize indicia of such involvement. That is why Commerce requires disclosure of the 2013 *Administrative Measures*, as well as other information concerning the operation of the EBC Program, in order to verify usage. Understanding the operation of the program is not, therefore, solely a matter of determining whether there is a financial contribution or whether a subsidy is specific. A complete understanding of the program provides a "roadmap" for the verifiers by which they can conduct an effective verification of usage.³⁶⁴ Thus, Commerce could not *accurately and effectively* verify usage at the company respondents' customers, even were it to attempt the unreasonably onerous examination of each of the customers' loans. To conduct verification of the customers without the information requested from the GOC would amount to looking for a needle in a haystack with the added uncertainty that Commerce might not even be able to identify the needle when it was found.

Based on the GOC's responses, Commerce understood that under this program loans were provided either directly from the China Ex-Im Bank to the borrowers (*i.e.*, a respondent's customers), or through an intermediary third-party bank, and that a respondent might have knowledge of loans provided to its customers through its involvement in the application process. Commerce gave the GOC an opportunity to provide the 2013 revisions regarding the *Administrative Measures*, which the GOC refused to provide.³⁶⁵

According to the GOC, none of the respondent companies' U.S. customers used the export buyer's credits from the China Ex-Im Bank during the POI.³⁶⁶ The GOC explained that to make this determination, it: (1) obtained the list of U.S. customers from the respondents; and (2) the China Ex-Im Bank searched its records and confirmed that none of the respondents used the export buyer's credits during the POI.³⁶⁷ The GOC's response indicated that exporters would know whether there was an interaction between the China Ex-Im Bank and the borrowers (*i.e.*, the respondents' U.S. customers, who are not participating in this proceeding), but neither the GOC, nor the respondent companies, provided enough information for Commerce to understand this interaction or how this information would be reflected in the respondent companies' (or their U.S. customers') books and records. As a result, the GOC failed to respond to Commerce's request, and instead claimed that the company respondents' U.S. customers did not use this

³⁶⁴ By analogy, consider attempting to verify whether a company has received a tax exemption without having an adequate understanding of how the underlying tax returns should be completed or where use of the tax exemption might be recorded.

³⁶⁵ See GOC's SQR at 4.

³⁶⁶ *Id.*

³⁶⁷ *Id.*

program based on selectively provided, incomplete information. As determined in the *Preliminary Results*, we continue to find that Commerce could not verify non-use of export buyer's credits by the customers of the respondents. Furthermore, the lack of information concerning the operation of the EBC Program prevents an accurate assessment of usage at verification:

In prior proceedings in which we have examined this program, before the 2013 amendments, we have found that the China Ex-Im, as the lender, is the primary entity that possesses the supporting information and documentation that are necessary for Commerce to fully understand the operation of the program which is prerequisite to Commerce's ability to verify the accuracy of the {respondents' claimed non-use of the} program. Because the program changed in 2013 and the GOC has not provided details about these changes, Commerce has outstanding questions about how this program currently functions, *e.g.*, whether the EX-IM Bank limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million, and whether it uses third-party banks to disburse/settle Export Buyer's Credits. Such information is critical to understanding how Export Buyer's Credits flow to and from foreign buyers and the EX-IM Bank and forms the basis of determining countervailability. Absent the requested information, the GOC's claims that the respondent companies did not use this program are not verifiable. Moreover, without a full understanding of the involvement of third-party banks, the respondent companies' (and their customers') claims are also not verifiable.³⁶⁸

We continue to find that usage of the EBC Program could not be verified at the company respondents in a manner consistent with Commerce's verification methods because Commerce could not confirm usage or claimed non-use by examining books and records which can be reconciled to audited financial statements³⁶⁹ or other documents, such as tax returns. Without the GOC providing bank disbursement information, Commerce could not tie any loan amounts to banks participating in this program in the company respondents' U.S. customers' books and records, and therefore could not verify the claims of non-use. A review of ancillary documents, such as applications, correspondence, emails, *etc.*, is insufficient for Commerce to verify any bank disbursement or loan amount pertaining to the company respondents, their customers, and/or the GOC's participation in the program.³⁷⁰ Commerce needed to have a better understanding of the program before it could verify it because it did not know what documents to request to review at verification or what information in the books and records to tie to the company respondents' reported information from their questionnaire responses. Therefore, we found it necessary to have had this information prior to verification in order to ensure the information we would have received was complete and accurate to fully analyze and calculate the benefits the company respondents received under this program during the course of the POR.

³⁶⁸ See *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*; 2016, 83 FR 62841 (December 7, 2018), and accompanying PDM at 16-17, unchanged in *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 37627 (August 1, 2019).

³⁶⁹ *Id.*

³⁷⁰ *Id.*

In short, 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 attempting to identify which loan was provided by the China Ex-Im Bank via a correspondent bank under the EBC Program. This necessary information is missing from the record because such disbursement information is only known by the originating bank, the China Ex-Im Bank, which is a government-controlled bank.³⁷¹ Without cooperation from the China Ex-Im Bank and/or the GOC, we cannot know the banks that could have disbursed export buyer's credits to the company respondents customers. Therefore, there are gaps in the record because the GOC refused to provide the requisite disbursement information.

Additionally, 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 wood flooring because the potential recipients of export buyer's credits are not limited to the customers of the company respondents, as they may be received by third-party banks and institutions, as noted 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 required missing information concerning the operation and administration of the EBC Program is necessary because it demonstrates why usage information provided by the GOC and the respondents cannot be verified and, thus, why there is a gap in the record concerning usage. Commerce has explained how the gap in the record (*i.e.*, missing information concerning the operation of the EBC Program) prevents complete and effective verification of the customers' certifications of non-use. A very similar rationale has been accepted by the CIT in a review of *Certain Solar Products from China*. Specifically, in *Changzhou Trina 2016*,³⁷² given similar facts, the CIT found Commerce reasonably concluded it could not verify usage of the EBC program at the exporter's facilities absent an adequate explanation from the GOC of the program's operation (*i.e.*, "absent a well-documented understanding of how an exporter would be involved in the application of its customer for an export buyer credit and what records the exporter might retain, we would have no way of knowing whether the records we review at a company verification necessarily include any applications or compliance records that an exporter might have....").³⁷³

³⁷¹ See *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014) (*Tetra from China*), and accompanying IDM at 31 (confirming that the GOC solely owns the China Ex-Im Bank).

³⁷² See *Changzhou Trina 2016*, 195 F. Supp. 3d at 1350) (citing *Certain Solar Products from China* IDM at 91-94).

³⁷³ *Id.*

Moreover, we disagree with the GOC that Commerce has not identified any gap in the record resulting from missing information.³⁷⁴ As an initial matter, we cannot simply rely on the GOC's assurances that it has checked its records. We have no way of verifying such statements without the GOC providing us with the requested documents which would allow us to then properly examine its claims of non-use. Further, given the constraints on Commerce resulting from the GOC's failure to provide all of the necessary information to fully understand the program's operation, Commerce reasonably determined that it would be unable to examine each and every loan obligation of each of the company respondents' customers and that, even if such an undertaking were possible, it would be meaningless, as Commerce would have no idea as to what documents it should look for, or what other indicia there might be within a company's loan documentation, regarding the involvement of the China Ex-Im Bank.

At the very least, even when Commerce has no means of limiting the universe of transactions before it begins verification, Commerce knows what it is looking for when it begins selecting documents or transactions for review. When, because of the GOC's failure to provide complete information, there are no such parameters, or there is no guidance as to what indicia Commerce should look for, it is unreasonable to expect Commerce to hunt for a needle in a haystack – a very large haystack in some instances. As an illustrative example, in the context of a value added tax (VAT) and import duty exemption, Commerce has met with the GOC to discuss how that program works, and in such instances the GOC has been fully cooperative.³⁷⁵ 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.

We continue to find that the GOC withheld necessary information that was requested of it and significantly impeded this proceeding. Accordingly, Commerce must rely on facts otherwise available in issuing this final determination with respect to the EBC Program, pursuant to sections 776(a)(1), (2)(A) and (C) of the Act. Specifically, necessary information is not on the record because the GOC withheld information that we requested that was reasonably available to it, which significantly impeded the proceeding. In addition, we find that an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act, because the GOC did not act to the best of its ability in providing the necessary information to Commerce. Additionally, we continue to find that under this program the GOC bestowed a financial contribution and provided a benefit to Baroque Timber and Jiangsu Guyu within the meaning of

³⁷⁴ See GOC's Case Brief at 17.

³⁷⁵ 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.")

sections 771(5)(D) and 771(5)(E) of the Act, respectively. Regarding specificity, although the record regarding this program suffers from significant deficiencies, we note that the GOC's description of the program and supporting materials (albeit found to be deficient) demonstrates that through this program, state-owned banks, such as the China Ex-Im Bank, provide loans at preferential rates for the purchase of exported goods from China.³⁷⁶ Finally, Commerce has found this program to be an export subsidy in past CVD proceedings involving China.³⁷⁷ Thus, we continue to find that, taking all such information into consideration, the provision of export buyer's credits is contingent on exports within the meaning of sections 771(5A)(A) and (B) of the Act.

For all the reasons explained above, we continue to find that necessary information is missing from the record, the GOC withheld information that was requested, and significantly impeded this proceeding, pursuant to sections 776(a)(1) and (2) of the Act, and that the GOC has failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act. Thus, Commerce's use of an adverse inference when selecting from among the facts otherwise available is reasonable and supported by substantial evidence on the record.

Comment 10: Whether to Limit Countervailability Findings to Subsidies Alleged in the Petition

GOC's Case Brief:

- Commerce requests respondents to disclose all other subsidies. Such other subsidies are not the subject of any allegation raised by the petitioner, any formal investigation, nor are they defined by Commerce. This other subsidy request has been used by Commerce as the basis to apply AFA, which prejudices responding parties by placing undue burdens upon them and distracts from the proper focus of the proceeding.³⁷⁸
- In the *Preliminary Results*, Commerce assigned subsidy margins to the mandatory respondents, using information provided by those companies in response to Commerce's "other subsidies" request. This result is contrary to law and no margins should be assigned in the final results.³⁷⁹
- Under section 702 of the Act, investigations may only commence after sufficient evidence of financial contribution, specificity and benefit is found or presented. Any investigation must be supported by a properly framed allegation and allegation-specific evidence.³⁸⁰
- Commerce's provisions and practices do not preclude it from engaging in additional investigation during the course of a proceeding and incorporating additional subsidy findings. Commerce's regulations permit petitioners to raise new subsidy allegations, as the petitioner did in this administrative review, and Commerce's practice is to examine

³⁷⁶ See GOC's SQR at Exhibits 36, 37, and 38.

³⁷⁷ 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.

³⁷⁸ See GOC's Case Brief at 19.

³⁷⁹ *Id.*

³⁸⁰ *Id.*

the allegation and determine whether the allegation and supporting information warrants initiation.³⁸¹

- Commerce’s regulations reinforce the idea that discovery of an apparent subsidy is not the means to an end; there must be evidence to give rise to the appearance of a subsidy.³⁸² Moreover, discovery is not a substitute for investigation. Discovery must be followed by notice to the parties that Commerce intends to include the discovered practice in the “ongoing proceeding”, and then proceed to “examination” or “consideration.”³⁸³
- Commerce’s decision to investigate other subsidies in this proceeding is contrary to law. By extension, there is no basis for Commerce to apply AFA and countervail other subsidies reported by the respondents.³⁸⁴
- Commerce was in error when it requested other subsidy information in its initial questionnaire. This request represents an investigation in the absence of any properly framed allegation supported by evidence, initiation, or notice thereof, contrary to statute, Commerce’s regulations, and practice. This impermissible investigation in unspecified other subsidies cannot be the basis for application of facts available let alone AFA.³⁸⁵
- Under such circumstances, the details of other subsidies cannot constitute “necessary information” within the scope of Commerce’s investigation or the meaning of the facts available statute. At most, the statute and Commerce’s regulations provide Commerce the authority, upon proper notice to the parties, to investigate such practices upon discovery, or defer consideration to a subsequent administrative review, but nothing more. In this proceeding, Commerce made no such discovery, provided no advance notice of its intent to include discovered practices in the ongoing proceeding, and engaged in no investigation once notice was given.³⁸⁶
- Any action to countervail “other” subsidies outside the scope of Commerce’s proper investigation would be contrary to U.S. law and the Subsidies and Countervailing Measures (SCM) Agreement. For these reasons, Commerce should assign no subsidy margin to “other subsidies” reported by the respondents.³⁸⁷

Petitioner’s Rebuttal Brief:

- Despite the GOC’s claims to the contrary, it is appropriate, and consistent with Commerce practice, for Commerce to continue to apply AFA to the GOC with respect to other subsidy programs.³⁸⁸
- Commerce is instructed by the statute to investigate and countervail subsidy programs it discovers.³⁸⁹

³⁸¹ *Id.* at 20.

³⁸² *Id.* at 20-21 (citing 19 CFR 351.311(b)-(d)).

³⁸³ *Id.*

³⁸⁴ *Id.* at 21.

³⁸⁵ *Id.* at 20 and 22.

³⁸⁶ *Id.* at 22.

³⁸⁷ *Id.*

³⁸⁸ *See* Petitioner’s Rebuttal Brief at 36-37.

³⁸⁹ *Id.* at 37 (citing section 775 of the Act).

- Commerce has rejected similar arguments made by the GOC under a nearly identical set of facts, finding that Commerce had acted well within its authority and practice.³⁹⁰
- The GOC has misconstrued Commerce’s actions. While the GOC notes that mere discovery of a potential subsidy does not make it countervailable,³⁹¹ Commerce did not simply discover the potential subsidies, but provided the GOC an opportunity to provide information regarding the discovered programs, which it failed to do.³⁹²

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.³⁹³ Investigations into potentially countervailable subsidies are initiated in one of two ways. First, an investigation can be self-initiated by Commerce.³⁹⁴ 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.³⁹⁵

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”³⁹⁶ that was not included in the petition, Commerce “shall include the practice, subsidy, or subsidy program in the proceeding {,}”³⁹⁷ 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.³⁹⁸

³⁹⁰ *Id.* (citing *Aluminum Extrusions from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at Comment

³⁹¹ *Id.* at 38 (citing GOC’s Case Brief at 21).

³⁹² *Id.* at 38.

³⁹³ *See, e.g., 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.

³⁹⁴ *See* section 702(a) of the Act.

³⁹⁵ *See* section 702(b) of the Act.

³⁹⁶ *See* section 775 of the Act.

³⁹⁷ *Id.*

³⁹⁸ *See* *Trina Solar 2016* 195 F. Supp. 3d 1334, 1341 (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) and section 775 of the Act.

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.³⁹⁹ 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." Our initial questionnaire requested details concerning whether the GOC provides any other forms of assistance and to provide detailed information regarding those assistance programs.⁴⁰⁰

Moreover, Commerce's question regarding "all other assistance" is not vague and does not exceed Commerce's information-collecting authority.⁴⁰¹ Commerce has broad discretion to determine which information is relevant to its determination and to request that information.⁴⁰² 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.⁴⁰³ Consistent with U.S. law, Commerce is not precluded from inquiring about other assistance to make determinations.⁴⁰⁴ Commerce "has independent investigative authority" to ask questions about other governmental assistance, beyond the subsidies alleged by the petitioner.⁴⁰⁵

Further, Commerce may determine to use AFA in deciding whether the elements of a countervailable subsidy are met for both subsidies alleged in a petition and those "discovered" during an investigation, or review, if Commerce determines that the respondents are being uncooperative. In this case, the GOC hindered Commerce's efforts to examine the "full scope of governmental assistance," and to consolidate all relevant subsidies into this review when it withheld information responsive to Commerce's requests for information. To avoid the application of facts available or AFA, the GOC was required by law to respond to Commerce's requests for information by conducting a thorough review of its records, regardless of whether it believed that the discovered subsidies fell outside the purview of Commerce's review. Thus, its failure to provide complete responses for the discovered assistance to Commerce in a timely manner reflects a deliberate and unilateral decision that the discovered subsidies were not relevant to Commerce's review. A deliberate decision not to cooperate warrants the application of AFA.

³⁹⁹ See *Trina Solar 2016*, 195 F. Supp. 3d at 1346.

⁴⁰⁰ See Commerce CVD Questionnaire at Section II-17.

⁴⁰¹ 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").

⁴⁰² See, e.g., *Acciai Speciali Termini S.p.A. v. United States*, 26 CIT 148, 167 (February 1, 2002) (sustaining 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 judgement that the information requested was irrelevant).

⁴⁰³ See *Trina Solar 2016*, 195 F. Supp. 3d at 1342-43.

⁴⁰⁴ *Id.*, 195 F. Supp. 3d at 1345-46.

⁴⁰⁵ *Id.*, 195 F. Supp. 3d at 1346.

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.”⁴⁰⁶

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 Results* with respect to “other subsidies.”

XI. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. 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

11/20/2020

X



Signed by: JOSEPH LAROSKI

Joseph A. Laroski Jr.
Deputy Assistant Secretary
for Policy and Negotiations

⁴⁰⁶ 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.