



C-570-041  
Administrative Review  
POR: 1/1/2021 - 12/31/2021  
**Public Document**  
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July 6, 2023

**MEMORANDUM TO:** Lisa W. Wang  
Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
Countervailing Duty Administrative Review of Truck and Bus  
Tires from the People's Republic of China; 2021

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## I. SUMMARY

The U.S. Department of Commerce (Commerce) has analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty (CVD) order<sup>1</sup> on truck and bus tires from the People's Republic of China covering the period of review (POR) January 1, 2021, through December 31, 2021. Based on an analysis of the issues raised by interested parties, we made changes to the calculations from the *Preliminary Results*. We recommend that you approve the positions described in the "Discussion of Issues" section of this memorandum.<sup>2</sup>

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

- Comment 1: Whether the Provision of Inputs for Less Than Adequate Remuneration (LTAR) Constitutes a Financial Contribution
- Comment 2: Whether Commerce Appropriately Found that the Provision of Land-Use Rights for LTAR Constitutes a Financial Contribution
- Comment 3: Whether the Provision of Electricity for LTAR Is Countervailable
- Comment 4: Whether the Benchmark for Electricity Includes Value-Added Tax (VAT)
- Comment 5: Whether Commerce Should Revise the Calculation of Various Input LTAR Programs

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<sup>1</sup> See *Truck and Bus Tires from the People's Republic of China: Amended Final Determination and Countervailing Duty Order*, 84 FR 4434 (February 15, 2019) (*Order*).

<sup>2</sup> See *Truck and Bus Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review in Part, and Intent to Rescind in Part; 2021*, 88 FR 13423 (March 3, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



- Comment 6: Whether Commerce Should Revise the Sales Denominator for a Parent Company
- Comment 7: Whether Commerce Should Update the Loan Benchmarks Used for Government Policy Lending
- Comment 8: Whether the Respondent Failed Verification for the Export Buyer's Credit (EBC) Program
- Comment 9: Whether Commerce Should Make an Adjustment to the Benchmark Used to Value the Provision of Land-Use Rights
- Comment 10: Whether Commerce Should Revise the Sales Denominator Calculated for an Input Supplier

## II. BACKGROUND

On March 3, 2023, Commerce published the preliminary results of this administrative review.<sup>3</sup> Qingdao Ge Rui Da Rubber Co., Ltd. (GRT) is the mandatory respondent. From April 18 to 19, 2023, we conducted verification of the EBC program at the premises of the GRT's affiliated importer, The Goodyear Tire and Rubber Company (GTRC), for its exports to Cooper Tire and Rubber Company (CTRC) and the exports of Goodyear Dalian Tire Company Limited (GYD), a cross-owned producer to GTRC.<sup>4</sup>

On April 27, 2023, we established a briefing schedule for interested parties to comment on the *Preliminary Results* and verification.<sup>5</sup> On May 11, 2023, GRT, the Government of China (GOC), and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union, AFL-CIO (the petitioner) submitted timely-filed case briefs.<sup>6</sup> On May 18, 2023, GRT submitted a timely-filed rebuttal brief.<sup>7</sup>

On June 23, 2023, we extended the final results of this review until July 13, 2023.<sup>8</sup> We conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

## III. SCOPE OF THE ORDER

The scope of the *Order* covers truck and bus tires. Truck and bus tires are new pneumatic tires, of rubber, with a truck or bus size designation. Truck and bus tires covered by the *Order* may be tube-type, tubeless, radial, or non-radial.

Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that

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

<sup>4</sup> See Memorandum, "Verification of the Export Buyer's Credit Questionnaire Responses of Qingdao Ge Rui Da Rubber Co., Ltd.," dated April 27, 2023 (Verification Report).

<sup>5</sup> See Commerce's Letter, "Briefing Schedule," dated April 27, 2023.

<sup>6</sup> See GRT's Letter, "Case Brief," dated May 11, 2023 (GRT Case Brief); see also GOC's Letter, "Administrative Case Brief," dated May 11, 2023 (GOC Case Brief); and Petitioner's Letter, "Case Brief," dated May 11, 2023 (Petitioner Case Brief).

<sup>7</sup> See GRT's Letter, "Rebuttal Brief," dated May 18, 2023 (GRT Rebuttal Brief).

<sup>8</sup> See Memorandum, "Extension of Deadline for Final Results of Countervailing Duty Administrative Review, 2021," dated June 23, 2023.

the tire conforms to applicable motor vehicle safety standards. Subject tires may also have one of the following suffixes in their tire size designation, which also appear on the sidewall of the tire:

TR – Identifies tires for service on trucks or buses to differentiate them from similarly sized passenger car and light truck tires; and

HC – Identifies a 17.5 inch rim diameter code for use on low platform trailers.

All tires with a “TR” or “HC” suffix in their size designations are covered by the *Order* regardless of their intended use.

In addition, all tires that lack one of the above suffix markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the “Truck-Bus” section of the *Tire and Rim Association Year Book*, as updated annually, unless the tire falls within one of the specific exclusions set out below.

Truck and bus tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes truck and bus tires produced in the subject country whether mounted on wheels or rims in the subject country or in a third country. Truck and bus tires are covered whether or not they are accompanied by other parts, *e.g.*, a wheel, rim, axle parts, bolts, nuts, *etc.* Truck and bus tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope of the *Order* are the following types of tires: (1) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires; (2) non-pneumatic tires, such as solid rubber tires; and (3) tires that exhibit each of the following physical characteristics: (a) the designation “MH” is molded into the tire’s sidewall as part of the size designation; (b) the tire incorporates a warning, prominently molded on the sidewall, that the tire is for “Mobile Home Use Only”; and (c) the tire is of bias construction as evidenced by the fact that the construction code included in the size designation molded into the tire’s sidewall is not the letter “R.”

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1015 and 4011.20.5020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.69.0020, 4011.69.0090, 4011.70.00, 4011.90.80, 4011.99.4520, 4011.99.4590, 4011.99.8520, 4011.99.8590, 8708.70.4530, 8708.70.6030, 8708.70.6060, and 8716.90.5059.<sup>9</sup>

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<sup>9</sup> On August 26, 2016, Commerce included HTSUS subheadings 4011.69.0020, 4011.69.0090, and 8716.90.5059 to the case reference files, pursuant to requests by U.S. Customs and Border Protection (CBP) and the petitioner. *See* Memorandum, “Requests from Customs and Border Protection and the Petitioner to Update the ACE Case Reference File,” dated August 26, 2016. On January 19, 2017, Commerce included HTSUS subheadings 4011.70.00 and 4011.90.80 to the case reference files, pursuant to requests by CBP. *See* Memorandum, “Requests from Customs and Border Protection to Update the ACE Case Reference File,” dated January 19, 2017.

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

Also, excluded from the scope of the *Order* are size 8-14.5 truck and bus tires imported by America Koryo, Inc. from China. Included within the scope are size 11-22.5 truck and bus tires imported by America Koryo, Inc. from China.<sup>10</sup>

#### IV. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

In the *Preliminary Results*, we notified parties of our intention to rescind the review for companies that did not have reviewable entries of subject merchandise pursuant to 19 CFR 351.213(d)(3)<sup>11</sup> and, on March 7, 2023, we provided a period for parties to submit comments regarding our determination.<sup>12</sup> On March 14, 2023, we received comments from Bridgestone Corporation, Bridgestone (Shenyang) Tire Co., Ltd. (Bridgestone Shenyang), Jiangsu Hankook Tire Co., Ltd. (Jiangsu Hankook), and Chongqing Hankook Tire Co., Ltd. (Chongqing Hankook) indicating that Bridgestone Shenyang and Jiangsu Hankook had subject entries during the POR.<sup>13</sup> After reviewing these comments, we find that Chongqing Hankook did not have reviewable entries of subject merchandise for which liquidation is suspended. No interested party submitted comments on this matter.<sup>14</sup> Because there is no evidence on the record to indicate that Chongqing Hankook had entries, exports, or sales of subject merchandise during the POR, we are rescinding the review with respect to this company, consistent with 19 CFR 351.213(d)(3).

#### V. NON-SELECTED RATE

We made no changes to the methodology in determining a rate for companies not selected for individual examination from the *Preliminary Results*.<sup>15</sup> However, we made changes to the calculations for the mandatory respondent, GRT, which provides the rate assigned to the non-selected companies. Therefore, the rate changed for each of the four non-selected companies, Bridgestone Shenyang, Jiangsu Hankook, Joyall (Weihai) Tire Co., Ltd., and Triangle Tyre Co., Ltd., for which a review was requested and not rescinded. These companies will receive an *ad valorem* subsidy rate of 14.98 percent.

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<sup>10</sup> See *Notice of Scope Rulings*, 85 FR 35261 (June 9, 2020).

<sup>11</sup> See *Preliminary Results* PDM at 5.

<sup>12</sup> See Memorandum, “Intent to Rescind Review, in Part,” dated March 7, 2023.

<sup>13</sup> See Bridgestone Corporation and Bridgestone Shenyang’s Letter, “Comments and Supporting Information Regarding Intent to Rescind Review, in Part,” dated March 14, 2023; see also Jiangsu Hankook and Chongqing Hankook’s Letter, “Response to the Department’s Notice of Intent to Rescind, in Part, the Preliminary Results of the 2021 Countervailing Duty Administrative Review,” dated March 14, 2023 (Hankook Comments). Jiangsu Hankook and Chongqing Hankook’s comments regarded solely entries made by Jiangsu Hankook. No party commented on Chongqing Hankook’s lack of reviewable entries.

<sup>14</sup> See Hankook Comments.

<sup>15</sup> See *Preliminary Results* PDM at 4-5.

## **VI. SUBSIDIES VALUATION**

### **A. Allocation Period**

We made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation period or the allocation methodology used in the *Preliminary Results*. For a description of the allocation period and the methodology used for these final results, *see* the *Preliminary Results*.<sup>16</sup>

### **B. Cross-Ownership and Attribution of Subsidies**

We made no changes to, and interested parties raised no issues in their case briefs regarding cross-ownership and the attribution of subsidies from the *Preliminary Results*.<sup>17</sup>

### **C. Denominators**

We made no changes to the methodology used for determining denominators from the *Preliminary Results*. Interested parties submitted comments regarding the denominators used, but we made no changes to the denominators used for GRT's affiliated companies. *See* Comments 6 and 9, below.

### **D. Interest Rate Benchmarks, Discount Rates, Input, Electricity, and Land Benchmarks**

GRT, the GOC, and the petitioner provided comments regarding the interest rate benchmarks, input benchmarks, and the comparison purchase values that are measured against the benchmarks to calculate the benefit for several LTAR programs. *See* Comments 4, 5, 7, and 9, below. We made changes to the calculation of the land benchmark and the comparison purchase values for the input LTARs, but we made no changes for interest rates or the provision of electricity.

## **VII. USE OF FACTS OTHERWISE AVAILABLE AND APPLICATION OF ADVERSE INFERENCES**

### **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.

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<sup>16</sup> *See Preliminary Results* PDM at 20.

<sup>17</sup> *Id.* at 21-22.

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 an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that Commerce may use an adverse inference (*i.e.*, adverse facts available (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 countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>18</sup> Section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the CVD investigation, a previous administrative review, or other information placed on the record.<sup>19</sup>

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>20</sup> 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.<sup>21</sup>

Finally, under section 776(d) of the Act, when using an adverse inference when selecting from the facts otherwise available, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use.<sup>22</sup> When selecting from the facts otherwise available with an adverse inference, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>23</sup>

## **B. Application of Facts Available and AFA Changes Since the *Preliminary Results***

The GOC raised multiple concerns with Commerce’s application of facts available and AFA in its case brief. *See* Comments 1-3, below. However, with the exception of the EBC program, we

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<sup>18</sup> *See* section 776(b)(1)(B) of the Act.

<sup>19</sup> *See* 19 CFR 351.308(c).

<sup>20</sup> *See* 19 CFR 351.308(d).

<sup>21</sup> *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) (SAA), at 870.

<sup>22</sup> *See* section 776(d)(1) of the Act.

<sup>23</sup> *See* section 776(d)(3) of the Act.



made no changes to our facts available and AFA determinations from the *Preliminary Results*.<sup>24</sup>

### C. Application of AFA: Export Buyer's Credit Program

As discussed in the *Preliminary Results*, we preliminarily found that the application of AFA to the GOC was warranted with regard to the financial contribution and specificity of the EBC program.<sup>25</sup> Parties submitted no comments regarding these determinations, and we made no changes with regard to our application of AFA to the GOC.

In addition, in the *Preliminary Results*, we found as facts available that record evidence was sufficient to demonstrate that the financing used by GRT and GYD's customers was unrelated to the EBC program.<sup>26</sup> Therefore, we preliminarily found that GRT and its affiliated companies filled the gaps caused by the GOC's non-cooperation and that they did not use the EBC program. Furthermore, we stated that we intended to verify GRT's claims of non-use of the EBC program.<sup>27</sup>

During verification of the EBC program, Commerce officials discovered previously unreported financing held by GTRC.<sup>28</sup> The information discovered at verification constitutes new factual information and is untimely under 19 CFR 351.301. Due to the discovery of previously unreported financing, we were not able to verify the information pertaining to the customers of GRT and GYD. As a result, we find that the information provided by GRT does not fill the gaps caused by the GOC's withholding of information and non-cooperation regarding the EBC program. Accordingly, we find that GRT used and benefited from the EBC program during the POR.

Interested parties submitted comments regarding this issue. For further information, *see* Comment 8, below.

#### *Selection of the AFA Rate*

Consistent with section 776(d) of the Act and our established practice, we applied our CVD hierarchy to determine the AFA rate for the EBC program.<sup>29</sup> Under the first step of Commerce's CVD AFA hierarchy for administrative reviews, Commerce applies the highest non-*de minimis* rate calculated for the identical program in any segment of the same proceeding. If there is no identical program match within the same proceeding, or if the rate is *de minimis*, under step two of the hierarchy, Commerce applies the highest non-*de minimis* rate calculated for a similar program within any segment of the same proceeding. If there is no non-*de minimis* rate calculated for a similar program within the same proceeding, under step three of the hierarchy,

<sup>24</sup> See *Preliminary Results* PDM at 6-20.

<sup>25</sup> *Id.* at 8-9.

<sup>26</sup> *Id.* at 9.

<sup>27</sup> See *Preliminary Results*, 88 FR at 13424.

<sup>28</sup> See Verification Report at 8.

<sup>29</sup> See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying Issues and Decision Memorandum (IDM) at 13; see also *Essar Steel, Ltd. v. United States*, 753 F.3d 1368, 1373-74 (Fed. Cir. 2014) (*Essar Steel*).

Commerce applies the highest non-*de minimis* rate calculated for an identical or similar program in another CVD proceeding involving the same country. Finally, if there is no non-*de minimis* rate calculated for an identical or similar program in another CVD proceeding involving the same country, under step four, Commerce applies the highest calculated rate for any program from the same country that the industry subject to the review could have used.<sup>30</sup>

Commerce's methodology is consistent with section 776(d)(1)(A) of the Act. Section 776(d)(1)(A) of the Act states that when applying an adverse inference in selecting from the facts otherwise available, Commerce may: (i) use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country; or (ii) if there is no same or similar program, use a countervailable subsidy rate from a proceeding that Commerce considers reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for Commerce's existing practice of using an AFA hierarchy in selecting a rate "among the facts otherwise available" in CVD cases, should the facts warrant such a selection.

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."<sup>31</sup> No legislative history accompanied this provision of the Trade Preferences Extension Act. Accordingly, Commerce is left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

We find that the Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: (1) Commerce may apply its hierarchy methodology; and (2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.<sup>32</sup>

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures "that the party does

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<sup>30</sup> See section 776(d) of the Act; see also *SolarWorld Americas, Inc. v. United States*, 229 F. Supp. 3d 1362 (CIT 2017) (sustaining Commerce's CVD AFA hierarchy and selection of AFA rate for CVD reviews).

<sup>31</sup> See section 776(d)(2) of the Act.

<sup>32</sup> This differs from antidumping duty proceedings, for which no hierarchy applies, under section 776(d)(1)(B) of the Act. Under that provision, "any dumping margin from any segment of the proceeding under the applicable antidumping order" may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.



not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>33</sup> Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.”<sup>34</sup> It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.<sup>35</sup>

In applying its AFA hierarchy in CVD reviews, Commerce’s goal is as follows: in the absence of necessary information from cooperative respondents, Commerce is seeking to find a rate that is a relevant indicator of how much the government of the country under review is likely to subsidize the industry at issue, through the program at issue, while inducing cooperation. Accordingly, in sum, the three factors that Commerce takes into account in selecting a rate are: (1) the need to induce cooperation; (2) the relevance of a rate to the industry in the country under investigation or review (*i.e.*, can the industry use the program from which the rate is derived); and (3) the relevance of a rate to a particular program, though not necessarily in that order of importance.

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a “pool” of available rates that Commerce can rely upon for purposes of identifying an AFA rate for a particular program. In reviews, for example, this “pool” of rates could include a non-*de minimis* rate calculated for the identical program in any segment of the proceeding, a similar program in any segment of that proceeding, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy, therefore, does not focus on identifying the highest possible rate that could be applied from among that “pool” of rates; rather, it adopts the factors identified above of inducement, relevancy to the industry and to the particular program.

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

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<sup>33</sup> See SAA at 870; see also *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012) (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (*De Cecco*) (finding that “{t}he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate with Commerce’s investigation, not to impose punitive damages.’”))

<sup>34</sup> See *De Cecco*, 216 F.3d at 1032.

<sup>35</sup> Commerce has adopted a practice of applying its hierarchy in CVD cases. See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at Comment 4 (applying the AFA hierarchical methodology within the context of CVD investigation); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012* (*Crystalline Silicon Photovoltaic Cells from China*), 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. See, e.g., *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

any previous review under section 751 {of the Act} concerning the subject merchandise.”<sup>36</sup> The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.<sup>37</sup>

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.<sup>38</sup> Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>39</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>40</sup>

Consistent with section 776(d) of the Act and our established practice, we applied our CVD hierarchy to determine the AFA rate for the EBC program.<sup>41</sup> Our examination of the results of all the segments of this proceeding leads us to conclude that there are no calculated rates for this program in this proceeding – and thus, no rates are available under step one of the CVD AFA hierarchy. Because we have not calculated a rate for an identical program in this proceeding, we then determine, under step two of the hierarchy, if there is a calculated rate for a similar/comparable program (based on the treatment of the benefit) in the same proceeding, excluding *de minimis* rates. When Commerce selects a similar program, it looks for a program with the same type of benefit. For example, it selects a loan program to establish the rate for another loan program, or it selects a grant program to establish the rate for another grant program.<sup>42</sup> Consistent with this practice, upon examination of the available above-*de minimis* programs from the current review, prior reviews, and the underlying investigation, Commerce selected the Government Policy Lending program because it confers the same type of benefit as the EBC program, as both programs are subsidized loans from the GOC.<sup>43</sup> On this basis, we are

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<sup>36</sup> See SAA at 870.

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

<sup>38</sup> *Id.* at 869-70.

<sup>39</sup> See section 776(d) of the Act.

<sup>40</sup> See, e.g., *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017), and accompanying IDM at 14 (citing *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996)).

<sup>41</sup> See, e.g., *Shrimp from China* IDM at 13; and *Essar Steel*, 753 F.3d at 1373-74.

<sup>42</sup> See *Crystalline Silicon Photovoltaic Cells from China* IDM at 14 and 44; see also *Narrow Woven Ribbons with Woven Selvage from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 78036 (December 29, 2014), and accompanying IDM at 5; and *Large Residential Washers from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012–2013*, 80 FR 55336 (September 15, 2015), and accompanying IDM at 5.

<sup>43</sup> See *Preliminary Results PDM* at 33.

using an AFA rate of 2.86 percent *ad valorem*, the highest rate determined for a similar program in a current segment in this proceeding as the AFA rate for the EBC program, applicable to GRT.<sup>44</sup>

Interested parties submitted comments regarding the selection of the AFA rate. For further information, *see* Comment 8, below.

## VIII. ANALYSIS OF PROGRAMS

### A. Programs Determined to Be Countervailable

#### 1. *Import Duty and VAT Exemptions for Imported Equipment*

We made no changes to, and parties submitted no comments regarding, our methodology for calculating the *ad valorem* subsidy rate for this program.<sup>45</sup> The final *ad valorem* subsidy rate for this program is:

GRT: 0.09 percent

#### 2. *Government Policy Lending*

We made no changes to our methodology for calculating the *ad valorem* subsidy rate for this program.<sup>46</sup> GRT and the petitioner submitted comments regarding this program that are addressed in Comments 7 and 10, below. The final *ad valorem* subsidy rate for this program is:

GRT: 2.86 percent *ad valorem*

#### 3. *Provision of Carbon Black for LTAR*

We made changes to our methodology for calculating the *ad valorem* subsidy rate for this program.<sup>47</sup> GRT and the GOC submitted comments regarding this program that are addressed in Comments 1 and 5, below. The final *ad valorem* subsidy rate for this program is:

GRT: 2.56 percent *ad valorem*

#### 4. *Provision of Nylon Cord for LTAR*

We made changes to our methodology for calculating the *ad valorem* subsidy rate for this program.<sup>48</sup> GRT and the GOC submitted comments regarding this program that are addressed in

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<sup>44</sup> See the “Government Policy Lending” section, *infra*.

<sup>45</sup> See *Preliminary Results* PDM at 32.

<sup>46</sup> *Id.* at 33.

<sup>47</sup> *Id.* at 33-34.

<sup>48</sup> *Id.* at 34-35.

Comments 1 and 5, below. The final *ad valorem* subsidy rate for this program is:

GRT: 0.10 percent *ad valorem*

5. *Provision of Synthetic Rubber and Butadiene for LTAR*

We made changes to our methodology for calculating the *ad valorem* subsidy rate for this program.<sup>49</sup> GRT and the GOC submitted comments regarding this program that are addressed in Comments 1 and 5, below. The final *ad valorem* subsidy rate for this program is:

GRT: 0.44 percent *ad valorem*

6. *Provision of Electricity for LTAR*

We made no changes to our methodology for calculating the *ad valorem* subsidy rate for this program.<sup>50</sup> The GOC submitted comments regarding this program that are addressed in Comments 3 and 4, below. The final *ad valorem* subsidy rate for this program is:

GRT: 1.87 percent *ad valorem*

7. *Provision of Land-Use Rights for LTAR*

We made changes to our methodology for calculating the *ad valorem* subsidy rate for this program.<sup>51</sup> The petitioner and the GOC submitted comments regarding this program that are addressed in Comments 2 and 9, below. The final *ad valorem* subsidy rate for this program is:

GRT: 1.22 percent *ad valorem*

8. *Export Buyer's Credit Program*

In the *Preliminary Results*, we found this program to be not used based on record evidence provided by GRT.<sup>52</sup> However, as discussed above in the section, "Application of AFA: Export Buyer's Credit," we find that GRT did not report all requested financing in its questionnaire responses and, consequently, that the application of AFA to GRT for this program is warranted. The petitioner and GRT submitted comments regarding this program that are addressed in Comment 8, below. The final *ad valorem* subsidy rate for this program is:

GRT: 2.86 percent *ad valorem*

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<sup>49</sup> *Id.* at 36-37.

<sup>50</sup> *Id.* at 37-38.

<sup>51</sup> *Id.* at 38.

<sup>52</sup> *Id.* at 8-9 and 39.

### 9. *Certain Initiated Grant and Other Subsidy Programs*

GRT submitted comments regarding the calculation of the program Economic Development for Cooper Tire (China) Investment Co. Ltd. (CTIC), but we made no changes regarding this program. *See* Comment 6, below. The list of programs is as follows:

1. Economic Development for CTIC
2. Additional Programs for GYD
3. Commuting Subsidies
4. Compensation of Land Resettlement
5. Extra Construction Expenses
6. Interest Subsidy from Economic Development Bureau
7. Job Stability
8. Special Fund for Industry Development
9. Enterprise Development for Goodyear Tire Management Company (Shanghai) Ltd. (SMC)

The combined final *ad valorem* subsidy rate for these programs is:

GRT: 2.98 percent *ad valorem*

### **B. Programs Determined to Not Confer a Measurable Benefit During the POR**

GRT reported receiving benefits under various other subsidy programs that did not confer a measurable benefit.<sup>53</sup> Based on the record evidence, we continue to determine that the benefits from these programs result in rates that are less than 0.005 percent *ad valorem* when attributed to the appropriate respondent's applicable sales, and therefore, provide no measurable benefit in the POR.

### **C. Programs Determined to Be Not Used during the POR**

1. Export Seller's Credits
2. Provision of Natural Rubber for LTAR
3. Income Tax Reductions for High- and New-Technology Enterprises
4. Enterprise Income Tax Law, Research and Development Program
5. State Key Technology Renovation Fund Program
6. Preferential Loans to State-Owned Enterprises
7. Discounted Loans for Export-Oriented Enterprises
8. Export Credit Guarantees
9. Income Tax Reduction for Advanced Technology for Foreign-Invested Enterprises (FIE)
10. Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs
11. VAT Refunds for FIEs on Purchases of Chinese-Made Equipment
12. VAT Exemptions and Deductions for Central Regions

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<sup>53</sup> *See Preliminary Results* PDM at 41.

13. Export Interest Subsidy Funds for Enterprises Located in in Guangdong and Zhejiang Provinces
14. Funds for “Outward Expansion” of Industries in Guangdong Province
15. Direct Government Grants to Guizhou Tire (GTC)
16. Direct Government Grants to Aeolus
17. Direct Government Grants to Qingdao Doublestar
18. Direct Government Grants to Sailun
19. Export Credit Insurance Subsidies (from Sinosure & PICC)
20. Import Duty Exemptions for Imported Equipment
21. Famous Brands Program
22. Special Fund for Energy-Saving Technology Reform
23. The Clean Production Technology Fund
24. Direct Government Grants to Double Coin
25. Special Funds for Giant All Steel Engineering Radial Tire Technology Transformation Project
26. Reward for Technical Renovation Project
27. Refund of Payment for Land-Use Right
28. Subsidy Concerning the Second Batch of Industrial Structure Adjustment of Shanghai for 2015
29. Reward for Processing Trade
30. Subsidy on Social Insurance Charges
31. Subsidy on Environmental Protection
32. Subsidy for Staff Training from Finance Bureau of Huangpu District, Shanghai City
33. Fund of Technical Reformation
34. Boiler Dust Collector Transformation Fee
35. SASAC Funds for Allocated Testing Exercise
36. Provincial Human Resources and Social Security Department Allocated Funding of Postdoctoral Work
37. Municipal Industry and Information Technology Committee Circulating Capital Subsidies
38. Sum of Petroleum Chemical Industry Innovation Funds Appropriations
39. Commercial Enterprises Innovation Funds
40. Benefit for Boiler Ultra-Low Emission and Glass Furnace Treatment
41. Export Credit Insurance Premium Subsidy
42. Processing Trade Innovation Development Subsidy
43. Foreign Policy Incentive Funds
44. Subsidy Income from the Industrial Information Bureau
45. International Market Development Subsidies
46. Capital Market Development Subsidy Fund Project
47. Dust and Volatile Comprehensive Treatment Project
48. Industrial Cluster Program
49. High-Level Enterprise Technological Transformation Project
50. Quality Brand Promotion Project
51. Pingdu Incentives Program
52. Mixing Waste Gas Treatment Project



53. Unorganized Waste Gas Treatment Project
54. International Independent Brand Project
55. Subsidies for Major Foreign Investment Projects
56. Fund Import Discount Project
57. Science and Technology Special Fund
58. New Production Equipment Subsidies
59. National Announcement Access
60. Research Center Award Fund
61. Development Support Funds
62. Foreign Trade Transformation and Upgrading Pilot County Funds
63. Innovative Resource Gathering Plan
64. Technical Transformation Support Funds
65. Overseas Investment Subsidies
66. 10 Million Sets of Infrastructure Supporting Construction Funds
67. Financial Innovation and Development Guidance Fund
68. Subsidies from Shandong High-Performance Tire Manufacturing Innovation Center
69. One-Time Employment Program
70. Employee Unemployment Insurance Program
71. Program for Interest Discount on Imported Equipment
72. Online Monitoring Equipment

## IX. DISCUSSION OF ISSUES

### Comment 1: Whether the Provision of Inputs for LTAR Constitutes a Financial Contribution

#### *GOC's Comments:*

- Commerce inappropriately applied AFA in finding that the respondents' Chinese producers of carbon black, nylon cord, and synthetic rubber and butadiene are government authorities.<sup>54</sup> There is no record evidence to indicate that prices are controlled by the GOC, and the respondents' input suppliers are privately owned.<sup>55</sup>
- The only manner in which Commerce made its determination was on the basis of whether the companies' owners or managers were Chinese Communist Party (CCP) officials or whether control was exerted through Primary Party Organizations (PPO).<sup>56</sup> However, record evidence indicates that, even if the owners or managers of an individually-owned company were CCP officials as outlined by Commerce,<sup>57</sup> neither CCP officials nor PPOs

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<sup>54</sup> See GOC Case Brief at 2-3.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> The GOC references "nine entities" listed by Commerce in the *Input Producer Appendix*, which are derived from the analysis of Commerce's 2012 Public Bodies Memorandum and the 2019 State-Invested Enterprises Memorandum, which updates the Public Bodies Memorandum. See Memorandum, "Public Bodies Analysis," dated February 1, 2023 (Public Bodies Memorandum), at "Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the

could control individually-owned companies or vest the companies with government authority. Commerce's logic, analysis, and ultimate conclusions in the Public Bodies Memorandum are incorrect, and the CCP is a political party, not a government authority.<sup>58</sup>

- The Public Bodies Memorandum reflects a misunderstanding of China's political and economic systems and does not state that the CCP exerts control over private companies through PPOs. Rather, the Public Bodies Memorandum expresses uncertainty over the role of PPOs.<sup>59</sup> While the Public Bodies Memorandum mentions PPOs in both private companies and state-owned enterprises, quotes from *The Economist* regarding PPOs were unlikely to apply equally in both types of organizations. Furthermore, the GOC explained in its initial questionnaire response that, under the CCP Constitution, PPOs cannot project direct authority over a company.<sup>60</sup> Thus, Commerce has no need to request information regarding PPOs because they do not have the authority to control private companies, and the GOC need not respond to questions regarding PPOs because the information is not necessary under the statute, which is indicated by the CCP Constitution.<sup>61</sup>
- CCP officials are not entitled to intervene in the operations of the input producers.<sup>62</sup> Under the *Company Law* of China, CCP officials are not entitled to the management or operation of private companies and, thus, Commerce's basis for finding that the presence of CCP officials vests the input producers with government authority is not supported by substantial evidence.<sup>63</sup> Commerce presents no evidence demonstrating that the *Company Law* is superseded or invalidated, and critical provisions of the *Company Law* dictate that a company's shareholders, directors, and managers are solely responsible for its operations.<sup>64</sup>

No other party submitted comments regarding this issue.

**Commerce's Position:** In the *Preliminary Results*, we found, based on an adverse inference in selecting from among the facts otherwise available, that the respondents' non-majority government-owned producers of carbon black, nylon cord, and synthetic rubber and butadiene are "authorities" within the meaning of section 771(5)(B) of the Act.<sup>65</sup> We made these decisions by drawing an adverse inference in selecting among limited record evidence, consistent with sections 776(a) and 776(b) of the Act, in light of the GOC's failure to provide complete

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People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS379" and "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"; *see also* Memorandum, "State-Invested Enterprises in China Analysis," dated February 7, 2023, at "Update of the Public Bodies Analysis of State-Invested Enterprises in China for Countervailing Duty Purposes," which updates Commerce's analysis from the Public Bodies Memorandum.

<sup>58</sup> See GOC Case Brief at 3.

<sup>59</sup> *Id.* at 4-5.

<sup>60</sup> *Id.* at 5-6.

<sup>61</sup> *Id.* at 6 (citing *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951)).

<sup>62</sup> *Id.* at 6-7.

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

<sup>64</sup> *Id.* at 7.

<sup>65</sup> See *Preliminary Results* PDM at 9-12. Furthermore, we found that the producers reported by the GOC to be majority-owned by the government are "authorities" within the meaning of section 771(5)(b) of the Act.

information in response to our questions. Therefore, we disagree with the GOC that Commerce wrongly applied AFA on this issue in the *Preliminary Results*. For the reasons detailed below, for these final results, we continue to find that the non-majority government-owned producers of the inputs purchased by GRT and its cross-owned companies are “authorities” within the meaning of section 771(5)(B) of the Act and, thus, that such producers provided a financial contribution in supplying these inputs to GRT and its cross-owned companies within the meaning of section 771(5)(D)(iii) of the Act.

As discussed in the *Preliminary Results*, to analyze whether the domestic producers and suppliers are “authorities” within the meaning of section 771(5)(B) of the Act, we sought information regarding the ownership of the input producers identified by the mandatory respondents.<sup>66</sup> We specified that such information should include articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, articles of association, business group registrations, business licenses, and tax registration documents.<sup>67</sup> Moreover, we requested information concerning whether any individual owners, board members, or senior managers involved with these producers were either government or CCP officials, and the role of any CCP primary organization within the producers.<sup>68</sup> Specifically, to the extent that the owners, managers, or directors of a producer are CCP officials or are otherwise influenced by certain CCP-related entities, Commerce requested information regarding the means by which the GOC may exercise control over company operations and other CCP-related information.<sup>69</sup>

The GOC’s response to our requests for information, or lack thereof, is fully described in the *Preliminary Results*.<sup>70</sup> The GOC did not provide a complete response to Commerce’s questions regarding the input producers identified by the mandatory respondents. When asked to provide detailed information (*e.g.*, company by-laws, articles of incorporation, licenses, capital verification reports, *etc.*) for all non-majority government-owned enterprises that produced inputs purchased by the mandatory respondents during the POR, the GOC only provided partial information (*i.e.*, basic registration and shareholder structure).<sup>71</sup>

The GOC objected to Commerce’s questions regarding the role of CCP officials and organizations in the management and operations of input suppliers, and refused to provide the information requested by Commerce regarding the ownership of the input producers identified by the mandatory respondents.<sup>72</sup> Rather, the GOC stated in its initial questionnaire response that the information obtained from the Enterprise Credit Information Publicity System (ECIPS) “is authoritative evidence of the ownership structure of enterprises in China,” suggesting this was sufficient to understand the ownership structure of these producers.<sup>73</sup> However, it is not the purview of a respondent or a foreign government to determine what requested information is

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<sup>66</sup> See Commerce’s Letter, “Countervailing Duty Questionnaire,” dated May 26, 2022 (Initial Questionnaire), at *Input Producer Appendix*; see also *Preliminary Results* PDM at 9-12.

<sup>67</sup> See Initial Questionnaire at *Input Producer Appendix*.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> See *Preliminary Results* PDM at 9-12.

<sup>71</sup> See GOC’s Letter, “Initial Questionnaire Response,” dated July 22, 2022 (GOCIQR), at Exhibits III.C63.1, III.C63.2, III.C64.1, III.C64.2, III.C66.1, and III.C66.2.

<sup>72</sup> *Id.* at 35.

<sup>73</sup> *Id.* at 19.

sufficient for Commerce to make a determination.<sup>74</sup> Moreover, the ownership structure and basic registration information that the GOC provided does not indicate whether or not the owners and shareholders of the companies have any CCP involvement. When asked to identify any owners, members of the board of directors, or managers of the input producers who were government or CCP officials during the POR, the GOC explained that there is “no central informational database to search for the requested information.”<sup>75</sup> Thus, we find that the GOC’s questionnaire responses failed to fill the gap in the record regarding the respondents’ non-majority government-owned producers and hindered Commerce’s ability to determine whether these producers constitute “authorities.”

The information we requested regarding the role of CCP officials in the management and operations of these producers is necessary to our determination of whether these producers are “authorities” within the meaning of section 771(5)(B) of the Act. Commerce considers information regarding the CCP’s involvement in China’s economic and political structure to be relevant because record evidence suggests that the CCP exerts significant control over activities in China and is part of the governing structure in China.<sup>76</sup> As explained in the Public Bodies Memorandum, “available information and record evidence indicates that the CCP meets the definition of the term ‘government’ ... for the limited purpose of applying the U.S. CVD law to China,” that the CCP exerts significant control over economic activities in China, that the presence of CCP officials as owners, managers, or directors of a producer is pertinent for determining whether a producer constitutes an “authority,” that publicly available information indicates that Chinese law requires the establishment of CCP organizations “in all companies, whether state, private, domestic, or foreign-invested,” and that such organizations may wield a controlling influence in the company’s affairs, as noted by multiple sources in the Public Bodies Memorandum.<sup>77</sup> Furthermore, regarding the GOC’s claims to not possess an information database for the requested information that would allow Commerce to determine whether the input producers identified by the respondent have any CCP involvement, we found in *Citric Acid from China* that the GOC was able to obtain the information requested independently from the respondents.<sup>78</sup> Thus, the GOC’s arguments regarding the CCP officials and PPOs are unavailing due to our analysis of record evidence.

As a result of the GOC’s failure to provide the necessary information regarding the ownership of the input producers as well as the role of CCP officials and PPOs in the input producers, we continue to find that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, we determine that the GOC withheld requested information pursuant to section 776(a)(2)(A) of the Act, and that an adverse inference is warranted in the application of facts available under section 776(b) of the Act. In drawing an adverse inference, we continue to find that CCP officials are present in each of the respondents’ input producers as individual owners, managers, and members of the boards of directors, and that

<sup>74</sup> See, e.g., *Ferrostaal Metals GmbH v. United States*, 518 F. Supp. 3d 1357, 1376 (CIT 2021) (*Ferrostaal Metals*) (“It is well established that it is Commerce, not the respondent, that determines what information is to be provided ... .”)

<sup>75</sup> See GOCIQR at 35.

<sup>76</sup> See Public Bodies Memorandum at 33.

<sup>77</sup> *Id.* at 35-36.

<sup>78</sup> See *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid from China*), and accompanying IDM at Comment 5.

this gives the CCP, as the government, meaningful control over the companies and their resources. As explained in the Public Bodies Memorandum, 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.<sup>79</sup> Therefore, as AFA, we find that the non-majority government-owned domestic producers that supplied GRT with carbon black, nylon cord, and synthetic rubber and butadiene during the POR are “authorities” within the meaning of section 771(5)(B) of the Act. Furthermore, we find that GRT received financial contributions from the non-majority government-owned producers of their inputs in the form of the purchase of a good within the meaning of section 771(5)(D)(iii) of the Act.

**Comment 2: Whether Commerce Appropriately Found that the Provision of Land-Use Rights for LTAR Constitutes a Financial Contribution**

*GOC’s Comments:*

- In finding that land-use rights GRT obtained from its shareholder, Qingdao Yiyuan Investment Co., Ltd. (Qingdao Yiyuan), provided a financial contribution as AFA, Commerce ignored record evidence that the land was obtained by public auction and, thus, not a financial contribution.<sup>80</sup> Commerce stated that information was missing related to how Qingdao Yiyuan’s specific bankruptcy auction was conducted, including *e.g.*, the relevant public notices for the auction.<sup>81</sup> However, GRT provided the relevant public notice of the auction, which indicates the auction was held by two individual companies and not the Shandong Pingdu People’s Court or Pingdu Bureau of Land and Resources. Thus, the auctions should not be interpreted as certain public authorities providing land-use rights to Qingdao Yiyuan.<sup>82</sup>
- Even if Commerce determined that further information regarding the bankruptcy auction process is missing, Commerce failed to adequately explain how the missing information would permit it to establish that a “countervailable event occurred.” Further information would not change the fact that the former owner of the land was a bankrupted market entity, Qingdao Guangming Tire Co., Ltd. (QGT), rather than an authority.<sup>83</sup> Payment was made to QGT rather than the authority.
- No benefit can be conferred for a market price formed in a public auction pursuant to 19 CFR 351.411(a).<sup>84</sup> The final price is formed through bidding and is thus a market price that would not confer a benefit. The public notice demonstrates that the purchase price is a market price because the notice provided all necessary information for participation, such as time of auction, information regarding the property, and contact information.

No other party submitted comments regarding this issue.

**Commerce’s Position:** We continue to find that the provision of land-use rights to GRT obtained by Qingdao Yiyuan from a public auction constitutes a financial contribution as AFA.

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<sup>79</sup> *Id.*

<sup>80</sup> *See* GOC Case Brief at 8.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 9.

<sup>84</sup> *Id.* at 10. (The GOC appears to reference 19 CFR 351.511(a)).



As discussed in the *Preliminary Results*, the GOC did not provide necessary information regarding the conduct of the specific public auction from which Qingdao Yiyuan obtained the land-use rights or the processes of the relevant local entities.<sup>85</sup> Moreover, the public notice provided by GRT, as opposed to the GOC from whom it was requested, is insufficient to fill the gap created by the GOC's non-cooperation with Commerce's requests for information regarding the auction conducted. Commerce stated in the *Preliminary Results* that we requested documentation on how the bankruptcy auction was conducted, including "e.g., the relevant public notices for the auction."<sup>86</sup> The public notice is merely an example of one of many parts of the information requested from the GOC that is necessary for Commerce to analyze financial contribution. Others include, as requested, the laws and regulations of the relevant authorities, including specifically those of the specific authorities identified as the suppliers of land-use rights by the respondent.<sup>87</sup>

Furthermore, the public notice provided by GRT raises further concerns regarding the GOC's non-cooperation. Rather than indicating that the Shandong Pingdu People's Court or the Pingdu Bureau of Land and Resources are irrelevant to the process because the auction was held by individual companies, the public notice states that the "entrusted court shall make the following requirements to the bidders in accordance with the opinions of the People's Government of Pingdu City," including a requirement related to the production of tires consistent with the land-use rights being for "Pingdu Rubber Tire Industrial Park" and a requirement that the "new enterprise shall comply with the requirements and standards of the local government."<sup>88</sup> Moreover, far from indicating that the transaction was conducted solely between two private entities, QGT and Qingdao Yiyuan, the public notice specifically states that there will be payment of a deposit to "Beneficiary: Qingdao Property Rights Exchange (special account of the Qingdao Intermediate People's Court for judicial auctions)."<sup>89</sup>

Thus, rather than resolve Commerce's concerns regarding the gap in the record created by the GOC, the provision of the public notice raises further concerns regarding the lack of information necessary to evaluate the countervailability of the auction. Multiple references are made to laws and regulations that Commerce solicited from the GOC, and which were not provided. Commerce specifically requested the GOC provide "all government laws or regulations pertaining to the provision of land or land-use rights relevant (*i.e.*, all relevant central, provincial, city, and county government laws and regulations under which the land-use agreement and certificate were issued)."<sup>90</sup> This request for information includes the laws and regulations referenced in the public notice that are related to the "Pingdu Rubber Tire Industrial Park," and "the requirements and standards of the local government."<sup>91</sup>

<sup>85</sup> See *Preliminary Results* PDM at 16-18.

<sup>86</sup> *Id.* at 17 (emphasis added).

<sup>87</sup> See Commerce's Letter, "Supplemental Questionnaire," dated December 13, 2022 (GOCSQ), at 4.

<sup>88</sup> See GRT's Letter, "Section III Initial Questionnaire Response," dated July 21, 2022 (GRTIQR), at Exhibit GRT-16C.4.

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

<sup>90</sup> See GOCSQ at 4.

<sup>91</sup> See GRTIQR at Exhibit GRT-16C.4.



Record evidence indicate that Qingdao Yiyuan obtained the land-use rights via a public auction from a bankrupt entity.<sup>92</sup> However, contrary to the GOC's claims that the presence of payments to the bankrupt entity indicates that Qingdao Yiyuan obtained the land from a private entity, there is not record evidence regarding the conduct of the public auction that could affirm the absence of government involvement. Rather, record evidence indicates that the Shandong Pingdu People's Court directed the transfer of the land from the bankrupt entity to Qingdao Yiyuan and that, according to the "Bidding Registration Procedures," payments were to be made to the account for "judicial auctions."<sup>93</sup> Given the absence of record information requested from the GOC, we are unable to evaluate GRT's claims regarding the ultimate supplier of the land.

Furthermore, record evidence from the respondent does not provide sufficient information necessary to determine whether the auction actually was conducted using market principles. Due to the GOC's non-cooperation, Commerce is unable to assess the number of bidders allowed, the number of bidders rejected for failing to meet the special requirements, or the number of bidders present for each of the auctioned land. Moreover, the public notice indicates that only certain tire producers would be allowed to bid, despite the GOC's claims that the provision of land-use rights was not contingent upon the firm's activity.<sup>94</sup> Therefore, current record evidence, without the supplemental information requested from the GOC, is not sufficient to determine whether this public auction was executed on a competitive basis.

Consequently, we continue to find that information necessary to evaluate financial contribution is not on the record of this review because the GOC withheld requested information and, thus, that we must rely on "facts otherwise available," pursuant to section 776(a)(2)(A) of the Act. Moreover, because the GOC failed to provide information, including local laws and regulations governing the authorities identified by the respondents as providing land-use rights, we find that the GOC did not act to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we continue to find that the GOC's provision of land-use rights constitutes a financial contribution within the meaning of section 771(5)(D) of the Act.

### **Comment 3: Whether the Provision of Electricity for LTAR Is Countervailable**

#### *GOC's Comments:*

- Commerce ignored record evidence demonstrating that provincial electricity tariff schedules removed industrial and commercial prices for electricity in October 2021; thus, Commerce should find that the program ceased in October 2021.<sup>95</sup> The GOC provided record evidence regarding the calculation of electricity prices in its initial questionnaire response, including providing the calculation formula.<sup>96</sup>
- The information requested by Commerce is not necessary because the National Development and Reform Commission (NDRC) is not involved in the pricing of

<sup>92</sup> *Id.* at Attachment GRT-3.

<sup>93</sup> *Id.* at Attachment GRT-3 and Exhibit GRT-16C.4.

<sup>94</sup> *Id.* at Exhibit GRT-16C.4; *see also* GOC IQR at 99-100.

<sup>95</sup> *See* GOC Case Brief at 10-11.

<sup>96</sup> *Id.* at 11.

electricity for commercial users and provincial pricing departments no longer publish tariff rates for such users.<sup>97</sup> Furthermore, such information is not necessary because the markets for the provision of a good and an upstream subsidy are separate under section 771A of the Act.<sup>98</sup> Thus, Commerce's requests for information regarding the upstream subsidy were unnecessary.

- Commerce cannot apply AFA to the GOC for the provision of electricity because it did not inform the GOC that its responses were deficient, as required by section 782(d) of the Act.<sup>99</sup> The U.S. Court of Appeals for the Federal Circuit has found that a notice of deficiency is a prerequisite for the application of AFA.<sup>100</sup> The GOC fully responded and did not believe its responses were deficient. Furthermore, Commerce never provided the GOC with an opportunity to correct a deficiency in its supplemental questionnaires, and the GOC provided a complete response to the initial questionnaire.<sup>101</sup>
- Commerce should find the program ceased upon release of Notice 1439 because it eliminated the commercial and industrial electricity tariff rates.<sup>102</sup>

No other party submitted comments regarding this issue.

**Commerce's Position:** We continue to find that the GOC did not act to the best of its ability in providing required information with respect to the Provision of Electricity for LTAR program. As explained in the *Preliminary Results*,<sup>103</sup> the GOC did not provide complete responses to Commerce's questions regarding this program. In the original questionnaire, Commerce requested information from the GOC that was needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act and whether such a provision was specific within the meaning of section 771(5A) of the Act.

Commerce requested information regarding the derivation of electricity prices at the provincial level, the procedure for adjusting retail electricity tariffs, and the role of the NDRC and the provincial governments in this process.<sup>104</sup> We asked how increases in cost elements led to retail price increases, the derivations of those cost increases, how cost increases were calculated, and how cost increases impacted final prices.<sup>105</sup> Additionally, we 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 adjustments, and how cost element increases and final price increases were allocated across the province and across tariff end-user categories.<sup>106</sup> Furthermore, we asked, if these factors were

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<sup>97</sup> *Id.* at 12.

<sup>98</sup> *Id.* at 12-13.

<sup>99</sup> *Id.* at 13-14.

<sup>100</sup> *Id.* at 13-14 (citing *Mukand, Ltd. v. United States*, 767 F.3d 1300, 1304 (Fed. Cir. 2014)).

<sup>101</sup> *Id.* at 15.

<sup>102</sup> *Id.* at 16.

<sup>103</sup> See *Preliminary Results* PDM at 13-16.

<sup>104</sup> See Initial Questionnaire at II-39 to II-40.

<sup>105</sup> *Id.*

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

not considered, what the rationale was for not incorporating them.<sup>107</sup> The GOC did not provide this necessary information and instead responded with regard to solely the coal price.<sup>108</sup>

In supplemental questions, we requested information regarding these cost elements for price adjustments again and, if such factors were not considered, we requested once again that the GOC explain why.<sup>109</sup> However, the GOC again did not provide a response to this question and instead simply stated that “the price adjustments which were effective during the POR were not triggered by the cost issue.”<sup>110</sup> Therefore, despite the GOC’s claims that it provided the missing information, the GOC did not provide a complete response to our questions and omitted information necessary for Commerce to assess the program, including how the GOC accounts for all other factors except the coal price.

Regarding the GOC’s argument that Commerce’s requests for information are not necessary since October 2021 because the NDRC is not involved in pricing for commercial and industrial users and provincial departments no longer publish commercial and industrial rates, we are unable to assess the accuracy of the GOC’s claims because the GOC omitted requested information despite multiple requests. In the initial questionnaire, we requested that the GOC: (1) “describe the procedure for adjusting retail electricity tariffs and explain the role of the NDRC and the provincial governments in this process”; and (2) “explain how the NDRC monitors costs related to the generation, transmission and distribution of electricity.”<sup>111</sup> The GOC’s response to these questions was incomplete.

For the period after October 2021, the GOC explained that the NDRC and provincial governments no longer adjusted retail electricity prices and, as such, this procedure was no longer relevant.<sup>112</sup> However, Commerce’s question did not specifically ask how these authorities set commercial and industrial electricity tariff prices, but rather, concerned the overall procedure for adjusting retail electricity tariffs and the role played by the government. The GOC’s response that it has no role in this regard is tantamount to saying that there is no regulation of the electricity market in China. Thus, in supplemental questions, we requested more explicitly that the GOC explain the “role, if any, the NDRC plays in regulating commercial and industrial electricity prices since October 2021 and provide all relevant documentation,” and that the GOC “explain the regulatory system for commercial and industrial electricity in the provinces in which the mandatory respondent purchased electricity and provide all relevant documentation.”<sup>113</sup> In response, the GOC referred back to the elimination of commercial and industrial electricity prices from the schedule without making any attempt to explain whether or not the GOC still has a program of providing electricity for LTAR through other regulatory means.<sup>114</sup> The GOC failed to provide any documentation with regard to NDRC’s role since October 2021 and, for the

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

<sup>108</sup> See GOCQR at 93.

<sup>109</sup> See GOCSQ at 4.

<sup>110</sup> See GOC’s Letter, “Supplemental Questionnaire Response,” dated December 27, 2022 (GOCSQR), at 2-3.

<sup>111</sup> See Initial Questionnaire at II-39 to II-40.

<sup>112</sup> See GOCQR at 90.

<sup>113</sup> See GOCSQ at 5.

<sup>114</sup> See GOCSQR at 3-4.

provinces, provided only the local implementation of the commercial and electricity elimination.<sup>115</sup>

In response to the second question regarding the costs of transmission, distribution, and other factors, outside of a brief discussion of the coal price and noting that the commercial and industrial prices have been eliminated since October 2021, the GOC simply stated, “{f}or transmission and distribution costs, NDRC monitors, among other things, profit levels of the grid companies.”<sup>116</sup> As discussed in the *Preliminary Results*,<sup>117</sup> documentation provided by the GOC indicates that the NDRC and provincial governments are still involved in the regulation of generation, transmission, and distribution of electricity since October 2021.<sup>118</sup> Therefore, a response that the NDRC tracks “among other things” the profits of grid companies is deficient with regard to the request for information and, likewise, insufficient for Commerce to assess whether the GOC is able to affect or manipulate retail electricity prices through its regulation of electricity generation, transmission and distribution.

In supplemental questions, we requested that the GOC among other things, “explain the role of the state grid in the transmission and distribution on electricity from the power generators to the consumers,” “describe in detail the agreements between the state grid and the power generators for the distribution of electricity and submit supporting documentation,” and provide an explanation of the spot-market for electricity, including the regulatory role played by the NDRC and provinces.<sup>119</sup> In response, the GOC provided a one sentence answer to the first question: “The state grid is to transmit electricity from power generators to consumers.”<sup>120</sup> For the second question, the GOC stated it was not privy to the contracts despite the agreements being for the *state grid*.<sup>121</sup> For both the second and third questions, the GOC stated that such information was not necessary or applicable.<sup>122</sup> Commerce notes that these responses are likewise deficient relative to our requests for information. In sum, the GOC provided deficient responses to the initial questionnaire, Commerce requested further information regarding specific issues with the initial questionnaire responses, and the GOC once again failed to provide complete responses. Therefore, the GOC’s argument regarding being unaware that its responses were deficient is unconvincing.

Regarding the GOC’s argument that information was not necessary because it related to an upstream subsidy, Commerce’s language regarding upstream markets in the *Preliminary Results* is unrelated to upstream subsidies as considered by section 771A of the Act. The relevant good for the upstream market, by which Commerce generally refers to the markets for the generation, transmission, and distribution of electricity, is electricity and not a separate input product. The relationship in this regard is more similar to a producer versus supplier relationship than an upstream subsidy as considered by section 771A of the Act. In sum, the GOC did not cooperate

<sup>115</sup> *Id.* at Exhibits S1-8.1 and S1-8.2.

<sup>116</sup> *Id.* at 94.

<sup>117</sup> See *Preliminary Results* PDM at 15.

<sup>118</sup> See GOCIQR at Exhibit III.C67.5.

<sup>119</sup> See GOCSQ at 5-6.

<sup>120</sup> See GOCSQR at 4.

<sup>121</sup> *Id.* at 5 (emphasis added).

<sup>122</sup> *Id.*; see also, e.g., *Ferrostaal Metals*, 518 F. Supp. 3d at 1376 (“It is well established that it is Commerce, not the respondent, that determines what information is to be provided ... .”)

with our requests for this necessary information regarding both the retail market and predecessor electricity markets, and, thus, the GOC's argument in this regard is unavailing.

As discussed in the *Preliminary Results*, record evidence continues to indicate that the GOC, through the NDRC and the provincial governments, maintained a major role in the regulation and control of electricity prices even though the commercial and industrial rates were removed.<sup>123</sup> In the absence of further documentation that Commerce requested on multiple occasions, we are unable to determine whether the GOC, through its control of electricity markets prior to the final distribution to retail customers, maintains a program of providing electricity for LTAR. Thus, such information is necessary, and, by the GOC's lack of cooperation, a gap is created in the record. Likewise, due to the gap on the record, we are unable to evaluate the GOC's claims that the program of the provision of electricity for LTAR was eliminated in October 2021. Therefore, as AFA, we continue to find that the program constituted a financial contribution within the meaning of section 771(5)(D) of the Act and was specific within the meaning of section 771(5A)(D)(iv) of the Act.<sup>124</sup>

#### **Comment 4: Whether the Benchmark for Electricity Includes VAT**

##### *GOC's Comments:*

- Commerce inappropriately found that the benchmark electricity tariff schedules are VAT-exclusive.<sup>125</sup> As an initial matter, VAT is a nationwide tax and, consequently, the only question is whether the tariff schedules themselves incorporate VAT. Record evidence from the Electricity Power Law of China states that tariff schedules will be tax-inclusive.<sup>126</sup> Furthermore, Commerce previously found electricity tariff schedules to be VAT-inclusive in *Forged Steel Fittings from China*.<sup>127</sup>

No other party submitted comments regarding this issue.

**Commerce's Position:** As discussed in 2019 and 2020 administrative reviews for truck and bus tires from China,<sup>128</sup> we agree with the GOC that electricity prices in China are VAT-inclusive, and that Commerce previously found certain electricity tariff schedules to incorporate VAT.<sup>129</sup> In this review, Commerce agrees that certain electricity tariff schedules include certain taxes.<sup>130</sup> However, as discussed in the *Preliminary Results*, multiple provinces mention certain duties

<sup>123</sup> See *Preliminary Results* PDM at 15.

<sup>124</sup> See *Canadian Solar, Inc. v. United States*, 23 F.4<sup>th</sup> 1372 (Fed. Cir. 2022) (affirming Commerce's AFA finding that the provision of electricity is regionally specific under section 771(5A)(D)(iv) of the Act).

<sup>125</sup> See GOC Case Brief at 16-17.

<sup>126</sup> *Id.* (citing GOC IQR at Exhibit III.C67.12).

<sup>127</sup> *Id.* (citing *Forged Steel Fittings from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 50342 (October 5, 2018) (*Forged Steel Fittings from China*), and accompanying IDM at Comment 6.

<sup>128</sup> See *Truck and Bus Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2019*, 86 FR 72921 (December 23, 2021) (*Truck and Bus Tires from China 2019*), and accompanying IDM at Comment 5D; see also *Truck and Bus Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2020*, 87 FR 39063 (June 30, 2022) (*Truck and Bus Tires from China 2020*), and accompanying IDM at Comment 6.

<sup>129</sup> See *Truck and Bus Tires from China 2020* IDM at Comment 6

<sup>130</sup> See GOC IQR at Exhibit III.C67.6.

(e.g., “national major water conservancy project construction fund”) or explicitly state that they are tax-inclusive (e.g., the Jiangmen Electricity Grid Sales Price List of Guangdong province, which state that the price is “{t}ax included” but not inclusive of various government funds and surcharges), but none of the provinces identified by Commerce in this proceeding as having the highest per-category rates (Beijing, Hainan, Shanghai, Tianjin or the Shenzhen catalogue of Guangdong Province) include VAT in their listed prices.<sup>131</sup> Thus, although we agree with the GOC that the appropriate question is whether the specific tariff schedules incorporate VAT, we continue to find that the relevant electricity tariff schedules, which were the basis for the benchmark, are VAT-exclusive.

#### **Comment 5: Whether Commerce Should Revise the Calculation of Various Input for LTAR Programs**

##### *GRT’s Comments:*

- For the provision of carbon black and nylon cord for LTAR, Commerce incorrectly omitted VAT from the purchase price paid by the respondents despite incorporating VAT into the benchmark.<sup>132</sup>
- For the provision of carbon black and synthetic rubber and butadiene, Commerce erroneously calculated the benefit on the entirety of Cooper (Kunshan) Tire Co., Ltd.’s (CKT) purchases of these inputs rather than on the purchases transferred to GRT.<sup>133</sup> CKT’s purchases that were transferred to GRT are already included in GRT’s purchase lists. Commerce should calculate the benefit on the basis solely of the transferred inputs, consistent with *Truck and Bus Tires from China 2019* and 19 CFR 351.525(b)(6)(v).<sup>134</sup>
- CKT did not transfer any nylon cord to GRT and, thus, CKT’s purchases of nylon cord should not be included in the benefit calculation.<sup>135</sup> While GRT stated that CKT transferred nylon cord, this was an error, which is demonstrated through GRT’s purchase list.<sup>136</sup>

No other party submitted comments regarding this issue.

**Commerce’s Position:** We agree with GRT’s comments regarding all corrections with respect to this issue. Regarding the incorporation of VAT in the purchase price for carbon black and nylon cord, the omission was an error. Regarding the transfers of inputs from CKT to GRT, consistent with *Truck and Bus Tires from China 2019*, we agree that the only purchases that should be incorporated in the calculation are those that were transferred to the respondent, pursuant to 19 CFR 351.525(b)(6)(v).<sup>137</sup> Therefore, we corrected all issues for these final results by recalculating the purchase price to incorporate VAT for carbon black and nylon cord,

<sup>131</sup> See *Preliminary Results* PDM at 30.

<sup>132</sup> See GRT Case Brief at 3-4 and 8-10.

<sup>133</sup> *Id.* at 5-8, 12-14.

<sup>134</sup> *Id.* (citing *Truck and Bus Tires from China 2019* IDM at 63).

<sup>135</sup> *Id.* at 10-11.

<sup>136</sup> *Id.*

<sup>137</sup> See *Truck and Bus Tires from China 2019* IDM at 63.



calculating the benefit for carbon black and synthetic rubber based solely on the transferred purchases, and removing CKT's purchases of nylon cord from the benefit calculation.<sup>138</sup>

#### **Comment 6: Whether Commerce Should Revise the Sales Denominator for a Parent Company**

*GRT's Comments:*

- Commerce calculated the sales denominator for CTIC used in the Economic Development for CTIC program by adding CTIC's unconsolidated sales and GRT's unconsolidated sales and subtracting the intercompany sales. However, CTIC reported its own consolidated sales, and Commerce should use this value in the final results.<sup>139</sup>

No other party submitted comments regarding this issue.

**Commerce's Position:** In its initial questionnaire response, GRT stated that it reported its unconsolidated sales, which are consistent with its financial statements.<sup>140</sup> While GRT provided a consolidated sales calculation, GRT did not provide an explanation of its methodology, and there are no supporting financial documents for the consolidated figures.<sup>141</sup> We are unable to assess how such figures were calculated or determine which companies are incorporated into the consolidated figure. Moreover, our approach in this review is consistent with our calculation methodology in prior reviews of using the audited figures reported for CTIC.<sup>142</sup> Therefore, we made no changes to the sales denominator for the final results of review.<sup>143</sup>

#### **Comment 7: Whether Commerce Should Update the Loan Benchmarks Used for Government Policy Lending**

*GRT's Comments:*

- In the *Preliminary Results*, Commerce used 2020 loan benchmark interest rates because 2021 data was not available. However, loan interest rate benchmark data is now available in other cases, and Commerce should update the rates.<sup>144</sup>

No other party submitted comments regarding this issue.

**Commerce's Position:** While we note that such loan benchmark interest rates may be available in other cases, those interest rates are not on the record of this review and have not been subject

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<sup>138</sup> See Memorandum, "Final Results Calculations for Qingdao Ge Rui Da Rubber Co., Ltd.," dated concurrently with this memorandum (GRT Final Calculation Memorandum).

<sup>139</sup> See GRT Case Brief at 14.

<sup>140</sup> See GRTIQR at III-6.

<sup>141</sup> See *DuPont Teijin Films China Ltd. v. United States*, 7 F. Supp. 3d 1338 (CIT 2014) (affirming Commerce's determination to rely on its default methodology when a respondent fails "to demonstrate that its proposed alternative methodology was clearly less distortive than methodology chosen by Commerce.")

<sup>142</sup> See GRTIQR at Exhibit GRT-1.

<sup>143</sup> See *Hussey Copper, Ltd. v. United States*, 834 F. Supp. 413, 422 (CIT 1993) (affirming that when "Commerce {} decide{s} that {}no departure from its standard methodology {is} warranted {}, the court will sustain Commerce's decision absent a showing that the decision is unreasonable."

<sup>144</sup> See GRTIQR at 15.

to comment or rebuttal by interested parties. Each of Commerce's proceedings is conducted on a case-specific basis and stands on its own.<sup>145</sup> Therefore, we made no changes to the interest rates used from the *Preliminary Results*.

### Comment 8: Whether the Respondent Failed Verification for the EBC Program

#### *Petitioner's Comments:*

- According to the Verification Report, GRT did not report the complete universe of loans requested in its questionnaire responses.<sup>146</sup> Specifically, Check #2 indicates that Commerce found unreported borrowing and, therefore, a gap remains in the record concerning GRT's claims of non-use of the EBC program.<sup>147</sup>
- In other cases where Commerce was presented with incomplete financing information, Commerce stated that "{i}t remains impossible, and contrary to Commerce's practice, to confirm non-use based on partial non-use information," and "there is no basis to find that the respondent or its customers have sufficiently filled the gaps in the record caused by the GOC's non-cooperation and withholding of information."<sup>148</sup> Therefore, Commerce should apply AFA for the EBC program.<sup>149</sup>

#### *GRT's Rebuttal Comments:*

- GRT/GYD properly reported all loans that were received and/or outstanding during the POR.<sup>150</sup> The EBC program supplemental questionnaire only requested loan information for all of GRT and GYD's U.S. customers and importers, which were CTRC and GTRC, respectively.<sup>151</sup> GTRC's financial statements indicate that the name "Goodyear Tire and Rubber Company" refers to both the corporate entity and the consolidated company, including all legal entities in which it holds a controlling financial interest.<sup>152</sup> For GTRC's reporting, it included all financing in GTRC's corporate account.<sup>153</sup> GRT did not report all loans for the consolidated entity because the scope of Commerce's request was limited to the U.S. importers and customers. Thus, approximately 25 percent of all loans were not reportable.<sup>154</sup>
- None of the six random completeness checks demonstrate that GRT failed to report financing provided to its U.S. importers and customers.<sup>155</sup> GRT was not required to report all loans for all GTRC entities because not all entities were GRT's U.S. importer and customer, *i.e.*, the corporate entity of GTRC.<sup>156</sup> For example, Check #6 related to

<sup>145</sup> See, e.g., *Certain Steel Concrete Reinforcing Bars from Turkey: Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082 (November 7, 2006), and accompanying IDM at Comment 22.

<sup>146</sup> See Petitioner Case Brief at 2.

<sup>147</sup> *Id.* at 2-3.

<sup>148</sup> *Id.* (citing *Certain Steel Racks and Parts Thereof from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2020*, 88 FR 21177 (April 10, 2023) (*Certain Steel Racks from China*), and accompanying IDM at Comment 1).

<sup>149</sup> *Id.* at 3-4.

<sup>150</sup> See GRT Rebuttal Brief at 3-4.

<sup>151</sup> *Id.* at 4.

<sup>152</sup> *Id.* at 5.

<sup>153</sup> *Id.* at 5-6.

<sup>154</sup> *Id.* at 6-7.

<sup>155</sup> *Id.* at 7.

<sup>156</sup> *Id.*

financing for Goodyear S.A., but no party argues that GRT was required to report this loan.<sup>157</sup> Check #2 related to an entity code for North America, but GTRC has 22 U.S. subsidiaries other than the corporate entities of GTRC and CTRC, which does not include further subsidiaries in Canada and Mexico.<sup>158</sup> GRT was not required to provide information regarding financing for these entities because they were not U.S. importers. The record does not establish that the loan was a reportable loan, only that it was unreported.<sup>159</sup>

- Commerce did not uncover any loans related to the EBC program.<sup>160</sup> While the details of the financing analyzed in Check #2 are business proprietary, they do not relate to the EBC program or the Export-Import Bank of China and, therefore, the check does not undermine GRT's claims of non-use of the program.<sup>161</sup>
- Even assuming that the financing reported in Check #2 should have been reported as part of the EBC program supplemental questionnaire response, perfection is not required for a respondent's loan information to fill the gap left by the GOC.<sup>162</sup> The U.S. Court of International Trade (CIT) found in *Risen Energy* that it is "unreasonable to require perfection" when information provided by the respondent substantively filled the gap.<sup>163</sup> In *Risen Energy*, the respondent reported loans covering approximately 95 percent of its sales, but Commerce still applied AFA because the respondent did not report the complete universe of loans. The CIT found this interpretation unreasonable and remanded the matter to Commerce to, if verified, apply a *pro rata* adjustment of the AFA rate or find non-use of the program.<sup>164</sup> The CIT made a similar decision in *Dalian Meisen Woodworking*.<sup>165</sup> Financing to the North American account accounts for only 0.5 percent of financing and, therefore, Commerce should find non-use of the program.<sup>166</sup>
- If Commerce does apply AFA, it must select the appropriate AFA rate, 1.78 percent, which is the highest rate previously calculated in this proceeding for the Government Policy Lending program, in considering GRT's cooperation in this proceeding.<sup>167</sup> Furthermore, in consideration of *Risen Energy*, Commerce should apply a *pro rata* adjustment to the AFA rate reflective of the potential universe of loans.<sup>168</sup>

**Commerce's Position:** As discussed above in the section "Application of AFA: Export Buyer's Credit," above, we find that GRT did not report the entirety of the loans to the U.S. importers and customers required in the EBC program supplemental questionnaire (*i.e.*, GTRC and CTRC). As discussed in the Verification Report, Commerce officials found in Check #2 that there was

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<sup>157</sup> *Id.* at 7-8.

<sup>158</sup> *Id.* at 8.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 9.

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

<sup>162</sup> *Id.* at 10.

<sup>163</sup> *Id.* (citing *Risen Energy Co. v. United States*, Consol. Court No. 20-03912, Slip Op. 23-48 (CIT April 11, 2023) (*Risen Energy*)).

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 11 (citing *Dalian Meisen Woodworking Co. v. United States*, Court No. 20-00110, Slip Op. 23-57 (CIT April 20, 2023) (*Dalian Meisen Woodworking*)).

<sup>166</sup> *Id.* at 11-12.

<sup>167</sup> *Id.* at 12-14.

<sup>168</sup> *Id.* at 14.

unreported financing in an account that is “included within the legal entity of GTRC.”<sup>169</sup> While GTRC may maintain a main corporate account in its accounting system, company officials explained that the entity code for the account evaluated in Check #2 was likewise for the legal entity of GTRC and not a separate legal entity within the consolidated company.<sup>170</sup> A distinction can be drawn between Checks #2 and #6 in that Check #6 referred to a foreign subsidiary, Goodyear S.A., and Commerce verified in Check #6 a loan for the “affiliated company network.” In addition to statements by company officials at verification explaining that the account reviewed in Check #2 was for the legal entity of GTRC, the record demonstrates that the account is not for a separate, listed legal entity: the list of subsidiaries provided in GTRC’s 10-K Form for the POR does not provide a North American entity, either domestically or internationally, and no other subsidiary has a similar name.<sup>171</sup>

Therefore, GRT should have provided this financing as part of its own EBC program supplemental questionnaire response because the financing was for GYD’s U.S. customer and importer, GTRC. Moreover, because the financing is for GTRC itself, GRT’s arguments related to other legal entities are irrelevant. Due to gaps in the record created by the GOC, Commerce is unable to assess GRT’s claims because the complete list of U.S. customer and importer financing has not been reported. As we stated in *Certain Steel Racks from China*, “{i}t remains impossible, and contrary to Commerce’s practice, to confirm non-use based on partial non-use information,” and “there is no basis to find that the respondent or its customers have sufficiently filled the gaps in the record caused by the GOC’s non-cooperation and withholding of information.”

Neither *Risen Energy* nor *Dalian Meisen Woodworking* is applicable to the current circumstances. In the instant review, Commerce reviewed financing for two U.S. customers included within only one consolidated entity. As discussed above, one of those U.S. customers, and thus, the consolidated entity overall, failed verification. In *Risen Energy*, the CIT considered the circumstances surrounding the respondent’s attempts to fill the gaps in the record caused by the GOC’s non-cooperation.<sup>172</sup> In that case, the POR was five years ago, Commerce had changed its policy with respect to the EBC program, and the missing financial data accounted for roughly five percent of sales of smaller importers.<sup>173</sup> In *Dalian Meisen Woodworking*, one of the U.S. customers was no longer in business.<sup>174</sup> Neither of these situations is applicable to GRT.<sup>175</sup> Moreover, neither case is final, and further remands are pending. While we do not generally agree that *pro rata* adjustments are appropriate, we further note that in the instant review, the portion of GRT and GYD’s U.S. sales accounted for by the importer or customer that failed verification, which is their consolidated parent company, is 100 percent. In short, we find that the information provided by GRT is not sufficient to fill the gaps caused by the GOC’s non-cooperation with respect to this program.

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<sup>169</sup> See Verification Report at 8.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*; see also GRTIQR at Exhibit GYD-5C (internal Exhibit 21.1 regarding “Subsidiaries of the Registrant”).

<sup>172</sup> See *Risen Energy*.

<sup>173</sup> *Id.*

<sup>174</sup> See *Dalian Meisen Woodworking*.

<sup>175</sup> *Id.*

**Comment 9: Whether Commerce Should Make an Adjustment to the Benchmark Used to Value the Provision of Land-Use Rights**

*Petitioner's Comments:*

- Commerce miscalculated the benchmark used to assess remuneration for the provision of land-use rights for GYD. While the nature of the mistake is business proprietary, Commerce should fix the issue for the final results.

No other party submitted comments regarding this issue.

**Commerce's Position:** We agree with the petitioner and modified the benchmark for the provision of land-use rights to use the correct unit of measure for the final results of review.<sup>176</sup>

**Comment 10: Whether Commerce Should Revise the Sales Denominator Calculated for an Input Supplier**

*Petitioner's Comments:*

- Commerce miscalculated the sales denominator for SMC.<sup>177</sup> While the nature of Commerce's error is business proprietary, Commerce should fix the issue for the final results of review.

*GRT's Rebuttal Comments:*

- Commerce should not adjust the sales denominator for SMC. Commerce explained its decision to use the combined sales denominator of SMC and GYD's relevant sales denominator, net of intercompany sales, because SMC's services are primarily dedicated to the downstream product. This is in accordance with 19 CFR 351.525(b)(6)(iv).<sup>178</sup>

**Commerce's Position:** We agree with GRT and made no adjustments to the sales denominator used for subsidies provided to SMC. As noted in the *Preliminary Results*, we attributed benefits to the combined value of SMC's sales and GYD's relevant sales denominator, net of intercompany sales, in accordance with 19 CFR 351.525(b)(6)(iv).<sup>179</sup> GYD's sales denominator for the POR, as a producer of subject merchandise, incorporates GRT as a cross-owned producer, consistent with 19 CFR 351.525(b)(6)(ii) and, therefore, GRT's sales will be included in the sales denominator, net of intercompany sales for the final results of review.<sup>180</sup>

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<sup>176</sup> See GRT Final Calculation Memorandum.

<sup>177</sup> See Petitioner Case Brief at 5.

<sup>178</sup> See GRT Rebuttal Brief at 14-15.

<sup>179</sup> See *Preliminary Results* PDM at 22.

<sup>180</sup> See GRT Final Calculation Memorandum.

## X. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these positions are accepted, we will publish the final results in the *Federal Register*.



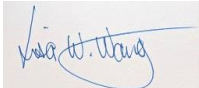
\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

7/6/2023

X



Signed by: LISA WANG

Lisa W. Wang

Assistant Secretary

for Enforcement and Compliance