



C-570-140
Investigation
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October 12, 2021

MEMORANDUM TO: Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: Scot Fullerton
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination of the Countervailing Duty Investigation of Certain
Mobile Access Equipment and Subassemblies Thereof from the
People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain mobile access equipment and subassemblies thereof (mobile access equipment) from the People's Republic of China (China), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). The petitioner in this case is the Coalition of American Manufacturers of Mobile Access Equipment (the petitioner). The mandatory respondents in this investigation are Lingong Group Jinan Heavy Machinery Co., Ltd. (LGMG) and Zhejiang Dingli Machinery Co., Ltd. (Dingli) (collectively, the respondents).

After analyzing the comments submitted by interested parties, we made certain changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues in this investigation for which we received comments from interested parties:

¹ See *Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 86 FR 41013 (July 30, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



General Issues

- Comment 1: Countervailability of the Provision of Certain Inputs and Services for Less Than Adequate Remuneration (LTAR)
- Comment 2: Countervailability of the Provision of Electricity for LTAR
- Comment 3: Countervailability of Other Subsidies
- Comment 4: Currency Undervaluation
- Comment 5: Export Buyer's Credit
- Comment 6: Whether to Average Dingli's Steel Benchmark Sources with UN Comtrade Data
- Comment 7: Benchmarks for the Provision of Hot-Rolled Steel Sheet and Plate for LTAR
- Comment 8: Benchmarks for the Provision of Ocean Shipping Services for LTAR and Ocean Freight in Input LTARs
- Comment 9: Certain UN Comtrade Benchmarks

Dingli Issues

- Comment 10: Whether Commerce Erred in Calculating Dingli's Use of the Provision of Cold-Rolled Steel for LTAR
- Comment 11: Whether Commerce Should Use Dingli's Consolidated Sales as the Denominator

LGMG Issues

- Comment 12: Whether Commerce Should Countervail LGMG's Off-the-Road (OTR) Tires
- Comment 13: Whether Commerce Should Countervail Lithium-Ion Batteries for LTAR
- Comment 14: Whether Commerce Should Reconsider the Benchmark for Diesel Engines and Which Diesel Engines Are Countervailable
- Comment 15: Whether Commerce Should Revise LGMG's Reported Total Sales Value
- Comment 16: Whether Commerce Should Include an Additional "Other Subsidy Program" in LGMG's Overall Subsidy Rate

II. BACKGROUND

A. Case History

On July 30, 2021, Commerce published its *Preliminary Determination*. On the same date, Shandong Lede Machinery Co., Ltd. (Shandong Lede) requested that Commerce remove Shandong Lede from the subsidy rate determination.² In late July, Commerce issued

² See Shandong Lede's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the Peoples Republic of China (Case Nos. C-570-140, A-570-139) Preliminary Affirmative Countervailing Duty Determination: Request for Removal of Shandong Lede from the Subsidy Rate Determination," dated July 30, 2021. Shandong Lede and the other non-responsive companies did not respond to the quantity and value (Q&V) questionnaire issued to them, did not provide documentation indicating they were having difficulty providing the information, and did not request to submit the information in an alternate form. Thus, Shandong Lede did not comply with Commerce's request for information by appropriately filing a Q&V questionnaire response indicating no exports of subject merchandise to the United States. Therefore, we continue to find that Shandong Lede is a non-responsive company for the purposes of determining a subsidy rate.

supplemental questionnaires to LGMG regarding general issues and Dingli regarding the export buyer's credit program to which we received timely responses.³

On August 2, 2021, Dingli submitted ministerial error allegations regarding the *Preliminary Determination*.⁴ On August 9, 2021, the petitioner submitted rebuttal comments regarding Dingli's ministerial error allegations, which we did not consider, pursuant to 19 CFR 351.224(c)(3).⁵ On August 13, 2021, Commerce determined that there were no ministerial errors in the *Preliminary Determination*.⁶

In the *Preliminary Determination*, Commerce stated that it would issue a post-preliminary analysis regarding new subsidy allegations (NSA) submitted by the petitioner on the provision of OTR tires for LTAR and the provision of cold-rolled steel for LTAR for which Commerce had issued pending supplemental questionnaires.⁷ In addition, Commerce stated that it would consider additional NSAs submitted by the petitioner regarding the provision of paint and other coatings for LTAR and an uncreditworthiness allegation regarding LGMG.⁸ On July 28, 2021, and August 4, 2021, respectively, Dingli, the GOC and LGMG responded to Commerce's NSA supplemental questionnaires that were pending at the *Preliminary Determination*.⁹

³ See Commerce's Letter, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Third Supplemental Questionnaire for LGMG," dated July 28, 2021; and Commerce's Letter, "Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Second Supplemental Questionnaire for Zhejiang Dingli Machinery Co., Ltd. Regarding the Export Buyer's Credit Program," dated July 30, 2021 (Dingli EBCSQ); see also Dingli's Letter, "Dingli Export Buyer's Credit Supplemental Questionnaire Response: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China (C-570-140) (POI: 2020)," dated August 4, 2021 (Dingli EBCSQR); and LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; CVD Investigation; Response to 4th Supplemental Questionnaire," dated August 6, 2021 (LGMG 4SQR). In the *Preliminary Determination*, we listed Lingong Group Jinan Heavy Machinery (Mobile Elevating Work Platforms) as a non-responsive company because it did not reply to our quantity and value questionnaire. After the *Preliminary Determination*, in LGMG 4SQR, LGMG reported that Lingong Group Jinan Heavy Machinery (Mobile Elevating Work Platforms) is not a separate company registered in China and that the listed address is for an LGMG rented office building. Consequently, we have removed Lingong Group Jinan Heavy Machinery (Mobile Elevating Work Platforms) from the list of non-responsive companies.

⁴ See Dingli's Letter, "Dingli Ministerial Error Allegation: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China (C-570-140) (POI: 2020)," dated August 2, 2021.

⁵ See Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Rebuttal Ministerial Error Comments," dated August 9, 2021.

⁶ See Memorandum, "Countervailing Duty Investigation Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Ministerial Error Allegations in the Preliminary Determination," dated August 13, 2021.

⁷ See *Preliminary Determination* PDM at 8.

⁸ *Id.*

⁹ See Dingli's Letter, "Dingli New Subsidy Allegation Supplemental Questionnaire Response: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China (C-570-140) (POI: 2020)," dated July 28, 2021; see also GOC's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China, Case No. C-570-140: GOC's New Subsidy Allegation Supplemental Questionnaire Response," dated July 28, 2021 (GOCNSASQR); and LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; CVD Investigation; Response to NSA Supplemental Questionnaire," dated August 4, 2021 (LGMG NSA SQR).

On August 13, 2021, Commerce issued a post-preliminary analysis, in which we found the provision of OTR tires for LTAR program to be not used and provision of cold-rolled steel for LTAR program countervailable.¹⁰ On August 16, 2021, Commerce determined not to initiate the NSA regarding the provision of paint and other coatings for LTAR.¹¹ Commerce also determined to initiate the uncreditworthiness allegation regarding LGMG but postpone examination of this allegation to the first administrative review requested of LGMG, if the investigation should result in an order, and LGMG is individually examined.¹²

On August 17, 2021, Commerce issued questionnaires in lieu of an onsite verification to Dingli and LGMG regarding all issues¹³ except the export buyer's credit program, and we received timely responses.¹⁴ On August 27, 2021, we established a briefing schedule for all issues except the export buyer's credit program.¹⁵ On September 7, 2021, Dingli, LGMG, the GOC, and the petitioner filed case briefs regarding all issues except the export buyer's credit program.¹⁶ On September 15, 2021, Dingli, LGMG, and the petitioner filed rebuttal briefs regarding all issues except the export buyer's credit program.¹⁷ On September 17, 2021, the petitioner filed

¹⁰ See Memorandum, "Post-Preliminary Analysis in the Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China," dated August 13, 2021 (Post-Preliminary Analysis).

¹¹ See Memorandum, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: New Subsidy Allegations and Creditworthiness Allegations," dated August 16, 2021 (NSA and Uncreditworthiness Memorandum), at 3.

¹² *Id.* at 5 and 7.

¹³ Scope issues are handled separately in conjunction with the accompanying antidumping (AD) investigation. See "Scope Issues" section below.

¹⁴ See Commerce's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Zhejiang Dingli Machinery Co., Ltd. Verification Questionnaire," dated August 17, 2021; see also Commerce's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Lingong Group Jinan Heavy Machinery Co., Ltd. Verification Questionnaire," dated August 17, 2021; Dingli's Letter, "Dingli In Lieu of Verification Response: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China (C-570-140) (POI: 2020)," dated August 25, 2021; and LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; {CVD} Investigation; LGMG In Lieu of Verification Questionnaire Response," dated August 25, 2021 (LGMG Verification QR).

¹⁵ See Commerce's Letter, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Briefing Schedule," dated August 27, 2021.

¹⁶ See Dingli's Letter, "Dingli's Case Brief: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: (C-570-140)," dated September 7, 2021 (Dingli General Issues Brief); LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; {CVD} Investigation; LGMG Case Brief," dated September 7, 2021 (LGMG General Issues Brief); GOC's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China, Case No. C-570-140: GOC's Case Brief," dated September 7, 2021 (GOC General Issues Brief); and Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Non-Export Buyer's Credit Program Case Brief," dated September 7, 2021 (Petitioner General Issues Brief).

¹⁷ See Dingli's Letter, "Dingli's Rebuttal Case Brief: Countervailing Duty Investigation on Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China (C-570-140)," dated September 15, 2021 (Dingli General Issues Rebuttal Brief); LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; {CVD} Investigation; LGMG Rebuttal Brief," dated September 15, 2021 (LGMG General Issues Rebuttal Brief); and Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Non-Export Buyer's Credit Program Rebuttal Brief," dated September 15, 2021 (Petitioner General Issues Rebuttal Brief).

comments requesting that Commerce reject the LGMG General Issues Rebuttal Brief because it contained new factual information to which LGMG filed rebuttal comments.¹⁸ On September 27, 2021, Commerce rejected the LGMG General Issues Rebuttal Brief,¹⁹ and, on September 29, 2021, LGMG filed a revised general issues rebuttal brief.²⁰

On August 30, 2021, Commerce received requests for a hearing from Dingli,²¹ LGMG,²² the Government of China (GOC),²³ and the petitioner.²⁴ On October 6, 2021, Commerce held a hearing regarding all issues in the countervailing duty (CVD) investigation. As explained below, a separate hearing on scope issues was held the on the same day.

On September 7, 2021, Commerce issued questionnaires in lieu of an onsite verification to Dingli and LGMG regarding the export buyer's credit program.²⁵ In addition, Commerce issued clarification regarding Dingli's questionnaire.²⁶ On September 14, 2021, Dingli requested further clarification and revision of the questionnaire to which the petitioner filed rebuttal comments opposing modification.²⁷ On September 15, 2021, Commerce revised Dingli's questionnaire.²⁸ On September 16, 2021, Dingli and LGMG timely filed responses to the export

¹⁸ See Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Request to Reject LGMG's Non-Export Buyer's Credit Program Rebuttal Brief," dated September 17, 2021; *see also* LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; CVD Investigation; Opposition to Petitioner's Request to Reject Rebuttal Brief," dated September 23, 2021.

¹⁹ See Commerce's Letter, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Reject and Maintain Rebuttal Brief for Lingong Group Jinan Heavy Machinery Co., Ltd.," dated September 27, 2021.

²⁰ See LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; {CVD} Investigation; Revised LGMG Rebuttal Brief," dated September 29, 2021.

²¹ See Dingli Letter, "Dingli Hearing Request in the Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (C-570-140)," dated August 30, 2021.

²² See LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; {CVD} Investigation; LGMG Request for A Public Hearing," dated August 30, 2021.

²³ See GOC's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China, Case No. C-570-140: Request for Hearing," dated August 30, 2021.

²⁴ See Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Request for Hearing," dated August 30, 2021.

²⁵ See Commerce's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Zhejiang Dingli Machinery Co., Ltd. Export Buyer's Credit Verification Questionnaire," dated September 7, 2021; and Commerce's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Lingong Group Jinan Heavy Machinery Co., Ltd. Verification Questionnaire," dated September 7, 2021.

²⁶ See Memorandum, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Clarification Regarding Dingli's Export Buyer's Credit Verification Questionnaire," dated September 7, 2021.

²⁷ See Dingli's Letter, "Dingli Request for Clarification: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China (C-570-140) (POI: 2020)," dated September 14, 2021; *see also* Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Opposition to Exclusion Request," dated September 14, 2021.

²⁸ See Commerce's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Zhejiang Dingli Machinery Co., Ltd. Export Buyer's Credit Verification Questionnaire Clarification," dated September 15, 2021.

buyer's credit questionnaires in lieu of an onsite verification.²⁹ On September 20, 2021, Commerce established briefing schedules for the export buyer's credit program to which we received timely filed case and rebuttal briefs from the GOC (case brief only), Dingli, LGMG (rebuttal brief only), and the petitioner.³⁰

B. Scope Issues

On July 26, 2021, concurrent with the *Preliminary Determination*, Commerce issued a Preliminary Scope Memorandum for this countervailing duty (CVD) investigation and the accompanying AD investigation.³¹ On July 29, 2021, we issued a separate briefing schedule for scope issues.³² We received scope case briefs and rebuttal briefs from Snorkel International, LLC., Xtreme Manufacturing, LLC., and Ahern Rentals, Inc. (collectively, Ahern Companies);³³ Skyjack Inc. and Skyjack Equipment Inc. (collectively, Skyjack);³⁴ and the petitioner.³⁵ On August 25, 2021, we received a request for a scope hearing from Skyjack,³⁶ and, on October 6, 2021, we held a scope-specific hearing. We addressed the scope issues in the Final Scope Memorandum.³⁷ As a result of our analysis, we made one change to the scope of the investigations. For further information, *see* Final Scope Memorandum.

²⁹ See Dingli's Letter, "Dingli U.S. Customer In Lieu of Verification Questionnaire Response: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China (C-570-140) (POI: 2020)," dated September 16, 2021 (Dingli EBCILOVQR); and LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; CVD Investigation; LGMG Second Verification Questionnaire Response," dated September 16, 2021 (LGMG EBCILOVQR).

³⁰ See Commerce's Letter, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: (1) Export Buyer's Credit Briefing Schedule and (2) Case Hearing Schedule," dated September 20, 2021; *see also* GOC's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China, Case No. C-570-140: GOC's Export Buyer's Credit Program Case Brief," dated September 27, 2021; Dingli's Letter, "Dingli's EBCP Case Brief: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: (C-570-140)," dated September 28, 2021; Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Export Buyer's Credit Program Case Brief," dated September 27, 2021; Dingli's Letter, "Dingli's EBCP Reply Brief: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: (C-570-140)," dated October 4, 2021; LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; CVD Investigation; LGMG Rebuttal Brief-Export Buyer's Credit Program," dated October 4, 2021; and Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Export Buyer's Credit Program Rebuttal Brief," dated October 4, 2021.

³¹ See Memorandum, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination," dated July 26, 2021.

³² See Memorandum, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Scope Briefing Schedule," dated July 29, 2021.

³³ See Ahern Companies' Letter, "Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Comments on the Scope of the Investigation," dated August 25, 2021.

³⁴ See Skyjack's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Scope Brief," dated August 25, 2021.

³⁵ See Petitioner's Letter, "Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Scope Rebuttal Brief," dated September 1, 2021.

³⁶ See Skyjack's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Request for Hearing," dated August 30, 2021.

³⁷ See Memorandum, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Scope Comments Decision Memorandum for the Final Determination," dated concurrently with this memorandum.

C. Period of Investigation

The period of investigation (POI) is January 1, 2020, through December 31, 2020.

III. SUBSIDIES VALUATION

A. Allocation of 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 Determination*. For a description of the allocation period and the methodology used for this final determination, see the *Preliminary Determination*.³⁸

B. Attribution of Subsidies

Interested parties submitted comments regarding the attribution of subsidies used in the *Preliminary Determination*.³⁹ We made certain changes to the attribution of subsidies in response to the comments submitted by interested parties. See Comment 11.

C. Denominators

Interested parties submitted comments regarding the selection of the appropriate denominators used to compute the subsidy rates in the *Preliminary Determination*.⁴⁰ We made certain changes to the denominators in response to the comments submitted by interested parties. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs in this review are explained in further detail in Comments 11 and 15 in the “Discussion of the Issues,” section below and in the final calculation memoranda, dated concurrently with these final results.⁴¹

D. Benchmarks and Interest Rates

Interested parties submitted comments regarding the benchmarks used for certain input LTARs in the *Preliminary Determination*.⁴² We made changes to certain benchmarks in response to the comments submitted by interested parties. See Comments 6, 7, 8, 9, and 14.

³⁸ See *Preliminary Determination* PDM at 42.

³⁹ *Id.* at 42-44.

⁴⁰ *Id.* at 44.

⁴¹ See Memorandum, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Final Determination Calculations for Zhejiang Dingli Machinery Co., Ltd.,” dated October 12, 2021 (Dingli Final Calculation Memorandum); see also Memorandum, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Final Determination Calculations for Lingong Group Jinan Heavy Machinery Co., Ltd.,” dated October 12, 2021 (LGMG Final Calculation Memorandum).

⁴² See *Preliminary Determination* PDM at 47-53.

We made no changes to, and interested parties raised no issues in their case briefs regarding the loan interest rate benchmarks and discount rates used in the *Preliminary Determination*.⁴³

IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

In a CVD proceeding, Commerce requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, Commerce may rely on adverse facts available (AFA) to preliminarily find that a financial contribution exists under the alleged program and/or that the program is specific.⁴⁴ However, where possible, Commerce will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit, to the extent that those records are useable and verifiable.

Section 776(a) of the Act provides that Commerce, subject to section 782(d) of the Act, shall select from the "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person withholds information that has been requested; 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; significantly impedes a proceeding; or provides information that cannot be verified as provided by section 782(i) of the Act.

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

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a 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.⁴⁵ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the CVD investigation, a previous administrative review, or other information placed on the record.⁴⁶

⁴³ *Id.* at 44-47.

⁴⁴ *See, e.g., Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011, 78 FR 58283 (September 23, 2013), and accompanying Issues and Decision Memorandum (IDM) at Comment 3.*

⁴⁵ *See* section 776(b)(1)(B) of the Act.

⁴⁶ *See* 19 CFR 351.308(c).

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.⁴⁷ 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.⁴⁸

Commerce relied on “facts otherwise available,” including adverse facts available (AFA), for several findings in the *Preliminary Determination*.⁴⁹ Commerce is no longer applying AFA in determining whether Dingli used the export buyer’s credit program. Otherwise, Commerce did not make any other changes to its determinations to rely on facts otherwise available and AFA, as applied in the *Preliminary Determination*. For further discussion, *see* Comments 1, 2, 3, and 5 below.

We are updating the AFA net countervailable subsidy rate, as determined in the *Preliminary Determination*, for the non-cooperating companies to include cold-rolled steel for LTAR and OTR tires for LTAR, which were programs included in our post-preliminary analysis.⁵⁰ The Appendix contains a chart summarizing our calculation of this updated rate, 448.70 percent *ad valorem*.

In addition, as described below, Commerce is now applying facts otherwise available and AFA with respect to OTR Tires for LTAR.

A. Application of AFA: Provision of OTR Tires for LTAR: Suppliers of OTR Tires are “Authorities”

We are investigating the provision of off-the road tires for LTAR. We requested information from the GOC regarding the specific companies that produced the OTR tires that LGMG, and its cross-owned companies, purchased during the POI. Specifically, we sought information from the GOC that would allow us to determine whether the producers are “authorities” within the meaning of section 771(B) of the Act.⁵¹

In its initial new subsidy questionnaire response, the GOC provided details regarding the ownership of multiple producers/suppliers, including state-owned corporations, publicly listed corporations, and corporations owned by private individuals.⁵² The GOC reported that some providers of the OTR tires purchased by LGMG are majority-owned by the government.⁵³ As

⁴⁷ See 19 CFR 351.308(d).

⁴⁸ See SAA, H.R. Doc. 103-316, vol 1 (1994) at 870.

⁴⁹ See *Preliminary Determination* PDM at 11-42.

⁵⁰ See Post-Preliminary Analysis.

⁵¹ See Commerce’s Letter, “Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: New Subsidy Allegation Questionnaire for the Government of China,” dated June 9, 2021 (GOCNSAQ), at 7-15.

⁵² See GOC’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China, Case No. C-570-140: GOC’s New Subsidy Allegation Questionnaire Response,” dated June 30, 2021 (GOCNSAQR), at Exhibit NSA-5.

⁵³ *Id.* at Exhibits NSA-6 and NSA-7.

explained in the Public Bodies Memorandum, majority government-owned enterprises in China possess, exercise, or are vested with governmental authority.⁵⁴ As such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we determine that these entities, which the GOC reported to be majority-owned by the government, constitute “authorities” within the meaning of section 771(5)(B) of the Act and that LGMG received a financial contribution from them in the form of the provision of a good from such entities, pursuant to section 771(5)(D)(iii) of the Act.

However, in the initial new subsidy questionnaire, we also asked the GOC to provide information regarding the role of Chinese Communist Party (CCP) officials in the companies that provided OTR tires to the respondent, including those for which the GOC did not report that the entities were majority-owned by the GOC.⁵⁵ Specifically, we asked the GOC to “{p}lease coordinate immediately with the company respondents to obtain a complete list of each company’s {input } suppliers.”⁵⁶ Furthermore we asked the GOC to: (1) provide information about the involvement of the CCP in any input supplier provider identified by LGMG, including whether individuals in management positions are CCP members, in order to evaluate whether the input suppliers that supplied the respondents are “authorities” with the meaning of section 771(5)(B) of the Act; and (2) identify any owners, members of the board of directors, or managers of the input suppliers who were government or CCP officials during the POR.⁵⁷

While the GOC provided an explanation of the role of the CCP, when asked to identify any owners, members of the board of directors, or managers of the input suppliers 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.”⁵⁸ The GOC concluded its response to this question by stating “{i}f the Department insists on the necessity of this information, the Department should collect this information through the respondents, via their suppliers directly.”⁵⁹ In *Citric Acid 2012 AR*, we found that the GOC was able to obtain the information requested independently from the companies involved, and that statements from companies, rather than from the GOC or CCP themselves, were not sufficient for these purposes.⁶⁰ In the absence of record evidence requiring that we revisit this prior finding, we find that the GOC was able to obtain the information requested independently, and thus failed to

⁵⁴ See Memorandum, “Countervailing Duty Investigation of Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Placing Documents on the Record,” dated April 23, 2021 (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 OTR Tires from the People’s Republic of China: An Analysis of Public Bodies in the 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.”

⁵⁵ See GOCNSAQ at 11-15.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See GOCNSAQR at Exhibit NSA-5.

⁵⁹ *Id.*

⁶⁰ See *Citric Acid and Certain Citrate Salts {from the People’s Republic of China}: Final Results of Countervailing Duty Administrative Review; 2012, 79 FR 78799 (December 31, 2014) (Citric Acid 2012 AR)*, and accompanying IDM at Comment 5.

provide the information requested of it for the non-majority-owned OTR tires suppliers of LGMG.

By failing to respond to the questionnaire, the GOC withheld information requested of it regarding the CCP's role in the ownership and management of LGMG's OTR tires producers. Record evidence demonstrates that the CCP exerts significant control over economic activities in China.⁶¹ Record evidence also demonstrates that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.⁶² With respect to the reportedly non-majority government-owned input producers that supplied the respondents during the POI, while the GOC provided website screenshots of the business registrations, the GOC failed to provide other relevant documentation specifically requested by Commerce, such as company by-laws, annual reports, tax registration documents, and articles of association.⁶³ Thus, we find, as we have in prior CVD proceedings and continue to do so in this investigation,⁶⁴ that the information requested regarding the role of CCP officials and CCP committees in the management and operations of the respondents input suppliers and ocean shipping service providers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act.

We find that the GOC withheld necessary information that was requested of it and that Commerce must rely on facts available in conducting its analysis of the producers that supplied the respondents with OTR tires during the POI.⁶⁵ As a result of the GOC's failure to provide the necessary information, we 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 information, and that an adverse inference is warranted in the application of facts available, in accordance with sections 776(a)(2)(A) and 776(b) of the Act.⁶⁶ In drawing an adverse inference, we 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 this gives the CCP, as the government, meaningful control over the companies and their resources.⁶⁷ 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.⁶⁸ Therefore, as AFA, we find that the non-majority government-owned domestic producers that supplied LGMG with OTR tires during the POI are "authorities" within the meaning of section 771(5)(B) of the Act.

⁶¹ See Public Bodies Memorandum and sources cited therein.

⁶² *Id.* at 35-36 and sources cited therein.

⁶³ See GOCNSAQR at Exhibit NSA-5.

⁶⁴ See, e.g., *Citric Acid 2012 AR* IDM at Comment 5.

⁶⁵ See sections 776(a)(1) and 776(a)(2)(A) of the Act.

⁶⁶ See section 776(b) of the Act.

⁶⁷ See Public Bodies Memorandum.

⁶⁸ See, e.g., Public Bodies Memorandum at WTO DS379 at 33-36, 38.

B. Application of AFA: Provision of OTR Tires for LTAR: Whether the OTR Tires Market Is Distorted

To determine the appropriate benchmarks with which to measure the benefit from the provision of inputs at LTAR under 19 CFR 351.511, Commerce asked the GOC several questions concerning the structure of the OTR tires industry.⁶⁹ Specifically, Commerce requested that the GOC provide the following information for the OTR tires:⁷⁰

- i. The total number of producers.
- ii. The total volume and value of Chinese domestic consumption of OTR tires, and the total volume and value of Chinese domestic production of OTR tires.
- iii. The percentage of domestic consumption accounted for by domestic production.
- iv. The total volume and value of imports of OTR tires.
- v. The percentage of total volume and (separately) value of domestic production that is accounted for by companies in which the Government maintains a majority ownership or a controlling management interest, either directly or through other Government entities. Please also provide a list of the companies that meet these criteria.
- vi. If the share of total volume and/or value of production that is accounted for by the companies identified in paragraph “e”, above, is less than 50 percent, please provide the following information:
 - a. The percentage of total volume and value of domestic production that is accounted for by companies in which the Government maintains some, but not a majority, ownership interest or some, but not a controlling, management interest, either directly or through other Government entities.
 - b. A list of the companies that meet the criteria under sub-paragraph “i”, above.
 - c. A detailed explanation of how it was determined that the government has less than a majority ownership or less than a controlling interest in such companies, including identification of the information sources relied upon to make this assessment.
- vii. A discussion of what laws, plans or policies address the pricing of OTR tires, the levels of production of OTR tires, the importation or exportation of OTR tires, or the development of OTR tires capacity. Please state which, if any, central and subcentral level industrial policies pertain to the OTR tires industry.

Commerce requested such information to determine whether the GOC is the predominant provider of OTR tires in China and whether its presence in the market distorts all transaction prices.

In response, the GOC provided only the total volume and value of imports of OTR tires and repeatedly stated that it does not have the other industry data that we requested.⁷¹ In response to

⁶⁹ See GOCNSAQ at 7-8.

⁷⁰ *Id.*

⁷¹ See GOCNSAQR at 14-15.

our supplemental questionnaire, the GOC stated that it does not keep records of the requested data for OTR tires, nor does it keep records on the classifications that include OTR tires.⁷²

Because the GOC provided none of the requested industry data, Commerce is unable to determine the number of OTR tires producers in operation during the POI, the percentage of off-the-tires producers in which the GOC maintained ownership interest, the share of OTR tires production market control that is represented by GOC-affiliated producers, and the share of domestic consumption represented by domestic production versus imports. In sum, the GOC provided import data related to OTR tires, but did not provide any industry statistics necessary for Commerce to analyze whether there is any market distortion for the OTR tires. Furthermore, the GOC did not supplement its initial filing when presented with a second opportunity to do so given broader criteria.

In past proceedings, the GOC demonstrated that it has the ability, through the State Statistical Bureau or other sources (*e.g.*, industry associations), to report data concerning the production of a wide variety of inputs and services.⁷³ This information is necessary for Commerce to assess the distortion in the input markets by comparing production by majority-GOC controlled entities, entities in which the GOC claims it does not maintain a majority interest, and imported inputs. Furthermore, we note that the GOC previously provided, and Commerce verified, information from other GOC-maintained databases concerning the value and volume of production by enterprises producing input products.⁷⁴ Specifically, Commerce verified the operation of the GOC's "Enterprise Credit Information Publicity System," which requires that the administrative authorities release detailed information of enterprises and other entities and which is intended to bring clarity to companies registered in China.⁷⁵ Based on this experience, we are aware that this system is a national-level internal portal that holds certain information regarding any China registered company. Among other information, each company must upload its annual report, make public whether it is still operating, and update any changes in ownership. The GOC previously stated that all companies operating within China maintain a profile in the system, regardless of whether they are private or a state-owned enterprise.⁷⁶ Therefore, we find that information related to the operation and ownership of companies within the OTR tires industry is in fact available to the GOC. In total, the GOC has access to information regarding both the

⁷² See GOCNSASQR at 1.

⁷³ See, *e.g.*, *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 79 FR 33174 (June 10, 2014), and accompanying PDM at 14-15, unchanged in *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014).

⁷⁴ See, *e.g.*, *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review: 2013*, 80 FR 77318 (December 14, 2015), and accompanying IDM at Comment 2.

⁷⁵ See *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016) (*SSSS from China Prelim*), and accompanying PDM at 21-22, unchanged in *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017), and accompanying IDM.

⁷⁶ See *SSSS from China Prelim* PDM at 21-22; see also, *e.g.*, GOC's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China, Case No. C-570-140: GOC's Initial Questionnaire Response," dated June 15, 2021 (GOCIQR), at 24-25.

production and the producers of the OTR tires products necessary to determine whether its respective market is distorted.

Therefore, we determine that the GOC, having failed to provide such data, withheld necessary information that was requested of it and significantly impeded this proceeding, such that the use of facts available is warranted, pursuant to sections 776(a)(1), (2)(A) and (2)(C) of the Act. Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information, and thus, the application of AFA pursuant to section 776(b) of the Act is warranted. For these reasons and based on the record evidence, we determine, as AFA, that the domestic markets for OTR tires is distorted through the intervention of the GOC,⁷⁷ and we are, therefore, relying on external benchmarks for determining the benefit from the provision of the OTR tires for LTAR, in accordance with 19 CFR 351.511(a)(2)(ii).

C. Application of AFA: Provision of OTR Tires for LTAR: Specificity

For purposes of Commerce's *de facto* specificity analysis, we asked the GOC to provide a list of industries in China that purchase the OTR tires, and to provide the amounts (volume and value) purchased by the OTR tires industry.⁷⁸ Specifically, our questionnaire asked the GOC to provide lists of the industries in China that purchase the OTR tires directly, using consistent levels of industrial classification, and to:

Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use the resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.⁷⁹

The GOC did not provide this information, nor did it explain the efforts it made to compile this information.⁸⁰ Instead, the GOC stated that it “does not maintain the requested data.”⁸¹ Consequently, Commerce requested that the GOC provide the information using data for the classification that includes the input.⁸² The GOC responded again by stating that the “GOC does not keep records of the requested data for {OTR tires}, nor does it keep records on the classifications that include {OTR tires}.”⁸³ In addition, the GOC asserted that the OTR tires “are

⁷⁷ See Memorandum, “Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: New Subsidy Allegations,” dated June 8, 2021 (NSA Initiation Memorandum) at 3-5 and exhibits cited therein.

⁷⁸ See GOCNSAQ at 8-9.

⁷⁹ *Id.*

⁸⁰ See GOCNSAQR at 17-18.

⁸¹ *Id.*

⁸² See Commerce’s Letter, “Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: New Subsidy Allegations Supplemental Questionnaire for the Government of China,” dated July 14, 2021 (GOCNSASQ), at 5.

⁸³ See GOCNSASQR at 71.

purchased by the mobile access equipment industry and all other industries” without further evidence of its claim.⁸⁴

The response submitted by the GOC is insufficient because it does not report the actual Chinese industries that purchased OTR tires, the volume and value of each industry’s respective purchases for the POI, and the prior two years, as requested, and which is necessary for our *de facto* specificity analysis. Therefore, we lack the required information to conduct a *de facto* specificity analysis. Consequently, we determine, in accordance with sections 776(a)(1), (2)(A), and (2)(C) of the Act, that necessary information is not available on the record, that the GOC withheld information that was requested of it, and that the GOC significantly impeded this proceeding. Thus, we are relying on “facts available” in making our specificity determination with respect to the OTR tires for LTAR program.

Moreover, by refusing to provide the requested, necessary information, including when given the opportunity to provide information at broader levels of classification determined by the GOC itself or to provide information from other sources,⁸⁵ we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we determine that an adverse inference is warranted in selecting from among the facts available pursuant to section 776(b) of the Act. In drawing an adverse inference from among the facts available, we find that the GOC is providing OTR tires for LTAR to a limited number of industries or enterprises,⁸⁶ and, hence, that the subsidies under this program are *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

VI. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. *Income Tax Reductions for High- and New-Technology Enterprises*

We have made no changes to, and parties submitted no comments regarding, our methodology for calculating the *ad valorem* subsidy rates for this program.⁸⁷ The final *ad valorem* subsidy rates for this program are:

Dingli:	2.40 percent <i>ad valorem</i>
LGMG:	0.94 percent <i>ad valorem</i>

⁸⁴ *Id.*

⁸⁵ See GOCNSASQ at 3. Commerce did not specifically request information kept or maintained by the GOC itself.

⁸⁶ See NSA Initiation Memorandum at 3-5 and exhibits cited therein.

⁸⁷ See *Preliminary Determination PDM* at 53-54.

2. *Income Tax Deduction for Research and Development Expenses Under the Enterprise Income Tax Law*

We have made no changes to, and parties submitted no comments regarding, our methodology for calculating the *ad valorem* subsidy rates for this program.⁸⁸ The final *ad valorem* subsidy rates for this program are:

Dingli: 0.50 percent *ad valorem*
LGMG: 0.29 percent *ad valorem*

3. *Policy Loans to the Mobile Access Equipment Industry*

We have made no changes to, and parties submitted no comments regarding, our methodology for calculating the *ad valorem* subsidy rates for this program.⁸⁹ The final *ad valorem* subsidy rates for this program are:

Dingli: 0.07 percent *ad valorem*
LGMG: 0.42 percent *ad valorem*

4. *Provision of Lithium-Ion Batteries for LTAR*

Interested parties submitted comments regarding this program. As explained in Commerce's position under Comments 9 and 12, we are not making changes to our methodology for calculating the *ad valorem* subsidy rates for this program from that used in the *Preliminary Determination*.⁹⁰ The final *ad valorem* subsidy rates for this program are:

Dingli: 1.67 percent *ad valorem*
LGMG: 0.69 percent *ad valorem*

5. *Provision of Hot-Rolled Steel Sheet and Plate for LTAR*

Interested parties submitted comments regarding this program. As explained in Commerce's position under Comments 6 and 7, we are making changes to our methodology for calculating the *ad valorem* subsidy rates for this program from that used in the *Preliminary Determination*.⁹¹ The final *ad valorem* subsidy rates for this program are:

Dingli: 1.00 percent *ad valorem*
LGMG: 0.04 percent *ad valorem*

⁸⁸ *Id.* at 54-55.

⁸⁹ *Id.* at 55-56.

⁹⁰ *Id.* at 56-57.

⁹¹ *Id.* at 57-58.

6. *Provision of Steel Bars for LTAR*

Interested parties submitted comments regarding this program. As explained in Commerce's position under Comments 6 and 7, we are not making changes to our methodology for calculating the *ad valorem* subsidy rates for this program from that used in the *Preliminary Determination*.⁹² The final *ad valorem* subsidy rates for this program are:

Dingli: 0.03 percent *ad valorem*
LGMG: no measurable benefit

7. *Provision of Steel Beams for LTAR*

Interested parties submitted comments regarding this program. As explained in Commerce's position under Comments 6, 7, and 9, we are making changes to our methodology for calculating the *ad valorem* subsidy rates for this program from that used in the *Preliminary Determination*.⁹³ The final *ad valorem* subsidy rates for this program are:

Dingli: 0.01 percent *ad valorem*
LGMG: no measurable benefit

8. *Provision of Hollow Structural Shapes for LTAR*

Interested parties submitted comments regarding this program. As explained in Commerce's position under Comments 6, 7, and 9, we are making changes to our methodology for calculating the *ad valorem* subsidy rates for this program from that used in the *Preliminary Determination*.⁹⁴ The final *ad valorem* subsidy rates for this program are:

Dingli: 2.98 percent *ad valorem*
LGMG: 0.29 percent *ad valorem*

9. *Provision of Electricity for LTAR*

Interested parties submitted comments regarding this program. As explained in Commerce's position under Comment 2, we are not making changes to our methodology for calculating the *ad valorem* subsidy rates for this program from that used in the *Preliminary Determination*.⁹⁵ The final *ad valorem* subsidy rates for this program are:

Dingli: 0.08 percent *ad valorem*
LGMG: 0.05 percent *ad valorem*

⁹² *Id.* at 58-59.

⁹³ *Id.* at 59-60.

⁹⁴ *Id.* at 60-61.

⁹⁵ *Id.* at 62.

10. *Provision of Land-Use Rights to the Mobile Access Equipment Industry for LTAR*

We have made no changes to, and parties submitted no comments regarding, our methodology for calculating the *ad valorem* subsidy rates for this program.⁹⁶ The final *ad valorem* subsidy rates for this program are:

Dingli: 0.48 percent *ad valorem*
LGMG: 0.04 percent *ad valorem*

11. *Provision of Cold-Rolled Steel for LTAR*

Interested parties submitted comments regarding this program. As explained in Commerce's position under Comment 10, we are making changes to our methodology for calculating the *ad valorem* subsidy rates for this program from that used in the Post-Preliminary Analysis.⁹⁷ The final *ad valorem* subsidy rates for this program are:

Dingli: 0.70 percent *ad valorem*
LGMG: no measurable benefit

12. *Provision of Diesel Engines for LTAR*

Interested parties submitted comments regarding these programs. As explained in Commerce's position under Comment 14, we are making changes to our methodology for calculating the *ad valorem* subsidy rates for this subsidy programs from that used in the *Preliminary Determination*.⁹⁸ Dingli reported that it imported all the diesel engines it purchased during the POI, so we find it did not use this program. The combined *ad valorem* subsidy rates for this program are:

Dingli: Did not use this program.
LGMG: 7.57 percent *ad valorem*

Provision of OTR Tires for LTAR

Interested parties submitted comments regarding this program. As explained in Commerce's position under Comment 13, we are now finding this program countervailable, whereas we found the program not used in the Post-Preliminary Analysis.⁹⁹ The final *ad valorem* subsidy rates for this program are:

Dingli: Did not use this program
LGMG: 6.96 percent *ad valorem*

⁹⁶ *Id.* at 62-63.

⁹⁷ *See* Post-Preliminary Analysis at 15.

⁹⁸ *Id.* at 65-66.

⁹⁹ *See* Post Preliminary Analysis at 15.

13. *Other Subsidy Programs*

Interested parties submitted comments regarding these programs. As explained in Commerce's position under Comments 3 and 16, we are not making changes to our methodology for calculating the *ad valorem* subsidy rates for these other subsidy programs from that used in the *Preliminary Determination*.¹⁰⁰ The combined *ad valorem* subsidy rates for these programs are:

Dingli: 2.03 percent *ad valorem*
LGMG: 1.05 percent *ad valorem*

B. Programs Determined to Be Not Used

1. *Provision of Galvanized Steel for LTAR*
2. *Provision of Wire Rod for LTAR*
3. *Government Directed Debt Restructuring in the Mobile Access Equipment Industry*
4. *Export Loans from Chinese State-Owned Banks*
5. *Export Seller's Credit from State-Owned Banks*
6. *Foreign Trade Development Fund Grants*
7. *Export Assistance Grants*
8. *Interest Payment Subsidies*
9. *Subsidies for the Development of Famous Brands and Chinese World Top Brands*
10. *State Key Technology Fund Grants*
11. *Grants for Retiring Outdated Capacity and Industrial Restructuring*
12. *Grants for Energy Conservation and Emission Reduction*
13. *Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Procured Equipment*
14. *Import Tariff and VAT Exemptions on Imported Equipment in Encouraged Industries*
15. *Export Buyer's Credits*

In a change from the *Preliminary Determination*, we are now finding the Export Buyer's Credits Program to be not used in this investigation. See Comment 5 below.

C. Programs Determined Not to Provide a Measurable Benefit

1. *Provision of International Ocean Shipping Services for LTAR*

Interested parties submitted comments regarding this program. As explained in Commerce's position under Comment 8, we are making changes to our methodology for calculating the *ad valorem* subsidy rates for this program from that used in the *Preliminary Determination*.¹⁰¹ The final *ad valorem* subsidy rates for this program are:

¹⁰⁰ See *Preliminary Determination* PDM at 64.

¹⁰¹ *Id.* at 63-64.

Dingli: Had no measurable benefit.
LGMG: Did not use this program.

2. *Provision of Steel Channels for LTAR*
3. *Provision of Steel Angles for LTAR*

D. Programs Determined to Not Provide a Countervailable Benefit During the POI

1. *Currency Undervaluation*

Interested parties submitted comments regarding this program. As explained in Commerce's position under Comment 5, we are not making changes to our analysis of this program.

VII. ANALYSIS OF COMMENTS

Comment 1: Countervailability of the Provision of Certain Inputs and Services for LTAR

A. Financial Contribution

GOC's Comments:

- Commerce's application of AFA to determine that privately-owned producers and providers are "authorities" is contrary to substantial evidence and law.¹⁰² The GOC cooperated to the best of its ability and demonstrated that Chinese Communist Party (CCP) organizations in private companies do not make the private companies "authorities," and Commerce's reliance solely upon AFA is unlawful.¹⁰³
- The GOC explained that there are no central databases for answering Commerce's questions regarding the presence of CCP officials in private companies.¹⁰⁴ Thus, the GOC referred Commerce to the respondents. Furthermore, Commerce requested information regarding private persons and entities not obligated to respond to the investigation.¹⁰⁵ The GOC cannot be required to provide information it does not possess.¹⁰⁶
- The GOC provided complete information to relevant questions and the Input Producer Appendix, in addition to the appropriate laws governing corporate decision-making.¹⁰⁷ Thus, there is no further "necessary" information, and no information is missing from the record.¹⁰⁸ Commerce must establish that necessary information is both not on the record and that Commerce specifically requested the necessary information. Then Commerce must establish that the GOC has not cooperated. Here, there is no factual basis to so find.¹⁰⁹

¹⁰² See GOC General Issues Brief at 3.

¹⁰³ *Id.* at 4.

¹⁰⁴ *Id.* at 4-5.

¹⁰⁵ *Id.* at 5.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 6.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 6-7.

- The Public Bodies Memorandum does not demonstrate that CCP involvement in a private company is sufficient to transform the company into an “authority.”¹¹⁰ The Public Bodies Memorandum does not state that the CCP exerts control over private companies through primary party organizations. At most, the Public Bodies Memorandum expresses uncertainty over the role of primary party organizations in private companies.¹¹¹ While *The Economist* article cited in the Public Bodies Memorandum mentions primary party organizations in private companies and in state-owned enterprises (SOEs), it is unlikely that the statements made in the article were intended to apply equally to primary party organizations in both types of entities.¹¹² Thus, there is no support for determining that party organizations can control private businesses.
- The CCP Constitution states that primary party organizations oversee all CCP members but do not direct their work.¹¹³ The CCP does not have authority to interfere with a private company and cannot project direct authority over the operation of a private company.¹¹⁴ Commerce has never demonstrated that the Company Law in China is superseded by or invalidated by primary party organizations.¹¹⁵ The Company Law in China demonstrates that the company’s shareholders, directors, and managers are solely responsible for its internal operation.¹¹⁶ CCP and primary party organizations would be in violation of the Company Law if they attempted to interfere.¹¹⁷
- Commerce’s AFA determination is contrary to law because first, Commerce did not substantiate its determination with record evidence; and second, Commerce did not consider relevant evidence to the contrary.¹¹⁸ Commerce did not “make the necessary factual findings to satisfy the requirements for countervailability,” including by “search{ing} ‘the far reaches of the record’ or considering evidence that “fairly detract{s} from the reasonableness of its conclusions.”¹¹⁹ In *Trina Solar 2016*, the court rejected the argument that Commerce does not need to cite to any record evidence in an AFA situation.¹²⁰ Furthermore, Commerce did not address record information concluding that non-majority government-owned input producers and service providers are not authorities, such as the presence of the Company Law.¹²¹

Petitioner’s Comments:

- The GOC failed to act to the best of its ability, warranting AFA.¹²² Instead of submitting required information regarding the CCP’s involvement in the input suppliers, including party membership by company officials, the GOC directed Commerce to the respondents

¹¹⁰ *Id.* at 7-8.

¹¹¹ *Id.* at 8.

¹¹² *Id.* at 9.

¹¹³ *Id.* at 10.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 11.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 12.

¹¹⁸ *Id.* at 12-13.

¹¹⁹ *Id.* at 13 (citing *Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334, 1350 (Ct. Int’l Trade 2016) (*Trina Solar 2016*)).

¹²⁰ *Id.* at 13-14.

¹²¹ *Id.* at 14.

¹²² See Petitioner General Issues Rebuttal Brief at 25.

and stated there is no central repository of such information.¹²³ The information is critical to Commerce’s analysis, and the agency has found the information is available to the GOC.¹²⁴

- Commerce has found majority government-owned producers exercise meaningful control over an enterprise, and the GOC refused requests for further information, failing to act to the best of its ability.¹²⁵ The GOC likewise failed to provide requested information regarding non-majority government-owned producers.¹²⁶ Therefore, the application of AFA to non-majority government-owned producers is proper.¹²⁷
- Commerce’s application of AFA is consistent with established practice.¹²⁸ Record evidence demonstrates that enterprises in which the government maintains less than a controlling ownership interest, including zero ownership interest, may be authorities where additional evidence, such as industrial plans or government and CCP presence, suggest that the government exercises meaningful control or that the government is using the enterprise to carry out government functions.¹²⁹ While the GOC disputes this, it offers no evidence to reverse Commerce’s findings.
- *Cast Iron Soil Pipe* applied AFA with similar facts to this proceeding.¹³⁰ The GOC’s failure to provide a complete explanation of corporate structure is grounds alone for AFA. In addition, the GOC failed to provide necessary information on CCP involvement, which Commerce has found to be grounds for AFA in *Wooden Cabinets and Vanities* and *Refillable Stainless Steel Kegs*.¹³¹ Commerce rejected many similar arguments in *Metal Lockers Final*,¹³² stating “information regarding the CCP’s involvement in China’s economic and political structure {was} relevant because public information suggests that the CCP exerts significant control over activities in China and is part of the governing structure in China.”

¹²³ *Id.* at 26.

¹²⁴ *Id.* at 26-27.

¹²⁵ *Id.* at 27-28.

¹²⁶ *Id.* at 28.

¹²⁷ *Id.*

¹²⁸ *Id.* at 28-29 (citing *Cast Iron Soil Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 6770 (February 28, 2019) (*Cast Iron Soil Pipe*), and accompanying IDM at 11; and *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 11962 (February 28, 2020) (*Wooden Cabinets and Vanities*), and accompanying IDM at 46-48).

¹²⁹ *Id.* at 29.

¹³⁰ *Id.* (citing *Cast Iron Soil Pipe* and the accompanying IDM at 10).

¹³¹ *Id.* at 30 (citing *Wooden Cabinets and Vanities and Refillable Stainless Steel Kegs from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, in Part*, 84 FR 57005 (October 24, 2019) (*Refillable Stainless Steel Kegs*), and accompanying IDM at 9).

¹³² *Id.* at 31 (citing *Certain Metal Lockers and Parts Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 35741 (July 7, 2021) (*Metal Lockers Final*), and accompanying IDM at 44-47).

- The GOC’s claim to be unable to provide full responses is unavailing.¹³³ Commerce has previously rejected this argument in *Wood Mouldings*,¹³⁴ finding that the GOC did have access to the information.

Commerce’s Position: In the *Preliminary Determination*, we found, based on drawing an adverse inference in selecting from among the facts otherwise available, that the non-majority government-owned producers and providers of diesel engines; lithium-ion batteries; hot-rolled steel sheet and plate; galvanized steel; wire rod; steel bars; steel beams; steel channels; steel angles; hollow structural shapes; and ocean shipping services purchased by Dingli and LGMG are “authorities” within the meaning of section 771(5)(B) of the Act.¹³⁵ Furthermore, in the Post-Preliminary Analysis, we likewise found that the non-majority government-owned producers of cold-rolled steel are “authorities” within the meaning of section 771(5)(B) of the Act.¹³⁶ We made these decisions by drawing an adverse inference in selecting among limited record evidence, consistent with section 776(a) and 776(b) of the Act, in light of the GOC’s failure to provide complete information in response to our questions. Therefore, we disagree with the GOC that Commerce wrongly applied AFA on this issue in the *Preliminary Determination* and Post-Preliminary Analysis. For the reasons detailed below, for the final determination, we continue to find that the producers and providers of the inputs and services purchased by Dingli and LGMG 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 Dingli and LGMG within the meaning of section 771(5)(D)(i) of the Act.

As discussed in the *Preliminary Determination*, in order 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.¹³⁷ 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.¹³⁸ 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.¹³⁹ 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.¹⁴⁰

¹³³ *Id.*

¹³⁴ *Id.* at 31-32 (citing *Wood Mouldings and Millwork Products from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 67 (January 4, 2021) (*Wood Mouldings*), and accompanying IDM at 43-44).

¹³⁵ See *Preliminary Determination* and the accompanying PDM at 26-28. Furthermore, we found that the producers and providers reported by the GOC to be majority-owned by the government are “authorities” within the meaning of section 771(5)(B) of the Act.

¹³⁶ See Post-Preliminary Analysis at 5-8.

¹³⁷ See *Preliminary Determination* PDM at 26-28; see also Post-Preliminary Analysis at 5-8.

¹³⁸ See *Preliminary Determination* PDM at 26-28; see also Post-Preliminary Analysis at 5-8.

¹³⁹ See *Preliminary Determination* PDM at 26-28; see also Post-Preliminary Analysis at 5-8.

¹⁴⁰ See *Preliminary Determination* PDM at 26-28; see also Post-Preliminary Analysis at 5-8.

The GOC objected to Commerce's questions regarding the role of CCP officials and organizations in the management and operations of input suppliers. However, we explained our understanding of the CCP's involvement in China's economic and political structure. Commerce determined that "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."¹⁴¹ Additionally, 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.¹⁴²

The GOC's response to our requests for information, or lack thereof, is fully described in the *Preliminary Determination* and Post-Preliminary Analysis.¹⁴³ 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 and provided services purchased by the mandatory respondents during the POI, the GOC only provided partial information (*i.e.*, basic registration and shareholder structure).¹⁴⁴

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,"¹⁴⁵ suggesting this was sufficient to understand the ownership structure of these producers. However, the ownership structure and basic registration information that the GOC provided does not indicate whether the owners and shareholders of the companies have any CCP involvement. And while the GOC provided a long narrative explanation of the role of the CCP, 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 POI, the GOC explained that there is "no central informational database to search for the requested information."¹⁴⁶ However, based on our analysis of the GOC's responses, we find that they lack the necessary information Commerce requested and hinder Commerce's ability to determine whether the 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

¹⁴¹ See Memorandum, "Countervailing Duty Investigation of Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Placing Documents on the Record," dated April 23, 2021 (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 OTR Tires from the People's Republic of China: An Analysis of Public Bodies in the 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."

¹⁴² *Id.*

¹⁴³ See *Preliminary Determination* PDM at 26-28; see also Post-Preliminary Analysis at 5-8.

¹⁴⁴ See, *e.g.*, GOCIQR at Exhibits A-5.1 and A-5.2.

¹⁴⁵ See, *e.g.*, GOCIQR at 24.

¹⁴⁶ *Id.*, *e.g.*, at 41.

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.¹⁴⁷ As explained in the Public Bodies Memorandum, record evidence demonstrates that producers in China that are majority-owned by the government, possess, exercise, or are vested with, governmental authority. Record evidence further demonstrates that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.¹⁴⁸

Therefore, we determine that necessary information is not available on the record, and that the GOC withheld information that was requested of it regarding purchases by the mandatory respondents. Accordingly, pursuant to sections 776(a)(1) and (a)(2)(A) of the Act, Commerce must rely on facts otherwise available in reaching a determination in this respect. Furthermore, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with requests for information regarding the ownership and government involvement in the management of producers and providers of the inputs and services from whom the mandatory respondents purchased said inputs during the POI.

Consequently, in accordance with section 776(b) of the Act, we find that an adverse inference in selecting from the facts available is warranted in the application of facts available. As AFA and considering our prior findings and the GOC's failure to provide rebuttal information to the contrary, we determine that non-majority government-owned input producers and service providers that supplied Dingli and LGMG are "authorities" within the meaning of section 771(5)(B) of the Act. In prior CVD proceedings, we found that the GOC was able to obtain the requested information independently regarding the companies involved.¹⁴⁹

In addition, we disagree with the GOC that it provided Commerce with sufficient information to determine whether any of the mandatory respondents' input producers are privately-owned entities. We explained in the *Preliminary Determination* and *Post-Preliminary Analysis* that the GOC's responses to the Input Producer Appendix for the inputs being investigated were deficient, and that the information supplied from ECIPS was not sufficient for our analysis of whether the input producers identified by the mandatory respondents are "authorities" under the Act.¹⁵⁰ While the GOC asserted that the information provided from ECIPS was sufficient for our analysis, it is for Commerce, not the GOC, to determine what information is necessary in order for Commerce to complete its analysis. For the reasons described above, for the final determination, we find that the GOC failed to provide on the record information necessary for Commerce to analyze whether the respondents' input producers are authorities.

We continue to find that necessary information is missing from the record, and that the GOC withheld necessary information that was requested of it and significantly impeded this

¹⁴⁷ See Public Bodies Memorandum.

¹⁴⁸ *Id.*

¹⁴⁹ See *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid 2012*), and accompanying IDM at Comment 5.

¹⁵⁰ See *Preliminary Determination PDM* at 26-28; see also *Post-Preliminary Analysis* at 5-8.

proceeding, pursuant to sections 776(a)(1) and (a)(2)(A) and (C) of the Act. Therefore, we must continue to rely on facts otherwise available in conducting our analysis of the respondents' input producers. Moreover, considering the incomplete responses from the GOC to Commerce's supplemental questionnaire, we also 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 continue to determine that an adverse inference is warranted in selecting from the facts available, pursuant to section 776(b)(1)(A) of the Act. As AFA, we find that CCP officials are present in each of the respondent's privately-owned input producers as individual owners, managers, and members of boards of directors, and that 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.¹⁵¹ Thus, for the final determination, we continue to find, as AFA, that all the non-majority government-owned the input producers and service providers of Dingli and LGMG are "authorities" within the meaning of section 771(5)(B) of the Act.

B. Specificity

I. Certain Inputs

GOC's Comments:

- Commerce's preliminary determination regarding the specificity of certain input LTAR programs failed to consider that the GOC acted to the best of its ability in responding to Commerce's questions.¹⁵² There are many uses for the inputs and, as the GOC explained in its questionnaire responses, it is impossible for the GOC to provide information that it does not have.
- Furthermore, the GOC replied to the Input Producer Appendix and, while it could not provide answers in the form requested by Commerce, the GOC acted to the best of its ability to supply the information that it could.

Petitioner's Comments:

- Commerce should continue to find the input LTAR programs specific because the GOC failed to comply with Commerce's requests multiple times and its claims to not maintain the necessary information are not true.¹⁵³ As Commerce recently found in *Fabricated Structural Steel*,¹⁵⁴ the GOC maintains databases that contain the requested information.

Commerce's Position: For the final determination, we continue to find, based on AFA, that the provision of diesel engines; lithium-ion batteries; hot-rolled steel sheet and plate; galvanized steel; wire rod; steel bars; steel beams; steel channels; steel angles; hollow structural shapes; and cold-rolled steel for LTAR programs are *de facto* specific within the meaning of section

¹⁵¹ See Public Bodies Memorandum.

¹⁵² See GOC General Issues Brief at 15.

¹⁵³ See Petitioner General Issues Rebuttal Brief at 32-33.

¹⁵⁴ *Id.* at 33-34 (citing *Certain Fabricated Structural Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 5384 (January 30, 2020) (*Fabricated Structural Steel*), and accompanying IDM at 43-44).

771(5A)(D)(iii)(I) of the Act. As we described in the *Preliminary Determination* and Post-Preliminary Analysis, Commerce asked the GOC to provide a list of industries in China that purchase each of the inputs directly, and to provide the amounts (volume and value) purchased by each of the industries.¹⁵⁵ Commerce requests such information for purposes of its *de facto* specificity analysis. Specifically, our questionnaire asks the GOC to:

Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use the resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.¹⁵⁶

The GOC's response to our requests for information, or lack thereof, including to supplemental questionnaires, is fully described in the *Preliminary Determination* and Post-Preliminary Analysis.¹⁵⁷ Despite the GOC's claims to not maintain the requested information, to be unable to provide the requested information, or to have already provided sufficient information, the GOC created a gap in the record by failing to provide information which is reasonably available to it, that would demonstrate whether or not the provisions of inputs are *de facto* specific to the mobile access equipment industry.¹⁵⁸ In addition, contrary to the GOC's assertion, responses to the Input Producer Appendix are not pertinent to the specific question regarding the purchasers of the inputs, which Commerce uses for its *de facto* specificity analysis. Furthermore, as discussed in the *Preliminary Determination*, Post-Preliminary Analysis, and below, the GOC's claims to be unable to respond to the questions – in any form even when provided alternative options – are unavailing.¹⁵⁹ Therefore, we find the application of facts available appropriate in determining whether the provisions of inputs are specific. Moreover, because the GOC did not cooperate to the best of its ability when it failed to provide us with requested information regarding the industries that purchase inputs, an adverse inference is warranted in selecting from among the facts otherwise available.¹⁶⁰

¹⁵⁵ See *Preliminary Determination* and the accompanying PDM at 31-32; see also Post-Preliminary Analysis at 8-9.

¹⁵⁶ See, e.g., Commerce's Letter, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Countervailing Duty Questionnaire Initial Questionnaire," dated April 23, 2021 (Initial Questionnaire), at 7.

¹⁵⁷ See *Preliminary Determination* and the accompanying PDM at 31-32; see also Post-Preliminary Analysis at 8-9.

¹⁵⁸ See *Preliminary Determination* PDM at 31-32; see also Post-Preliminary Analysis at 8-9.

¹⁵⁹ See *Preliminary Determination* PDM at 32 (The GOC was provided "the opportunity to provide information at broader levels of classification determined by the GOC itself or to provide information from other sources (e.g., industry associations)); see also Post-Preliminary Analysis at 8-9 ("{T} the GOC did not explain (as requested) what information is maintained with regard to purchasers of {cold-rolled steel} by the SSB or suggest an alternative means of providing the requested data") and footnote 57 (citing section 782(c)(1) of the Act providing that a party notify Commerce if it "is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information").

¹⁶⁰ See, e.g., *RZBC Grp. Shareholding Co. Ltd. v. United States*, 100 F. Supp. 3d 1288, 1296-97 (CIT 2015) (upholding Commerce's finding that the GOC was "unresponsive" to specificity-related questions in the context of an input for LTAR program, and that "the GOC had not worked to the best of its ability to provide data," thus warranting application of AFA).

We disagree with the GOC's claim that Commerce erred in applying AFA because we continue to find that the GOC failed to act to the best of its ability to respond to Commerce's inquiries regarding whether input LTAR programs are specific. As an initial matter, we note that the GOC has previously provided, and Commerce has verified, information from GOC-maintained databases concerning the value and volume of production by enterprises producing inputs.¹⁶¹ Moreover, Commerce has verified the operation of the ECIPS database, through which the administrative authorities release detailed information on enterprises and other entities, and which is intended to provide details on companies registered in China.¹⁶² Based on this experience, we are aware that this database is a national-level internal portal that holds certain information regarding any Chinese-registered company. Among other information, each company must upload its annual report, make public whether it is still operating, and update any changes in ownership. In prior proceedings, when Commerce requested that the GOC provide information related to the specificity of an input for LTAR program, the GOC provided information from a GOC-maintained database concerning the industries that consumed this input.¹⁶³

Accordingly, the GOC maintains information related to industries that use inputs but did not provide such information for the purposes of this investigation. Therefore, we find that the GOC did not cooperate to the best of its ability in responding to Commerce's inquiries related to the specificity of the input LTAR programs. It is for Commerce, not the GOC, to determine whether the information provided is sufficient for Commerce to make its determinations regarding specificity.¹⁶⁴ For the reasons described above, we continue to find that the GOC failed to provide information necessary for us to analyze whether the input LTAR programs are specific.

Therefore, consistent with past proceedings,¹⁶⁵ Commerce continues to determine, in accordance with sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, that necessary information is not available on the record, that the GOC withheld information that was requested of it, and that the GOC significantly impeded this proceeding. Thus, we are continuing to rely on facts available in making our final determination. Moreover, we continue to determine, in accordance with section 776(b) of the Act, that the GOC failed to cooperate to the best of its ability to comply by failing to provide us with requested information regarding the industries that purchase diesel engines; lithium-ion batteries; hot-rolled steel sheet and plate; galvanized steel; wire rod; steel bars; steel beams; steel channels; steel angles; hollow structural shapes; and cold-rolled steel.

Consequently, an adverse inference in selecting from among the facts otherwise available is

¹⁶¹ See, e.g., *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review*; 2013, 80 FR 77318 (December 14, 2015), and accompanying IDM at Comment 1.

¹⁶² See *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016), and accompanying PDM at 21-22, unchanged in *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017).

¹⁶³ See *Cast Iron Soil Pipe* IDM at 15.

¹⁶⁴ See *ABB Inc. v. United States*, 355 F. Supp. 3d 1206, 1222 (CIT 2018) (ABB) ("Commerce prepares its questionnaires to elicit information that it deems necessary to conduct a review, and the respondent bears the burden to respond with all of the requested information and create an adequate record.").

¹⁶⁵ See *Wooden Cabinets and Vanities* IDM at 48-51.

warranted. Applying an adverse inference to these facts, we continue to find that the GOC's provisions of diesel engines; lithium-ion batteries; hot-rolled steel sheet and plate; galvanized steel; wire rod; steel bars; steel beams; steel channels; steel angles; hollow structural shapes; and cold-rolled steel are specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

II. Ocean Shipping Services

GOC's Comments:

- The GOC was unable to provide data regarding the volume and value of international shipping because it does not maintain such data.¹⁶⁶ Furthermore, the GOC was unable to provide certain responses regarding the traded goods sector because, as the GOC has explained, the traded goods sector consists of an unknowable number of enterprises and industries that can freely use ocean shipping.¹⁶⁷
- Both the WTO and U.S. courts have recognized that a subsidy must be limited in some way to an enterprise, industry, or group of industries, which is not the case here.¹⁶⁸ The SAA states that the specificity test is “an initial screening mechanism to winnow out only those foreign subsidies which are truly broadly available and widely used throughout an economy” and the CIT ruled in *Wilmar Trading* that the statute “requires that the subsidy not be spread throughout the economy.”¹⁶⁹ Similarly, the WTO in *Upland Cotton* stated that “a subsidy would cease to be specific because it is sufficiently broadly available throughout an economy as not to benefit a particular limited group of producers of certain products.”¹⁷⁰ The traded goods group is not specific, and the record demonstrates that the alleged subsidy is spread throughout the economy.¹⁷¹

Petitioner's Comments:

- Commerce explained in detail its application of AFA and should continue to find the program specific as AFA in the final determination given the GOC's repeated failure to provide information on the traded goods sector and purchasers of ocean shipping services.¹⁷² Furthermore, the information on the record still demonstrates finding the provision of ocean shipping services for LTAR to be specific because it is contingent upon export performance and limited to the traded goods sector, which constitutes a specific group of enterprises.¹⁷³

Commerce's Position: As discussed below in Comment 8, we changed the benchmark for ocean shipping services to reflect shipping solely to the United States and the specific ports used

¹⁶⁶ See GOC General Issues Case Brief at 16.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 17.

¹⁶⁹ *Id.* at 17 (citing *Uruguay Round Agreements Act, Statement of Administrative Action*, H.R. Rep. No. 103-316, at 929-30, reprinted in 1994 U.S.C.A.N. 4040, 4242 (SAA) and *Wilmar Trading Pte Ltd. v. United States*, 466 F. Supp. 3d 1334, 1358 (Ct. Int'l Trade 2020) (*Wilmar Trading*)).

¹⁷⁰ *Id.* (citing *Panel Report, United States – Subsidies on Upland Cotton*, WTO Doc. WT/DS267/R (adopted Mar. 21, 2005) (*Upland Cotton*)), para. 7.1142.

¹⁷¹ *Id.* at 18.

¹⁷² See Petitioner General Issues Rebuttal Brief at 34-35.

¹⁷³ *Id.*

by Dingli. As a result of this change, the program did not confer a measurable benefit to Dingli. Consequently, arguments regarding the specificity of the program are rendered moot.

C. Distortion

GOC's Comments:

- Commerce's application of AFA regarding the distortion of the inputs and ocean shipping service markets is unlawful because the GOC reported that it does not maintain the requested data and, thus, cooperated to the best of its ability.¹⁷⁴ The GOC did provide the information available to it: volume and value of imports.¹⁷⁵
- Commerce misunderstood the AFA framework by finding the GOC to have not cooperated because the GOC has previously used GOC-maintained databases to gather some of the information requested.¹⁷⁶ The record here demonstrates that the information requested is not maintained by the GOC and, given that, the record does not support application of AFA because the GOC cooperated.¹⁷⁷ What the GOC has or has not been able to provide in other cases about different inputs does not provide sufficient evidence to support the conclusion that the GOC has failed to cooperate by not acting to the best of its ability in this investigation by not providing information about the hot-rolled steel, cold-rolled steel, galvanized steel, and stainless steel markets.¹⁷⁸
- The record of this proceeding contains information that demonstrates that the markets for these inputs are not distorted.¹⁷⁹ For example, there were no export tariffs or other restraints on the input products.

Petitioner's Comments:

- Commerce correctly found that the GOC did not cooperate with its requests for information regarding the distortion of the input markets.¹⁸⁰ Furthermore, Commerce found in its *Preliminary Determination* that the GOC has demonstrated an ability to report data concerning the production of a wide variety of inputs and services. That is, this information was available to the GOC, but the GOC did not provide it.¹⁸¹
- Commerce relies upon information and findings in other cases consistently. For example, Commerce recently relied in *Fabricated Structural Steel* upon prior cases demonstrating that the GOC had databases with the information available to it.¹⁸² In effect, the GOC attempts to adjust its purported reporting capabilities on a case-by-case basis. Thus, the

¹⁷⁴ See GOC General Issues Case Brief at 18.

¹⁷⁵ *Id.* at 18-19.

¹⁷⁶ *Id.* at 19.

¹⁷⁷ *Id.* at 19-20.

¹⁷⁸ *Id.* at 20. (Regarding this element of the GOC General Issues Brief, Commerce notes that the provision of stainless steel for LTAR is not a specifically considered program within the context of this investigation. Commerce is considering the provision of diesel engines; lithium-ion batteries; wire rod; steel bars; steel beams; steel channels; steel angles; hollow structural shapes; and ocean shipping services for LTAR programs, which the GOC has not included in its argument here).

¹⁷⁹ *Id.*

¹⁸⁰ See Petitioner General Issues Rebuttal Brief at 36.

¹⁸¹ *Id.* at 36-37.

¹⁸² *Id.* at 37 (citing *Fabricated Structural Steel* IDM at 43).

GOC's repeated refusal to provide this information, which it clearly possesses, warrants the application of AFA.

Commerce's Position: For the reasons detailed below, Commerce will continue to rely on facts available for this final determination to find that the diesel engine; lithium-ion battery; hot-rolled steel sheet and plate; galvanized steel; wire rod; steel bar; steel beam; steel channel; steel angle; hollow structural shape; cold-rolled steel; and ocean shipping services markets are distorted.¹⁸³ We requested the following information from the GOC regarding the input markets and ocean shipping services market in China.

- i. The total number of producers.
- ii. The total volume and value of Chinese domestic consumption of {input}, and the total volume and value of Chinese domestic production of {input}.
- iii. The percentage of domestic consumption accounted for by domestic production.
- iv. The total volume and value of imports of {input}.
- v. The percentage of total volume and (separately) value of domestic production that is accounted for by companies in which the Government maintains a majority ownership or a controlling management interest, either directly or through other Government entities. Please also provide a list of the companies that meet these criteria.
- vi. If the share of total volume and/or value of production that is accounted for by the companies identified in paragraph "{v}", above, is less than 50 percent, please provide the following information:
 - a. The percentage of total volume and value of domestic production that is accounted for by companies in which the Government maintains some, but not a majority, ownership interest or some, but not a controlling, management interest, either directly or through other Government entities.
 - b. A list of the companies that meet the criteria under sub-paragraph "{a}", above.
 - c. A detailed explanation of how it was determined that the government has less than a majority ownership or less than a controlling interest in such companies, including identification of the information sources relied upon to make this assessment.
- vii. A discussion of what laws, plans or policies address the pricing of {input}, the levels of production of {input}, the importation or exportation of {input}, or the development of {input} capacity. Please state which, if any, central and subcentral level industrial policies pertain to the {input} industry.¹⁸⁴

As discussed in the *Preliminary Determination* and *Post-Preliminary Analysis*, we determine that the GOC did not provide complete responses to Commerce's questions for each of the inputs.¹⁸⁵

¹⁸³ See *Preliminary Determination* PDM at 28-30; see also *Post-Preliminary Analysis* at 9-11.

¹⁸⁴ See, e.g., *Initial Questionnaire* at 6.

¹⁸⁵ See *Preliminary Determination* PDM at 28-30; see also *Post-Preliminary Analysis* at 10.

Furthermore, the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information, including by failing to provide specific information that it has provided regarding the input markets in other proceedings covering periods as recent as the year prior to the POI.¹⁸⁶ The GOC thus claims, without any explanation, that it, for this POI, does not maintain the same requested data.¹⁸⁷ Furthermore, as discussed in the *Preliminary Determination* and Post-Preliminary Analysis, in past proceedings, the GOC has demonstrated that it has the ability, through the State Statistical Bureau or other sources (e.g., industry associations), to report data concerning the production of a wide variety of inputs and services.¹⁸⁸ Therefore, the GOC's arguments that it does not maintain the requested data are unavailing.

In total, Commerce determines that the GOC has (1) created a gap in the record by failing to provide requested information necessary to determine the GOC's involvement in the input markets and ocean shipping service market and (2) failed to cooperate to the best of its ability by failing to provide information that it has provided in recent investigations covering the some of the same inputs. Consequently, an adverse inference is warranted in the application of facts available.

The GOC's argument, that it does not maintain the data requested in this case (despite readily available evidence to the contrary)¹⁸⁹ is unconvincing. Again, we note that the GOC has provided in prior proceedings,¹⁹⁰ and Commerce has verified, information from GOC-maintained databases containing the type of information requested in this investigation which is necessary for Commerce to conduct a full analysis of the GOC's involvement in the market and thus determine whether domestic prices are distorted (i.e., whether such prices are unusable as a "tier one" benchmark). As noted in the preliminary determination, Commerce has verified the operation of the GOC's "Enterprise Credit Information Publicity System" which requires that the administrative authorities release detailed information of enterprises and other entities and which

¹⁸⁶ See *Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 68848 (October 30, 2020) (*Walk-Behind Mowers*), and accompanying PDM at 13-14, unchanged in *Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 27379 (May 20, 2021). In *Walk-Behind Mowers*, we found that the partial information provided by the GOC regarding the Chinese cold-rolled steel market was deficient in key respects. Nonetheless, the fact that the GOC provided information in this earlier proceeding that it now claims does not exist suggests that the GOC has withheld reasonably available information.

¹⁸⁷ See, e.g., *Walk-Behind Mowers* PDM at 13-14; see also GOC's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China, Case No. C-570-140: GOC's New Subsidy Allegation Supplemental Questionnaire Response," dated July 28, 2021. In *Walk-Behind Mowers* PDM, the GOC provided statistics for majority government-owned domestic production of cold-rolled steel covering multiple years. In this investigation we requested similar information, but the GOC asserts in this investigation that it does not maintain the same data, despite it only being one year later, without any explanation or attempt to provide the prior year's information in place of the POI data if there were difficulties – which should have been expressed to Commerce – in obtaining information for the POI. Consequently, Commerce views the GOC's claims not to maintain the data as dubious.

¹⁸⁸ See *Preliminary Determination* PDM at 28-30; see also Post-Preliminary Analysis at 9-11.

¹⁸⁹ See *supra* fn. 189 *Walk Behind Mowers*.

¹⁹⁰ See, e.g., *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review: 2013*, 80 FR 77318 (December 14, 2015) (*Citric Acid 2013*), and accompanying IDM at Comment 2.

is intended to bring clarity to companies registered in China.¹⁹¹ Hence, Commerce is aware of the existence of a national-level internal portal that holds certain information regarding any China registered company. Commerce considers the information on the record, or lack thereof, considering its experience in prior proceedings. Thus, Commerce continues to determine that the GOC has access to the information regarding both the production and the producers of inputs and ocean shipping service providers necessary to determine whether their respective markets are distorted.

Therefore, we conclude, as AFA, that the extent to which the GOC is involved in the operations of the input producers and ocean shipping service providers is such that prices for domestic (Chinese) transactions involving these inputs are significantly distorted. As a result, we continue to find that the use of an external benchmark (*i.e.*, “tier two” (world market) prices as described under 19 CFR 351.511(a)(2)(ii)) is warranted for calculating the benefits for the provisions of all the input and ocean shipping services for LTAR.

Comment 2: Countervailability of the Provision of Electricity for LTAR

GOC’s Comments:

- Commerce found the provision of electricity for LTAR countervailable as AFA. However, the GOC acted to the best of its ability to comply with Commerce’s requests, and Commerce did not provide sufficient support that the program is specific or consider account information contradicting its AFA finding.¹⁹²
- The GOC consistently stressed in this investigation that electricity prices are set by the provinces and that the role of the National Development and Reform Commission (NDRC) is not to determine specific prices.¹⁹³ Prices are based upon market principles. To demonstrate its compliance, the GOC answered every question in the Electricity Appendix and provided complete answers to Commerce’s supplemental questionnaires.¹⁹⁴ Consequently, there are no grounds to apply AFA because the GOC cooperated to the best of its ability.¹⁹⁵
- Commerce relied entirely upon AFA in finding the program countervailable. It did so without facts, which are required under *Trina Solar 2016*, and it ignored reference to record evidence, which directly contradicts Commerce’s determination.¹⁹⁶ The GOC stated, and provided evidence, that prices are set by the provinces and that industrial and commercial rates apply to all users.¹⁹⁷ Under the Notice of the National Development and Reform Commission on Lowering Coal-Fired Electricity On-Grid Price and General

¹⁹¹ See *Preliminary Determination PDM* at 30 (citing *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016) (*SSSS from China Prelim*), and accompanying PDM at 21-22, unchanged in *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017)).

¹⁹² See GOC General Issues Brief at 20-21.

¹⁹³ *Id.* at 21.

¹⁹⁴ *Id.* at 22.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 23.

¹⁹⁷ *Id.*

Industrial and Commercial Electricity Price, provinces have the authority to set their own electricity tariffs and there is accompanying legislation that eliminated provincial price proposals.¹⁹⁸

- Although Commerce in the *Preliminary Determination* points to Notice 3105 as indicative of the NDRC's involvement in local price adjustments, the GOC directly addressed this notice, explaining that during the POI there was no NDRC review of the provincial price proposals, and the provincial agencies are only required to provide their final adjustment price schedules to the NDRC for its records.¹⁹⁹

Petitioner's Comments:

- Commerce appropriately applied AFA to the provision of electricity for LTAR because the GOC failed to properly explain the relationship between the NDRC and the provinces.²⁰⁰ The GOC repeatedly failed to provide requested information and what information the GOC did provide contradicts its statements regarding electricity pricing.²⁰¹
- Furthermore, the GOC misinterprets Notice 3105 in arguing that the provinces set electricity prices.²⁰² Commerce found that Notice 3105 directs provinces to follow the direction of the NDRC.²⁰³ In applying AFA, Commerce correctly found that the electricity for LTAR program constitutes a financial contribution and is specific, as well as that an adverse inference is warranted for the electricity benchmark.²⁰⁴
- Commerce rejected the same arguments from the GOC on multiple occasions and should continue to do so here.²⁰⁵ Commerce similarly found that the GOC failed to cooperate in *Metal Lockers*²⁰⁶ and *Walk-Behind Mowers*²⁰⁷ in finding that the GOC did not fully explain the relationship between the NDRC and the provinces. Furthermore, in *Walk-Behind Mowers*, Commerce addressed the same arguments regarding Notice 3105.²⁰⁸ In *Jiangsu Zhongji Lamination*, the CIT likewise found that the notices undermine the GOC's argument that the NDRC does not control electricity prices.²⁰⁹

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. Specifically, as explained in the *Preliminary Determination*, the GOC did not provide complete responses to Commerce's questions regarding this program.²¹⁰ In the original questionnaire, Commerce requested information from the GOC that was needed to determine whether the

¹⁹⁸ *Id.* at 23-24.

¹⁹⁹ *Id.* at 24.

²⁰⁰ See Petitioner General Issues Brief at 38.

²⁰¹ *Id.* at 39.

²⁰² *Id.*

²⁰³ *Id.* at 39-40.

²⁰⁴ *Id.* at 40.

²⁰⁵ *Id.* at 41.

²⁰⁶ *Id.* (citing *Metal Lockers Final IDM* at 37-38).

²⁰⁷ *Id.* at 41-42 (citing *Walk-Behind Mowers IDM* at 61-65).

²⁰⁸ *Id.* at 42 (citing *Walk-Behind Mowers IDM* at 63-65).

²⁰⁹ *Id.* (citing *Jiangsu Zhongji Lamination v. United States*, 405 F. Supp. 3d 1317, 1338 (Ct. Int'l Trade 2019) (*Jiangsu Zhongji Lamination*)).

²¹⁰ See *Preliminary Determination PDM* at 35-37, section "Application of AFA: Provision of Electricity for LTAR."

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.

Specifically, 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.²¹¹ 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.²¹² 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 Provincial Price Proposals, and how cost element increases and final price increases were allocated across the province and across tariff end-user categories.²¹³ The GOC did not provide this necessary information.

In particular, the GOC did not fully address the role of the NDRC.²¹⁴ Despite the GOC's claims regarding Notice 3105 limiting the involvement of the NDRC, we found that Article 2 of Notice 3105 stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt (kW) hour and that the Appendix to Notice 3150 indicates that this average price adjustment applies to all provinces and at varying amounts.²¹⁵ Furthermore, NDRC Notice 3105 also directs additional price reductions, and stipulates, at Articles II and X, that local price authorities shall implement in time the price reductions included in its Annex and report resulting prices to the NDRC.²¹⁶ Furthermore, we found that Notice 3105 does not explicitly stipulate that provincial authorities set electricity prices or eliminate provincial price proposals.²¹⁷ In addition to Notice 3105, Commerce also found that Notices FGJG (2020) 258 and 994 showed direct evidence of the NDRC directing specific price adjustments during the POI. Thus, despite the GOC's claims, the NDRC continues to play an important role in setting electricity prices, which the GOC has not fully explained or addressed.

In the *Preliminary Determination*, we relied on facts available pursuant to sections 776(a)(1) and (2)(A) and (C) of the Act because necessary information was missing from the record and because the GOC withheld information that was requested of it for our analysis and significantly impeded the proceeding. Furthermore, we applied AFA pursuant to section 776(b) of the Act because the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information.²¹⁸ Consistent with the Act and our practice, Commerce is continuing to apply AFA with respect to the provision of electricity for LTAR for this final determination. We continue to find that the GOC failed to fully explain the roles and nature of the cooperation between the NDRC and the provincial governments in deriving electricity price adjustments.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

Therefore, the GOC significantly impeded the proceeding, within the meaning of section 776(a)(2)(C) of the Act.

The GOC's refusal to answer Commerce's questions completely with respect to the roles and nature of cooperation between the NDRC and the provinces in deriving electricity price adjustments and failure to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves, leaves Commerce with incomplete information to carry out a specificity analysis. The GOC failed to explain, in this and previous cases, the reason for how Chinese provincial electricity rate schedules are calculated and why they differ, claiming without support that the provincial governments set the rates for each province in accordance with market principles.²¹⁹ Thus, we continue to find this program countervailable and to rely on our findings in the *Preliminary Determination* that the GOC's provision of electricity is specific within the meaning of section 771(5A)(D) of the Act because preferential rates are provided to a limited number of preferred industries and enterprises.²²⁰ Furthermore, we continue to find that the provision of electricity for LTAR confers a financial contribution pursuant to section 771(5)(D)(iii) of the Act because GOC officials and state electricity providers, following central and provincial policy directives, provide a good, electricity, to the respondents.²²¹

As a result of the GOC's refusal to provide the requested information and unwillingness to cooperate, Commerce was unable to evaluate whether the electricity rates included in the electricity schedules submitted by the GOC were calculated based on market principles.²²² Accordingly, in the *Preliminary Determination*, Commerce applied AFA to the determination of the appropriate benchmark.²²³ Specifically, because the GOC provided the provincial electrical tariff schedules, Commerce relied on this information for the application of facts available. As described above, we continue to find that the GOC failed to act to the best of its ability, pursuant to sections 776(b) of the Act. Accordingly, as AFA, Commerce identified the highest rates amongst the provincial electrical tariff schedules for each reported electrical category and used those rates as the benchmarks in the benefit calculations.²²⁴

Comment 3: Countervailability of Other Subsidies

GOC's Comments:

- When Commerce receives notice or discovers a subsidy, it shall include it in the ongoing review so long as "sufficient time remains before the scheduled date for the final

²¹⁹ See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34828 (July 23, 2018) (*Photovoltaic Cells 2015*), and accompanying IDM at Comment 1; see also *Cast Iron Soil Pipe Fittings from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 60178 (December 19, 2017), unchanged in *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 32075 (July 11, 2018) (*Soil Pipe Fittings*).

²²⁰ See Petition Volume III at 16-19 and exhibits cited therein.

²²¹ *Id.*

²²² See *Preliminary Determination PDM* at 42.

²²³ *Id.*

²²⁴ *Id.*

determination.”²²⁵ If sufficient time does not remain, 19 CFR 351.311(c) directs Commerce to defer examination of the discovered measure to a future administrative review or to allow the petitioner to withdraw and re-file its petition to include the new measure, thereby resetting the statutory deadlines imposed on the proceeding.

Commerce’s determination to apply AFA ignores its obligation to examine first whether the practice appears to be countervailable, and second, if so, whether there is sufficient time to examine the practice and render a finding backed by substantial evidence and not based entirely on AFA. Commerce never explained to the GOC why it believed the subsidies were countervailable or that it had sufficient time to examine them in its supplemental questionnaires.²²⁶

- Commerce’s determination to countervail other subsidies is inconsistent with its obligations under the SCM Agreement.²²⁷ Under Article 11.2(iii), sufficient evidence regarding the “existence, amount, and nature of the subsidy” must be presented to initiate the investigation of another program.²²⁸ This position was recently upheld by the WTO Appellate Body. Therefore, Commerce’s practice of concluding that a respondent has failed to cooperate when providing a full response to this open-ended inquiry is premature absent a more direct inquiry supported by credible evidence and the initiation of a discrete investigation by Commerce.²²⁹

Petitioner’s Comments:

- Commerce should continue its established practice of countervailing discovered “other subsidies.”²³⁰ In arguing that Commerce erred by applying AFA to these programs, the GOC ignores both Commerce practice and the plain language of the statute, which directs Commerce to countervail discovered subsidies and apply AFA when parties do not cooperate.²³¹
- Section 775(d) of the Act states that when Commerce “discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition . . . {Commerce} shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding.”²³² Thus, Commerce’s actions are required by statute.²³³
- Commerce practice is to examine discovered subsidies. Commerce rejected similar arguments from the GOC in *Aluminum Extrusions*, where Commerce had likewise issued supplemental questionnaires regarding discovered subsidies to which the GOC failed to

²²⁵ See GOC General Issues Case Brief at 25 (citing 19 CFR 351.311(a)-(b)).

²²⁶ *Id.*

²²⁷ *Id.* at 26.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ See Petitioner General Issues Brief at 42-43.

²³¹ *Id.* at 43.

²³² *Id.* (citing section 775(d) of the Act).

²³³ *Id.*

fully respond and then applied AFA.²³⁴ Thus, Commerce’s actions in this investigation are consistent with its practice.

- Commerce should set aside the GOC’s misplaced claim that the agency was required to explain why there was insufficient time in this investigation to further examine discovered subsidy programs.²³⁵ The regulation does not require Commerce to explain its determination, and Commerce is correct to apply AFA without further inquiry given the GOC’s position that it had not and would not cooperate.²³⁶
- The GOC’s arguments regarding the WTO are unavailing because WTO language does not take precedence over U.S. law. U.S. CVD laws are compliant with U.S. obligations to the WTO, and WTO reports do not have the power to change U.S. law.²³⁷

Commerce’s Position: We disagree with the GOC’s interpretation of the statute and regulations regarding the lawful initiation of an investigation of other subsidies and the scope of Commerce’s authority. For the reasons detailed below, we continue to find that other subsidies self-reported by the respondents are countervailable.

Section 775(1) of the Act states that, if, during a proceeding, Commerce discovers “a practice that appears to provide a countervailable subsidy, but was not included in the matters alleged in the underlying CVD petition” Commerce “shall include the practice, subsidy, or subsidy program if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding.”²³⁸ Thus, section 775 of the Act imposes an affirmative obligation on Commerce to “consolidate in one investigation ... all subsidies known by petitioning parties to the investigation or by {Commerce} relating to {subject merchandise}” to ensure “proper aggregation of subsidization practices.”²³⁹ Commerce’s regulations carve out a limited exception to its obligation to investigate what “appear” to be countervailable subsidies: when Commerce discovers a potential subsidy too late in a proceeding, it may defer its analysis of the program until a subsequent review, if any.²⁴⁰ Moreover, Commerce has broad discretion to determine which information it deems relevant to its determination, and to request that information.²⁴¹

²³⁴ *Id.* at 44 (citing *Aluminum Extrusions from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) (*Aluminum Extrusions*), and accompanying IDM at 86-88).

²³⁵ *Id.*

²³⁶ *Id.* at 45.

²³⁷ *Id.* at 45-46 (citing *Multilayered Wood Flooring from the People’s Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2017*, 85 FR 76011 (November 27, 2020) (*Multilayered Wood Flooring*), and accompanying IDM at 70).

²³⁸ See section 775(1) of the Act (emphasis added).

²³⁹ See S. Rep. No. 96-249 at 98 (1979); see also *Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d 1141, 1150n.12 (CIT 2000) (“Congress ... clearly intended that all potentially countervailable programs be investigated and catalogued, regardless of when evidence on these programs became reasonably available.”).

²⁴⁰ See 19 CFR 351.311(a) and (c).

²⁴¹ See *Trina Solar 2016*, 195 F. Supp. 3d at 1342 (holding that Commerce has “independent authority, pursuant to {section 775 of the Act}, to examine additional subsidization in the production of subject merchandise,” and this “broad investigative discretion” permits Commerce to require respondents to report additional forms of governmental assistance); see also, e.g., *Acciai Speciali Terni S.p.A., et al., v. United States*, 26 CIT 148, 167 (CIT 2002); and *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986).

Thus, consistent with the CIT's holding in *Trina Solar 2016*,²⁴² we find that Commerce's "other assistance" question enables Commerce to effectuate its obligation to investigate subsidies that it discovers during the course of a proceeding. We further find that this practice is consistent with Commerce's broad discretion to seek information it deems relevant to its determination.

Further, under 19 CFR 351.311(b), Commerce will examine the practice, subsidy, or subsidy program "if during a countervailing duty investigation ... {Commerce} discovers a practice that appears to provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding ... {and} will examine that practice, subsidy, or subsidy program if the Secretary concludes that sufficient time remains before the scheduled date for the final determination or final results of review." Therefore, the regulation clearly provides for the investigation of subsidy programs during an ongoing investigation, which thereby permits a determination of whether the subsidy in question is countervailable. Commerce is not obligated by the regulation to explain to the GOC, in supplemental questionnaires, why we believe the requested information is necessary to the analysis of the discovered subsidy prior to a preliminary determination or why we believe we have sufficient time to examine the discovered subsidy. The GOC's obligation is to respond, to the best of its ability, to the questionnaire. The GOC's argument is unavailing; Commerce conducts its analysis of a subsidy program based on all the relevant information provided; as a result, it determines whether measures are countervailable subsidies after providing the GOC and the respondents an opportunity to respond to information requests, not prior.

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

{O}ur CVD laws are consistent with our WTO obligations. Moreover, it is the Act and {Commerce's} regulations that have direct legal effect under U.S. law, and not the WTO Agreements or WTO reports. In this regard, WTO reports "do not have any power to change U.S. law or to order such a change."²⁴³

Additionally, as stated in 19 CFR 351.311(d), Commerce must notify the parties of any subsidy discovered during the course of the ongoing proceeding and state whether it will be included in the proceeding. Commerce notified the mandatory respondents of its investigation of these

²⁴² See *Trina Solar 2016*, 195 F. Supp. 3d at 1342 ("Commerce's inquiry concerning the full scope of governmental assistance provided by the {GOC} and received by the Respondents in the production of subject merchandise was within the agency's independent investigative authority pursuant to {section 702}(a) {and 775 of the Act}, and this inquiry was not contrary to law.").

²⁴³ See *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at Comment 1; see also *Oil Country Tubular Goods from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 11504 (March 27, 2019), and accompanying IDM at Comment 1.

programs, as the respondents self-reported the programs in their initial CVD questionnaire responses.²⁴⁴

For the reasons discussed above, Commerce acted consistently with its authority, and its practice, in investigating subsidy programs that came to light during the course of the investigation. Furthermore, we have made no change to the *Preliminary Determination* with respect to our treatment of respondents' self-reported other subsidies (*i.e.*, grants). We continue to find that information necessary to perform our analysis of financial contribution and specificity is not available on the record and that application of facts available, pursuant to section 776(a) of the Act, is warranted. Furthermore, Commerce determines, in accordance with section 776(b) of the Act, that the GOC has not cooperated to the best of its ability and that application of an adverse inference in selecting among the facts available is warranted. Thus, we determine, as AFA, that other subsidies constitute a financial contribution, pursuant to section 771(5)(D)(i) of the Act, except for Tax Offsets for Research and Development, which constitutes a financial contribution pursuant to section 771(5)(D)(ii) of the Act, and are specific, within the meaning of section 771(5A) of the Act.

Comment 4: Currency Undervaluation

GOC's Comments:

- Commerce correctly found that currency undervaluation did not provide a countervailable benefit during the POI based upon the findings of the Department of Treasury (Treasury).²⁴⁵ However, Commerce should also find that the renminbi (RMB) is undervalued because the International Monetary Fund found that the RMB is “broadly in line with fundamentals and desirable policies,” the RMB appreciated substantially in 2020, and various studies have found that the RMB is not undervalued.²⁴⁶

Petitioner's Comments:

- The GOC's argument about whether the RMB is undervalued is both unnecessary and unsupported by record evidence.²⁴⁷ Treasury found the RMB to be undervalued, the GOC makes no compelling argument for Commerce to reconsider Treasury's determination, and it would be inappropriate for Commerce to overturn Treasury's analysis.

Commerce's Position: In the *Preliminary Determination*, pursuant to the analysis of Treasury, we found that, while the RMB was undervalued, in accordance with 19 CFR 351.528(a)(2), the RMB's undervaluation did not provide a benefit to producers/exporters of mobile access equipment during the POI.²⁴⁸ Consequently, the GOC's arguments related to currency undervaluation are moot, and in this instance, we decline to reconsider Treasury's findings or our determination.

²⁴⁴ See, e.g., Dingli's Letter, “Dingli Initial Questionnaire Response: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China (C-570-140) (POI: 2020),” dated June 15, 2021.

²⁴⁵ See GOC General Issues Brief at 27.

²⁴⁶ *Id.* at 27-29.

²⁴⁷ See Petitioner General Issues Rebuttal Brief at 46-48.

²⁴⁸ See *Preliminary Determination* PDM at 67.

Comment 5: Export Buyers Credit

Petitioner's Affirmative Comments:

- Commerce found in the *Preliminary Determination* that the Export Buyers Credit program (EBC) was specific, constituted a financial contribution, and provided a benefit as AFA because the GOC did not cooperate to the best of its ability.²⁴⁹ In particular, with respect to benefit, Commerce found that the GOC did not provide the 2013 revisions to the *Administrative Measures* of the China Export-Import Bank (China Ex-Im Bank) or a list of third-party banks, which impedes Commerce's ability to verify the program.²⁵⁰ However, with minimal explanation regarding supplemental questionnaire responses received from LGMG regarding the EBC program, Commerce found, as facts available, that LGMG did not use the program.²⁵¹ Commerce reached this conclusion despite the GOC's non-cooperation, which is otherwise necessary to verify non-use of the program.²⁵²
- Commerce erred by not applying AFA to find that LGMG used the EBC program. Commerce has repeatedly asserted that it requires information from the GOC non-use of the EBC program.²⁵³ In this investigation, Commerce does not fully understand how the program operates because of the GOC's non-cooperation. Consequently, Commerce does not know what information the respondents could provide to demonstrate non-use.²⁵⁴ Commerce explained this same issue in *Walk-Behind Mowers* and *Metal Lockers*.²⁵⁵ Thus, Commerce's determination is inconsistent with established practice. Commerce cannot claim it both needs information from the GOC and claim that information provided by the respondents is sufficient to demonstrate non-use of the EBC program.²⁵⁶
- While the CIT directed Commerce to consider whether information provided by the respondents is sufficient to fill the gap created by the GOC's non-cooperation, the CIT has not required Commerce to find the program not used.²⁵⁷ Further, each proceeding contains its own record, and Commerce should not be led into an incorrect determination by non-binding CIT precedent from other cases.²⁵⁸ Indeed, continuing the logic of the *Preliminary Determination* will induce further non-cooperation from the GOC.²⁵⁹
- LGMG's references to *Small Engines* throughout this proceeding are misplaced due to the unique circumstances of *Small Engines*. The sole U.S. customer in that case was the U.S. parent of the Chinese company, and the U.S. customer provided complete

²⁴⁹ See Petitioner EBC Brief at 2.

²⁵⁰ *Id.* at 2-3 (citing *Preliminary Determination* PDM at 25).

²⁵¹ *Id.* at 3-5.

²⁵² *Id.*

²⁵³ *Id.* (citing *Walk-Behind Mowers* IDM at 47-53; and *Metal Lockers* IDM at 23-28).

²⁵⁴ *Id.* at 5-6.

²⁵⁵ *Id.* at 6 (citing *Walk-Behind Mowers* IDM at 52; and *Metal Lockers* IDM at 26).

²⁵⁶ *Id.* at 6-7.

²⁵⁷ *Id.* at 7 (citing *Guizhou Tyre Co. v. United States*, 348 F. Supp. 3d 1261, 1281 (Ct. Int'l Trade 2018) (*Guizhou Tyre*); and *Changzhou Trina Solar Energy Co. v. United States*, 52 F. Supp. 3d 1316, 1327-28 (CIT 2018) (*Trina Solar 2018*)).

²⁵⁸ *Id.* at 7.

²⁵⁹ *Id.* at 7-8.

information, which Commerce does not have in this case.²⁶⁰ EBC program funds could flow through an unidentified third-party bank and, without the GOC's cooperation, there is no way for the respondents to demonstrate otherwise.²⁶¹ Moreover, information regarding cash flow statements, as envisioned in *Small Engines*,²⁶² is not available here from LGMG.²⁶³

- LGMG did not provide complete information about its customers business proprietary financing since the *Preliminary Determination*.²⁶⁴ Commerce does not have information to trace funding through possible third-party banks.²⁶⁵ Furthermore, LGMG did not disclose all its financing and left unresolved discrepancies in its financing.²⁶⁶
- Commerce should continue to apply AFA to regarding Dingli's use of the EBC program.²⁶⁷ Commerce found that Dingli did not provide a complete response to Commerce's supplemental questions regarding the non-traditional financing of one of its customers and unilaterally determined what forms of financing were appropriate for Commerce's assessment. Thus, Commerce found that it could not determine whether the EBC program was used and appropriately applied AFA.²⁶⁸
- Information provided by Dingli since the *Preliminary Determination* continues to support the application of AFA.²⁶⁹ Similar to the situation in *Small Engines*, Dingli failed to provide information regarding its cashflow statement regarding certain business proprietary information.²⁷⁰ Thus, Commerce should likewise find that Dingli failed to prove non-use of the EBC Program.
- Dingli's customers also failed verification regarding certain business proprietary elements of their EBC verification questionnaires.²⁷¹ In reporting a liability account, Dingli failed to provide supporting and requested documentation,²⁷² certain business proprietary elements run afoul of concerns regarding potential recipients that are third-party banks and institutions that Commerce would be unable to verify,²⁷³ Dingli did not tie the balance sheet of a customer to the financial accounting system,²⁷⁴ provided

²⁶⁰ *Id.* at 8-9 (citing *Small Engines* IDM at 22).

²⁶¹ *Id.* at 9-10.

²⁶² *Id.* at 10 (citing *Small Engines* IDM at 23).

²⁶³ *Id.* at 10-11.

²⁶⁴ *Id.* at 12.

²⁶⁵ *Id.* at 12-13.

²⁶⁶ *Id.* at 13-14.

²⁶⁷ *Id.* at 15-16.

²⁶⁸ *Id.*

²⁶⁹ *Id.* at 17.

²⁷⁰ *Id.* at 17-18 (citing *Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 14071 (March 12, 2021) (*Small Engines*)).

²⁷¹ *Id.* at 18.

²⁷² *Id.* at 18-19.

²⁷³ *Id.* at 19-20 (citing *Certain Chassis and Subassemblies Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 15186 (March 22, 2021) (*Chassis Final*), and accompanying IDM at 40).

²⁷⁴ *Id.* at 21

information that is not elsewhere referenced,²⁷⁵ and failed to provide information regarding certain interest expense accounts.²⁷⁶

Dingli's Affirmative Comments:

- The record conclusively established that Dingli did not use the EBC program. In the *Preliminary Determination*, Commerce found, as AFA, that Dingli used the program because Dingli did not provide complete information regarding the non-traditional financing of its customers.²⁷⁷ This concern is no longer valid given the information provided since the *Preliminary Determination* in Dingli's supplemental questionnaire and verification questionnaire responses.²⁷⁸ Thus, Commerce should find that Dingli did not use the program.
- Dingli filed a ministerial error allegation regarding the EBC program that was rendered moot by the issuance of a supplemental questionnaire, which also corrected a legal error by Commerce in not promptly issuing a questionnaire to Dingli regarding a found deficiency.²⁷⁹ Dingli responded to the questionnaire with complete information regarding the financing.²⁸⁰ In addition, Dingli provided complete information regarding the verification questionnaire. Combined, the record as summarized shows that Dingli and its customers did not use the EBC program.²⁸¹ Furthermore, the GOC provided exhibits demonstrating and affirmed that it did not provide EBC to the respondents or their U.S. customers.²⁸²
- The CIT, in *Canadian Solar*, found that Commerce should avoid applying AFA on a collateral, cooperating party if information on the record exists to avoid such impact.²⁸³ The CIT has applied this reasoning in each case involving EBC since *Guizhou Tyre*, finding that evidence submitted by the respondents prevents Commerce from applying AFA because evidence from the respondents establishes non-use of the program.²⁸⁴ In those cases, the evidence consisted of non-use declarations; in this case, there is a much greater amount of evidence to demonstrate non-use of the program.²⁸⁵
- Finding non-use of the program would be consistent with *Small Engines*, where the respondent provided non-use declarations and their underlying loan information.²⁸⁶ Commerce noted in *Small Engines* that a loan reconciliation demonstrated the purpose of all financing. This is the first case in which Commerce directly sought information like that submitted in *Small Engines* from the respondents' U.S. customers and verified this information. Since Dingli and its customers have submitted all the requested information, the record demonstrates that Dingli's U.S. customers financing was both

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 21-23.

²⁷⁷ See Dingli EBC Brief at 2 (citing *Preliminary Determination* PDM at 25).

²⁷⁸ *Id.*

²⁷⁹ *Id.* at 2-3 (citing section 782(d) of the Act).

²⁸⁰ *Id.*

²⁸¹ *Id.* at 4-6.

²⁸² *Id.* at 6.

²⁸³ *Id.* at 6 (citing *Canadian Solar Inc. v. United States*, No. 19-00178, 2021 WL 4026868, at *14 (Ct. Int'l Trade Sept. 3, 2021) (*Canadian Solar*); *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1343 (CIT 2013) (*Archer Daniels Midland*); and *Guizhou Tyre*).

²⁸⁴ *Id.* at 6-7 (citing *Guizhou Tyre*).

²⁸⁵ *Id.* at 7

²⁸⁶ *Id.* (citing *Small Engines* IDM at Comment 7).

unrelated to the EBC program and that there is no unreported financing. Furthermore, verifying this information is similar to verifying loan programs in other proceedings, and, in this investigation, Commerce has been more thorough than normal in its verification. Therefore, Commerce should find non-use of the program.²⁸⁷

GOC's Affirmative Comments:

- Commerce's determination to apply AFA because the GOC did not provide the 2013 revision to the *Administrative Measures* of the China Ex-Im Bank and certain "necessary information" should be reversed because the GOC reported that Dingli, LGMG, and their U.S. customers did not use the program and, consequently, there was no gap in the record.²⁸⁸ The information Commerce requested was, thus, not necessary.
- Commerce can only apply AFA if a party does not cooperate to the best of its ability – which the GOC did – and the Federal Circuit has previously determined that an adverse inference is only warranted under circumstances where Commerce could expect a more forthcoming response.²⁸⁹ In this investigation, the GOC fully cooperated by confirming that the program was not used by the respondents and confirming with the China Ex-Im Bank.²⁹⁰ No further information is necessary to demonstrate non-use of the EBC program, and, thus, there is no basis to apply AFA.²⁹¹
- Commerce's determination to apply AFA based on AFA alone is contrary to law. Commerce "must still make the necessary factual findings to satisfy the requirements for countervailability," which Commerce did not do in the *Preliminary Determination*.²⁹² The record does not demonstrate that there is a financial contribution because the preferential interest rate is provided to the foreign importer, not the Chinese respondent.²⁹³ Thus, any financial contribution would be to the U.S. customer.
- Application of AFA is only warranted when necessary information is missing from the record.²⁹⁴ However, the record is clear that the EBC program was not used by the respondents, as demonstrated through their questionnaire responses before and after the *Preliminary Determination* (where Commerce correctly found LGMG to have not used the program and incorrectly found Dingli to have used the program).²⁹⁵ Thus, the application of AFA is not warranted.
- The circumstances here are similar to *Yama Ribbons*, where the CIT found that Commerce was not free to ignore record evidence demonstrating that the respondent did not use the EBC program, and, on remand, Commerce reversed its determination.²⁹⁶ Dingli has likewise shown, through record evidence, including customer non-use declarations and its complete responses to questionnaires from Commerce that it did not use the EBC program.²⁹⁷ The pertinent issue is whether the respondents used the

²⁸⁷ *Id.* at 7-8.

²⁸⁸ *See* GOC EBC Brief at 2-3.

²⁸⁹ *Id.* at 3 (citing *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (*Nippon Steel*)).

²⁹⁰ *Id.* at 3.

²⁹¹ *Id.*

²⁹² *Id.* at 4 (citing *Trina Solar 2016*).

²⁹³ *Id.* at 5.

²⁹⁴ *Id.* at 5-6 (citing *JSW Steel Ltd. v. United States*, 315 F. Supp. 3d 1379, 1382 (Ct. Int'l Trade 2018)).

²⁹⁵ *Id.* at 6-7.

²⁹⁶ *Id.* at 7 (citing *Yama Ribbons & Bows Co. v. United States*, 419 F. Supp. 3d 1341 (Ct. Int'l Trade 2019)).

²⁹⁷ *Id.* at 7-8.

program, not Commerce’s full understanding of the program.²⁹⁸ Commerce has likewise been directed by the CIT in *Trina Solar 2018*, *Guizhou Tyre*, and *Clearon Corp* that it cannot find use as AFA when the record indicates otherwise, including specifically that the 2013 revisions to the *Administrative Measures* were immaterial in *Guizhou Tyre*.²⁹⁹

Petitioner’s Rebuttal Comments:

- Dingli failed to provide information necessary to verify its U.S. customers non-use of the EBC program. However, Dingli cannot provide the information necessary to verify use of the program because of the GOC’s non-cooperation, which leaves Commerce searching for a “needle in a haystack” because there are no limiting parameters.³⁰⁰
- Regarding business proprietary information, Dingli did not complete a reconciliation step in its EBC verification questionnaire, did not provide complete details on its liability accounts, did not provide supporting documentation for certain accounts, did not provide certain information a liability account, and did not provide information for certain interest expense accounts.³⁰¹ Given these failures, Dingli withheld information from Commerce regarding the EBC program, and Commerce should continue to find that Dingli used the program as AFA.³⁰²
- Commerce cannot rely upon facts available to find non-use of the EBC program in view of the non-cooperation of the GOC and should apply AFA to Dingli based upon the GOC’s failure to cooperate.³⁰³ In *Chassis*, Commerce found that it could not analyze or verify the program without the GOC’s cooperation, and, likewise, Commerce cannot meaningfully analyze or verify the program here.³⁰⁴ Furthermore, Dingli’s references to *Small Engines* is misplaced because the facts of that case – a single U.S. customer that is a parent of the Chinese respondent and complete record of all funds flowing into the parent – are not replicated in this case because of Dingli’s relationship with its customers and business proprietary affiliations.³⁰⁵ Consequently, Commerce cannot determine without additional information from the GOC, such as a list of third-party banks, whether Dingli benefited from the EBC program. Moreover, in *Small Engines*, Commerce identified further relevant information necessary to meaningfully assess and verify use: cash flow records.³⁰⁶ However, Dingli’s proprietary information regarding its cash flows have multiple flaws. Thus, without a list of third-party banks or the 2013 revisions to the *Administrative Measures*, Commerce cannot find non-use.³⁰⁷
- Commerce should reject Dingli’s argument that verifying the EBC program is comparable to verifying other loan programs because Commerce cannot follow normal verification procedures due to the GOC’s non-cooperation resulting in a “needle in a

²⁹⁸ *Id.* at 8.

²⁹⁹ *Id.* at 1-10 (citing *Trina Solar 2018*, *Guizhou Tyre*, and *Clearon Corp. v. United States*, 359 F. Supp. 3d 1344, 1357 (Ct. Int’l Trade 2019)).

³⁰⁰ See Petitioner EBC Rebuttal Brief at 2-4 (citing *Chassis* IDM at 41).

³⁰¹ *Id.* at 3-9.

³⁰² *Id.* at 8-9.

³⁰³ *Id.* at 10.

³⁰⁴ *Id.* at 11 (citing *Chassis* IDM at 42).

³⁰⁵ *Id.* at 11-12.

³⁰⁶ *Id.* at 13-16.

³⁰⁷ *Id.* at 16-17.

haystack” issue with added uncertainty that Commerce “may not even be able to identify the needle when it was found”.³⁰⁸

- Commerce’s AFA determination is supported by the record because the GOC did not cooperate to the best of its ability comply with Commerce’s requests for information.³⁰⁹ Despite the GOC’s claims that no further cooperation was necessary beyond asserting that the respondents did not use the EBC program, Commerce made clear that it did not possess the information necessary to verify non-use.³¹⁰ Thus, the GOC’s assertion does not constitute complete cooperation. Rather, the GOC’s non-cooperation warrants AFA.³¹¹
- Despite the GOC’s claims that the program cannot constitute a financial contribution, Commerce cannot fully understand how the program works without their cooperation, including how funding flows or which entities would be entitled to benefits.³¹² Furthermore, the GOC reports that the Chinese exporter receives the money directly from the China Ex-Im Bank.³¹³ Thus, Commerce appropriately found a financial contribution.
- The GOC’s arguments related to the gap in the record are in error because Commerce explained in detail what information is missing from the record and the respondents did not provide complete information for Commerce to verify non-use of the program.³¹⁴ The GOC’s citations to the CIT are likewise mistaken because the precedents are non-binding and reflect distinct factual records, and Commerce requires additional information to determine usage of the program.³¹⁵ The GOC’s references to *Guizhou Tyre* and *Trina Solar 2018* are for proceedings in which the CIT remanded Commerce to explain its reasoning. The CIT did not, as the GOC claims, find that Commerce cannot apply AFA.³¹⁶ Furthermore, Commerce has fully explained its rationale for applying AFA in this investigation.³¹⁷

Dingli’s Rebuttal Comments:

- None of the issues raised by the petitioner detract from or impeach the substantial evidence provided by Dingli that it did not use the EBC program. The petitioner failed to identify necessary missing information or evidence that contradicts Dingli’s statements and evidence demonstrating non-use of the EBC program.³¹⁸ While there have been disputes regarding the cash flow, there is no dispute that the program creates a loan liability, which the U.S. customer must repay to the lender. Thus, the program is no different from other loan programs.³¹⁹ Commerce generally accepts statements alone of non-use and then, at verification, reviews accounts that would contain subsidies reported as not used. Thus, as a loan program, the appropriate accounts are the liability and

³⁰⁸ *Id.* at 17 (citing *Chassis IDM* at 38).

³⁰⁹ *Id.* at 18-19.

³¹⁰ *Id.* at 19.

³¹¹ *Id.* at 19-20.

³¹² *Id.* at 20.

³¹³ *Id.* at 20-21.

³¹⁴ *Id.* at 21.

³¹⁵ *Id.* at 21-22.

³¹⁶ *Id.* at 23 (citing *Guizhou Tyre*).

³¹⁷ *Id.* at 23-24.

³¹⁸ See Dingli EBC Rebuttal Brief at 2.

³¹⁹ *Id.* at 2-3.

financial expense accounts. While Commerce can review other accounts, Commerce should begin with the question of whether a U.S. auditor would permit such a loan liability to be recorded in a different account. Both U.S. customers have audited financial statements.³²⁰

- The application of AFA requires a gap in the record, and, since the *Preliminary Determination*, Dingli has provided extensive information filling the gap previously identified by Commerce, and none of the issues raised by the petitioner detract from the added information or constitute a gap that would necessitate the application of AFA.³²¹
- Adverse inferences cannot be applied unless it is appropriate to use facts others available.³²² Moreover, reliance upon facts available is only appropriate to fill gaps in the record necessary to Commerce to complete its calculation.³²³ In addition, Commerce must show that the party failed to cooperate to the best of their ability.³²⁴ The purpose of AFA is to incentivize cooperation, not impose punitive margins.³²⁵ Even if the GOC's responses are lacking, Commerce is nevertheless required to review the entire record, which both Commerce and the Court have recognized.³²⁶ Commerce's practice is to use record information when a government fails to respond.³²⁷
- Petitioner's arguments regarding cash flow (excluding the argument that usage of the program can be verified at the respondent) are unavailing because Commerce did not request information regarding Dingli's cash flow statement, Dingli is not required to provide information regarding the subsidies of non-responding affiliates; and further information regarding U.S. customers does not represent a gap in the record.³²⁸ Furthermore, the focus of Commerce's inquests should not be on the actual receipt of funds but the booking of liability and interest, as with all loan programs, which would show EBC funding. Thus, the focus on the cash flow is irrelevant.³²⁹
- The alleged issues with the proprietary information provided by Dingli's U.S. customers in verification are without merit because of the short time-frame of verification (exacerbated by the verification being of unaffiliated U.S. customers), because Dingli provided reasonable alternatives to Commerce's requests, and because Dingli³³⁰ demonstrated how the account at issue does not contain any financing. Furthermore,

³²⁰ *Id.* at 3.

³²¹ *Id.* at 3-4.

³²² *Id.* at 4-5 (citing *Shandong Huarong Mach. Co. v. United States*, 435 F. Supp. 2d 1261, 1289 (Ct. Int'l Trade 2006)).

³²³ *Id.* at 5 (citing *Nippon Steel; Ningbo Dafa Chem. Fiber Co. v. United States*, 580 F.3d 1247, 1255 (Fed. Cir. 2009); and *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011) (*Zhejiang Dunan Hetian Metal*)).

³²⁴ *Id.* at 5-6 (citing *Nippon Steel; Trina Solar 2018*; and *Guizhou Tyre*).

³²⁵ *Id.* at 6 (citing *F.Lli de Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000)).

³²⁶ *Id.* at 6-7 (citing *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 720 (Ct. Int'l Trade 1997); and *Countervailing Duty New Shipper Review: Certain In-shell Roasted Pistachios from the Islamic Republic of Iran*, 73 FR 9993 (February 25, 2008), and accompanying IDM at Comment 2)).

³²⁷ *Id.* at 7-8 (citing *RZBC Grp. Shareholding Co. v. United States*, 2016 Ct. Intl. Trade LEXIS 68 at *6 (June 30, 2016); *Archer Daniels Midland; Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254 (Ct. Int'l Trade 2012); *Trina Solar 2018*; and *Yama Ribbons*).

³²⁸ *Id.* at 8-9.

³²⁹ *Id.* at 10.

³³⁰ *Id.* at 11-12.

the petitioner's concerns regarding reconciliation are misleading because Dingli complied with Commerce's clarified request for information.³³¹ In addition, certain business proprietary information requested was not requested by Commerce in verification, and Dingli provided a complete response regarding all interest expense accounts of concern in verification.³³² Finally, certain business proprietary concerns regarding another U.S. customer's bank statements are without merit, including because of limitations to Commerce's questions.³³³

LGMG's Rebuttal Comments:

- Commerce appropriately found that LGMG did not use the EBC program in the *Preliminary Determination*, and record evidence provided by LGMG further affirms that LGMG did not use the program despite arguments by the petitioner regarding "additional information" provided since the *Preliminary Determination*.³³⁴ Commerce has a complete record and no evidence on the record indicates that LGMG used the EBC program.³³⁵
- The petitioner's arguments regarding cash flow statements derived from *Small Engines* are misplaced; Commerce carefully designed its questions in the instant investigation to obtain necessary information for its analysis.³³⁶ Commerce's supplemental questions regarding the EBC program were fully answered by LGMG and fill the gap left in the record by the GOC.³³⁷ Specifically, LGMG provided complete answers to the loan template, and, at no point, did Commerce request further information regarding certain parts of LGMG's business proprietary financial information. LGMG provided complete responses to each question from Commerce, and, consequently, there is no basis for Commerce to apply AFA.³³⁸
- Commerce also has all of the necessary information from LGMG's business proprietary verification responses to verify that LGMG did not use the program.³³⁹ Commerce requested information from the U.S. customer's financial statements and LGMG provided complete responses, including information regarding certain business proprietary loans.³⁴⁰ Petitioner's concerns regarding other borrowing is speculation for which there is no record evidence that would suggest an importer of subject merchandise could receive benefits under the program.³⁴¹ Finally, petitioner's concerns regarding certain business proprietary accounts are speculative and do not relate to the EBC

³³¹ *Id.* at 13-14.

³³² *Id.* at 14-16.

³³³ *Id.* at 17-19.

³³⁴ See LGMG EBC Rebuttal Brief at 2-3.

³³⁵ *Id.* at 3.

³³⁶ *Id.* at 4.

³³⁷ *Id.* at 5.

³³⁸ *Id.* at 6.

³³⁹ *Id.* at 7.

³⁴⁰ *Id.* at 7-8.

³⁴¹ *Id.* at 8-9.

program.³⁴² Thus, LGMG provided a complete verification response, which affirms that LGMG did not use the EBC program.

- Commerce's finding of non-use in the *Preliminary Determination* is consistent with established practice, including *Solar Cells*, where Commerce likewise found non-use of the program given certifications from U.S. customers confirming non-use of the program.³⁴³ Furthermore, Commerce found non-use of the program in *Small Engines* based upon the provision of U.S. customer financial information with the only caveat being that Commerce was unable to verify the information – which Commerce did in this investigation.³⁴⁴ Similarly, in *Boltless Shelving*, Commerce found non-use of the program notwithstanding the GOC's non-cooperation.³⁴⁵ Thus, Commerce can and does reach determinations of non-use.
- Applying AFA to find that LGMG used the EBC program would be contrary to law because the question of countervailability is separate from the question of whether LGMG used the program.³⁴⁶ LGMG provided all necessary information and, consequently, there is no gap in the record. The CIT has recently held that similar record evidence is sufficient to determine non-use of the program, including in *Guizhou Tyre* and *Clearon Corp* among others.³⁴⁷ Thus, the CIT has consistently found that the information missing from the record is not necessary to determine usage of the program provided the respondent demonstrates non-use.³⁴⁸
- Commerce cannot apply AFA if doing so would adversely impact a cooperating party and other information exists on the record.³⁴⁹ In *Trina Solar 2017*, the CIT ruled that customer declarations alone are sufficient to fill the gap created by the GOC.³⁵⁰ In the instant investigation, LGMG provided U.S. customer declarations in addition to extensive further information. Thus, Commerce should find that LGMG did not use the program.

Commerce's Position: Commerce's position continues to be that the GOC is the only party that can answer questions about the internal administration of this program and that non-use certificates cannot replace the cooperation of the GOC. As such, due to the lack of cooperation from the GOC, we continue to find, as adverse facts available, that the program constitutes a financial contribution pursuant to section 771(5)(D) of the Act and is specific pursuant to section 771(5A)(B) of the Act. However, considering court precedent, Commerce developed supplemental questionnaires issued to mandatory respondents and their U.S. customers requesting additional information regarding its financing activities to probe claims of non-use for

³⁴² *Id.* at 9-10.

³⁴³ *Id.* at 11-12 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 46904 (July 19, 2016), and accompanying IDM at 11).

³⁴⁴ *Id.* at 12-13 (citing *Small Engines* IDM at Comment 2).

³⁴⁵ *Id.* at 13 (citing *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015), and accompanying IDM at 10).

³⁴⁶ *Id.* at 14-15 (citing *Zhejiang Dunan Hetian Metal*; and *Gerber Food (Yunnan) Co., Ltd. v. United States*, 387 F. Supp. 2d 1270, 1284 (Ct. Int'l Trade 2005)).

³⁴⁷ *Id.* at 16-17 (citing *Guizhou Tyre*, *Clearon Corp*, *Trina Solar 2018*, and multiple other rulings).

³⁴⁸ *Id.* at 16-20.

³⁴⁹ *Id.* at 21 (citing *Archer Daniels Midland*).

³⁵⁰ *Id.* at 21-22 (citing *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 255 F. Supp. 3d 1312, 1318 (Ct. Int'l Trade 2017) (*Trina Solar 2017*)).

the Export Buyer's Credit program.³⁵¹ Upon further review of the record and information provided since the *Preliminary Determination*, we determine that neither LGMG nor Dingli used the EBC program. Below we discuss the evolution of Commerce's treatment of this program.

Solar Cells from China Initial Investigation of the EBC Program

Commerce first investigated and countervailed the EBC program in the Solar Cells from China investigation.³⁵² Our initiation was based on, among other information, the China ExIm Bank's 2010 annual report, demonstrating that the credits provided under this program are "medium – and long-term loans, and have preferential, low interest rates. Included among the projects that are eligible for such preferential financing are energy projects."³⁵³ Commerce initially asked the GOC to complete the "standard questions appendix" for the EBC program. The appendix requests, among other information, a description of the program and its purpose, a description of the types of relevant records the government maintains, the identification of the relevant laws and regulations, and a description of the application process (along with sample application documents). The standard questions appendix is intended to help Commerce understand the structure, operation, and usage of the program.³⁵⁴

The GOC provided none of the information requested by Commerce in the ensuing investigation, despite being given multiple opportunities to do so, and instead simply stated that "{n}one of the respondents or their reported cross-owned companies applied for, used, or benefited from the alleged programs during the POI."³⁵⁵ In response to a request from Commerce for information concerning the operation of the EBC program and how we might verify usage of the program, the GOC stated that none of the respondents' customers had used the program either. The GOC added: "{t}he GOC understands that this program, including the buyer's credit cannot be implemented without knowledge of the exporters because the program has a substantial impact on the exporter's financial and foreign exchange business matters."³⁵⁶ Although asked, the GOC provided no additional information concerning exactly how an exporter's financial and foreign exchange matters would be affected. Commerce then gave the GOC another opportunity to provide the information requested.³⁵⁷ The GOC again refused to provide sample application documents, regulations, or manuals governing the approval process, and instead provided only a short description of the application process which gave no indication of how an exporter might

³⁵¹ See Commerce's Letter, "Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Supplemental Questionnaire for Zhejiang Dingli Machinery Co., Ltd. Regarding the Export Buyer's Credit Program," dated July 1, 2021; see also Commerce's Letter, "Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Supplemental Questionnaire for Lingong Group Jinan Heavy Machinery Co., Ltd. Regarding the Export Buyer's Credit Program," dated July 1, 2021; and Dingli EBCSQ.

³⁵² See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 12, 2012) (*Solar Cells from China*), and accompanying IDM at Comment 18. While Commerce's determination with respect to the EBC program was initially challenged, the case was dismissed.

³⁵³ See *Solar Cells from China* IDM at 59.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.* at 60.

³⁵⁷ *Id.* at 60-61.

be involved in the provision of export buyer's credits, how it might have knowledge of such credits, or how such credits might be reflected in a company's books and records.³⁵⁸

Based on the GOC's responses, Commerce's understanding was that, under this program, loans were provided directly from the China ExIm Bank to the borrowers (*i.e.*, a respondent's customers), with no involvement of third parties, such as exporters, or third-party banks. Accordingly, Commerce made clear its understanding that the only way to establish non-use of the program was through the GOC and not the respondent companies.³⁵⁹ Additionally, Commerce concluded that, even if the respondent company might have some knowledge of loans provided to its customers through its involvement in the application process, such information is not the type Commerce would examine to verify that the claim of non-use at issue was complete and accurate:

{E}ven if the {respondent exporter} might have been involved in, or might have received some notification of, its customer's application for receiving such export credits, such information is not the type of information that {Commerce} needs to examine in order to verify that the information is complete and accurate. For verification purposes, {Commerce} must be able to test books and records in order to assess whether the questionnaire responses are complete and accurate, which means that we need to tie information to audited financial statements, as well as to review supporting documentation for individual loans, grants, rebates, *etc.* If all a company received was a notification that its buyers received the export credits, or if it received copies of completed forms and approval letters, we have no way of establishing the completeness of the record because the information cannot be tied to the financial statements. Likewise, if an exporter informs Commerce that it has no binder (because its customers have never applied for export buyer's credits), there is no way of confirming that statement unless the facts are reflected in the books and records of the respondent exporter.³⁶⁰

On this basis, Commerce concluded that usage of the program could not be confirmed at the respondent exporters in a manner consistent with its long-standing verification methods.³⁶¹

³⁵⁸ *Id.* at 61.

³⁵⁹ *Id.*

³⁶⁰ *Id.* at 61-62.

³⁶¹ Commerce provided a similar explanation in the 2014 investigation of solar products from China. *See Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products from China*), and accompanying IDM at 93. This was affirmed by the CIT in *Trina Solar*. In *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 255 F. Supp. 3d 1312, 1318 (CIT 2017) (*Changzhou II*), the Court noted that the explanation from *Solar Products from China* constituted "detailed reasoning for why documentation from the GOC was necessary" to verify non-use. However, the Court found that the 2014 review of solar cells from China at issue in *Changzhou II* was distinguishable because the respondents submitted customer certifications of non-use, and Commerce had "failed to show why a full understanding" of the program necessary to verify non-use. *Id.* at 10 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017), amended by *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final*

These methods are comparable to those of an auditor, attempting to confirm usage or claimed non-usage by examining books and records which can be traced to audited financial statements, or other credible official company documents, such as tax returns, that provide a credible and complete picture of a company's financial activity for the period under examination. A review of ancillary documents, such as applications, correspondence, emails, *etc.*, provides no assurance to Commerce that it has seen all relevant information.³⁶²

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

In the *Solar Cells from China* investigation, however, despite Commerce’s repeated requests for information, the GOC failed to offer any guidance as to how Commerce could search for EBC program lending in the respondent exporters’ books and records that could be tied to financial statements, tax returns, or other relevant company documents. Therefore, Commerce concluded in that investigation that it could not verify usage of the program at the respondent exporters and instead attempted verification of usage of the program at the China ExIm Bank itself because it “possessed the supporting records needed to verify the accuracy of the reported non-use of the EBC program {and} would have complete records of all recipients of export buyer’s credits.”³⁶³ We noted our belief that “{s}uch records could be tested by {Commerce} to check whether the U.S. customers of the company respondents had received export buyer’s credits, and such records could then be tied to the {China} ExIm Bank’s financial statements.”³⁶⁴ However, the

Results of Countervailing Duty Administrative Review; 2014, 82 FR 46760 (October 6, 2017), and accompanying IDM). The CIT in *Guizhou Tyre* reached a similar conclusion concerning the 2014 review of tires from China. See *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 18285 (April 18, 2017)).

³⁶² The Court agreed with Commerce in *RZBC Group Shareholding Co. v. United States*, 222 F. Supp. 3d 1196, 1201-02 (CIT 2017) (*RZBC Group II*), following a remand, finding that Commerce could not verify non-use of the program by examining the respondent-exporter’s audited financial statements or other books and records because record evidence demonstrated that the program terms were ambiguous. See *RZBC Group II*, 222 F. Supp. 3d at 1201-02 (concerning *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid 2012*), and accompanying IDM at Comment 6).

³⁶³ See *Solar Cells from China* IDM at 62.

³⁶⁴ *Id.*

GOC refused to allow Commerce to query the databases and records of the China ExIm Bank.³⁶⁵ Furthermore, there was no information on the record of *Solar Cells from China* from the respondent exporters' customers.

Chlorinated Isos Investigation of the EBC Program

Two years later, in the *Chlorinated Isos Investigation*,³⁶⁶ the respondents submitted certified statements from all customers claiming that they had not used the EBC program. This was the first instance of respondents submitting such customer certifications. At that point in time, as explained in detail above, based on the limited information provided by the GOC in earlier investigations, it was Commerce's understanding that the EBC program provided medium – and long-term loans and that those loans were provided directly from the China ExIm Bank to the borrowers (*i.e.*, the respondent exporters' customers) only. Because the respondents' customers were participating in the proceeding, verification of non-use appeared to be possible through examining the financial statements and books and records of the U.S. customers for evidence of loans provided directly from the China ExIm Bank to the U.S. customers pursuant to verification steps like the ones described above. Based on the GOC's explanation of the program, we had expected to be able to verify non-use of this program through review of the participating U.S. customers' subledgers themselves. Therefore, despite being “unable to conduct a complete verification of non-use of this program at China ExIm, ... {w}e conducted verification ... in the United States of the customers of {the respondents}, and confirmed through an examination of each selected customer's accounting and financial records that no loans were received under this program.”³⁶⁷

2013 Amendments to the EBC Program

Our understanding of the operation of the EBC program began to change after *Chlorinated Isos Investigation* had been completed in September 2014. In *Citric Acid 2012*, Commerce began to gain a better understanding of how China ExIm Bank disbursed funds under the program and the corresponding timeline; however, Commerce's attempts to verify the program's details, and to obtain accurate statements concerning the operation and use of the program, were thwarted by the GOC.³⁶⁸ In subsequent proceedings, Commerce continued to investigate and evaluate this program.

For example, in the *Silica Fabric Investigation*³⁶⁹ conducted in 2016-2017, based on what we had learned in *Citric Acid 2012*, we asked the GOC about certain changes to the EBC program,

³⁶⁵ *Id.*

³⁶⁶ See *Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos Investigation*), and accompanying IDM.

³⁶⁷ See *Chlorinated Isos Investigation* IDM at 15.

³⁶⁸ See *Citric Acid 2012* IDM at Comment 6 (“{N}otwithstanding the non-use claims of the RZBC Companies and the GOC, we find that the GOC's refusal to allow the verifiers to examine the EXIM Bank database containing the list of foreign buyers that were provided assistance under the program during the POR precluded {Commerce} from verifying the non-use claims made by the RZBC Companies and the GOC.”).

³⁶⁹ See *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017) (*Silica Fabric Final*), and accompanying IDM at Comment 17.

including changes in 2013 that eliminated the USD 2 million minimum business contract requirement.³⁷⁰ In response, the GOC stated that there were three relevant documents pertaining to the EBC program: (1) “Implementing Rules for the Export Buyer’s Credit of the {China ExIm Bank}” which were issued by the China ExIm Bank on September 11, 1995 (referred to as “1995 Implementation Rules”); (2) “Rules Governing Export Buyer’s Credit of the {China ExIm Bank}” which were issued by the China ExIm Bank on November 20, 2000 (referred to as “2000 Rules Governing Export Buyer’s Credit” or “Administrative Measures”); and (3) 2013 internal guidelines of the China ExIm Bank.¹²³ According to the GOC, “{t}he {China ExIm Bank} has confirmed to the GOC that ... its 2013 guidelines are internal to the bank, non-public, and not available for release.”³⁷¹ The GOC further stated that “those internal guidelines do not formally repeal or replace the provisions of the {Administrative Measures} which remain in effect.”³⁷²

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

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

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

Additional information in the GOC’s supplemental questionnaire response also indicated that the loans associated with this program are not limited to direct disbursements through the {ExIm} Bank. Specifically, the GOC stated that customers can open loan accounts for disbursements through this program with other banks. The funds are first sent from the {ExIm} Bank to the importer’s account, which could be at the {ExIm} Bank or other banks, and that these funds are then sent to the exporter’s bank account. Given the complicated structure of loan disbursements for this program {Commerce’s} complete understanding of how this program is administrated is necessary. Thus, the GOC’s refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administrated by the {ExIm} Bank, impeded {Commerce’s} ability to conduct its investigation of this program.³⁷³

³⁷⁰ *Id.*

³⁷¹ *See Silica Fabric Final IDM at Comment 17.*

³⁷² *Id.*

³⁷³ *See Silica Fabric Final IDM at 12.*

Further, we determined that we could not rely on declarations from customers claiming non-use of the program because “we are unable to verify the accuracy of these documents as the primary entity that possesses such supporting records is the {ExIm} Bank of China.”³⁷⁴

Additionally, we explained that “we now have information on the record that demonstrates the GOC updated certain measures of the program, but the GOC refused to provide the updated measures {, }” and “{b}ecause the GOC withheld critical information regarding this program, we are unable to determine how the program now operates, and, thus, we cannot verify {the respondent’s} declarations as submitted.”³⁷⁵

The Instant Investigation

In the *Preliminary Determination*, we found that: (1) the GOC withheld necessary information regarding the EBC program, including all laws, regulations, and governing documents and a list of third-party (partner/correspondent) banks; (2) the GOC impeded Commerce’s ability to determine whether the provision of EBC constitute a financial contribution and is specific; (3) the use of facts available is appropriate; (4) an adverse inference is warranted due to the GOC’s failure to cooperate to the best of its ability; and (5) the EBC program constitutes a financial contribution and is specific,³⁷⁶ pursuant to the limited information on the record regarding the EBC program.³⁷⁷ No arguments raised by the GOC or other interested parties fundamentally detracts from these core findings, and, consequently, we continue to find that the GOC’s non-cooperation significantly impedes our investigation of the EBC program, including information otherwise necessary to verify non-use of the program. While the GOC argues that the application of AFA is inappropriate, Commerce has found that its lack of cooperation creates a gap in the record by its failure to provide information regarding the 2013 revisions to the *Administrative Measures* and a list of third-party banks, which the GOC has withheld, and Commerce has found that this information is necessary to understand the mechanics of the EBC program.³⁷⁸

However, regarding benefit, we recognize that the CIT directed Commerce in numerous decisions to consider whether any available information provided by respondents may be sufficient to fill the gap of missing record information in considering claims of non-use for the EBC program.³⁷⁹ As a result, we issued supplemental questionnaires and questionnaires in lieu of onsite verification to each mandatory respondent and their U.S. customers, requesting additional information regarding its financing activities. We received complete responses from the respondents, and, consequently, as facts available, we find that neither Dingli nor LGMG – or their U.S. customers used the program. However, we note that our ability to fully analyze the respondents’ financial records and verify certain information could potentially have been bolstered by an onsite verification and the findings thereof. We acknowledge that there are certain concerns and issues raised that could potentially have benefited by examination during an

³⁷⁴ *Id.* at 62.

³⁷⁵ *Id.*

³⁷⁶ See Petition Volume III at 104-106 and Exhibits III-119 – III-121.

³⁷⁷ See *Preliminary Determination* PDM at 21-24.

³⁷⁸ *Id.*

³⁷⁹ See *Guizhou Tyre Co. v. United States*, 348 F. Supp. 3d 1261, 1271 (Ct. Int’l Trade 2018); see also *Clearon Corp. v. United States*, 359 F. Supp. 3d 1344, 1358-1360 (Ct. Int’l Trade 2019)

onsite verification. However, considering the time constraints of this investigation, in which the deadline for the final was not extended by alignment with the antidumping duty investigation, Commerce cannot request further information from the respondents to clarify all possible concerns.

Regarding the petitioner's concerns related to certain business proprietary elements of the in lieu onsite verification questionnaire responses, we agree with Dingli and LGMG that their responses: (1) fully answered all questions; (2) that information cited as concerning by the petitioner was not explicitly requested by Commerce, including certain information regarding cash flows; (3) that information regarding certain liability or interest accounts was provided with sufficient accompanying support; (4) that accompanying financial information did not raise concerns as outlined by the petitioner; and (5) that concerns regarding certain non-responding companies is neither warranted nor subject to this investigation.³⁸⁰ The record regarding use of the EBC program in the instant investigation is, pursuant to the direction of the CIT, sufficient to demonstrate non-use of the program. Respondents provided sufficient information regarding their financing and the financing of their U.S. customers, notwithstanding the gaps that persist in our understanding regarding the operation of the program.³⁸¹

Thus, while we continue to find that the GOC's non-cooperation significantly impedes and prevents a complete verification of the EBC program, in recognition of court precedent, we find that neither LGMG nor Dingli used the EBC program.

Comment 6: Whether to Average Dingli's Steel Benchmark Sources with UN Comtrade Data

Dingli's Comments:

- Commerce's determination to not use the Steelguru, Metal Expert, Indian Engineering Export Promotion Council (EEPC), and Indian Ministry of Steel data is unlawful and not consistent with Commerce practice.³⁸² Under 19 CFR 351.511(a)(2)(ii), Commerce will average all such prices where there is more than one commercially available world

³⁸⁰ See Dingli EBCILOVQR at Exhibits VE-2a, VE-2b, VE-3a-1, VE-3a-2, VE-3a-3, VE-4e, and VE-7a; see also LGMG EBCILOVQR.

³⁸¹ See generally Dingli EBCILOVQR; LGMG EBCILOVQR; and Dingli EBCSQR; see also *Preliminary Determination* PDM at 21, 25 (regarding record evidence for LGMG's non-use of the EBC program).

³⁸² See Dingli General Issues Brief at 5-6.

market price, and this is further established by Commerce practice.³⁸³ Thus, “Commerce must average all commercially available prices to arrive at the benchmark figure.”³⁸⁴ Indeed, Commerce has determined that averaging all available data leads to the “most robust world market price possible.”³⁸⁵ Nothing in the regulation requires a benchmark to come from multiple countries or be inclusive of all prices – which not even UN Comtrade data represents.³⁸⁶ Rather, for a price to be included in the average benchmark the only test is whether “it is reasonable to conclude that such price would be available to purchasers in the country in question” and whether it is a “commercially available world market price.”

- The CIT has noted “that the benchmark input prices being compared need not be ‘identical ... {because} Commerce’s regulations require only that {the input price} be a comparable market-determined price that would be available to the purchasers in the country at issue.’”³⁸⁷ Commerce has repeatedly used tier-two benchmarks from non-UN Comtrade sources that only provide prices, such as the London Metal Exchange, Steel Business Briefing, MEPS, and Steel Orbis.³⁸⁸ The nature of those sources is virtually identical to the ones Dingli has provided here, and Commerce has previously found those sources reliable and representative.³⁸⁹
- Each of the sources report input prices on a monthly (and sometimes more frequent) basis.³⁹⁰ None of these sources include the weight or quantity of sales that underlie the reported AUVs; nor do they provide additional details regarding delineation of product

³⁸³ *Id.* at 6-7 (citing *High Pressure Steel Cylinders from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2017*, 84 FR 40393 (August 14, 2019), and accompanying PDM at 10, unchanged in *High Pressure Steel Cylinders from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2017*, 84 FR 71373 (December 27, 2019) (*High Pressure Steel Cylinders 2017*); *Boltless Shelving* IDM at 18; *Citric Acid 2012*; *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1343 (CIT 2013); *Carbon and Alloy Steel Threaded Rod from the People’s Republic of China: Preliminary Affirmative Determination: Countervailing Duty Investigation*, 84 FR 36578 (July 29, 2019) (*CASTR Preliminary*), and accompany PDM at 33, unchanged in *Carbon and Alloy Steel Threaded Rod from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 8833 (February 18, 2020) (*CASTR Final*); and *Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part of Countervailing Duty Investigation*, 82 FR 58175 (Dec. 11, 2017) (*Cold-Drawn Mechanical Tubing*), and accompanying IDM at Comment 4.)

³⁸⁴ *Id.* at 8 (citing *Essar Steel Ltd. v. United States*, 721 F.Supp.2d 1285, 1293 (CIT 2010) (*Essar Steel*)).

³⁸⁵ *Id.* (citing *Citric Acid 2012* IDM at Comment 10 and *Cold-Drawn Mechanical Tubing* IDM at Comment 4).

³⁸⁶ *Id.*

³⁸⁷ *Id.* at 9 (citing *Archer Daniels Midland Co.*, 917 F. Supp. 2d at 1344 (quoting *Essar*, 678 F.3d at 1273–74.)).

³⁸⁸ *Id.* at 9-10 (citing *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009), and accompanying IDM at Comment 13; *Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51,775 (August 26, 2015), and accompanying IDM at Comment 7, *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011), and accompanying IDM at 32; *Certain Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying IDM at 15; *Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 57444 (Sept. 21, 2010); and *High Pressure Steel Cylinders from the People’s Republic of China: Final Affirmative Countervailing Duty Determination* 77 FR 26738 (May 7, 2012), and accompanying IDM at 18).

³⁸⁹ *Id.*

³⁹⁰ *Id.* at 10-11.

types beyond their description. Never has this fact been either an impediment to their use or to averaging these sources with UN Comtrade data. Indeed, Commerce has rejected arguments to *not* include other sources.³⁹¹ Commerce has explicitly included these Metal Expert and Steelguru sources in prior proceedings.³⁹² Considering the regulation and Commerce’s practice, Commerce must average all the prices, including Dingli’s steel benchmark sources.

Petitioner’s Comments:

- Commerce should continue to exclude Dingli’s benchmark sources because the sources are not accurate or reliable. Regardless of whether Commerce has used such sources in the past, Commerce has also rejected prices from these sources based on an analysis of the facts on the record.³⁹³
- Commerce specifically rejected Steelguru India and EEPC data in *Fluid End Blocks* because it gives undue weight to data from one particular country.³⁹⁴ The Steelguru data that Dingli submitted include steel plate prices from only three countries (Ukraine, Turkey, and India), the Metal Expert data include only three countries (Germany, Italy, and Poland), and the Indian Ministry and EEPC data both only cover India.³⁹⁵ Using a simple average of these monthly prices and the UN Comtrade data would give disproportionate weight to the limited number of countries in Dingli’s proposed sources, particularly India.
- Commerce had additional reasons for excluding the Dingli sources: the data is self-selected without explanatory criteria and lacks clear product descriptions or delineations.³⁹⁶ Thus, Commerce correctly used the petitioner’s data, which was provided with explanation and reasoning for various selections.³⁹⁷
- Dingli’s sources are not usable for reasons other than those cited by Commerce.³⁹⁸ The EEPC data contains an “MS Flats” category without explanation and sales terms are either unclear or not explained. In sum, Commerce should continue to use the petitioner’s UN Comtrade benchmark data and reject Dingli’s sources.³⁹⁹

Commerce’s Position: We disagree that Commerce is required, by statute and practice, to average Dingli’s benchmark sources with the UN Comtrade data. When there is more than one dataset representing a world market price, then Commerce “will average such prices *to the extent practicable, making due allowance for factors affecting comparability.*”⁴⁰⁰ As stated in the

³⁹¹ *Id.* at 11-12 (citing *Chests and Cabinets from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 56582 (November 29, 2017), and accompanying IDM at Comment 5).

³⁹² *Id.* at 12-13. (citing *Cold-Drawn Mechanical Tubing* IDM at Comment 4; and *CASTR Preliminary PDM* at 33).

³⁹³ See Petitioner General Issues Rebuttal Brief at 6.

³⁹⁴ *Id.* at 6-7 (citing *Forged Steel Fluid End Blocks from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 31457 (May 26, 2020) (*Fluid End Blocks*), and accompanying PDM at 36, unchanged in *Forged Steel Fluid End Blocks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 80020 (December 11, 2020), and accompanying IDM at 6).

³⁹⁵ *Id.* at 7.

³⁹⁶ *Id.* at 8.

³⁹⁷ *Id.*

³⁹⁸ *Id.* at 8-9.

³⁹⁹ *Id.* at 9-10.

⁴⁰⁰ 19 CFR 351.511(a)(2)(ii) (emphasis added).

Preliminary Determination, we declined to use Dingli’s data because of several flaws in the underlying datasets as presented to Commerce, and we continue to find that Dingli’s benchmark submission contains numerous problems across all sources affecting comparability such that these sources are not appropriate benchmarks.⁴⁰¹ Consequently, we have not averaged Dingli’s benchmark sources with the UN Comtrade Data.

Dingli’s benchmark submission contains five exhibits of non-UN Comtrade steel data: Steelguru India,⁴⁰² Steelguru International,⁴⁰³ Metal Expert,⁴⁰⁴ EEPC,⁴⁰⁵ and the Indian Ministry of Steel.⁴⁰⁶ Of the sources, only the EEPC and Ministry of Steel datasets are provided with accompanying supporting information that would explain or otherwise assist Commerce in analyzing the underlying data source.⁴⁰⁷ Furthermore, the information provided in the accompanying PDFs of the Indian sources is primarily composed of information on the general Indian steel market, various export markets, and the management of the data providers.⁴⁰⁸ Dingli also eschewed further explanation of the data sources in its written submission, as its description of the data sources is entirely composed of one line: “2-19 provide the source information for the benchmark data.”⁴⁰⁹ Consequently, Commerce has scant context on the provided Microsoft Excel exhibits that would otherwise explain flaws in the data or other questions that arise from how the data is presented.

Regarding the data sources themselves, Steelguru India, the EEPC, and the Indian Ministry of Trade are all Indian sources.⁴¹⁰ A world price is one that is a representative price of the overall market that would be “reasonable to conclude... would be available” to the purchasers in the respondent country. In general, Commerce’s practice is where we have reliable data from a broad set of countries, we would not use data from single or limited country sources because such sources may be self-selected and distort the benchmark by overemphasizing a limited number of countries.⁴¹¹ Commerce stated in *Fluid End Blocks* that “{w}ith respect to the steel

⁴⁰¹ See *Preliminary Determination* PDM at 49-50; see also Dingli’s Letter, “Dingli Benchmark Submission: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China (C-570-140) (POI: 2020),” dated June 28, 2021 (Dingli Benchmark Submission).

⁴⁰² See Dingli Benchmark Submission at Exhibit 11.

⁴⁰³ *Id.* at Exhibit 12.

⁴⁰⁴ *Id.* at Exhibit 13.

⁴⁰⁵ *Id.* at Exhibit 14.

⁴⁰⁶ *Id.* at Exhibit 15.

⁴⁰⁷ *Id.* at 5 (Exhibit List indicating that Exhibits 11 Steelguru India data, 12 Steelguru International data, and 13 Metal Expert data are “Excel,” while Exhibit 14 EEPC is “PDF and Excel” and Exhibit 15 is simply listed as “Indian Ministry of Steel Data” but does include accompanying documentary support in the PDF version of the exhibit) and at Exhibits 11-15.

⁴⁰⁸ *Id.* at Exhibits 14 and 15.

⁴⁰⁹ *Id.* at 1.

⁴¹⁰ *Id.* at Exhibits 11, 14, and 15.

⁴¹¹ See, e.g., *Certain Corrosion Inhibitors from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 7537 (January 29, 2021), and accompanying IDM at Comment 7E; see also *Certain Metal Lockers and Parts Thereof from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 80771 (December 14, 2020) (*Metal Lockers Preliminary*), and accompanying PDM at 48-49, unchanged in *Metal Lockers Final*. We note that the benchmark selected for diesel engines reflects exports from only one country, the United States. However, as explained in the *Preliminary Determination*, the specific facts of the diesel engines

ingots export price data, because the Steelguru and the EEPC India data submitted by {an interested party} are derived solely from Indian market prices, we did not use them in the monthly average price benchmarks to avoid giving undue weight to data from one particular country.”⁴¹² The same rationale applies to Dingli’s benchmark submissions here and it is further exacerbated by the inclusion of the Indian Ministry of Steel data. Averaging the self-selected Indian prices would in effect give greater weight to Indian prices, distorting the world market price.

In addition, all three Indian data sources contain other concerns affecting comparability. The Steelguru International data provides size data without units of measurement and grade data without accompanying description.⁴¹³ Consequently, unlike with UN Comtrade data, Commerce has no way to delineate between the products beyond the surface level labeling within the provided Microsoft Excel sheet. Thus, based on the record evidence, we continue to find the UN Comtrade data more reflective of world prices, as required under 19 CFR 351.511(a)(2)(ii), and therefore find the Indian domestic prices to be inappropriate benchmarks.

Regarding the EEPC data, delivery terms are not provided for any shipments, and, consequently, it is unclear if the data reflects delivered prices or offers and, while there is extensive sizing information, there is no description of the product categories.⁴¹⁴ While Dingli provided “MS Flats” in its “Summary HR Plate” sheet, it is unclear whether the underlying prices reflect hot-rolled steel or encompass multiple categories, such as cold-rolled steel. In addition, despite the source of the data being the EEPC, the underlying data appears to originate from *Steel Town (Weekly)* prices of Mandi Gobindgarh, India and thus may reflect solely domestic Indian price offerings instead of broader world prices which better reflect what is reasonably available to Chinese mobile access equipment producers, as required under 19 CFR 351.511(a)(2)(ii).

The Indian Ministry of Steel data is the most flawed for use as a benchmark: it does not include descriptions beyond overall product categories, such as sizing information; includes a basket category of “structural” for products – including those otherwise divided out in other Dingli sources – that are separate LTAR programs; lists “plates” as an overall category, which could theoretically include multiple forms of steel; does not include delivery terms; and does not establish whether the data excludes exports to China.⁴¹⁵ Indeed, while not listed in the top 10 of export partners, the data likely does include some exports to China because it encompasses “total export.”⁴¹⁶ Consequently, this Indian data source cannot be used for reliable steel benchmarks.

For the Steelguru International data, we continue to find that the data is not usable for the steel benchmarks.⁴¹⁷ While this dataset is reflective of a broader market than the aforementioned

LTAR indicate that the USA Trade Online data is the most appropriate of the benchmarks on the record. No parties contested the use of USA Trade Online data as the source for the diesel engines benchmark. For further information, see *Preliminary Determination PDM* at 48-49 and Comment 14.

⁴¹² See *Fluid End Blocks PDM* at 36.

⁴¹³ See Dingli Benchmark Submission at Exhibit 11.

⁴¹⁴ *Id.* at Exhibit 14.

⁴¹⁵ *Id.* at Exhibit 15.

⁴¹⁶ *Id.*

⁴¹⁷ See *Preliminary Determination PDM* at 49-50.

sources, it is similarly flawed and not a usable benchmark.⁴¹⁸ Of the listed product categories, hot-rolled steel includes the most countries, five, while other categories, such as angles, contain only one, Turkey.⁴¹⁹ Thus, the data contain similar issues to the Indian sources. In addition, there are no descriptions of the included products or explanations of how the categories were determined. For example, regarding hot-rolled steel, the data include a variety of different grades but no explanation of the differences between them, and, while there are sizes listed, there are no units of measurement.⁴²⁰ Hot-rolled from Turkey's listed size in the Microsoft Excel sheet appears to incidentally refer to a date instead of a listed size. Without further context or clearer product descriptions, like those provided in the UN Comtrade data, there is no means by which we can assess the reliability of the data, which could – without further clarification – include a wide variety of unrelated products, specialty, or custom grades, and generally speaking, aberrational prices. Lastly, all shipments appear to be domestic purchases: excluding the “IPN/UPN (Beams)” category, which just contains data for Turkey, all prices are listed with origin and delivery point of the same country.⁴²¹ Consequently, for all reasons above, we continue to find that the Steelguru prices are not appropriate benchmarks.

Finally, regarding the Metal Expert data, there are multiple flaws that make the data unreliable and possibly distortive for the purposes of the steel benchmarks.⁴²² To begin, the data are unclear whether the prices reflect delivered prices that would be available to Chinese producers or simply a list of offers. Products are listed as “offer,” “contract,” and “assessment,” but, as previously discussed, Dingli did not provide any supplementary information regarding this Excel sheet to explain what the data contains and to whom these terms would be available.

Second, while the data does include size descriptions with units, the Metal Expert data provides a list of inconsistent grading without further context that could include a variety of unrelated or specialist products.⁴²³ Without further information, we cannot determine whether the listed grades are appropriate for comparison to the respondents' steel purchases.

Third, multiple transactions are, by “flow,” described as “domestic producers,” or “stocklists,” and, thus, may reflect solely domestic price offerings. As noted above, where we have broad range of world prices, Commerce will find those to be more reflective of prices reasonably available to producers in the country under investigation, as required under 19 CFR 351.511(a)(2)(ii). Some of these, such as the only source for “H-beam,” are of Chinese prices. Thus, pursuant to our AFA determination regarding the distortion of the Chinese market for steel inputs,⁴²⁴ these are not usable for the tier-two benchmark.

Fourth, for multiple product categories, the data limits down to a single or very few sources.⁴²⁵ There are only two sources for “beam” or “I-beam,” three for “angle,” and one for “bars.”⁴²⁶

⁴¹⁸ See Dingli Benchmark Submission at Exhibit 12.

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

⁴²¹ *Id.*

⁴²² *Id.* at Exhibit 13.

⁴²³ *Id.*

⁴²⁴ See Comment 1C.

⁴²⁵ See Dingli Benchmark Submission at Exhibit 13.

⁴²⁶ *Id.*

Thus, like the Indian sources, we continue to find that the Metal Expert data is distortive by overemphasizing certain countries and may reflect a bias in self-selection.

Finally, multiple export shipments do not contain a delivery location or contain a delivery location that could conceivably be China.⁴²⁷ For example, multiple shipments are listed for delivery on the “Russian Border.”⁴²⁸ These shipments, as well as those without a listed delivery location, could include prices for China. We stated in *Metal Lockers Preliminary* that because the “export price data listed only the exporting country, we are not able to determine whether such data contains exports to China and subsequently exclude the exports to China from the {data source} because exports to China, *i.e.*, imports into the country in question, are considered tier-one prices. Thus, we are not using the {data source}.”⁴²⁹ Similarly, we cannot determine whether the provided prices exclude exports to China and whether the Metal Expert data thus include tier-one prices. Consequently, we cannot use the Metal Expert data.

For the reasons explained in the *Preliminary Determination*, we continue to find the UN Comtrade data to be complete and reliable for purposes of calculating an appropriate benchmark for steel inputs. Moreover, no interested party argued Commerce should not continue to use the UN Comtrade data in its calculation of a tier-two benchmark for steel inputs. Therefore, for the final determination, we find that all the Dingli benchmark sources are unreliable and/or distortive. Consequently, we decline to average them with the UN Comtrade data, and, for this final determination, have continued to use solely UN Comtrade data to benchmark all steel inputs.

Comment 7: Benchmarks for the Provision of Hot-Rolled Steel Sheet and Plate for LTAR

A. Whether Commerce Should Combine Sheet and Plate into a Single Benchmark

Dingli’s Comments:

- Commerce’s determination to split the benchmarks for hot-rolled steel sheet and plate into two groups is unlawful and not consistent with Commerce practice.⁴³⁰ 19 CFR 351.511(a)(2)(ii) does not require the benchmarks to be specific but comparable.⁴³¹
- Commerce included UN Comtrade benchmarks for flat products in coils in thicknesses greater than 4.75 mm, greater than 10 mm, and in between 4.75 mm and 10 mm. When averaged, the three are not “input specific.” Dingli has plate purchases ranging from 6 mm to 80 mm. Thus, Harmonized Tariff Schedule (HTS) codes for the range above, for example, 10 mm are not applicable to Dingli’s plate purchases below 10 mm and vice-versa.⁴³² In addition, there are other issues with specificity related to coils and patterns. Since Dingli’s purchases do not fit squarely within the HTS codes, it is more appropriate to average all prices, including Dingli’s other sources.⁴³³

⁴²⁷ *Id.*

⁴²⁸ *Id.*

⁴²⁹ See *Metal Lockers Preliminary PDM* at 48.

⁴³⁰ See Dingli General Issues Brief at 13.

⁴³¹ *Id.*

⁴³² *Id.* at 14.

⁴³³ *Id.* at 14-15.

LGMG's Comments:

- Commerce properly divided hot-rolled steel sheet and plate into two, different HTS groupings.⁴³⁴

Petitioner's Comments:

- Dingli's arguments disregard the instruction in 19 CFR 351.511(a)(2)(ii) to "mak{e} due allowance for factors affecting comparability" when more than one world market price is available.⁴³⁵ Separate benchmark prices for HRS plate and HRS sheet are on the record, and the record also shows a clear distinction between the two products. Thus, Commerce's decision was consistent with the regulation, and Commerce should continue to do so for the final determination.⁴³⁶
- Commerce practice is to adjust benchmarks for factors affecting comparability when the record indicates adjusting is reasonable and contains the information to adjust.⁴³⁷ Both conditions are met regarding hot-rolled steel sheet and plate. Documentation shows that Dingli was able to split its sheet and plate purchases data and that tariff codes are separable. Thus, Dingli's argument, in effect, is to make the benchmark less comparable to Dingli's purchases.⁴³⁸

Commerce's Position: We disagree that we should combine hot-rolled steel sheet and plate into a single, overarching benchmark. Dingli's argument misplaces the assumption that "input specific" applies to each category of product at each size. Rather, the petitioner alleged – and we initiated – the program with the understanding that sheet and plate were separate; in prior determinations, we have separated the two benchmarks; the data reported by Dingli and LGMG indicates that hot-rolled steel is separable into sheet and plate; and a review of Commerce's cases covering hot-rolled steel products shows that a differentiation is typically drawn between sheet or other flat products and plate.

The petitioner alleged the program with sheet and plate separated for the purposes of benchmarking. In particular, the petitioner provided two different data sets from *SteelBenchmarker* for the benchmarks of sheet and plate that were used to demonstrate benefit for the purposes of initiation.⁴³⁹ Furthermore, Commerce initiated the program "on the allegation as described in the Petition based of the support therein" and did not conclude it was necessary to otherwise modify the program, which separates sheet and plate.⁴⁴⁰ In our initial questionnaire, we explicitly requested that the respondents report hot-rolled steel sheet and plate separately.⁴⁴¹ Thus, the program has always explicitly separated sheet and plate.

⁴³⁴ See LGMG General Issues Rebuttal Brief at 14.

⁴³⁵ See Petitioner General Issues Rebuttal Brief at 10.

⁴³⁶ *Id.*

⁴³⁷ *Id.* at 11 (citing *Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013), and accompanying IDM at Comment 12).

⁴³⁸ *Id.*

⁴³⁹ See Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties," dated February 26, 2021 (the Petition), Volume III at 39-40 and Exhibit III-60.

⁴⁴⁰ See Checklist, "Countervailing Duty Investigation Initiation Checklist: Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China," dated March 18, 2021 (Initiation Checklist), at 16-17.

⁴⁴¹ See Initial Questionnaire at 93.

In the *53-Foot Containers Final*, regarding specifically the provision of hot-rolled steel sheet and plate, we stated that we “initiated this program based on Petitioner’s allegation of the provision of hot-rolled sheet and plate and asked respondents to report all purchases of hot-rolled sheet and plate . . . Benchmarks used should reflect the steel products the respondents were asked to report.”⁴⁴² When looking to find the most appropriate benchmark price, Commerce tries to do an “apples to apples” comparison, which includes various factors affecting the comparability for that given input. Commerce’s practice is to differentiate between the input specific benchmarks where possible. In this instance, the UN Comtrade data can specifically separate the two types of inputs being used (*i.e.*, hot rolled sheet and plate). Moreover, when finding appropriate benchmark sources, we look to the most robust information on the record. Thus, consistent with Commerce practice, we are separating the benchmarks for sheet and plate to reflect the way the respondents purchase their inputs. Commerce likewise split sheet and plate based upon the facts of the investigation in *53-Foot Containers Preliminary*, and the determination was unchanged in *53-Foot Containers Final*.⁴⁴³ Specifically, Commerce created two different benchmarks, one for hot-rolled steel sheet in coils and one for hot-rolled steel plate, based upon the benchmark submissions – sheet in coils and plate were separately provided – and the ways in which the respondents reported the data (*i.e.*, separately). Despite Dingli’s claims that hot-rolled steel sheet and plate are all one basket category, Dingli’s own benchmark submissions – despite their other, significant issues – do predominantly separate plate from other forms of steel.⁴⁴⁴

Both Dingli and LGMG were able to report their sheet and plate purchases separately.⁴⁴⁵ Indeed, despite arguing that separating the two benchmarks is unlawful and inconsistent with prior practice, Dingli submitted information indicating that there is a separation between sheet and plate recognized by the market.⁴⁴⁶

⁴⁴² See *53-Foot Domestic Dry Containers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 21209 (April 17, 2015) (*53-Foot Containers Final*), and accompanying IDM at 59.

⁴⁴³ See *53-Foot Domestic Dry Containers from the People’s Republic of China: Preliminary Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 79 FR 58320 (September 29, 2014) (*53-Foot Containers Preliminary*), and accompanying PDM at 24-26 (substantive determination to split sheet and plate), unchanged in *53-Foot Containers Final*; see also *Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 86 FR 56 (January 4, 2021), and accompanying PDM at 23, unchanged in *Chassis Final*.

⁴⁴⁴ See Petitioner’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Submission of Benchmark Information and Other Factual Information,” dated June 28, 2021 (Petitioner Benchmark Submission), at Exhibits 11-13, and 15.

⁴⁴⁵ See Dingli’s Letter, “Dingli Supplemental Questionnaire Response: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China (C-570-140) (POI: 2020),” dated July 13, 2021 (Dingli SQR), at Exhibit S6; see also LGMG’s Letter, “LGMG’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from China; CVD Investigation; LGMG 1st Supplemental Questionnaire Response,” dated July 19, 2021 (LGMGSQR).

⁴⁴⁶ See Dingli’s Letter, “Dingli Rebuttal Benchmark Information: Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China (C-570-140) (POI: 2020),” dated July 8, 2021, at Exhibit 4 (indicating that a difference is drawn at 6 mm. Commerce agrees that there is a distinction between the two products but disagrees that 6mm is the specific difference. Extensive review of Commerce’s scopes and the fact that UN Comtrade data consistently splits at 4.75 mm indicates that the 6 mm differentiation is not standard).

Finally, Commerce's practice is to treat hot-rolled steel and steel plate as separate products. Commerce conventionally differentiates "hot-rolled steel flat products" – or sheet – from steel plate products, which are produced from hot-rolled steel, by thickness. For example, the scope of *Cut-to-Length Plate* covers "iron and non-alloy steel flat rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 {millimeters (mm)} or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness."⁴⁴⁷ By contrast, *Hot-Rolled Carbon Steel Flat Products* covers "certain hot-rolled carbon steel flat products of a rectangular shape . . . in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness."⁴⁴⁸ Thus, Commerce's practice for standard hot-rolled steel products and hot-rolled steel plate products is to differentiate the products at 4.75 mm. Notably, this practice appears to date back to approximately 1993 and encompass multiple countries.⁴⁴⁹ Consequently, we continue to split hot-rolled steel sheet and hot-rolled steel plate for purposes of benchmarking and benefit calculation for this final determination. In addition, we reallocated Dingli's hot-rolled steel sheet and plate purchases by their thickness – excluding coils – to accurately reflect the difference between hot-rolled steel sheet and hot-rolled steel plate.

Thus, Dingli's arguments that certain sizes are more comparable to either greater or smaller thicknesses are unavailing. Hot-rolled steel sheet and hot-rolled steel plate are overarching groups that apply for ranges of sizes that split at 4.75 mm. Consequently, we have not averaged all hot-rolled steel sheet and steel plate together but kept the benchmarks split. Indeed, averaging all hot-rolled steel sheet and steel plate benchmarks together would make the benchmark less specific.

Regarding Dingli's argument that the benchmarks do not factor in hot-rolled steel plate in coil purchases, we disagree that purchases of coils should be considered as "plate." As discussed above, Commerce normally treats coils "regardless of thickness" as a flat product (*i.e.*,

⁴⁴⁷ See *Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China; Termination of Suspension Agreement and Notice of Antidumping Duty Order*, 68 FR 60081 (October 21, 2003) (*Cut-to-Length Plate*). Commerce notes that a special product, "mill plate," is described as having at least 4 mm thickness. However, neither respondent reported purchases of "mill plate," and the distinction for "mill plate" is not otherwise made on the record. Consequently, we find the 4 mm value to be not pertinent to the benchmark here or the split between the hot-rolled steel purchased by the respondents.

⁴⁴⁸ See *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001) (*Hot-Rolled Carbon Steel Flat Products*). Furthermore, we note that products in coils are not normally covered by the scopes of plate products, but, instead, are, "regardless of thickness," included within the scopes of steel flat products. Consequently, we are treating hot-rolled steel in coils as sheet for benchmark purposes. See also *53-Foot Containers*, which benchmarked hot-rolled steel sheet by coil.

⁴⁴⁹ See *Initiation of Antidumping Duty Investigations and Postponement of Preliminary Determinations: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Various Countries*, 57 FR 33488 (July 29, 1992) (with similar divide at 4.75 mm for hot-rolled steel in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062 (July 9, 1993)). The investigations cover 19 countries with matching scopes: "hot-rolled carbon steel flat products," "cold-rolled carbon steel flat products," "corrosion-resistant carbon steel flat products" and "cut-to-length carbon steel plate." Notably, the carbon steel plate scope covers hot-rolled steel products 4.75mm or more in length.

comparable to sheet) instead of plate.⁴⁵⁰ Thus, for the final determination, we included Dingli's coil purchases, regardless of thickness, in the hot-rolled steel sheet category and compared it to the hot-rolled steel sheet benchmark. We also modified the sheet benchmark to include coil HTS categories. For further information, *see* Comment 7B.

B. Whether Commerce Should Modify the UN Comtrade Data Selection of Benchmarks for Hot-Rolled Steel Sheet and Plate

Petitioner's Comments:

- Commerce should use the petitioner's hot-rolled steel sheet and plate benchmark selections instead of LGMG's for the final determination. The petitioner's monthly hot-rolled steel sheet and plate benchmarks do not include any prices for China, either as an exporting country or importing country, making it unnecessary to remove such data.⁴⁵¹ The petitioner did not include data for China as the exporting country and used the "Slicer" function to remove exports to China.⁴⁵²
- For hot-rolled steel sheet, the petitioner provided UN Comtrade data for the HTS codes under the Carbon and Alloy Hot Rolled Sheets product group in the Commerce's classification list. For hot-rolled steel plate, the petitioner provided UN Comtrade data for the HS codes under the Carbon and Alloy Cut to Length Plate and Carbon and Alloy Plates in Coils product groups in Commerce's classification list.⁴⁵³ By contrast, LGMG's benchmark submission is much more limited, including five HTS codes for sheet and three for plate. Commerce's practice is to include more data points to have a more robust benchmark.⁴⁵⁴ Thus, Commerce should use the petitioner's data set because it is more extensive than LGMG's dataset.

Dingli's Comments:

- As an initial matter, Dingli agrees with the petitioner that the benchmark should be the most robust possible, including as many data points as possible.⁴⁵⁵ While Commerce is required to include and average all available record world market prices including those placed on the record by Dingli, Commerce should reject the petitioner's argument to include all its UN Comtrade data for hot-rolled steel.⁴⁵⁶ The petitioner has not demonstrated that an issue with removing exports to China has been corrected.⁴⁵⁷
- Commerce should exclude the petitioner's UN Comtrade hot-rolled steel benchmark prices because: (1) the data contains cold-rolled alloy steel and other high alloyed steel values, and (2) several of the HTS values include a multitude of products not comparable to plate or sheet.⁴⁵⁸ HTS code 7225.50 is for cold-rolled products and HTS code 7226.91

⁴⁵⁰ *See Hot-Rolled Carbon Steel Flat Products* ("in coils (whether or not in successively superimposed layers), regardless of thickness").

⁴⁵¹ *See* Petitioner General Issues Brief at 20-22.

⁴⁵² *Id.*

⁴⁵³ *Id.* at 22.

⁴⁵⁴ *Id.* at 22-23 (citing *Utility Scale Wind Towers from China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Utility Scale Wind Towers*), and accompanying IDM at 68).

⁴⁵⁵ *See* Dingli General Issues Rebuttal at 1-2 (citing *Utility Scale Wind Towers* IDM at 68).

⁴⁵⁶ *Id.* at 3.

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

is a basket category for a variety of products, and multiple HTS codes appear in both the sheet and plate benchmarks.⁴⁵⁹ Thus, while the petitioner may argue that Dingli's steel sources give undue weight to certain purchases, there is a stronger case that the inclusion of the same UN Comtrade HTS value in two different benchmarks is what would truly give undue weight in the calculations of the benchmarks.⁴⁶⁰

LGMG's Comments:

- The petitioner offers no legitimate reason for Commerce to change away from the hot-rolled steel sheet and plate benchmark provided by LGMG.⁴⁶¹ Unlike LGMG's data, the petitioner does not specifically identify and subtract exports to China, and, furthermore, the data set includes exports to China.⁴⁶²
- The petitioner's range of hot-rolled steel sheet and plate products is overly broad. The petitioner's "range" of benchmark data to be applied to LGMG's hot-rolled sheet and plate inputs is not based on the tariff classifications of the actual hot-rolled sheet and plate that LGMG purchases, but rather is derived from a Commerce list of products that require steel import licenses to be imported into the United States.⁴⁶³ The petitioner's benchmark reflects a broader range of steel products that are unrelated to LGMG's purchases and, thus, less accurate and less relevant.
- The petitioner's reliance on *Utility Scale Wind Towers* is misplaced because Commerce was referring to data sources, not the use of as many HTS codes as possible.⁴⁶⁴ Thus, Commerce should continue to use LGMG's benchmark selection.

Commerce's Position: In light of our analysis of the difference between steel sheet and plate in Comment 7A, we modified the tariff code selections of UN Comtrade data used in benchmarking both hot-rolled steel sheet and hot-rolled steel plate. To begin, upon further analysis of the underlying data, we agree with the petitioner that the submitted UN Comtrade data for hot-rolled steel sheet and plate does not include exports to China.⁴⁶⁵ Furthermore, we agree with the petitioner that a broader range of tariff codes are applicable to sheet and plate than as originally provided in the LGMG data source. LGMG excludes without explanation certain HTS codes that would seem to apply to sheet. For example, LGMG's benchmark submission for hot-rolled steel sheet excludes HTS codes 720853 and 720854, which explicitly apply to straight hot-rolled steel products between 3 and 4.75 mm.⁴⁶⁶ Furthermore, despite LGMG's claims that certain codes are irrelevant to its purchases, LGMG did not provide HTS data for its hot-rolled steel sheet and plate purchases,⁴⁶⁷ and, consequently, Commerce is unable to determine from record

⁴⁵⁹ *Id.* at 3-5.

⁴⁶⁰ *Id.* at 5.

⁴⁶¹ See LGMG General Issues Rebuttal Brief at 14.

⁴⁶² *Id.* at 14-15.

⁴⁶³ *Id.* at 15-16.

⁴⁶⁴ *Id.* at 16-17 (citing *Utility Scale Wind Towers* IDM at 68).

⁴⁶⁵ See Petitioner Benchmark Submission at Exhibit 1 (the "China" data for hot-rolled steel plate is removable by the "Slicer" function and there is no data for "China" in the underlying hot-rolled steel sheet tab whatsoever).

⁴⁶⁶ See LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; {CVD} Investigation; LGMG Rebuttal Benchmark Submission," dated July 8, 2021 (LGMG Rebuttal Benchmark Submission), at Exhibit 1.

⁴⁶⁷ See LGMGSQR at Exhibit S1-1.

evidence whether its selection of HTS codes reflects only its purchases and is, thus, more accurate.

However, we also agree with Dingli that the petitioner's benchmark selection likewise includes basket categories that do not clearly reflect either sheet or plate.⁴⁶⁸ Multiple HTS codes are included in both of the petitioner's sheet benchmark tables and plate benchmark tables. Thus, for the final determination, we used the petitioner's underlying data set but adjusted the HTS code selection to reflect our findings in Comment 7A regarding the 4.75 mm separation and hot-rolled steel sheet in coils.

As we stated in the *Preliminary Determination*, "we can accurately remove non-relevant codes {from UN Comtrade Data} to create input-specific benchmarks for sheet and plate," and, upon further review, by modifying the petitioner's data we can better reflect Commerce's practice regarding hot-rolled steel, as analyzed by thickness and whether or not in coils, more precisely than either the LGMG or Dingli benchmark submissions.

In consideration of the analysis in Comment 7A, we selected from HTS codes, by thickness, from the petitioner's benchmark submission and edited the selections to accommodate the benchmark separation described in Comment 7A (*i.e.*, splitting at 4.75 mm except for products in coils). Therefore, the benchmark for hot-rolled steel sheet incorporates all provided HTS codes explicitly stated to be for hot-rolled steel straight products below 4.75 mm and all HTS codes for hot-rolled steel in coils: 7208.10, 7208.25, 7208.26, 7208.27, 7208.36, 7208.37, 7208.38, 7208.39, 7208.53, 7208.54, and 7225.30.⁴⁶⁹ For hot-rolled steel plate, we selected all provided HTS codes for hot-rolled steel straight products explicitly stated to be above 4.75 mm in thickness: 7208.51, 7208.52, and 7211.14.⁴⁷⁰ Pursuant to Comment 6, we did not include any of Dingli's benchmark sources in our calculations.

Comment 8: Benchmarks for the Provision of Ocean Shipping Services for LTAR and Ocean Freight in Input LTARs

A. Whether Commerce Should Include the Petitioner's Ocean Freight Benchmark in the Benchmark

Dingli's Comments:

- While Commerce's determination to average the petitioner and Dingli's ocean freight benchmarks is consistent with prior practice, it is not consistent with Commerce's actions in this investigation, where Commerce has declined to average Dingli's steel sources with the UN Comtrade data.⁴⁷¹ The petitioner's ocean freight benchmark reflects a single country source – the United States – and, consequently, Commerce should not use the petitioner's data for either general ocean freight or lithium-ion batteries.⁴⁷² The data is

⁴⁶⁸ See Petitioner Benchmark Submission at Exhibit 1.

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.*

⁴⁷¹ See Dingli General Issues Brief at 17-18.

⁴⁷² *Id.* at 18.

less inclusive and consists solely of a single, self-selected country, which is less reliable than broader data.⁴⁷³

Petitioner's Comments:

- Dingli has not provided a basis for Commerce to reject the petitioner's ocean freight benchmarks.⁴⁷⁴ The issue with Dingli's steel sources is not comparable because Commerce found a multitude of issues with Dingli's steel sources and, furthermore, Dingli's ocean freight benchmark, which is composed of 58 lanes,⁴⁷⁵ is not comparable to UN Comtrade data, which includes thousands of data points.⁴⁷⁶
- Dingli did not provide rates for hazardous freight, and, consequently, Commerce should continue to use the petitioner's hazardous ocean freight benchmark for the provision of lithium-ion batteries.⁴⁷⁷

Commerce's Position: Upon further review, we find that the benchmarks for ocean shipping services for LTAR and ocean freight in the input LTARs should be separated. Thus, regarding the petitioner's benchmark submission, we have two distinct answers: for ocean shipping services, we excluded the petitioner's benchmark submission, and, for the input LTARs, we continued to include the petitioner's ocean freight data because it is a component in the overall world market. For further information regarding ocean freight in the input LTARs, *see* Comments 8B and 8C

In the *Preliminary Determination*, we attributed benefits from the Provision of Ocean Shipping Services for LTAR program to Dingli's total sales of subject merchandise to the United States, pursuant 19 CFR 351.525(b)(4) and (5).⁴⁷⁸ This continues to be appropriate because, with ocean-shipping services, the cargo and destination of each shipment is already known. For benchmarking purposes, the world market price for ocean shipping services can only be for shipments to the United States because shipments to other, third-party countries are not subject to the investigation. Likewise, shipments of non-subject merchandise to other ports, including those in the United States, could not provide a benefit because the product is outside the scope. In this investigation, the petitioner's provided data for shipping lanes from New York and Norfolk are not appropriate because they do not reflect the actual shipment destinations of the respondents and, consequently, are not comparable. Dingli's ocean freight benchmark submission contains prices for lanes that are applicable to Dingli's purchases and, thus, for the final determination, we relied only upon those ocean freight benchmarks.⁴⁷⁹ The exact nature of Dingli's ocean freight purchases is proprietary information, and, consequently, we address the detailed methods for selecting the benchmark in the Dingli Final Calculation Memorandum.⁴⁸⁰

By contrast, pursuant to 19 CFR 351.511(a)(2)(iv), the benchmarks for the input LTARs should reflect delivered prices, which include delivery charges and import duties and, pursuant to 19

⁴⁷³ *Id.*

⁴⁷⁴ *See* Petitioner General Issues Rebuttal Brief at 16.

⁴⁷⁵ There are 56 entries from world ports to Chinese ports. *See* Dingli Benchmark Submission at Exhibit 17.

⁴⁷⁶ *Id.* at 16-17.

⁴⁷⁷ *Id.* at 17.

⁴⁷⁸ *See Preliminary Determination* PDM at 64.

⁴⁷⁹ *See* Dingli Benchmark Submission at Exhibit 17.

⁴⁸⁰ *See* Dingli Final Calculation Memorandum.

CFR 351.511(a)(2)(ii), for tier-two benchmarks, Commerce will use a world market price “where it is reasonable to conclude that such price would be available to purchasers in the country in question.” Thus, the possible freight sources of the inputs should reflect shipping prices from a broad range of lanes, including the petitioner’s submitted freight data of New York and Norfolk to China. While we acknowledge that the input freight data is from a single source – the United States – we agree with the petitioner that, in comparison to the UN Comtrade data incorporating thousands of input purchases, the 56 ocean freight shipping lanes in Dingli’s ocean freight benchmark submission are more comparable to the petitioner’s two lanes than the steel benchmarks, which encompass tens of thousands of data points. However, to prevent the two data points provided by the petitioner from being given undue weight compared to the 56 data points provide by Dingli, we modified our benchmark calculation for ocean freight in the input LTARs. For further information, *see* Comments 8B and 8C.

For the provision of lithium-ion batteries for LTAR, we disagree with Dingli that the petitioner’s benchmark submission is inappropriate. As discussed in the *Preliminary Determination*, the petitioner provided information showing that lithium-ion batteries are hazardous and the petitioner’s benchmark submission contains the only data for hazardous ocean-freight on the record.⁴⁸¹ Consequently, we continue to find that the petitioner’s hazardous freight data is appropriate, and the ocean freight, which we used in the benchmark for the provision of lithium-ion batteries for LTAR, is unchanged.

B. Whether Commerce Should Change the Method of Averaging Ocean Freight in the Input LTARs

Dingli’s Comments:

- If Commerce continues to include the petitioner’s ocean freight benchmark, Commerce must correct its distorted averaging.⁴⁸² Commerce averaged the petitioner’s single-country source with Dingli’s multi-country source. Commerce should, to the extent practicable, average the data by all of the ports provided instead of providing equal weight to the petitioner’s single country source.

We received no other comments on this issue.

Commerce’s Position: We agree with Dingli that the input for LTAR ocean freight benchmark used in the *Preliminary Determination* provided undue weight to the petitioner’s two lanes. By simple averaging the summaries of the two petitioner’s average benchmark with Dingli’s average benchmark, we, in effect, provided the Norfolk and New York shipment lanes data points the same weight as shipments from 56 shipment lanes, which is distortive. As noted above, whereas each amount reported from UN Comtrade data is the average of multiple data points, here each shipping lane is its own data point. To address this issue, we modified the benchmark to treat the two lanes, with certain modifications as discussed in Comment 8C, as merely two of the overall 58 lanes provided from all ocean freight sources for ocean freight from the world to Shanghai and then simple averaged the entirety. Consequently, the ocean freight benchmark for input LTARs still incorporates both sources, but we have changed the method of calculation.

⁴⁸¹ *See Preliminary Determination* PDM at 51.

⁴⁸² *See* Dingli General Issues Brief at 19.

C. Whether Commerce Should Remove Certain Charges in the Petitioner's Ocean Freight Benchmark Submission

Dingli's Comments:

- Commerce should remove the bunker surcharge and certain other surcharges from the petitioner's ocean freight benchmark, consistent with *High Pressure Steel Cylinders 2017*, where Commerce removed the bunker surcharge.⁴⁸³

Petitioner's Comments:

- Commerce's practice is to include freight surcharges unless otherwise indicated by the record that they would not be paid.⁴⁸⁴ Dingli's reference to *High Pressure Steel Cylinders 2017* is likewise unavailing because the facts of that case indicated that the purchase may be aberrational since the surcharges exceed the cost of the ocean freight, which is not true here.⁴⁸⁵

Commerce's Position: We agree that certain charges in the petitioner's general ocean freight data appear aberrational or unnecessary. Specifically, despite covering the same lanes as the hazardous freight data, there are multiple additional charges in the general freight data that should apply to both the general and hazardous cargo but do not appear in the hazardous data.⁴⁸⁶ Thus, we conclude that these additional charges are not necessary and not reflective of the world market price for shipments from New York and Norfolk to China, and we have removed them from the calculation of the ocean freight included in the benchmarks for comparison to input LTARs. The exact nature of the additional charges is business proprietary. Consequently, we fully discuss these charges in the Dingli Final Calculation Memorandum and the LGMG Final Calculation Memorandum.⁴⁸⁷

Comment 9: Certain UN Comtrade Benchmarks

A. Whether Commerce Should Modify the Benchmark Selection for Hollow Structural Shapes

Dingli's Comments:

- Commerce did not fully analyze the HTS code selection of the benchmark used for hollow structural shapes considering the hollow structural shapes purchased by Dingli.⁴⁸⁸ Dingli did not purchase hollow structural shapes with circular cross-sections.⁴⁸⁹ However, the benchmark used the *Preliminary Determination* includes HTS codes 7304.31, 7304.39, 7304.59, 7305.31 and 7306.30, which are for circular cross-section hollow structural shapes. Commerce should only use HTS codes 7304.90, 7306.61,

⁴⁸³ *Id.* at 20 (citing *High Pressure Steel Cylinders 2017* IDM at Comment 2).

⁴⁸⁴ See Petitioner General Issues Rebuttal Brief at 17-19 (citing *CASTR Final* IDM at 20; and *Fabricated Structural Steel* IDM at 55).

⁴⁸⁵ *Id.* (citing *High Pressure Steel Cylinders 2017* IDM at 12-13).

⁴⁸⁶ See Petitioner Benchmark Submission at Exhibits 8 and 9.

⁴⁸⁷ See Dingli Final Calculation Memorandum; see also LGMG Final Calculation Memorandum.

⁴⁸⁸ See Dingli General Issues Brief at 15.

⁴⁸⁹ *Id.*

7306.69 and 7306.90 in the final determination. Commerce should average these with Dingli's steel sources.

We received no other comments on this issue.

Commerce's Position: We agree that the benchmark for hollow structural shapes can be tailored to reflect the respondents' purchases of hollow structural shapes more accurately based upon record evidence. Dingli did not report any of its hollow structural shape purchases as circular and, consequently, we agree that the inclusion of an HTS code for circular cross-sections is inappropriate. We modified the benchmark selection to include only HTS codes 7304.90, 7306.61, 7306.69, and 7306.90. Pursuant to Comment 6, we did not include any of Dingli's benchmark sources in our calculations.

B. Whether Commerce Should Modify the Benchmark Selection for Steel Beams

Dingli's Comments:

- Record evidence from the International Trade Administration, submitted by the petitioner, shows that HTS code 7216.32, submitted by LGMG, is the only UN Comtrade benchmark on the record that includes the input description of "beams."⁴⁹⁰ However, Commerce used HTS code 7216.33 in the *Preliminary Determination*, and this code is not referred to as beams in the International Trade Administration record evidence. Commerce should average HTS code 7216.32 with Dingli's steel sources.

Petitioner's Comments:

- If Commerce includes LGMG's benchmark data for HTS code 7216.32, Commerce should average it with benchmark data for HTS code 7216.33.⁴⁹¹ Commerce has used HTS code 7216.33 in prior proceedings, and the petitioner submitted record evidence indicating that the type of steel beam covered by HTS code 7216.33 is used in the production of machinery. Thus, there is no reason to exclude HTS code 7216.33.

Commerce's Position: We agree with Dingli that HTS code 7216.32 should be included in the benchmark for steel beams. However, we also note that information provided by the petitioner indicates that H-sections in HTS code 7216.33 are conventionally referred to as a form of "beams" and that "H beams" are specifically used in a wide variety of applications, such as "machinery bases," which could be applicable to mobile access equipment.⁴⁹² In addition, we note that neither LGMG nor Dingli specified which form of beam would be applicable to their beam purchases. Consequently, pursuant to 19 CFR 351.511(a)(2)(ii), where there is more than one commercially available world market price, we will average such prices to the extent practicable, which we have for UN Comtrade HTS codes 7216.32 and 7216.33. Pursuant to Comment 6, we did not include any of Dingli's benchmark sources in our calculations.

⁴⁹⁰ *Id.* at 16.

⁴⁹¹ See Petitioner General Issues Rebuttal Brief at 12.

⁴⁹² See Petitioner Benchmark Submission at Exhibit 4.

C. Whether Commerce Should Modify the Benchmark Selection for Lithium-Ion Batteries

Dingli's Comments:

- Commerce did not use Dingli's submitted benchmark data for lithium-ion batteries covering HTS codes 8501.20 and 8501.70, which are for electric motors and electric accumulators respectively.⁴⁹³ Commerce's practice is to use all comparable data, and consequently, Commerce should include these HTS codes in the final determination benchmark.⁴⁹⁴

Petitioner's Comments:

- Dingli provided no evidence indicating that HTS codes 8501.20 and 8501.70, which do not cover lithium-ion batteries, are comparable to lithium-ion batteries.⁴⁹⁵ The HTS codes that Dingli argues should be included in the benchmarks are not for lithium-ion batteries, and Dingli provided no explanation or citations to the record to justify the inclusion of these other HTS numbers in the benchmarks.
- Commerce specifically limited its initiation of the program to lithium-ion batteries.⁴⁹⁶ Record evidence indicates that just HTS code 8507.60 is for lithium-ion batteries, and neither of the other codes are for lithium-ion batteries.⁴⁹⁷ Dingli's citation to *Fabricated Structural Steel* is misleading in that, were Commerce to accept the argument, Commerce would use any input claimed to be comparable, regardless of whether there is evidence for this.⁴⁹⁸ The burden is on Dingli to demonstrate that the two codes are comparable.
- Citing *Fabricated Structural Steel* is further in error because, in that proceeding, the respondent argued against use of a hot-rolled steel benchmark for benchmarking hot-rolled steel.⁴⁹⁹ Here, Dingli wishes to use two benchmarks for lithium-ion batteries that are not for lithium-ion batteries.

Commerce's Position: We disagree with Dingli that the UN Comtrade HTS codes it cites to are for merchandise comparable to the respondents' purchases. Both Dingli and LGMG reported purchases of lithium-ion batteries, not products similar to lithium-ion batteries.⁵⁰⁰ Furthermore, Dingli has not provided any record evidence demonstrating that "electric motors" or "electric accumulators," the other tariff codes, are applicable to lithium-ion batteries. Thus, we decline to incorporate the tariff codes for products other than lithium-ion batteries into our benchmark.

⁴⁹³ See Dingli General Issues Brief at 16-17.

⁴⁹⁴ *Id.* at 17 (citing *Fabricated Structural Steel* IDM at Comment 7; *Archer Daniels Midland*; and *Essar Steel*).

⁴⁹⁵ See Petitioner General Issues Rebuttal Brief at 13.

⁴⁹⁶ *Id.*

⁴⁹⁷ *Id.* at 13-14.

⁴⁹⁸ *Id.*

⁴⁹⁹ *Id.* at 15.

⁵⁰⁰ See Dingli SQR at Exhibit S6.

Comment 10: Whether Commerce Erred in Calculating Dingli's Use of the Provision of Cold-Rolled Steel for LTAR

Petitioner's Comments:

- Commerce incorrectly summed the benchmark for Dingli's cold-rolled steel purchases by adding from the wrong column, K, instead of the prior total column, M.⁵⁰¹ Commerce should correct the issue in the final determination.

We received no other comments on this issue.

Commerce's Position: Commerce agrees that we erred in summing the benchmarks for cold-rolled steel in the Post-Preliminary Analysis. For the final determination, we corrected the error.

Comment 11: Whether Commerce Should Use Dingli's Consolidated Sales as the Denominator

Dingli's Comments:

- Commerce incorrectly used Dingli's unconsolidated sales in the *Preliminary Determination*.⁵⁰² Dingli is a parent company, pursuant to 19 CFR 351.525(b)(6)(iii). Consequently, the appropriate denominator for Dingli's non-export benefit calculations is its reported consolidated sale value. This is consistent with Commerce practice.⁵⁰³

Petitioner's Comments:

- Dingli's financial statements show certain business proprietary issues with its consolidated sales, and, because Dingli did not provide information that would allow Commerce to make an adjustment, Commerce should make no changes to Dingli's sales values.⁵⁰⁴

Commerce's Position: We agree with Dingli that the appropriate value for its sales denominator is its consolidated sales, pursuant to 19 CFR 351.525(b)(6)(iii). Dingli is a parent company with its own operations⁵⁰⁵ and Dingli received transfers of land-use rights from its subsidiaries, Green Power and Shengda Fenghe. Regarding the petitioner's arguments related to issues with Dingli's consolidated sales, the exact nature of Dingli's affiliations is business proprietary. Consequently, we fully discuss Dingli's consolidated sales in the Dingli Final Calculation Memorandum.⁵⁰⁶ For this final determination, we used Dingli's consolidated sales value as the denominator for the subsidies it received.

⁵⁰¹ See Petitioner General Issues Brief at 23.

⁵⁰² See Dingli General Issues Brief at 20-21.

⁵⁰³ *Id.* (citing *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 9, 2013), and accompanying IDM at Comment 13; and *Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 9274 (March 5, 2018), and accompanying IDM at Comment 9).

⁵⁰⁴ See Petitioner General Issues Rebuttal Brief at 20-21.

⁵⁰⁵ See, e.g., Dingli IQR at 2.

⁵⁰⁶ See Dingli Final Calculation Memorandum.

Comment 12: Whether Commerce Should Countervail LGMG's OTR Tires*Petitioner's Case Brief:*

- It is clear from Commerce's prior practice and the evidence on the record that LGMG's use of OTR tires was not tied to the production or sale of non-subject merchandise. Indeed, available evidence indicates that these types of OTR tires are used in the production of subject merchandise.⁵⁰⁷ As such, Commerce should reject LGMG's argument to the contrary and countervail these purchases in the final determination.
- In the new subsidy allegation, the petitioner alleged that Chinese mobile access equipment producers receive OTR tires for LTAR from the Chinese government.⁵⁰⁸
- Commerce initiated an investigation into the provision of OTR tires for LTAR.⁵⁰⁹
- LGMG reported in its initial new subsidy allegations questionnaire response that it "purchased OTR tires for the production of non-subject merchandise, *i.e.*, mining trucks during the POI."⁵¹⁰
- LGMG merely asserted that these tire purchases "did not confer any countervailable benefits as to the production of subject merchandise," and LGMG provided no other information, such as the dimensions or weight of these purchases, or any detail on the "mining trucks" for which these tires were supposedly purchased.⁵¹¹
- LGMG provided documentation describing its purchases of tire and wheel subassemblies, in response to a supplemental questionnaire.⁵¹²
- Commerce incorrectly found that "{n} either Dingli or LGMG reported purchasing OTR tires during the POI."⁵¹³ As shown above, LGMG reported OTR tires purchases, separate from its purchases of tire and wheel subassemblies.⁵¹⁴
- Therefore, the question is not whether LGMG purchased OTR tires during the POI, but rather whether those purchases are countervailable. To the latter question, the record does not show that LGMG's OTR tires purchases are tied to the production of non-subject merchandise and, thus, they should have been countervailed.⁵¹⁵
- Commerce's practice regarding subsidies that benefit inputs that could be used to produce subject merchandise is clear and well-established.⁵¹⁶

⁵⁰⁷ See Petitioner General Issues Brief at 7 (citing Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: New Subsidy Allegations," dated May 7, 2021 (Petitioner NSA), at Exhibit NSA-10).

⁵⁰⁸ *Id.* (citing LGMG NSAQR at 3 and Exhibit NSA-2).

⁵⁰⁹ *Id.* at 4 (citing NSA Initiation Memorandum).

⁵¹⁰ *Id.* (citing LGMG NSAQR at 3 and Exhibit NSA-2).

⁵¹¹ *Id.* at 5

⁵¹² *Id.* (citing LGMG's Letter "Certain Mobile Access Equipment and Subassemblies Thereof from China; CVD Investigation; Response to NSA Supplemental Questionnaire," dated August 4, 2021 (LGMG NSASQR), at 2 and Exhibit NS1-3)

⁵¹³ See Petitioner General Issues Brief at 5 (citing Post-Preliminary Analysis Memorandum at 15).

⁵¹⁴ *Id.*

⁵¹⁵ *Id.* at 5-6

⁵¹⁶ *Id.* at 6 (citing Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Rebuttal Benchmark Information, Comments on New Subsidy Allegation Questionnaire Responses, and Initial Pre-Preliminary Determination Comments," dated July 8, 2021 (Petitioner Rebuttal Benchmark), at 13; *Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative*

- If a subsidized input could be used in the production of subject merchandise—regardless of whether the input is used—then Commerce attributes the benefit from those subsidies to subject merchandise and does not try to trace the subsidy through the manufacturing process to particular products.⁵¹⁷
- Commerce’s tying regulation provides that where “a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.”⁵¹⁸
- LGMG has asserted baselessly that it only “purchased OTR tires for the production of non-subject merchandise” and, therefore, these purchases “did not confer any countervailable benefits.”⁵¹⁹
- It is Commerce’s established practice to attribute subsidies to an input if that input could be used to produce subject merchandise, *e.g.*, in *Kitchen Appliance Shelving*, Commerce rejected the respondents’ argument that it did not consume steel strip in the production of subject merchandise, and thus, its kitchen racks (*i.e.*, subject merchandise) could not have benefitted from the steel strip for LTAR program.⁵²⁰
 - Accordingly, Commerce countervailed the respondent’s purchases of steel strip for LTAR and attributed that subsidy to the respondent’s total sales.⁵²¹
- Likewise, in *Rectangular Pipe and Tube*, the respondent claimed that certain hot-rolled steel purchases were not countervailable because they were used to produce non-subject merchandise.⁵²² However, Commerce found that “{t}here is no question . . . that {hot-rolled steel} can be used to produce subject merchandise” and, as a result, the agency continued to find that the respondent’s hot-rolled steel purchases for LTAR are countervailable because the agency “do{es} not trace subsidized inputs through a company’s production process.”⁵²³
- Further, in *OCTG from Turkey*, Commerce rejected the respondent’s argument that the agency’s LTAR inquiry into all hot-rolled coil purchases was overly broad as only certain purchases were suitable for the production of subject merchandise.⁵²⁴
 - Like LGMG has in this case, the respondent in *OCTG from Turkey* argued that Commerce should tie the subsidy in question to a specific product under 19 CFR 351.525(b)(5).⁵²⁵ Commerce found there that the respondent “has not even provided information that would allow us to tie the benefit under the {hot-rolled steel} for

Review, in Part; Calendar Year 2017, 84 FR 56173 (October 21, 2019) (*Pipes and Tubes from Turkey*), and accompanying IDM at 21; and *Trina Solar 2018*).

⁵¹⁷ *Id.* (citing *Countervailing Duties*, 63 FR 65348, 65403 (November 25, 1998) (*CVD Preamble*)).

⁵¹⁸ *Id.* at 7.

⁵¹⁹ *Id.*

⁵²⁰ *Id.* at 7 (citing *Certain Kitchen Appliance Shelving and Racks Final Results of the Countervailing Duty Administrative Review*, 77 FR 21744 (April 11, 2012) (*Kitchen Appliance Shelving*), and accompanying IDM at 30-31).

⁵²¹ *Id.* at 8.

⁵²² *Id.* (citing *Light-Walled Rectangular Pipe and Tube from People’s Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR. 35642 (June 24, 2008) (*Rectangular Pipe and Tube*), and the accompanying IDM at 37-38).

⁵²³ *Id.*

⁵²⁴ *Id.* (citing *Certain Oil Country Tubular Goods Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR. 41964 (July 18, 2014) (*OCTG from Turkey*), and accompanying IDM at 53-54).

⁵²⁵ *Id.*

- LTAR program to a specific product or ‘to mak{e} due allowance for factors affecting comparability,’ as 19 CFR 351.511(a)(2)(ii) instructs.”⁵²⁶ As such, Commerce relied on the reported hot-rolled steel purchase information in reaching its final subsidy calculations.⁵²⁷
- There is no evidence on the record here establishing that the OTR tires that LGMG purchased could not be used to produce subject merchandise.⁵²⁸
 - The petitioner’s new subsidy allegation further shows that OTR tires can be used in the production of both subject and non-subject merchandise, because they may be “suitable for trailers, loaders, forklifts, lifting platform, and various industrial vehicles for mining, construction, railway, steel plant, seaport, airport, clean factory, *etc.*”⁵²⁹
 - It is also critical that Commerce treat the Chinese respondents’ LTAR input purchases in a consistent manner. Herein, Commerce correctly rejected respondents’ arguments that they did not use cold-rolled steel to produce subject merchandise,⁵³⁰ consistent with its typical practice. Thus, Commerce countervailed those purchases.⁵³¹
 - Commerce made a similar finding with respect to the respondents’ purchases of lithium-ion batteries, even though both LGMG and Dingli claimed they did not use such batteries to produce subject merchandise.⁵³² Given that LGMG failed to show that its OTR tires purchases are tied to non-subject merchandise, Commerce should apply a similar rationale as in its cold-rolled steel and lithium-ion batteries determinations, and it should countervail LGMG’s purchases of OTR tires.⁵³³
 - The petitioner provided supporting documentation to show that the HTS number in the petitioner’s UN Comtrade data covers OTR tires, but LGMG and Dingli did not provide any supporting documentation for the HTS numbers that they submitted.⁵³⁴

LGMG’s Rebuttal Case Brief:

- The factual record and Commerce’s regulations, however, amply support Commerce’s finding of non-use.⁵³⁵
- LGMG reported that (1) the tires that it purchased for use in the production of subject merchandise were tire and wheel subassemblies purchased as one single piece; and 2) the tires that were exclusively used in the production of mining truck, wholly different and distinct non-subject merchandise.⁵³⁶
- Commerce’s regulations at 19 CFR 351.525(b)(5)(i) state that “if a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.”⁵³⁷

⁵²⁶ *Id.*

⁵²⁷ *Id.* at 8-9.

⁵²⁸ *Id.* at 9.

⁵²⁹ *Id.*

⁵³⁰ *Id.* at 10.

⁵³¹ *Id.*

⁵³² *Id.*

⁵³³ *Id.*

⁵³⁴ *Id.* at 10-11.

⁵³⁵ See LGMG General Issues Rebuttal Brief at 2.

⁵³⁶ *Id.* at 3.

⁵³⁷ *Id.*

- Commerce’s consistent line of cases over many years confirm its application of this rule: Commerce will not (and may not) countervail an alleged subsidy that is tied to the production of non-subject merchandise.⁵³⁸
- LGMG made clear in its factual submissions on the record that its purchases of tires were tied to the production of mining trucks, “particular products” that are non-subject merchandise.⁵³⁹
- There is nothing in the record that contradicts this fact; indeed, the factual information on record fully supports this. Accordingly, consistent with its regulations and practice, Commerce must not attribute any OTR subsidies to LGMG’s subject merchandise, and Commerce correctly determined non-use as to OTR tires for LGMG.⁵⁴⁰
- The petitioner is incorrect that the tires LGMG purchased for its production of mining trucks “could” be used in the production of subject merchandise and thus should be countervailed. This proposition runs contrary to both Commerce’s regulations and the record evidence. Pursuant to 19 CFR 351.525(b)(5)(i), when a purchased input is in fact tied to production of a particular product (e.g., mining trucks), Commerce *may not* attribute subsidies other than to that particular product.⁵⁴¹

Commerce’s Position: At issue is the analysis that Commerce uses to determine whether benefits received under a subsidy program are tied to a particular product or market under 19 CFR 351.525(b). Generally, we consider subsidies to be untied, as most subsidies benefit the entire production of a company;⁵⁴² however, we have “implemented tying regulations to attribute subsidies rather than tracing subsidies through {a} compan{y’s}” production process.⁵⁴³

Although we incorrectly stated otherwise in the Post-Preliminary Analysis,⁵⁴⁴ LGMG reported purchases of Chinese-origin OTR tires, in addition to its purchases of tire and wheel

⁵³⁸ *Id.* at 3 (citing e.g., *Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Administrative Review, 2017-2018*, 85 FR 77163 (Dec. 1, 2020) (*Softwood Lumber from Canada 2020*), and accompanying IDM at 261-262 (“The record shows that this program is tied to non-subject merchandise and thus not countervailable in this proceeding.”); *Certain Steel Wheels from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2013) (*Steel Wheels*), and accompanying IDM at 36; *Preliminary Results and Partial Rescission of Countervailing Duty Administrative Reviews: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 75 FR 55745 (September 14, 2010), unchanged in *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 75 FR 3613 (Jan. 20, 2011); *Dynamic Random Access Memory Semiconductors Final Results of Countervailing Duty Administrative Review*, 71 FR 14174 (March 21, 2006) (*RAM from Korea*), and accompanying IDM at 15 (where benefits provided under one project were tied to non-subject merchandise, Commerce stated that “in accordance with 19 CFR 351.525(b)(5), we find that {the respondent} did not receive any countervailable benefits under this program during the POR”); *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 69 FR 51063 (August 17, 2004) (*PET Film, Sheet, and Strip from India*), and accompanying IDM at Comment 8).

⁵³⁹ *Id.*

⁵⁴⁰ *Id.* at 3-4.

⁵⁴¹ *Id.* at 4.

⁵⁴² See *CVD Preamble*, 63 FR at 65400.

⁵⁴³ See *Rectangular Pipe and Tube* IDM at 37-38 (citing *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS*), and accompanying IDM at Comment 18.

⁵⁴⁴ See Post-Preliminary Analysis at 15.

subassemblies.⁵⁴⁵ LGMG stated that it used the purchased OTR tires to produce mining trucks, rather than subject merchandise, claimed that the subsidy is tied to the mining trucks and that we should continue to not countervail this program in this final determination.⁵⁴⁶ LGMG also reported that it purchased “tire and wheel subassemblies as one single piece” for use in the production of subject merchandise.⁵⁴⁷ Subassemblies containing a tire and wheel were not covered by the petitioner’s new subsidy allegation on OTR Tires, therefore we did not countervail these subassembly purchases.

The petitioner argues that LGMG’s purchases of OTR tires are not tied to its production of non-subject merchandise and should therefore be countervailed. We agree with the petitioner. The petitioner correctly characterizes our established practice, explaining “that when a subsidized input can be used in the production of subject merchandise—regardless of whether the input is actually used—we attribute the benefit from those subsidies to subject merchandise and do not try to trace the subsidy through the manufacturing process to particular products.”⁵⁴⁸

Section 351.525(b)(5)(i) of Commerce’s regulations states that, generally, “{i}f a subsidy is tied to the production or sale of a particular product, {Commerce} will attribute the subsidy only to that product.”⁵⁴⁹ When determining whether a subsidy is tied to particular product or market under 19 CFR 351.525(b), Commerce’s practice is to examine the contingencies the administering authority imposes upon the recipient firm, at the time of the bestowal of the benefit.⁵⁵⁰ As the *Preamble* to Commerce’s regulations makes clear, our analysis of whether a subsidy is tied to particular products focuses on the “stated purpose of the subsidy or the purpose we evince from the record evidence at the time of bestowal.”⁵⁵¹ Furthermore, under this approach, Commerce does not further examine how the recipient firm uses the subsidy for purposes of the tying analysis.⁵⁵² A subsidy is tied to a particular product when the intended use is known to the provider of the subsidy and so acknowledged prior to, or concurrent with, the bestowal of the subsidy.⁵⁵³ For example, in determining whether a loan is tied to a particular product, Commerce examines the loan approval documents; to determine whether a grant is tied to a particular product, Commerce examines the grant approval documents.

In conducting this tying analysis, Commerce will look to whether, at the time of the bestowal of the subsidy, there was a stated purpose of the subsidy that is supported by record evidence, and also may consider whether the input can be used to produce specific merchandise.⁵⁵⁴ Record

⁵⁴⁵ See LGMG NSAQR at 3 and Exhibit NSA-2.

⁵⁴⁶ See LGMG Verification QR at Exhibit V-1.

⁵⁴⁷ See LGMG 4SQR at 2 and Exhibit NS1-3.

⁵⁴⁸ See, e.g., *Rectangular Pipe and Tube* IDM at 37-38.

⁵⁴⁹ *Id.* (citing *CFS* IDM at Comment 18).

⁵⁵⁰ See *Pipes and Tubes from Turkey* IDM at 21 (citing *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstance*, 82 FR 51814 (November 8, 2017) (*Softwood Lumber from Canada Investigation*), and accompanying IDM at Comment 53).

⁵⁵¹ See *CVD Preamble*, 63 FR at 65403.

⁵⁵² See *Pipes and Tubes from Turkey* IDM at 21 (citing *Softwood Lumber from Canada Investigation* IDM at Comment 53).

⁵⁵³ *Id.*

⁵⁵⁴ See *Kitchen Appliance Shelving* IDM at 30-31 (citing e.g., *Industrial Phosphoric Acid from Israel: Final Countervailing Duty Determination*, 63 FR 13626, 13628-13629 (March 20, 1998); and *CFS* IDM at Comment 18).

evidence indicates that a variety of tire types are used in subject merchandise, and that a Chinese producer manufactures OTR tires for a variety of subject and non-subject merchandise.⁵⁵⁵ LGMG has not provided information regarding the type or size of the OTR tires it purchased, or the types of tires used to produce non-subject mining equipment.⁵⁵⁶ Additionally, LGMG has provided incomplete information necessary to establish the models of tires it used to produce MAE.⁵⁵⁷

Further, the record does not establish the “stated purpose of the subsidy,”⁵⁵⁸ therefore, we do not have record evidence to establish that the intended use of the OTR tires was known to the provider of the subsidy (*i.e.*, the GOC), at the point of bestowal (*i.e.*, sales of OTR tires) because “the contingencies the administering authority imposes upon the recipient firm” at the point of bestowal have not been elucidated on the record (*e.g.*, communications establishing that the OTR tires are for a specific product or market).⁵⁵⁹ Therefore, we determine that OTR tires for LTAR are not tied to the production of specific products because we do not have record evidence indicating otherwise, and, consequently, we find that the OTR tires purchased by LGMG, including those LGMG states are not for subject merchandise, are included within the program.

We selected benchmark information to calculate the benefit under 19 CFR 351.511(a)(2)(i).⁵⁶⁰ The GOC reported tariff rates for HTS Codes 4011.80 which has 4 subcategories 11, 12, 91, and 94, the first two subcategories have 17 percent tariff rates in China, and the second two subcategories have 25 percent tariff rates.⁵⁶¹ We calculated a simple average of these four rates to arrive at an average tariff rate of 21 percent. Applicable VAT was 16 percent.⁵⁶² Dingli’s UN Comtrade data is incomplete, for which Dingli did not provide explanation or context.⁵⁶³ LGMG also provided UN Comtrade data, but their data is for a basket category for which LGMG provided no support.⁵⁶⁴ By contrast, the petitioner’s OTR tires benchmark submission covers “{r}ubber; new pneumatic tyres, of a kind used on construction, mining or industrial handling vehicles and machines.”⁵⁶⁵ Thus, the petitioner’s selection of HTS codes is more appropriate. We compared the price paid for the tires, to the applicable benchmark. We then totaled the subsidies for all purchases and divided the total benefit by LGMG’s total sales to calculate the subsidy rate.⁵⁶⁶

⁵⁵⁵ See Petitioner NSA at Exhibits NSA-4 – NSA-8.

⁵⁵⁶ See LGMG’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from China; CVD Investigation; LGMG New Subsidy Allegation Questionnaire Response,” dated June 30, 2021 (LGMGNSAQR), at 3 and Exhibit NSA-2; *see also* LGMG NSA SQR at 2 and Exhibit NS1-3.

⁵⁵⁷ See LGMGNSAQR at 3 and Exhibit NSA-2; *see also* LGMG NSA SQR at 2 and Exhibit NS1-3.

⁵⁵⁸ See CVD Preamble, 63 FR at 65403.

⁵⁵⁹ See *Softwood Lumber from Canada Investigation* IDM at Comment 53.

⁵⁶⁰ See Petitioner Benchmark Submission at Exhibit 1.

⁵⁶¹ See GOCNSAQR at Exhibit NSA-8.

⁵⁶² See GOCNSAQR at 17 (citing GOCIQR at Exhibit A-5.8 citing (*Notice of the Ministry of Finance and the State Administration of Taxation on Adjusting Value-added Tax Rates (No. 32 (2018)) of the Ministry of Finance*)).

⁵⁶³ See Dingli Benchmark Submission at Exhibit 8.

⁵⁶⁴ See LGMG’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from China; {CVD} Investigation; LGMG Benchmark Submission,” dated June 28, 2021, at Exhibit 1.

⁵⁶⁵ See Petitioner Benchmark Submission at Exhibits 1 and 2.

⁵⁶⁶ See LGMG Final Calculation Memorandum.

Comment 13: Whether Commerce Should Countervail Lithium-Ion Batteries for LTAR*LGMG's Case Brief:*

- Commerce erroneously countervailed the benefits received by LGMG under the Provision of Lithium-ion Batteries for LTAR program.⁵⁶⁷ Commerce's regulations at 19 CFR 351.525(b)(5)(i), provide that if a subsidy is tied to the production or sale of a particular product, Commerce will attribute the subsidy only to that product.
- Commerce's long-standing practice is to not countervail a subsidy found to be tied to non-subject merchandise. In *Aluminum Extrusions*, Commerce determined not to countervail a cross-owned affiliate's purchases of primary aluminum because the record showed that such purchases were used solely in producing non-subject merchandise.⁵⁶⁸
- Commerce has often found that a subsidy is not countervailable if the respondent demonstrates that the subsidy is tied to a particular non-subject product.⁵⁶⁹
- LGMG's purchased lithium-ion batteries were used solely for the production of mobile access equipment sold in the domestic market but not used in production of the subject merchandise (*i.e.*, mobile access equipment shipped to and sold in the United States).⁵⁷⁰
- LGMG provided specific information regarding the model number of each non-subject mobile access equipment product that contains the respective purchased lithium-ion battery and the specific market to which the finished products were sold.⁵⁷¹
- Similarly, in the *Preliminary Determination*, Commerce correctly did not countervail LGMG's purchases of diesel engines that were used as inputs to non-subject merchandise.⁵⁷²
- Also, Commerce correctly found that LGMG did not use the OTR Tires for LTAR program, as the record shows that LGMG's purchases of OTR tires were used solely in the production of particular non-subject merchandise.⁵⁷³

⁵⁶⁷ See LGMG General Issues Brief at 2.

⁵⁶⁸ *Id.* (citing *Aluminum Extrusions from the People's Republic of China: Final Results of Changed Circumstances Reviews; Partial Revocation of Antidumping and Countervailing Duty Orders*, 79 FR 634 (January 6, 2014), and accompanying IDM at Comment 16 (Commerce did not attribute the benefits received by the respondent's affiliate to the respondent, because the affiliate uses these subsidies only in its production of non-subject merchandise)). We agree with the petitioner's claim in Petitioner General Issues Rebuttal Brief at 23 that LGMG has incorrectly cited this determination, the appropriate reference is *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) (*Aluminum Extrusions from China*), and accompanying IDM at Comment 16. Commerce did publish, *Aluminum Extrusions from the People's Republic of China: Final Results of Changed Circumstances Reviews; Partial Revocation of Antidumping and Countervailing Duty Orders*, 79 FR 634 (January 6, 2014), but the cited discussion does not occur within.

⁵⁶⁹ *Id.* (citing *e.g.*, *PET Film, Sheet, and Strip from India* IDM at Comment 8 (in which Commerce did not countervail the benefits from a subsidy program where they were tied to non-subject merchandise); *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012), and accompanying IDM at Comment 7; *Steel Wheels* IDM at 36; and *Aluminum Extrusions Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 77325 (December 14, 2015), and accompanying IDM at Comment 8)).

⁵⁷⁰ *Id.* at 3 (citing LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; {CVD} Investigation; LGMG Initial Questionnaire Response," dated June 15, 2021 (LGMGIQR), at 20; and LGMG 4SQR at 2).

⁵⁷¹ *Id.* at 3-4.

⁵⁷² *Id.*

⁵⁷³ *Id.*

Petitioner's Rebuttal Brief:

- Commerce should continue to find that LGMG received a countervailable benefit under this program during the POI regardless of whether LGMG used lithium-ion batteries in the production of subject merchandise exported to the United States.⁵⁷⁴
- LGMG's argument that it "confirmed" that its purchased lithium-ion batteries were used solely for production of mobile access equipment, sold in the domestic market, but were not used in production of the subject merchandise,"⁵⁷⁵ should be rejected by Commerce.⁵⁷⁶
- Commerce has consistently stated that it does not trace subsidized inputs through a company's production process.⁵⁷⁷
 - In *Light-Walled Rectangular Pipe and Tube from China*, Commerce faced an almost identical argument to LGMG's assertion here and found that purchases of an input at LTAR that "could be used to produce the subject merchandise were countervailable" because "we do not trace subsidized inputs through a company's production process."⁵⁷⁸ Here, subject products containing lithium-ion batteries are sold in the United States.⁵⁷⁹
- Furthermore, LGMG's argument that its merchandise that is sold in the domestic market but otherwise meets the description of subject merchandise is not "subject merchandise" is inaccurate. "Subject merchandise" covers "the class or kind of merchandise that is within the scope of the investigation."⁵⁸⁰ Commerce previously analyzed this issue in *Certain Passenger Vehicle and Light Truck Tires from China*:⁵⁸¹
 - "{The respondent company's} attempt to distinguish between 'merchandise under consideration' and 'subject merchandise' has no support under the statute and regulations... {s}ubject merchandise is defined in section 771(25) of the Act as 'the class or of kind of merchandise that is within the scope of the investigation...'"
 - And that, "{t}racing subsidies {to imports to the United States} is neither practical nor required by the CVD law. Instead, the Department has devised attribution rules that reasonably assign benefits based on who receives the subsidy and the express purpose of the subsidy at the time it was bestowed."
- Whether LGMG exports subject merchandise that used lithium-ion batteries for LTAR to the United States is irrelevant to Commerce's analysis.⁵⁸²

⁵⁷⁴ See Petitioner General Issues Rebuttal Brief at 24.

⁵⁷⁵ *Id.* at 21

⁵⁷⁶ *Id.*

⁵⁷⁷ *Id.* (citing *e.g.*, *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010), and accompanying IDM at Comment 36; *Rectangular Pipe and Tube* IDM at Comment 8; and *CFS* at Comment 18).

⁵⁷⁸ *Id.* at 21-22.

⁵⁷⁹ *Id.* at 22.

⁵⁸⁰ *Id.*

⁵⁸¹ *Id.* at 22-23 citing (*Certain Passenger Vehicle and Light Truck Tires from the Peoples Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015), and accompanying IDM at Comment 19).

⁵⁸² *Id.* at 23.

- LGMG is incorrect that, the relevant inquiry in whether the provision of lithium-ion batteries for LTAR should be countervailed, is whether the input is used for the production of subject merchandise.⁵⁸³
 - In support of this claim, LGMG cites to *Aluminum Extrusions*, stating that, in that review, the “Department determined not to countervail as {sic} cross-owned affiliate’s purchases of primary aluminum because the record showed that such purchases were used solely in producing non-subject merchandise.”⁵⁸⁴
 - However, in *Aluminum Extrusions*, Commerce’s determination was based on the cross-owned affiliate’s purchases of primary aluminum; because, the cross-owned affiliate, was not a producer of subject merchandise but instead was a supplier of input aluminum to the respondent.⁵⁸⁵
- LGMG claims that lithium-ion batteries for LTAR should not be countervailed under 19 CFR 351.525(b)(5).⁵⁸⁶ However, in *Aluminum Extrusions*, Commerce expressly stated that the provision of subsidies to the respondent, were best analyzed under 19 CFR 351.525(b)(6)(v), which addresses countervailing subsidies to corporations with cross-ownership and is not germane to LGMG’s claim here.⁵⁸⁷
- Commerce did not countervail purchases of diesel engines for LTAR because it found that LGMG did not receive a measurable benefit from this program.⁵⁸⁸
- Commerce also found that LGMG did not report purchasing OTR tires and therefore did not use the program. This determination also has nothing to do with whether the program is tied to “non-subject merchandise.”⁵⁸⁹

Commerce’s Position: In the *Preliminary Determination*, we countervailed lithium-ion batteries for LTAR, and we continue to do so in this final determination. Section 351.525(b)(5)(i) of Commerce’s regulations generally stipulates, that if a subsidy is tied to the production or sale of a particular product, Commerce will attribute the subsidy only to that product. However, our practice is not to trace subsidies through a company’s production, rather we determine whether a subsidy is tied to a product when the intended use is acknowledged by the provider at the bestowal of the subsidy.

LGMG’s reliance on *Aluminum Extrusions* is misplaced, the decision made in that case concerns 19 CFR 351.525(b)(6)(iv), which provides for the attribution of subsidies received by a cross-owned input supplier which does not produce subject merchandise, and further, that case does not discuss a tying analysis. LGMG argues that its purchases should be tied to its sales in the domestic market which would be handled under 19 CFR 351.525(b)(4) and calls for a tying analysis. Therefore, no information on the record establishes that, at the time bestowal, the subsidy was intended for a particular market or product. Contrary to LGMG’s contention, whether the input was sold in the domestic market or in the United States, is not the factor we take into consideration in the tying analysis pursuant to 19 CFR 351.525(b)(4). Moreover, we

⁵⁸³ *Id.*

⁵⁸⁴ *Id.*

⁵⁸⁵ *Id.* citing (*Aluminum Extrusions* IDM at Comment 16.)

⁵⁸⁶ *Id.* at 24

⁵⁸⁷ *Id.*

⁵⁸⁸ *Id.*

⁵⁸⁹ *Id.*

have already considered that the input for LTAR program is a domestic subsidy by attributing it over the respondents' total sales.

Comment 14: Whether Commerce Should Reconsider the Benchmark for Diesel Engines and Which Diesel Engines Are Countervailable

Petitioner's Case Brief:

- Commerce should continue to countervail LGMG's diesel engines purchases in the final determination,⁵⁹⁰ and it should continue to do so in its final calculations. However, Commerce erred by removing certain data from its diesel engines for LTAR benchmark.⁵⁹¹
- In its preliminary calculations, Commerce relied on the USA Trade Online benchmark data for diesel engines submitted by the petitioner.⁵⁹²
- In doing so, Commerce removed data for "diesel engines that are not used in subject merchandise," finding that engines with power levels higher than 149.2 kW could not be used in subject merchandise and, thus, should be excluded from the benchmark.⁵⁹³
- Without further explanation, Commerce reasoned that "{w}ith this information removed, the benchmark is comparable to engines used in the production of subject merchandise."⁵⁹⁴
- There is no bright line based on kW level or power rating, though, separating which diesel engines can be used for subject merchandise and which cannot.⁵⁹⁵
- The record describes the power categories of LGMG's diesel engine purchases but does not distinguish between engines used for subject merchandise and those that could only be used for non-subject merchandise.⁵⁹⁶
- The diesel engine benchmark data relied on by Commerce is sorted into five categories based on kW level.⁵⁹⁷ The first category covers engines below 149.2 kW, and the second category covers engines with power levels between 149.2 kW and 373 kW.⁵⁹⁸
- The record establishes that diesel engines spanning a wide range of power levels are used in the production of subject merchandise.⁵⁹⁹ As such, it is distortive for Commerce to limit its diesel engines benchmark data to only the first power level category (*i.e.*, engines with ratings below 149.2 kW).⁶⁰⁰

⁵⁹⁰ See Petitioner General Issues Brief at 11.

⁵⁹¹ *Id.*

⁵⁹² *Id.*

⁵⁹³ *Id.*

⁵⁹⁴ *Id.* at 11-12.

⁵⁹⁵ *Id.* at 12 (citing Petitioner Benchmark Submission at Exhibit 5 (the petitioner provided export data from the U.S. Census Bureau's USA Trade Online in two formats: (1) monthly data for five separate power rating categories, and (2) monthly data for these five power rating categories combined. Data for the five power rating categories separately are in the "USA Trade Monthly by HTS" worksheet, and data for all five categories combined are in the "USA Trade All HTS Combined" worksheet)).

⁵⁹⁶ See Petitioner's Case Brief at 12 citing (LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; {CVD} Investigation; LGMG 3rd Supplemental Questionnaire Response," dated July 22, 2021 (LGMG 3SQR), at 3-4 and Exhibit S3-5.

⁵⁹⁷ *Id.* at 13.

⁵⁹⁸ *Id.*

⁵⁹⁹ *Id.*

⁶⁰⁰ *Id.*

- It is Commerce’s practice to construct broad and inclusive benchmarks, based on a range of data approximating world market prices for the input at issue.⁶⁰¹
 - Commerce uses broad averages to calculate benchmarks because parties can always participate in gamesmanship over minor differences in products. In *Essar Steel*, the CIT recognized that “{w}hen using a tier two benchmark, Commerce must average all commercially available world market prices to arrive at the benchmark figure.”⁶⁰²
 - In *Archer Daniels Midland Co. v. United States*, the CIT rejected the respondent’s attempt to force Commerce to use “benchmark prices that are nearly identical to {respondent’s} reported purchases” because the regulation “does not manifest such a stringent standard.”⁶⁰³
 - It is consistent with Commerce’s prior practice, *e.g.*, in *Hot-Rolled Steel from India 2007*, Commerce found that there “is no requirement that the benchmark used in Commerce’s LTAR analysis be identical to the good sold by the foreign government...In fact, the imposition of such a requirement would likely disqualify most, if not all, potential benchmarks under consideration in a LTAR analysis.”⁶⁰⁴
 - Similarly, in *High Pressure Steel Cylinders 2017*, Commerce found it appropriate to use UN Comtrade data as a benchmark for seamless tube steel even though the data included “seamless tube steel sizes that were not used in the production of subject merchandise.”⁶⁰⁵
- In this investigation, “substantiated record evidence” does not demonstrate that the prices of the diesel engines that Commerce excluded from the benchmark (*i.e.*, those above the 149.2 kW threshold) could not be used to produce subject merchandise and are incomparable to other types of diesel engines, *e.g.*, diesel engines produced by global engines producer Perkins Engines Company Limited (Perkins) span a wide range of kW power levels.⁶⁰⁶
 - Perkins specifically identifies telehandlers as an application for its off-highways engines.⁶⁰⁷

⁶⁰¹ *Id.* (citing *e.g.*, *Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR. 47479 (October 12, 2017) (*Pipe and Tube from Turkey*), and accompanying IDM at 16 (“{Commerce} is not required to rely upon an LTAR benchmark that is identical to the product sold by the government authority, and the application of such a standard would likely invalidate many, if not all, potential LTAR benchmarks from consideration.”); *Softwood Lumber from Canada Investigation* IDM at 110 (“{u}nder 19 CFR 351.511(a)(2)(i), in choosing such in-country prices, Commerce will consider factors affecting comparability. However, the legal requirements governing Commerce’s selection of benchmarks do not require perfection.”).

⁶⁰² *Id.* at 13-14 citing (*Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1293 (CIT 2010)).

⁶⁰³ *Id.* at 14 (citing *Archer Daniels Midland Co.*).

⁶⁰⁴ *Id.* (citing *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009) (*Hot-Rolled Steel from India 2007*), and accompanying IDM at Comment 12 (Commerce also stated that “to the extent that substantiated record evidence demonstrates that the price of the good sold by the government is not comparable to the price of the proposed benchmark, Commerce will not conduct its LTAR analysis using that benchmark.”)).

⁶⁰⁵ *Id.* at 14-15 citing (*High Pressure Steel Cylinders from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 83 FR 63471 (December 10, 2018) (*High Pressure Steel Cylinders 2016*), and accompanying IDM at 16-17).

⁶⁰⁶ *Id.*

⁶⁰⁷ *Id.*

- Indeed, the power levels for Perkins' off-highway engines 1110 and 1200 series, range between 56-205 kW and 82-239 kW, respectively.⁶⁰⁸
- Further, Chinese diesel engine manufacturer Dongfeng Chaoyang Diesel Engine Co., Ltd. produces diesel engines with a power range of 60-155 kW.⁶⁰⁹
- Taken together, this information demonstrates that 149.2 kW is by no means a clear cut-off.⁶¹⁰
- Commerce did not point to any evidence that diesel engines with a power level higher than 149.2 kW cannot be used to produce subject merchandise.⁶¹¹
- At the very least, Commerce should match LGMG's diesel engine purchases to benchmarks based on kW power category in the final determination. Commerce's regulations provide that the agency will average world market prices, "making due allowance for factors affecting comparability."⁶¹²
- Commerce's preliminary methodology of removing all diesel engine benchmark data above the 149.2 kW threshold effectively compares LGMG's higher power category purchases against lower power category benchmarks.⁶¹³ This is inconsistent with Commerce's regulations as it fails to account for "factors affecting comparability," such as kW level.⁶¹⁴
- In this regard, at a minimum, Commerce should include all levels of benchmark data in its final calculations and match LGMG's purchases against benchmark data for the same power level category.⁶¹⁵

LGMG's Rebuttal Case Brief:

- Commerce's benchmark calculations for diesel engines purchased by LGMG are proper and in accordance with Commerce's practice and case precedents. Commerce should continue to rely on this calculation in the final determination.⁶¹⁶
- All of the diesel engines that LGMG uses to produce the subject merchandise are rated at or below "Power Rating A."⁶¹⁷
- In benchmarking diesel engines, Commerce concluded that it should avoid using benchmark data that "may include engines covering a range of power levels, including higher-power engines that are not used in subject merchandise, because they are of greater size and horsepower, and where Commerce has no reliable way to identify and remove higher-power engines from the data set."⁶¹⁸

⁶⁰⁸ *Id.*

⁶⁰⁹ *Id.*

⁶¹⁰ *Id.*

⁶¹¹ *Id.*

⁶¹² *Id.* at 16.

⁶¹³ *Id.*

⁶¹⁴ *Id.*

⁶¹⁵ *Id.* at 16 (If Commerce matches LGMG's purchases against benchmark data for the same power level category, then Commerce should also use import duty rates that the Government of the People's Republic of China reported for individual power level categories in the benchmarks. See LGMGIQR at Exhibit A-5.7).

⁶¹⁶ See LGMG General Issues Rebuttal Brief at 9.

⁶¹⁷ *Id.* at 5 (citing LGMG 3SQR at Exhibit S3-5 (updated Exhibit I-15); "Power Rating A" is LGMG's business proprietary information and is discussed in LGMG Final Calculation Memorandum).

⁶¹⁸ *Id.* at 6.

- The types or sizes of diesel engines other manufacturers of mobile access equipment in the United States or third countries use does not matter to the analysis.⁶¹⁹
- Commerce did not find “that engines with power levels higher than 149.2 kW could not be used in subject merchandise.”⁶²⁰
- Based on the record of this investigation, Commerce properly constructed a benchmark for diesel engine purchases that excludes diesel engines that LGMG does not use in its production of subject merchandise.⁶²¹
- Contrary to the petitioner’s claim,⁶²² Commerce elaborated on its chosen benchmark stating that: ⁶²³ (1) USA Trade Online data are already reported in units and, thus, reflect the basis on which diesel engines are customarily sold without the need for conversion; (2) data presents engine exports at the 10-digit HTS level. As such, Commerce can accurately remove the data for engine exports above 149.2 kW) to create a benchmark that is comparable to engines used in the production of subject merchandise; and (3) pursuant to 19 CFR 351.511(a)(2)(iv), with the addition of delivery charges and import duties, the benchmark reflects the price that a producer of subject merchandise would pay if it imported the product.
 - While the USA Trade Online data reflect only that of U.S. exports to the world, and therefore do not provide the same country coverage as UN Comtrade data, it is preferable to the UN Comtrade data because it is (1) reported on the same basis as which diesel engines are sold; (2) use more specific HTS numbers; and (3) can be altered to reflect the diesel engines used in subject merchandise.
- Commerce properly concluded that expansive benchmark data would be distortive, given the differences in units and the absence of any industry standard benchmark conversion factor on the record:⁶²⁴
 - Engines are not sold in kilograms and prices do not necessarily scale with kilograms. Consequently, a benefit calculated in kilograms would not be useful to average with a benefit calculated in units.
- Commerce’s determination to use benchmark data for diesel engines having power levels of 149.2 kW and lower (the most specific kW category available from the data) properly reflected a benchmark corresponding to the engines actually used in the production of the subject merchandise under investigation.⁶²⁵
- Notwithstanding the petitioner’s appeal to Commerce’s supposed practice of calculating “broad and inclusive benchmarks,”⁶²⁶ Commerce’s approach here, is consistent with its longstanding practice of relying on data that reflects the narrowest category of products encompassing the input product:
 - In *Multilayered Wood Flooring* the record demonstrated that a certain six-digit HTS covers products unlike the inputs used by the respondents in the production of the flooring; because it is not reflective of products comparable to the

⁶¹⁹ *Id.*

⁶²⁰ *Id.*

⁶²¹ *Id.*

⁶²² *Id.* at 7.

⁶²³ *Id.*

⁶²⁴ *Id.* at 8.

⁶²⁵ *Id.*

⁶²⁶ *Id.*

plywood input used in wood flooring, and Commerce removed it from the calculation of the plywood input benchmark.⁶²⁷

- Commerce prefers benchmarks on an HTS-specific basis that correspond to the actual purchases of the respondent. In *Uncoated Paper*, Commerce stated that the {respondent} reported their input purchases on an HTS specific basis and Commerce calculated HTS-specific benchmarks that correspond to the HTS categories of calcium carbonate purchased by the respondent during the POI.⁶²⁸

Commerce Position: In the *Preliminary Determination*, we countervailed only the diesel engines LGMG purchased to produce subject merchandise and did not countervail LGMG’s purchases of other Chinese-origin-diesel engines, resulting in an inadvertent inconsistency with our tying regulation.⁶²⁹ Section 351.525(b) of Commerce’s regulations stipulates when benefits received under a subsidy program are tied to a particular product or market. As described above in Comment 12, our practice is not to trace subsidies through a company’s production, and we determine that a subsidy is tied to a product only when the intended use is acknowledged by the provider at the bestowal of the subsidy.⁶³⁰ LGMG provided business proprietary information related to its OTR tires that relates to this issue.⁶³¹ However, crucial to our tying analysis, no information on the record establishes whether any of the providers of the Chinese-origin-diesel engines purchased by LGMG, knew or acknowledged what product would be made with the diesel engines at the point of bestowal (*i.e.*, the sale).⁶³² Thus, like with OTR tires, we determine that diesel engines for LTAR are not tied to the production of a specific product, and we are countervailing all LGMG’s purchases of diesel engines in this final determination.⁶³³

In the *Preliminary Determination*, Commerce used a Tier 2 benchmark, based on the petitioner’s USA Trade Online,⁶³⁴ which was constructed to cover the full range of power ratings that LGMG

⁶²⁷ *Id.* at 9 (citing *Multilayered Wood Flooring* IDM at Comment 6; *Photovoltaic Cells 2015* IDM at Comment 3; *Certain Uncoated Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 81 FR 3110 (January 20, 2016) (*Uncoated Paper*), and accompanying IDM at 25-26)).

⁶²⁸ *Id.* (citing *Uncoated Paper* IDM at 25-26; *Steel Wheels* IDM at Comment 15; *Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR. 4936 (January 28, 2009) (*Stainless Pressure Pipe*), and accompanying IDM at “Provision of SSC for LTAR” (where Commerce compared prices by steel grade); *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) (*Hot-Rolled Steel from India 2006*), and accompanying IDM at “Sale of High-Grade Iron Ore for LTAR” (where Commerce conducted the benefit analysis on a lump-to-lump and fine-to-fine basis); and *Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73448 (December 12, 2005) (*Softwood Lumber from Canada 2005*), and accompanying IDM at “Calculation of Provincial Benefit” and “Methodology for Adjusting the Unit Prices of the Crown Stumpage Program Administered by the GOBC” (where Commerce computed species-specific benefits))).

⁶²⁹ See Memorandum, “Countervailing Duty Investigation of Mobile Access Equipment from the People’s Republic of China: Preliminary Determination Calculations for Lingong Group Jinan Heavy Machinery Co., Ltd.,” dated July 28, 2021, at 11.

⁶³⁰ See *Pipes and Tubes from Turkey* IDM at 21 (citing *Softwood Lumber from Canada Investigation* IDM at Comment 53).

⁶³¹ See LGMG Verification QR at Exhibit V-9.

⁶³² See generally, LGMGIQR; LGMG 3SQR; and LGMG Verification QR.

⁶³³ See revised calculation in LGMG Final Calculation Memorandum.

⁶³⁴ See Petitioner Benchmark Information at Exhibit 5.

used in its production of subject merchandise.⁶³⁵ Because we are now countervailing all of LGMG's purchases of Chinese-origin-diesel engines, the benchmark that we used in the *Preliminary Determination* has insufficient coverage of power ratings to cover all the Chinese-origin-diesel engines which LGMG purchased.⁶³⁶ The petitioner argues for a "broad and inclusive" benchmark that covers all 5 power rating ranges available in the benchmark information:

- (1) exceeding 0 kW, but not exceeding 149.2 kW, and corresponding to HTS 8408.90.90.10;
- (2) exceeding 149.2 kW, but not exceeding 373 kW, and corresponding to HTS 8408.90.90.20;
- (3) exceeding 373 kW but not exceeding 746 kW, and corresponding to HTS 8408.90.90.30;
- (4) exceeding 746 kW but not exceeding 1119 kW,⁶³⁷ and corresponding to HTS 8408.90.90.40; and,
- (5) 1,119 kW and greater, corresponding to HTS 8408.90.90.50.⁶³⁸

Although these goods were sold in China, we are still able to determine the HTS which they would be reported under, because the differences are determined by the engine's power rating, and LGMG has reported the power rating of every diesel engine it purchased.

Parties' arguments concerning the benchmark constructed in the *Preliminary Determination*, have mostly been superseded by our determination to expand the coverage of the program to all LGMG's purchases of all Chinese-origin-diesel engines. In the petitioner's secondary argument, it considered circumscribing the set of power ranges used to for the benchmark (*i.e.*, based on the power levels of all possible subject merchandise), and similarly, for this final determination, we have only included the power rating ranges in the benchmark that correspond to the power ratings of LGMG's purchases of Chinese-origin-diesel engines.⁶³⁹ Our regulation for construction of a Tier 2 benchmark, 19 CFR 351.511(a)(2)(ii), stipulates that we will average world market prices where there is more than one commercially available world market price, "making due allowance for factors affecting comparability." Those factors are not described therein; however, in *Uncoated Paper* we used HTS specific benchmark data, and in *Steel Wheels from China*, where available, we used benchmarks specific to whether products were steel plate or coil, where the data allowed.⁶⁴⁰ These decisions provide for comparability between the benchmark and the purchases, by applying piecemeal benchmarks to compare prices for similar goods. Here, stratification of the benchmark yields comparisons that are more reasonable than an average of the power rating ranges applicable to LGMG's purchases. An average, of just the ranges that correspond to the purchases, creates significant mismatches between the benchmark

⁶³⁵ See *Preliminary Determination* PDM at 48.

⁶³⁶ *Id.*

⁶³⁷ See Petitioner Benchmark Information at Exhibit 5 (which incorrectly identifies the power range of the HTS exceeding 373 kW, but not exceeding 1,119 kW and HTS chapter 84 which correctly identifies the 4th stratum, as indicated above).

⁶³⁸ See Petitioner's Benchmark Information at Exhibit 5.

⁶³⁹ *Id.*

⁶⁴⁰ See LGMG's Rebuttal Case Brief at 9 (citing *Uncoated Paper* IDM at 25-26; and *Steel Wheels* IDM at Comment 15).

and LGMG's purchases; therefore, for this final determination we used HTS specific benchmarks to make allowances for comparability pursuant to 19 CFR 351.511(a)(2)(ii). Our approach in this regard is consistent with Commerce's practice of deriving benchmark prices by grade when such data are available and when the record evidence indicates that the respondent firm purchases the good in question on a grade or specific basis matching stratification in available benchmark data.⁶⁴¹ Here, similarly to grades, or the differences between similar but not identical merchandise, LGMG purchases diesel engines based on HTS-specific power ratings, which provides a reasonable method to establish benchmarks across the large range of power ratings of diesel engines.

The petitioner's reliance on *Essar Steel* to aver that we "must average all world market prices" when constructing a Tier 2 benchmark is misplaced. The *Essar Steel* court was repeating some but not all the requirements of 19 CFR 351.511(a)(2)(ii). This regulation also states that we average all world market prices "to the extent practicable." "Practicable" is not the same as possible; rather, *Oxford Languages* defines practicable as both "able to be done" or "useful." An overly broad benchmark, such as one that includes all the HTS categories, or even all the categories corresponding to LGMG's purchases, is not "useful" in this instance because it creates significant mismatches and unreasonable benefits calculations.

Here, the wide, and varied power-rating ranges of the HTS-based divisions of the benchmark data, are dissimilar to the situation in *Archer Daniels Midland Co. v. United States*, because power-rating ranges of the benchmark categories which we used here, in applying HTS-specific benchmarks are not "nearly identical" to LGMG's purchased diesel engines.⁶⁴² Because LGMG identified all the power levels of its purchased Chinese-origin-diesel engines, information available on the record is sufficient to apply the HTS-specific benchmark. Here, by using HTS-specific-power ranges we are not attempting to limit the benchmark to a narrow range around subject merchandise to create a benchmark that is "identical" to LGMG's purchases, as countenanced in *Hot-Rolled Steel from India 2007*'s call for proof against gamesmanship, cited by the Petitioners.⁶⁴³ Furthermore, the petitioner's final challenge to similar benchmarks from *High Pressure Steel Cylinders 2017* is concerned with a hypothetical requirement to use identical benchmarks, and adds nothing to the discussion beyond that already provided by *Hot-Rolled Steel from India 2007*'s concerns.⁶⁴⁴

We have otherwise continued to use the same benchmark calculation methodology that we adopted in the *Preliminary Determination*.

⁶⁴¹ See *Steel Wheels* IDM at Comment 15.

⁶⁴² See *Archer Daniels Midland Co. v. United States*, 968 F. Supp. 2d 1269, 1279 (CIT 2014).

⁶⁴³ See *Hot-Rolled Steel from India 2007* IDM at Comment 12.

⁶⁴⁴ See *High Pressure Steel Cylinders 2016* IDM at 16-17.

Comment 15: Whether Commerce Should Revise LGMG's Reported Total Sales Value

Petitioner's Case Brief:

- Commerce should apply FA or AFA to adjust LGMG's reported total sales value to account for the respondent's failure to fully report certain income unrelated to selling MAE.⁶⁴⁵
- Commerce's regulations provide that it "normally will attribute a subsidy to the products produced by the corporation that received the subsidy."⁶⁴⁶
- The *CVD Preamble* clarifies that Commerce "will normally attribute a subsidy received by a corporation to the products produced by that corporation. Hence, for example, if corporation A receives a subsidy, then that subsidy will normally be attributed to the sales of products produced by corporation A."⁶⁴⁷
- Commerce is instructed to attribute subsidies to sales of products that a company produces, not to resales of products or service sales. Consistent with its regulations, in recent proceedings, Commerce has excluded amounts "not related to production," such as rental income and bidding services, from respondents' sales denominators.⁶⁴⁸
- Commerce's initial questionnaire in this proceeding requested that respondents "{s}eparately report the value of services sold by your company, if any."⁶⁴⁹
- Applying FA or AFA in this instance is consistent with Commerce's FA and AFA standard.⁶⁵⁰
- This adjustment is necessary to ensure that LGMG's total sales value is not distorted by revenue generated through business activities, unrelated to selling MAE, of which the respondent has not fully disclosed or provided complete information.⁶⁵¹

LGMG's Rebuttal Case Brief:

- LGMG accurately identified, and separated, the exact amount of its sales revenue attributable to certain income unrelated to selling MAE, as specifically requested by Commerce.⁶⁵²
- The spreadsheet in Exhibit S3-4, which revises Exhibit I-10, precisely as Commerce requested, provides a breakdown of the amounts of LGMG's different types of income.⁶⁵³
- LGMG fully cooperated with Commerce's requests for information, and therefore, no basis exists for application of "facts available" or "adverse facts available," given that

⁶⁴⁵ See Petitioner General Issues Brief at 17; see also BPI discussion of this issue in the LGMG Final Calculation Memorandum.

⁶⁴⁶ *Id.*

⁶⁴⁷ *Id.*

⁶⁴⁸ See Petitioner's Case Brief at 17 (citing *e.g.*, *Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 86 FR 1933 (January 11, 2021), and accompanying IDM at 45).

⁶⁴⁹ *Id.* at 18.

⁶⁵⁰ *Id.* at 19.

⁶⁵¹ *Id.* at 20.

⁶⁵² See LGMG General Issues Rebuttal Brief at 10.

⁶⁵³ *Id.* at 11.

Commerce has the information it requested and LGMG cooperated fully and did not impede the investigation in any way.⁶⁵⁴

- In response to Commerce’s Verification Questionnaire, LGMG provide a reconciliation of its total sales to its accounting records and financial statements for the period of investigation (POI), 2012, 2013, and 2019, as well as documentation to confirm that the reported sales were on an FOB basis.⁶⁵⁵
- Notably, however, Commerce’s Verification Questionnaire did not request further details or documentation on certain LGMG income other than from sales of MAE.⁶⁵⁶
- LGMG cannot be penalized for failing to provide verification documentation for an item that was not requested by Commerce.⁶⁵⁷
- Commerce should reject the petitioner’s claim that adverse facts available is warranted, resulting in a punitive and inaccurate downward adjustment to LGMG’s reported sales value. LGMG accurately reported its total sales, accurately provided the specific identification and breakdown between different types of income and provided detailed supporting documents and accounting records to demonstrate that its reported total sales are accurate.⁶⁵⁸

Commerce’s Position: We agree with the petitioner that LGMG’s total sales value should be reduced by certain amounts of other income;⁶⁵⁹ however, we disagree with the petitioner on which income items should be deducted. The petitioner argues that 19 CFR 351.525(b)(6)(i), which provides that we “normally will attribute a subsidy to the products produced by the corporation that received the subsidy,” was applicable; however, 19 CFR 351.525(b)(3) explains that Commerce “will attribute a domestic subsidy to all products sold by a firm...”⁶⁶⁰ The *CVD Preamble* further instructs Commerce to attribute subsidies to sales of products that a company produces, not to resales of products or service sales.⁶⁶¹ Therefore, in accordance with our regulations and the *CVD Preamble*, Commerce does not include income that is not related to “all products sold.”⁶⁶² Commerce’s practice is to include any sales or income accounts in the sales denominator unless it is determined that those accounts are not related to production activities.⁶⁶³

To modify the denominator as the petitioner suggests would not allow Commerce to capture all LGMG’s sales during the POI; therefore, for this final determination, we have deducted certain

⁶⁵⁴ *Id.* (citing *Nippon Steel*: “Thus, the legislative history mirrors the language in the statute by recognizing that: (1) Commerce must use facts otherwise available when requested information is missing and (2) Commerce may impose an adverse inference after determining that a respondent has not been fully cooperative or has failed to act to the best of its ability in gathering information.”); *see also*, *Certain Hot-Rolled Steel Flat Products from Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR. 56813 (November 14, 2018) (*Hot-Rolled Steel from Japan*), and accompanying PDM at 10-11).

⁶⁵⁵ *Id.* at 11-12.

⁶⁵⁶ *Id.* at 12.

⁶⁵⁷ *Id.* at 13.

⁶⁵⁸ *Id.* 13-14.

⁶⁵⁹ *See* LGMG Verification QR at Exhibit V-1.

⁶⁶⁰ *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review and Rescission, in Part*; 2018, 86 FR 53279 (September 27, 2021), and accompanying IDM at Comment 4.

⁶⁶¹ *See CVD Preamble*, 63 FR at 65402.

⁶⁶² *Id.*

⁶⁶³ *Id.*

income where the record evidence supports that it is unrelated to the sale of “products” by LGMG. Here, an application of facts available is not warranted because we are not missing information necessary to make the decision, and LGMG cooperated by fully answering all our questions on the matter.⁶⁶⁴ Due to the business proprietary nature of the information involved, further discussion can be found in the LGMG Final Calculation Memorandum.

Comment 16: Whether Commerce Should Include an Additional “Other Subsidy Program” in LGMG’s Overall Subsidy Rate

Petitioner’s Case Brief:

- For LGMG, Commerce countervailed certain “other programs” during the AUL.⁶⁶⁵ However, LGMG reported an additional subsidy that it received, *i.e.*, Program A, which Commerce did not countervail.⁶⁶⁶ The date of approval and receipt of the subsidy are within the AUL.⁶⁶⁷ In LGMG’s calculations for the *Preliminary Determination*, Commerce included a similar program from a later period of the AUL,⁶⁶⁸ but did not include Program A.⁶⁶⁹ The benefit represents a large proportion of LGMG’s sales value in the year of issuance.⁶⁷⁰ Commerce should calculate a subsidy rate for Program A, pursuant to 19 CFR 351.524(b), and should include the resulting benefit in LGMG’s final subsidy rate.⁶⁷¹

LGMG’s Rebuttal Case Brief:

- The petitioner claims that Commerce erred by failing to include Program A,⁶⁷² a grant that LGMG received in a year prior to the POI.⁶⁷³ Program A has no relevance to the POI, nor is it properly allocable across the AUL period. Program A had been fully expensed and had no impact on LGMG’s income statement or any other aspect of its financial performance during the POI, or in 2015-2019.⁶⁷⁴
- The petitioner misunderstands both Commerce’s calculation methodology for allocating “Other Subsidies,” as well as, LGMG’s detailed documentation of “other subsidies” received from 2012-2020.⁶⁷⁵
- Commerce’s meticulous allocations of the various “Other Subsidies” reported by LGMG reflect an accurate calculation of the applicable programs and benefits.⁶⁷⁶
- Commerce thoroughly reviewed the “other subsidies,” that LGMG reported based on its accounting records for the POI, 2020. LGMG also submitted its history of other

⁶⁶⁴ See *Nippon Steel*, 337 F.3d at 1381.

⁶⁶⁵ See Petitioner General Issues Brief at 25.

⁶⁶⁶ *Id.* at 25-26.

⁶⁶⁷ *Id.* at 26

⁶⁶⁸ *Id.*

⁶⁶⁹ *Id.*

⁶⁷⁰ *Id.*

⁶⁷¹ *Id.*

⁶⁷² Contains BPI Information, see LGMG Final Calculation Memorandum.

⁶⁷³ See LGMG General Issues Rebuttal Brief at 19.

⁶⁷⁴ *Id.* at 21.

⁶⁷⁵ *Id.* at 19.

⁶⁷⁶ *Id.*

subsidies going back to 2012, so that Commerce could allocate across the AUL period where applicable.⁶⁷⁷

- The detailed listing of “other subsidies” reported by LGMG in Exhibit S1-5 clearly shows that Commerce correctly captured the universe of other subsidies applicable to the period of investigation in this case.
- Commerce accurately allocated certain “other subsidies.” Commerce correctly attributed an allocable 2020 share of the subsidy based on an AUL amortization of these non-recurring subsidies.⁶⁷⁸

Commerce’s Position: The allocation of benefits to a particular time period is described in 19 CFR 351.524. Subsection (a) of this regulation applies to recurring benefits and states that Commerce “will allocate (expense) a recurring benefit in the year in which the benefit was received,” and subsection (b)(1) applies to non-recurring benefits in general and calls for the allocation of “non-recurring benefit to a firm over the number of years corresponding to the average useful life of renewable physical assets....” We agree with LGMG that Program A has no relevance to the POI, nor is it properly allocable across the AUL period. Program A was fully expensed in the year in which it was received, which was prior to the POI, and thus, had no impact on LGMG’s income statement or any other aspect of its financial performance during the POI, or in 2015-2019.⁶⁷⁹ Due to the business proprietary nature of the information involved, further discussion can be found in the LGMG Final Calculation Memorandum.

VIII. RECOMMENDATION

We recommend approving all the above positions. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

Agree

Disagree

10/12/2021

X



Signed by: RYAN MAJERUS

Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

⁶⁷⁷ *Id.*

⁶⁷⁸ *Id.* at 20.

⁶⁷⁹ *See* LGMGSQR at Exhibit S1-5 (updated Exhibit I-36)).

Appendix – Total Adverse Facts Available Rate

Program	Subsidy Rate
Preferential Lending	
Government Directed Debt Restructuring in the Mobile Access Equipment Industry	10.54% ⁶⁸⁰
Policy Loans to the Mobile Access Equipment Industry	0.42% ⁶⁸¹
Capital Injections and Other Payments from the State Capital Operating Budget	10.54% ⁶⁸²
Export Loans from Chinese State-Owned Banks	10.54% ⁶⁸³
Export Seller's Credit	4.25% ⁶⁸⁴
Export Buyer's Credit	10.54% ⁶⁸⁵
Export Credit Insurance⁶⁸⁶	
Export Credit Insurance	1.27%
Grants⁶⁸⁷	
Foreign Trade Development Fund Grants	1.27%
Export Assistance Grants	1.27%
Interest Payment Subsidies	1.27%
Subsidies for the Development of Famous Brands and Chinese World Top Brands	1.27%
State Key Technology Fund Grants	1.27%
Grants for Retiring Outdated Capacity and Industrial Restructuring	1.27%
Grants for Energy Conservation and Emission Reduction	1.27%
Income Tax Programs⁶⁸⁸	
Income Tax Reductions for High and New Technology Enterprises	25.00%
Enterprise Income Tax Law, Research and Development Program	
Indirect Tax Programs	
Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Procured Equipment ⁶⁸⁹	9.71%
Import Tariff and VAT Exemptions on Imported Equipment in Encouraged Industries ⁶⁹⁰	9.71%

⁶⁸⁰ See *Coated Paper from China Amended Final*.

⁶⁸¹ *Id.*

⁶⁸² *Id.*

⁶⁸³ *Id.*

⁶⁸⁴ See *Citric Acid and Citrate Salts*.

⁶⁸⁵ See *Coated Paper from China Amended Final*.

⁶⁸⁶ See *High Pressure Steel Cylinders*.

⁶⁸⁷ *Id.*

⁶⁸⁸ See GOCIQR at 343, indicating the standard income tax rate.

⁶⁸⁹ See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final*, 80 FR 68843 (November 6, 2015).

⁶⁹⁰ *Id.*

Provision of Goods/Services for Less Than Adequate Remuneration	
Provision of Land-Use Rights to the Mobile Access Equipment Industry for LTAR ⁶⁹¹	0.48%
Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR ⁶⁹²	13.36%
Provision of Land-Use Rights to State-Owned Enterprises for LTAR ⁶⁹³	13.36%
Provision of Electricity for LTAR	0.08%
Provision of Diesel Engines for LTAR ⁶⁹⁴	7.57%
Provision of Lithium-Ion Batteries for LTAR	1.67%
Provision of Hot-Rolled Steel Sheet and Plate for LTAR	1.00%
Provision of Galvanized Steel for LTAR ⁶⁹⁵	9.17%
Provision of Wire Rod for LTAR ⁶⁹⁶	9.17%
Provision of Steel Bars for LTAR	0.03%
Provision of Steel Beams for LTAR	0.01%
Provision of Steel Channels for LTAR ⁶⁹⁷	9.17%
Provision of Steel Angles for LTAR ⁶⁹⁸	9.17%
Provision of Hollow Structural Shapes for LTAR	2.98%
Provision of International Ocean Shipping Services for LTAR	9.17%
Provision of Cold-Rolled Steel for LTAR	0.70%
Provision of OTR Tires for LTAR	6.96%
Certain Other Subsidy Programs⁶⁹⁹	253.24%
Total	448.70%

⁶⁹¹ Includes the provision of land-use rights to the mobile access equipment industry, to industrial and other SEZs, and to SOEs.

⁶⁹² See *Woven Sacks from China Final*.

⁶⁹³ *Id.*

⁶⁹⁴ See *Steel Threaded Rod from China Final*.

⁶⁹⁵ *Id.*

⁶⁹⁶ *Id.*

⁶⁹⁷ *Id.*

⁶⁹⁸ *Id.*

⁶⁹⁹ See *High Pressure Steel Cylinders* for all rates of 1.27%; see also Memorandum, "Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Non-Responsive Companies Calculation," dated concurrently with, and hereby adopted by, this memorandum.