C-570-052
Investigation
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DATE: November 6, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Issues and Decision Memorandum for the Final Affirmative Determination

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I. SUMMARY

The Department of Commerce (Department) determines that countervailable subsidies are being provided above the *de minimis* level to producers and exporters of certain hardwood plywood products (hardwood plywood) from the People's Republic of China (PRC), as provided for in section 705 of the Tariff Act of 1930, as amended (the Act). Below is a complete list of issues in this investigation for which we received comments from interested parties:

Comment 1: The Department's Continued Use of AFA for Bayley Wood
Comment 2: Selection of Electricity AFA Benchmark
Comment 3: Whether Sanfortune Was Uncreditworthy and Whether Certain of Its Loans Should Be Treated as Long-Term Loans
Comment 4: Whether Two Grants Received by Sanfortune Should Be Consolidated
Comment 5: Treatment of Sanfortune's Outstanding Time Drafts
Comment 6: Electricity for LTAR Benefit Attribution for Sanfortune
Comment 7: Land for LTAR Benefit Attribution for Sanfortune
Comment 8: Whether Certain of Sanfortune's Loans Are Export Loans
Comment 9: Correction of Mistranslations in the GOC's Explanation of Transformer Capacities
Comment 10: Whether Policy Loans to the Hardwood Plywood Industry Are Countervailable
Comment 11: Whether the Department Should Apply AFA and Find the Provision of Electricity to Be Provided for LTAR
Comment 12: Whether the Department Should Apply AFA to Find That Land Was Provided to Sanfortune for LTAR

Comment 13: Whether the Department Should Apply AFA for the Specificity for Four of Sanfortune's Reported Grants
Comment 14: Whether JOC Yuantai Should Receive the All Others Rate, Rather than the AFA Rate
Comment 15: Critical Circumstances
Comment 16: All-Others Rate Calculation
Comment 17: Presentation of Sanfortune's Drawer Slides at Verification
Comment 18: Whether the Department Properly Initiated on the Petitioners' New Subsidy Allegations
Comment 19: Whether the Provision of Urea for LTAR Is Countervailable
Comment 20: Whether the Provision of Formaldehyde for LTAR Is Countervailable
Comment 21: Whether the GOC's Provision of Timber, UF Resin, and Cut Timber for LTAR Is Specific
Comment 22: Whether the Department Should Correct the Ocean Freight Data Used in Calculating the Urea and Formaldehyde Benchmarks
Comment 23: Whether Veneers Are Included as Part of the Program for the Provision of Cut Timber for LTAR
Comment 24: Export-Buyer's Program

II. BACKGROUND

A. *Case History*

On April 25, 2017, we published the *Preliminary Determination* for this investigation.[1] In the *Preliminary Determination*, we calculated an above *de minimis* rate for Linyi Sanfortune Wood Co., Ltd. (Sanfortune), while the subsidy rate for Shandong Dongfang Bayley Wood Co., Ltd. (Bayley Wood) was based entirely on adverse facts available (AFA).[2] We preliminarily determined that 62 companies did not respond to our request for quantity and value (Q&V) questionnaires responses,[3] and, as a result, we applied a rate based on AFA to these companies. As Sanfortune was the only company for which we calculated a rate, the preliminary duty rate for Sanfortune also served as the all-others rate. We conducted verifications of the questionnaire responses submitted by the Government of the PRC (GOC) and Sanfortune between August 31 and September 7, 2017.[4] On October 25, 2017, we released our post-preliminary analysis of the petitioners' new subsidy allegations.[5]

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[1] *See Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 19022 (April 25, 2017) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

[2] "Bayley Wood" also includes Linyi Yinhe Panel Factory, which we found to be cross-owned with Bayley Wood in the *Preliminary Determination*. *See* PDM at 13-14.

[3] Hereafter referred to as the Non-Responsive Companies.

[4] *See* Department Memoranda, "Verification of the Questionnaire Responses of the Government of the People's Republic of China: Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China," and "Verification of the Questionnaire Responses of Linyi Sanfortune Wood Co., Ltd.: Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China," (Sanfortune Verification Report) both dated October 12, 2017.

[5] *See* Department Memorandum, "Certain Hardwood Plywood Products from the People's Republic of China: Post-Preliminary Analysis," dated October 26, 2017 (Post-Preliminary Analysis).

We received case briefs regarding the application of AFA to Bayley Wood from the GOC,[6] Bayley Wood,[7] and various importers[8] on October 6, 2017, and a rebuttal brief from the petitioners on this issue on October 11, 2017.[9] Case briefs regarding issues other than the application of AFA to Bayley Wood or the post-preliminary analysis were received from the petitioners,[10] the GOC,[11] Sanfortune,[12] and various importers, on October 17, 2017.[13] Rebuttal briefs were filed by the petitioners,[14] the GOC,[15] and Sanfortune on October 20, 2017.[16] Briefs regarding the post-preliminary analysis were filed on October 30, 2017, by the petitioners, the GOC, Sanfortune and Bayley Wood, and various importers.[17]

B. *Period of Investigation*

The period of investigation (POI) is January 1, 2015, through December 31, 2015.

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[6] *See* Letter from the GOC, "Certain Hardwood Plywood Products from the People's Republic of China, Case No. C-570-052: Case Brief," dated October 6, 2017 (the GOC's First Brief).
[7] *See* Letter from Bayley Wood, "Hardwood Plywood Products from the People's Republic of China: Case Brief," dated October 6, 2017 (Bayley Wood's Brief).
[8] *See* Letter from various importers, "Hardwood Plywood Products from the People's Republic of China: Letter in Lieu of Case Brief," dated October 6, 2017 (U.S. Importers' Letter).
[9] *See* Letter from the petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Rebuttal Brief," dated October 11, 2017 (the petitioners' First Rebuttal Brief).
[10] *See* Letter from the petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Case Brief of the Coalition for Fair Trade in Hardwood Plywood," dated October 17, 2017 (the petitioners' Case Brief).
[11] *See* Letter from the GOC, "Certain Hardwood Plywood Products from the People's Republic of China, Case No. C-570-052: Case Brief," dated October 17, 2017 (the GOC's Second Brief).
[12] *See* Letter from Sanfortune, "Hardwood Plywood Products from the People's Republic of China: Case Brief on Preliminary Determination for Sanfortune," dated October 17, 2017 (Sanfortune's Brief).
[13] *See* Letter from JOC Yuantai International Trade Co., Ltd., "Case Brief of JOC Yuantai International Trading Co., Ltd. in the Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China," dated October 17, 2017 (JOC Yuantai Case Brief); and Letter from various importers, "Hardwood Plywood Products from the People's Republic of China: Letter in Lieu of Case Brief on Remaining Issues," dated October 17, 2017 (U.S. Importers' Brief).
[14] *See* Letter from the petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Rebuttal Brief of the Coalition for Fair Trade in Hardwood Plywood," dated October 20, 2017 (the petitioners' Second Rebuttal Brief).
[15] *See* Letter from the GOC, "Certain Hardwood Plywood Products from the People's Republic of China, Case No. C-570-052: Rebuttal Brief," dated October 20, 2017 (the GOC's Rebuttal Brief).
[16] *See* Letter from Sanfortune, "Hardwood Plywood Products from the People's Republic of China: Rebuttal Brief," dated October 20, 2017 (Sanfortune's Rebuttal Brief).
[17] *See* Letter from the petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: New Subsidy Allegations Case Brief," dated October 30, 2017 (the petitioners' NSA Brief); Letter from the GOC, "Certain Hardwood Plywood Products from the People's Republic of China, Case No. C-570-052: Case Brief Regarding the Department's Post-Preliminary Analysis of Petitioners' New Subsidy Allegations," dated October 30, 2017 (the GOC's NSA Brief); Letter from Sanfortune and Bayley Wood, "Hardwood Plywood Products from the People's Republic of China: Post-Preliminary Analysis Case Brief," dated October 30, 2017 (the company respondents' NSA Brief); and Letter from Patriot Timber Products, Inc., Taraca Pacific, Inc., Northwest Hardwoods, Inc., Liberty Woods International, Inc., Concannon Corp. Ltd., Canusa Wood Products, Sierra Forest Products, Inc., McCorry & Company Limited, Laminate Technologies Inc., Masterbrand Cabinets, Inc., Prime Wood Inc., USPLY LLC, Holland Southwest International Inc., Genesis Products, Inc., Richmond International Forest Products, Inc., MJB Wood Group, Inc., Fabuwood Cabinetry Corp. and Plywood Source LLC, "Hardwood Plywood Products from the People's Republic of China: Case Brief on October 26, 2017 Post-Preliminary Analysis Memorandum," dated October 30, 2017 (U.S. Importers' NSA Brief).

III. SCOPE OF THE INVESTIGATION

The merchandise subject to this investigation is hardwood and decorative plywood, and certain veneered panels as described below. For purposes of this proceeding, hardwood and decorative plywood is defined as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core, with the face and/or back veneer made of non-coniferous wood (hardwood) or bamboo. The veneers, along with the core may be glued or otherwise bonded together. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP-1-2016 (including any revisions to that standard).

For purposes of this investigation a "veneer" is a slice of wood regardless of thickness which is cut, sliced or sawed from a log, bolt, or flitch. The face and back veneers are the outermost veneer of wood on either side of the core irrespective of additional surface coatings or covers as described below.

The core of hardwood and decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to hardwood, softwood, particleboard, or medium-density fiberboard (MDF).

All hardwood plywood is included within the scope of this investigation regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or covers obscures the grain, textures, or markings of the wood. Examples of surface coatings and covers include, but are not limited to: ultra violet light cured polyurethanes; oil or oil-modified or water based polyurethanes; wax; epoxy-ester finishes; moisture-cured urethanes; paints; stains; paper; aluminum; high pressure laminate; MDF; medium density overlay (MDO); and phenolic film. Additionally, the face veneer of hardwood plywood may be sanded; smoothed or given a "distressed" appearance through such methods as hand-scraping or wire brushing. All hardwood plywood is included within the scope even if it is trimmed; cut-to-size; notched; punched; drilled; or has underwent other forms of minor processing.

All hardwood and decorative plywood is included within the scope of this investigation, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1219 x 1829 mm (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches).

Subject merchandise also includes hardwood and decorative plywood that has been further processed in a third country, including but not limited to trimming, cutting, notching, punching, drilling, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

The scope of the investigation excludes the following items: (1) structural plywood (also known as "industrial plywood" or "industrial panels") that is manufactured to meet U.S. Products Standard PS 1-09, PS 2-09, or PS 2-10 for Structural Plywood (including any revisions to that standard or any

substantially equivalent international standard intended for structural plywood), and which has both a face and a back veneer of coniferous wood; (2) products which have a face and back veneer of cork; (3) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on Multilayered Wood Flooring from the People's Republic of China, Import Administration, International Trade Administration. See Multilayered Wood Flooring from the People's Republic of China, 76 FR 76690 (December 8, 2011) (amended final determination of sales at less than fair value and antidumping duty order), and Multilayered Wood Flooring from the People's Republic of China, 76 FR 76693 (December 8, 2011) (countervailing duty order), as amended by Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders, 77 FR 5484 (February 3, 2012); (4) multilayered wood flooring with a face veneer of bamboo or composed entirely of bamboo; (5) plywood which has a shape or design other than a flat panel, with the exception of any minor processing described above; (6) products made entirely from bamboo and adhesives (also known as "solid bamboo"); and (7) Phenolic Film Faced Plyform (PFF), also known as Phenolic Surface Film Plywood (PSF), defined as a panel with an "Exterior" or "Exposure 1" bond classification as is defined by The Engineered Wood Association, having an opaque phenolic film layer with a weight equal to or greater than 90g/m3 permanently bonded on both the face and back veneers and an opaque, moisture resistant coating applied to the edges.

Excluded from the scope of this investigation are wooden furniture goods that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of this investigation is "ready to assemble" (RTA) furniture. RTA furniture is defined as (A) furniture packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes 1) all wooden components (in finished form) required to assemble a finished unit of furniture, 2) all accessory parts (*e.g.*, screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a finished unit of furniture, and 3) instructions providing guidance on the assembly of a finished unit of furniture; (B) unassembled bathroom vanity cabinets, having a space for one or more sinks, that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional component shape/size, painted or stained prior to importation, and stacked within a singled shipping package, except for furniture feet which may be packed and shipped separately; or (C) unassembled bathroom vanity linen closets that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional shape/size, painted or stained prior to importation, and stacked within a single shipping package, except for furniture feet which may be packed and shipped separately.

Excluded from the scope of this investigation are kitchen cabinets that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of this investigation are RTA kitchen cabinets. RTA kitchen cabinets are defined as kitchen cabinets packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes 1) all wooden components (in finished form) required to assemble a finished unit of cabinetry, 2) all accessory parts (*e.g.*, screws, washers, dowels, nails, handles, knobs, hooks, adhesive glues) required to assemble a finished unit of cabinetry, and 3) instructions providing guidance on the assembly of a finished unit of cabinetry.

Excluded from the scope of this investigation are finished table tops, which are table tops imported in finished form with pre-cut or drilled openings to attach the underframe or legs. The table tops are ready for use at the time of import and require no further finishing or processing.

Excluded from the scope of this investigation are finished countertops that are imported in finished form and require no further finishing or manufacturing.

Excluded from the scope of this investigation are laminated veneer lumber door and window components with (1) a maximum width of 44 millimeters, a thickness from 30 millimeters to 72 millimeters, and a length of less than 2413 millimeters (2) water boiling point exterior adhesive, (3) a modulus of elasticity of 1,500,000 pounds per square inch or higher, (4) finger-jointed or lap-jointed core veneer with all layers oriented so that the grain is running parallel or with no more than 3 dispersed layers of veneer oriented with the grain running perpendicular to the other layers; and (5) top layer machined with a curved edge and one or more profile channels throughout.

Imports of hardwood plywood are primarily entered under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4412.10.0500;4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4150; 4412.31.4160; 4412.31.4180; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5235; 4412.31.5255; 4412.31.5265; 4412.31.5275; 4412.31.6000; 4412.31.6100; 4412.31.9100; 4412.31.9200; 4412.32.0520; 4412.32.0540; 4412.32.0565; 4412.32.0570; 4412.32.0620; 4412.32.0640; 4412.32.0670; 4412.32.2510; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2630; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5600; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5700; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3141; 4412.94.3161; 4412.94.3175; 4412.94.4100; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5115;
and 4412.99.5710.

Imports of hardwood plywood may also enter under HTSUS subheadings 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.10.9000; 4412.94.5100; 4412.94.9500; and 4412.99.9500. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

IV. SCOPE COMMENTS

We invited parties to comment on the Department's Preliminary Scope Memorandum,[18] Additional

[18] *See* Department Memorandum, "Certain Hardwood Plywood Products from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations," dated April 17, 2017 (Preliminary Scope Memorandum).

Preliminary Scope Memorandum,[19] and Post-Preliminary Scope Memorandum.[20] The Department reviewed the briefs submitted by interested parties, considered the arguments therein, and has made changes to the scope of the investigation. For further discussion, see the Department's Final Scope Decision Memorandum.[21]

V. SUBSIDIES VALUATION

A. Allocation Period

The Department has made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination* and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination*.[22]

B. Attribution of Subsidies

The Department has made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies. For descriptions of the methodologies used for this final determination, *see* the *Preliminary Determination*.[23]

C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the Sanfortune Final Calculation Memorandum prepared for this final determination.[24]

VI. BENCHMARKS AND DISCOUNT RATES

The Department made no changes to the benchmarks or discount rates used in the *Preliminary Determination* or the Post-Preliminary Analysis. For a description of the benchmarks and discount rates used for this final determination, *see* the *Preliminary Determination*, Post-Preliminary Analysis, and the Sanfortune Final Calculation Memorandum.

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[19] *See* Department Memorandum, "Certain Hardwood Plywood Products from the People's Republic of China: Additional Scope Comments Preliminary Decision Memorandum and Extension of Deadlines for Scope Case Briefs and Scope Rebuttal Briefs," dated June 16, 2017 (Additional Preliminary Scope Memorandum).
[20] *See* Department Memorandum, "Certain Hardwood Plywood Products from the People's Republic of China: Scope Comments Post-Preliminary Decision Memorandum," dated October 16, 2017 (Post-Preliminary Scope Memorandum).
[21] *See* Department Memorandum, "Certain Hardwood Plywood Products from the People's Republic of China: Final Scope Decision Memorandum," dated concurrently with this document.
[22] *See* PDM at 12.
[23] *Id*. at 5-6.
[24] *See* Department Memorandum, "Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Determination Calculations for Linyi Sanfortune Wood Co., Ltd.," dated concurrently with this memorandum (Sanfortune Final Calculation Memorandum).

VII. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES

Based on the shipment data placed on the record by Sanfortune, as requested by the Department, and shipment data from the International Trade Commission's (ITC) Dataweb, for the *Preliminary Determination*, we examined whether the increase in imports was massive by comparing shipments over the period of September 2016, through November 2016, with the period December 2016, through February 2017.[25] The Department preliminarily determined that critical circumstances existed for Bayley Wood, the companies that did not respond to our Q&V questionnaire, and all other producers or exporters.[26]

Based on the additional shipment data placed on the record by Sanfortune following the *Preliminary Determination*, as requested by the Department, and additional ITC data placed on the record by the Department, we examined whether the increase in imports was massive by comparing shipments over the period of July 2016, through November 2016, with the period December 2016, through April 2017.[27] For this final determination, the Department continues to find that critical circumstances exist for Bayley Wood and the companies that did not respond to our Q&V questionnaire, but not for Sanfortune and all other producers or exporters.[28]

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

The Department relied on "facts otherwise available," including AFA, for several findings in the *Preliminary Determination* and the Post-Preliminary Analysis. For a description of these decisions, *see* the *Preliminary Determination* and the Post-Preliminary Analysis. The Department has not made any changes to its decisions in the *Preliminary Determination* and the Post-Preliminary Analysis to use facts otherwise available and AFA. Consistent with our current CVD practice,[29] for this final determination, we are including in the AFA rate those programs that were self-reported by Sanfortune.

In determining the AFA rate, we are guided by the Department's methodology detailed in the *Preliminary Determination*.[30] We have selected, as AFA, the highest calculated program-specific above-zero rates for the cooperating respondents in this investigation for the following programs:

- Policy Loans to the Hardwood Plywood Industry[31]

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[25] *See* PDM at 9-12.
[26] *Id*.
[27] *See* Department Memorandum, "Monthly Shipment Q&V Analysis for Critical Circumstances for the Final Determination," dated concurrently with this memorandum (Final Critical Circumstances Memorandum.
[28] *See* Comment 15 below; *see also* Final Critical Circumstances Memorandum.
[29] *See*, *e.g.*, *Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Affirmative Determination and Final Determination of Critical Circumstances, in Part*, 82 FR 3282 (January 11, 2017) and accompanying IDM at 6-11.
[30] *See* PDM at 20-24.
[31] Consistent with recent investigations, we are using a single AFA rate for "Government Policy Lending" and "Preferential Loans to SOEs," because an analysis of the specifics of these two allegations in this investigation reveals they would apply to the same loans provided by state-owned commercial banks (SOCBs). *See*, *e.g.*, Grain-Oriented Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 79 FR 59221 (October 1, 2014), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences."

- Preferential Loans to SOEs
- Provision of Electricity for LTAR
- Provision of Land-Use Rights for LTAR
- Provision of Urea for LTAR
- Provision of Formaldehyde for LTAR
- Enterprise Innovation Loan Interest Grant
- Foreign Trade Regional Coordination Development Promotion Fund
- Linyi Mart Development Special Fund
- Forest Certification Pilot Special Fund

Also, as noted in the *Preliminary Determination*, we applied an adverse inference that each of the non-responsive companies paid no income tax during the POI under the following programs:

- Income Tax Reductions under Article 28 of the Enterprise Income Tax
- Tax Offsets for Research and Development under the Enterprise Income Tax
- Preferential Income Tax Policy for Enterprises in the Northeast Region
- Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
- Income Tax Benefits for Foreign Invested Enterprises Based on Geographic Locations
- Local Income Tax Exemption and Reduction Programs for "Productive" Foreign Invested Enterprises
- Tax Offsets for Research and Development by Foreign-Invested Enterprises
- Income Tax Reductions for Export-Oriented Foreign-Invested Enterprises

The standard corporate income tax rate in China is 25 percent. We, therefore, find the highest possible benefit for all income tax exemption and reduction programs combined is 25 percent (*i.e.*, the income tax programs combined provide a countervailable benefit of 25 percent). Consistent with past practice, the 25 percent AFA rate does not apply to income tax credit and rebate, accelerated depreciation, or import tariff and value-added tax exemption programs, because such programs may not affect the tax rate.[32]

Lastly, for all other programs not mentioned above,[33] we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in other PRC CVD proceedings. For this *Final Determination*, we can match, based on program names, program type, descriptions, and/or benefit treatments, the following programs to the same programs from other PRC CVD proceedings:

- Provision of Standing Timber for LTAR

[32] *See*, *e.g.*, *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

[33] The GOC did not provide information regarding these programs, because it claimed that the mandatory respondents did not use them. However, as discussed further below in Comment 21, we are adversely inferring from the lack of cooperation by Bayley Wood and the companies that failed to respond to the Q&V questionnaire that these companies did use these programs.

- Provision of Cut Timber for LTAR
- Provision of UF Resin for LTAR
- Provision of Export Credits - Export Buyers' Credit
- Provision of Export Credits - Export Sellers' Buyers' Credit
- Provision of Water for LTAR
- Provision of Land to SOEs by the GOC for LTAR
- Preferential Loans for State-Owned Enterprises
- Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
- Interest Loan Subsidies for the Forestry Industry
- Foreign Trade Development Fund Grants
- Export Assistance Grants
- Export Interest Subsidies
- Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands
- Funds for Outward Expansion of Industries in Guangdong Province
- Provincial Fund for Fiscal and Technological Innovation
- State Key Technology Renovation Fund
- Shandong Province's Special Fund for the Establishment of Key Enterprise
- Technology Centers
- Shandong Province's Environmental Protection Industry Research and
- Development Funds
- Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
- Waste Water Treatment Subsidies
- Technology to Improve Trade Research and Development Fund
- Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment
- Value-Added Tax and Import Duty Exemptions for Use of Imported Equipment
- Value-Added Tax Rebate Exemptions on Foreign Invested Enterprise Purchases of Chinese-Made Equipment
- Export Performance Award
- Special Municipal Encouragement Fund for Foreign Trade Development
- 2009 Special Promotion Fund for Foreign Trade Steady Growth
- Finance Contribution Award
- Special Fund for Export Credit Insurance Premium
- Patent Application Award
- Enterprise Technical Transformation Fixed Assets Investment Award

Accordingly, we determine the AFA countervailable subsidy rate is 194.90 percent *ad valorem*. The chart below summarizes the calculation of the AFA rate.

	Program Name	**AFA Rate**	**Source**
1.	Policy Loans to the Hardwood Plywood Industry	3.64%	Calculated – Sanfortune

2.	Preferential Loans to SOEs		Calculated – Sanfortune
3.	Provision of Electricity for LTAR	0.61%	Calculated – Sanfortune
4.	Provision of Land-Use Rights for LTAR	5.24%	Calculated – Sanfortune
5.	Enterprise Innovation Loan Interest Grant	0.11%	Calculated – Sanfortune
6.	Foreign Trade Regional Coordination Development Promotion Fund	0.25%	Calculated – Sanfortune
7.	Linyi Mart Development Special Fund	0.08%	Calculated – Sanfortune
8.	Forest Certification Pilot Special Fund	0.03%	Calculated – Sanfortune
9.	Provision of Water for LTAR	20.06%	Highest Rate for Similar Program Based on Benefit Type
10.	Provision of Land to SOEs by the GOC for LTAR	13.36%	Highest Rate for Similar Program Based on Benefit Type
11.	Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program	2.05%	Highest Rate for Similar Program Based on Benefit Type
12.	Interest Loan Subsidies for the Forestry Industry	0.58%	Highest Rate for Similar Program Based on Benefit Type
13.	Foreign Trade Development Fund Grants	0.58%	Highest Rate for Similar Program Based on Benefit Type
14.	Export Assistance Grants	0.58%	Highest Rate for Similar Program Based on Benefit Type
15.	Export Interest Subsidies	0.58%	Highest Rate for Similar Program Based on Benefit Type
16.	Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands	0.58%	Highest Rate for Similar Program Based on Benefit Type
17.	Funds for Outward Expansion of Industries in Guangdong Province	0.58%	Highest Rate for Similar Program Based on Benefit Type
18.	Provincial Fund for Fiscal and Technological Innovation	0.58%	Highest Rate for Similar Program Based on Benefit Type
19.	State Key Technology Renovation Fund	0.58%	Highest Rate for Similar Program Based on Benefit Type
20.	Shandong Province's Special Fund for the Establishment of Key Enterprise Technology Centers	0.58%	Highest Rate for Similar Program Based on Benefit Type

21.	Shandong Province's Environmental Protection Industry Research and Development Funds	0.58%	Highest Rate for Similar Program Based on Benefit Type
22.	Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises	0.58%	Highest Rate for Similar Program Based on Benefit Type
23.	Waste Water Treatment Subsidies	0.58%	Highest Rate for Similar Program Based on Benefit Type
24.	Technology to Improve Trade Research and Development Fund	0.58%	Highest Rate for Similar Program Based on Benefit Type
25.	Income Tax Reductions under Article 28 of the Enterprise Income Tax	25.00%	Highest Rate for Similar Program Based on Benefit Type
26.	Tax Offsets for Research and Development under the Enterprise Income Tax		Highest Rate for Similar Program Based on Benefit Type
27.	Preferential Income Tax Policy for Enterprises in the Northeast Region		Highest Rate for Similar Program Based on Benefit Type
28.	Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China		Highest Rate for Similar Program Based on Benefit Type
29.	Income Tax Benefits for Foreign Invested Enterprises Based on Geographic Locations		Highest Rate for Similar Program Based on Benefit Type
30.	Local Income Tax Exemption and Reduction Programs for "Productive" Foreign-Invested Enterprises		Highest Rate for Similar Program Based on Benefit Type
31.	Tax Offsets for Research and Development by Foreign-Invested Enterprises		Highest Rate for Similar Program Based on Benefit Type
32.	Income Tax Reductions for Export-Oriented Foreign-Invested Enterprises		Highest Rate for Similar Program Based on Benefit Type
33.	Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment	9.71%	Highest Rate for Similar Program Based on Benefit Type
34.	Value-Added Tax and Import Duty Exemptions for Use of Imported Equipment	9.71%	Highest Rate for Similar Program Based on Benefit Type
35.	Value-Added Tax Rebate Exemptions on Foreign Invested Enterprise Purchases of Chinese-Made Equipment	9.71%	Highest Rate for Similar Program Based on Benefit Type

36.	Export Performance Award	0.58%	Highest Rate for Similar Program Based on Benefit Type
37.	Special Municipal Encouragement Fund for Foreign Trade Development	0.58%	Highest Rate for Similar Program Based on Benefit Type
38.	2009 Special Promotion Fund for Foreign Trade Steady Growth	0.58%	Highest Rate for Similar Program Based on Benefit Type
39.	Finance Contribution Award	0.58%	Highest Rate for Similar Program Based on Benefit Type
40.	Special Fund for Export Credit Insurance Premium	0.58%	Highest Rate for Similar Program Based on Benefit Type
41.	Patent Application Award	0.58%	Highest Rate for Similar Program Based on Benefit Type
42.	Enterprise Technical Transformation Fixed Assets Investment Award	0.58%	Highest Rate for Similar Program Based on Benefit Type
43.	Provision of Standing Timber for LTAR	20.06%	Highest Rate for Similar Program Based on Benefit Type
44.	Provision of Cut Timber for LTAR	20.06%	Highest Rate for Similar Program Based on Benefit Type
45.	Provision of Urea for LTAR	0.74%	Calculated – Sanfortune
46.	Provision of Formaldehyde for LTAR	1.74%	Calculated – Sanfortune
47.	Provision of UF Resin for LTAR	20.06%	Highest Rate for Similar Program Based on Benefit Type
48.	Provision of Export Credits - Export Buyers' Credit	10.54%	Highest Rate for Similar Program Based on Benefit Type
49.	Provision of Export Credits - Export Sellers' Buyers' Credit	10.54%	Highest Rate for Similar Program Based on Benefit Type
	Total *Ad Valorem* Rate	194.90%	

IX. ANALYSIS OF PROGRAMS

A. *Programs Determined to Be Countervailable*

For the descriptions, analyses, and calculation methodologies of these programs, *see* the *Preliminary Determination* and Post-Preliminary Analysis. Except where noted, no issues were raised by

interested parties in case briefs regarding these programs. Sanfortune's final program rates are as follows.

1. Policy Loans to the Hardwood Plywood Industry

   The petitioners and the GOC both submitted comments in their case or rebuttal briefs regarding this program. As explained below in Comment 10, we continue to find that the provision of policy loans during the POI provides a countervailable subsidy. With one exception, no changes have been made to the methodology used to calculate or attribute these subsidies since the *Preliminary Determination*. The one exception is that we are treating a subset of these loans as export-related loans, as discussed in Comment 8 below and in the Sanfortune Final Calculation Memorandum.[34]

   Sanfortune: 3.64 percent *ad valorem*

2. Provision of Electricity for LTAR

   The petitioners, the GOC, and Sanfortune submitted comments in either their case or rebuttal briefs regarding the countervailability of this program, the benchmark selected, and the attribution of benefits for Sanfortune. As explained below in Comments 2, 6, 9, and 11, the only changes to this program relate to the correction of transposed headings which affect the selected benchmark rate. As such, we have corrected the benchmark information used in calculating Sanfortune's benefit under this program.

   Sanfortune: 0.61 percent *ad valorem*

3. Provision of Land-Use Rights by the GOC for LTAR

   The petitioners, the GOC, and Sanfortune submitted comments in either their case or rebuttal briefs regarding the application of AFA in finding this program countervailable, as well as attribution of benefits to Sanfortune. As explained below in Comments 7 and 12, the Department has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*.

   Sanfortune: 5.24 percent *ad valorem*

4. Self-Reported Grant Programs

   The petitioners, the GOC, and Sanfortune submitted comments in either their case or rebuttal briefs regarding the application of AFA in finding these programs countervailable, as well as comments about the calculation methodology for certain grants. As explained below in Comments 4 and 13 the Department has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*. Our uncreditworthiness determination does, however, affect the benchmark rate applied to certain allocable benefits from two of these grants.

[34] *See* Sanfortune Final Calculation Memorandum.

a. Enterprise Innovation Loan Interest Grant
b. Foreign Trade Regional Coordination Development Promotion Fund
c. Linyi Mart Development Special Fund
d. Forest Certification Pilot Special Fund

Sanfortune: 0.47 percent *ad valorem* cumulative for the above-listed programs.

5. Provision of Urea for LTAR

The petitioners, the GOC, and Sanfortune submitted comments in their post-preliminary briefs with respect to the application of AFA in finding this program countervailable. As explained below in Comment 19, the Department has made no changes to the methodology used to calculate or attribute subsidies under this program since the Post-Preliminary Analysis.

Sanfortune: 0.74 percent *ad valorem*

6. Provision of Formaldehyde for LTAR

The petitioners, the GOC, and Sanfortune submitted comments in their post-preliminary briefs with respect to the application of AFA in finding this program countervailable. As explained below in Comment 20, the Department has made no changes to the methodology used to calculate or attribute subsidies under this program since the Post-Preliminary Analysis.

Sanfortune: 1.74 percent *ad valorem*

7. Provision of Export Credits - Export Buyers' Credit

The petitioners, the GOC, and Sanfortune submitted comments in their post-preliminary briefs with respect to the application of AFA in finding this program countervailable, as well as the *ad valorem* rate selected. As explained below in Comment 24, the Department has made no changes to with respect to this program since the Post-Preliminary Analysis.

Sanfortune: 10.54 percent *ad valorem*

B. *Programs Determined to Be Not Used by, or Not to Confer a Measurable Benefit to, Sanfortune*

1. Provision of Standing Timber for LTAR
2. Provision of Cut Timber for LTAR
3. Provision of UF Resin for LTAR
4. Provision of Export Credits - Export Sellers' Credit
5. Provision of Water for LTAR
6. Provision of Land to SOEs by the GOC for LTAR

7. Preferential Loans for State-Owned Enterprises
8. Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
9. Interest Loan Subsidies for the Forestry Industry
10. Foreign Trade Development Fund Grants
11. Export Assistance Grants
12. Export Interest Subsidies
13. Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands
14. Funds for Outward Expansion of Industries in Guangdong Province
15. Provincial Fund for Fiscal and Technological Innovation
16. State Key Technology Renovation Fund
17. Shandong Province's Special Fund for the Establishment of Key Enterprise Technology Centers
18. Shandong Province's Environmental Protection Industry Research and Development Funds
19. Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
20. Waste Water Treatment Subsidies
21. Technology to Improve Trade Research and Development Fund
22. Income Tax Reductions under Article 28 of the Enterprise Income Tax
23. Tax Offsets for Research and Development under the Enterprise Income Tax
24. Preferential Income Tax Policy for Enterprises in the Northeast Region
25. Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
26. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment
27. Income Tax Benefits for Foreign Invested Enterprises Based on Geographic Locations
28. Local Income Tax Exemption and Reduction Programs for "Productive" Foreign-Invested Enterprises
29. Tax Offsets for Research and Development by Foreign-Invested Enterprises
30. Income Tax Reductions for Export-Oriented Foreign-Invested Enterprises
31. Value-Added Tax and Import Duty Exemptions for Use of Imported Equipment
32. Value-Added Tax Rebate Exemptions on Foreign Invested Enterprise Purchases of Chinese-Made Equipment
33. Export Performance Award
34. Special Municipal Encouragement Fund for Foreign Trade Development
35. 2009 Special Promotion Fund for Foreign Trade Steady Growth
36. Finance Contribution Award
37. Special Fund for Export Credit Insurance Premium
38. Patent Application Award
39. Enterprise Technical Transformation Fixed Assets Investment Award

X. ANALYSIS OF COMMENTS

Comment 1: The Department's Continued Use of AFA for Bayley Wood

Bayley Wood

- The Department asserts that evidence shows that Shelter Forest[35] exerts material control over Bayley Wood and four other Chinese producers. However, the Department is precluded from finding "control" unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.[36]
- Despite the above stated standard, the Department has used inconclusive information from an investigation that took place five years ago and refused to collect relevant information from Bayley Wood, the Shelter Companies, and alleged affiliates that could be used to substantiate the "weight" analysis.[37]
- The Department refused to issue supplemental questionnaires to Bayley Wood, to Shelter Forest International, to Bayley Wood's current customer Shelter Forest, or to any of the potential "affiliates" implicated by the petitioners' allegations.[38]
- The Department claims that Shelter Forest and Shelter Forest International are "operating as one and the same," however the two companies had different registry numbers, different registry dates, different principal places of business, different presidents, and different secretaries.[39]
- The Department lists Ryan Loe as the president of both entities, however this has not been the case since April 2, 2014, and Ryan Loe was never the president of both SFIA and SFII at the same time.[40]
- Shelter Forest and Shelter Forest International did not fail to disclose that Mr. Loe was president of Shelter Forest International in 2011. Corporate documents support the narrative explanation that Bayley Wood and Shelter Forest provided to the Department confirming the former president of Shelter Forest International resigned his position and established Shelter Forest on December 13, 2013.[41]
- The conclusion that defunct companies in fact controlled or control the pricing and production of Bayley Wood is unreasonable without significant additional inquiry and factual support.[42]
- The Department is considering two brochures which were found on the internet as "cached" pages as evidence of a relationship between Shelter Forest and Bayley Wood. A cached webpage is a version that is outdated or incorrect and has been removed from the site.[43]
- However, the Department should not interpret the cached website as a demonstration of control. It did not accept Shelter Forest International's claims of control at face value in 2012 and should not accept them now.[44]

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[35] At issue are two similarly named companies: Shelter Forest International Inc. (Shelter Forest International) and Shelter Forest International Acquisition, Inc. (Shelter Forest).
[36] *See* Bayley Wood's Brief, at 8.
[37] *Id.*
[38] *Id*. at 11.
[39] *Id*. at 12.
[40] *Id*. at 12-14.
[41] *Id*.
[42] *Id*. at 15.
[43] *Id*.
[44] *Id*. at 14.

- The Department has declined to investigate the petitioners' allegations of affiliation and provided Bayley Wood with no opportunity to definitively and finally rebut these allegations.[45]
- The record is not missing information regarding three of the four additional potential affiliates: Xuzhou Shelter Import & Export Co., Ltd. (Xuzhou Shelter), Jiangsu Shengyang Industrial Joint Stock (Shengyang), and Henan Hongda Wood Craft Industry, Co. (Hongda).[46] Xuzhou Shelter, Shengyang, and Hongda filed Q&V questionnaire responses with the Department.[47] The law firm of Curtis, Mallet-Prevost, Colt & Mosle LLP entered its appearance on behalf of Shelter, Xuzhou Shelter, Shengyang, and Hongda without reference to any affiliation between them.[48] The Department did not seek additional information of any supposed affiliation between these companies despite additional information regarding these companies being available in the respective separate rate responses on the record of the parallel antidumping duty investigation.[49]
- Bayley Wood reported the existence of Company D in a supplemental response on March 28, 2017, stating that it was not cross-owned with Bayley Wood, and that it did not provide any inputs to Bayley Wood.[50]
- In Company D's full questionnaire response that was filed on April 10, 2017 at the request of the Department, Company D confirmed that it did not share any majority ownership with Bayley Wood, did not supply any inputs to Bayley Wood or Yinhe Panel during the POI, did not produce or export the subject merchandise, and did not benefit from most of the subsidy programs under investigation. The only subsidies Company D could have benefited from, the provision of land or electricity for LTAR, are not physically transferable to another company.[51]
- In light of the Department's willingness to accept and evaluate new subsidy allegation and critical circumstance submissions from the petitioners that were filed late without explanation of good cause, the Department's refusal to evaluate Company D's status as an affiliate of Bayley Wood is indefensible.
- The Department refused to issue a deficiency questionnaire to Bayley Wood in violation of section 782(d) of the Act.[52]
- In *China Kingdom*, 507 F. Supp. 2d at 1354, 1357, the Court concluded that an interested party situated in the position of China Kingdom must receive the opportunity to remedy or explain the deficiency, if allowing the opportunity is practicable in light of the statutory limits.[53]
- Although Shelter filed a detailed rebuttal of the petitioners' claims on the record of the parallel antidumping duty investigation, there was no need to file those documents on the record of the CVD investigation because it was unreasonable to assume that the Bayley Wood's U.S. customer would be investigated for the receipt of subsidies from the GOC.[54]

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[45] *Id*. at 17.
[46] *Id*. at 16.
[47] *Id*. at 17.
[48] *Id*.
[49] *Id*. at 19.
[50] *Id*. at 20.
[51] *Id*. at 20.
[52] *Id*. at 22-23.
[53] *See China Kingdom Imp. & Exp. Co. v. United States*, 507 F. Supp. 2d 1337 (CIT 2007) (*China Kingdom*); Bayley Wood's Brief, at 22.
[54] *Id*. at 23.

- If the Department required additional information to rebut the petitioners' allegations, the Department should have included Shelter's submission to the AD record in the record of the CVD investigation, and issued supplemental questionnaires to Shelter and Bayley Wood.[55]
- The Department received the petitioners' allegations too late to fully investigate for the preliminary determination. The Department should have instead issued a post-preliminary supplemental questionnaire and make a post-preliminary determination on this subject.[56]
- Given that nearly seven months have passed since the *Preliminary Determination*, and given the Court's statements of law in the *China Kingdom* case, the Department must apply section 782(d) of the Act in this case, where no basis is apparent to find that giving Bayley Wood a chance to cure any perceived deficiencies is impractical.[57]
- In *Agro Dutch*, the Court stated that the Department "has the duty of administering the proceeding properly and fairly," and if Commerce is unclear on invoices or information it is incumbent on Commerce to ask relevant questions upon receipt of such information.[58]
- In accordance with section 782(i)(1) of the Act, the Department is compelled to verify all of the information that it relies upon in making a final determination in an investigation.[59]
- If the Department intends to "verify the information relied upon in making its final determination" as stated in the *Preliminary Determination*,[60] then it must also verify the veracity of the petitioners' allegations.
- The Department must continue its investigation of a respondent, even when it assigns an AFA rate in its preliminary determination, when the circumstances so demand.[61]
- With respect to the new subsidy programs examined by the Department in the Post-Preliminary Analysis, Bayley Wood was never provided an opportunity to demonstrate its non-use of the programs, and therefore the Department has no basis to conclude that Bayley Wood did not cooperate. Bayley Wood should be treated like the cooperating "all others" exporters with respect to any CVD margins that are a result of the new subsidy allegations.[62]

The GOC

- The Department cannot make a finding that a respondent is not cooperating to the best of its ability absent a determination that the response is deficient in some way.
- If the Department does determine that a response is deficient, section 782(d) of the Act requires that it provide an opportunity to remedy the deficiency.
- It is contrary to the statute and undermines the deterrent purposes of the AFA statute to refuse to consider a response and accuse a respondent of not acting to the best of its ability.
- The Department failed in its obligation to note any deficiency with respect to the response for Company D, and to provide Bayley Wood with an opportunity to remedy any deficiencies.
- This situation differs from those cases in which a company is found at verification to have failed to disclose information, or fails to provide information after numerous requests from the

[55] *Id*.
[56] *Id*.
[57] *Id*. at 24.
[58] *See Agro Dutch Indus v. United State*s, 31 CIT 2047 (2007) (*Agro Dutch*); Bayley Wood's Brief, at 25.
[59] *Id*. at 26.
[60] *See Preliminary Determination*, at 19024.
[61] *Id*. at 27.
[62] *See* the company respondents' NSA brief at 4.

Department. In these cases, the Department is not obligated to provide an opportunity to remedy any deficiencies in a response.

- Contrary to the Department's statement in the *Preliminary Determination* that it was "deprived… of the opportunity" to investigate the affiliation issue, there was sufficient time remaining in the investigation to pursue the issue further.
- Although there may not have been sufficient time to investigate the issue further prior to the *Preliminary Determination*, it is the Department's practice in such instances to defer consideration of the issue until after the preliminary determination, such as by issuing a post-preliminary analysis.
- The Department erred in relying solely on information provided by the petitioners, rather gathering information from Bayley Wood as well.
- An AFA finding is only applicable where a party fails to cooperate with "a request for information from the administering authority," *i.e.*, the Department.
- In making its finding that Bayley Wood failed to cooperate to the best of its ability, the Department did not look to any deficiencies in the information provided by Bayley Wood, but only the petitioners' allegations of affiliation.
- By refusing to accept any additional information from Bayley Wood or verifying the information provided by the company, the Department denied Bayley Wood the opportunity to develop the record further with respect to the issue of whether the application of total AFA was warranted.
- The Department effectively made a final determination at the preliminary stage of the investigation, contrary to the Act.
- Before applying AFA, the Department must establish "that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information."
- The Department's determination that Bayley Wood failed to cooperate to the best of its ability is contradicted by the record, as Bayley Wood filed timely responses to all questionnaires issued by the Department, including a response for Company D.
- The Department did not request further information regarding Bayley Wood's alleged affiliation with Shelter, and instead based its AFA determination solely on the allegations made by the petitioners.
- Bayley Wood did not disclose the existence of Company D due to its interpretation of what constitutes an "affiliated company."
- Although Company D is owned by the father of one of Bayley Wood's owners, it is not a cross-owned company that needs to submit a complete questionnaire response.
- When the Department requested a full questionnaire response, Bayley Wood provided a timely response, arguing that the company was not cross-owned and that it did not supply any inputs to Bayley Wood.
- The Department's finding in the *Preliminary Determination* that Bayley Wood failed to cooperate is belied by Bayley Wood's full and timely responses to all of the Department's questionnaires.
- The information requested by the Department with respect to Companies A, B, C, and D were all irrelevant to this investigation, and therefore no questionnaires should have been requested. Nonetheless, Bayley Wood provided timely responses.
- The Department's rejection of Company's D's response, without any notice of deficiency provided to the company, is a violation of the SCM Agreement.

- Article 12.7 of the SCM Agreement stipulates that an investigating authority may only resort to facts available when an interested party "refuses access to, or otherwise does not provide necessary information within a reasonable period of time or significantly impedes the investigation."
- In *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, the Appellate Body rejected the Department's finding of noncooperation where a respondent attempted to submit corrections to data it had submitted in its questionnaire less than two weeks before verification for the sole reason that the information was not submitted by the deadline because the Department had "fail{ed} to consider whether, in the light of all the facts and circumstances," the information was still submitted within a reasonable period.
- In this case, Bayley Wood clearly submitted the requested information, within a reasonable period, and the Department failed to consider the facts and circumstances of Bayley Wood's responses.
- The Appellate Body found that cooperation is "a process involving joint effort, whereby parties work together towards a common goal," and as such Bayley Wood's failure to submit information for all of its affiliates in its initial response cannot be grounds to find it non-cooperative.

The petitioners

- The statute requires the Department to use "facts otherwise available" where an interested party: 1) withholds information requested by the Department, 2) fails to provide information in a timely manner or in the form requested; 3) significantly impedes a proceeding; or 4) provides information that cannot be verified.[63]
- Bayley Wood has failed to act to the best of its ability by withholding all information about its affiliation with Shelter Forest and Company D (which manufactures an input used in hardwood plywood production). Thus, the application of AFA is the only option available to the Department.[64]
- By failing to properly report its affiliation with Company D, Bayley Wood deprived the Department of the opportunity to fully examine cross-ownership between the companies.[65]
- The timeliness of Company D's questionnaire response is not at issue. Because Bayley Wood refused to report its affiliation with Company D, the submission of the questionnaire was delayed by over two months.[66]
- Bayley Wood's failure to cooperate occurred well before the submission of Company D's questionnaire response, and in fact began when Bayley Wood failed to report its affiliation in response to the Department's original questionnaire.
- Given the late stage at which the Department became aware of the existence of this affiliate, due to Bayley Wood's failure to properly report its affiliation with Company D, the Department did not have the opportunity to thoroughly examine the issue of cross-ownership or issue supplemental questionnaires.

[63] *See* the petitioners' First Rebuttal Brief, at 2.
[64] *Id*. at 3.
[65] *Id*. at 14.
[66] *Id*. at 14-15.

- By failing to report all of its affiliates early in the investigation, Bayley Wood withheld necessary information from the Department and prevented it from requesting necessary information from the GOC.
- Bayley Wood's interpretation of what constitutes an "affiliated company" is irrelevant, as the Department's questionnaire expressly provides that affiliated persons include members of a family. Company D is owned by the father/father-in-law of Bayley Wood's owners.
- Bayley Wood's claim that it need not file a response for Company D because the company is not cross-owned, is inapposite, as the Department requested that Bayley Wood report its affiliates so that it could determine for itself which affiliates should be required to provide information. Bayley Wood still reported the existence of other affiliated companies despite its assertion that some of these companies were not cross-owned.
- Before a determination regarding cross-ownership can occur, a company must first disclose a complete list of all its affiliated companies, which Bayley Wood failed to provide.
- The Department was not required to provide Bayley Wood with another opportunity to correct its deficient responses. Where mandatory respondents simply refuse to respond to the Department's questionnaires, the Department is not required to go back and afford the respondent with multiple opportunities to submit a questionnaire response.[67]
- In the 2012 Plywood investigation, both Shelter Forest International and Yinhe M&C submitted information detailing their affiliation. The companies reported that Shelter Forest International has "complete operational control" over reported Bayley Wood affiliate Yinhe M&C's plywood mills, and "actually coordinates the production and sales{.}"[68] Shelter Forest also submitted a sworn affidavit by its president, Ryan Loe, establishing that Yinhe M&C and others had refocused from their prior operations as independent companies and were instead assigned toward producing certain grades of goods under Shelter Forest International's "TigerPly" brand.[69] The documentation provided establishes that there was much more than a loose association between this group of companies.
- Bayley Wood's claims that the Department did not find affiliation in the previous investigation are misleading. Bayley Wood claims that the Department "rejected SFII's claims that its submission were sufficient to find the alleged affiliation between SFII and three Chinese producers of subject merchandise" including Yinhe M&C. However, the issue in the prior proceeding was whether the Department should collapse certain entities for respondent selection purposes; the Department never evaluated these claims because the Department does not consider requests to collapsing for purposes of respondent selection.[70]
- Determinations regarding collapsing and affiliation are made for different reasons and pursuant to different authorities. As such, Bayley Wood's collapsing arguments are irrelevant.[71]

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[67] *See*, *e.g.*, Issues and Decision Memorandum accompanying *Countervailing Duty Investigation of Stainless Steel and Strip from the People's Republic of China*, 82 FR 9714 (February 8, 2017) ("If the Department had to treat {such} intentional "non-responses" as deficiencies, and had to provide a second chance to submit withheld information, parties would be able to essentially grant themselves an extension to any deadline, simply by not responding, knowing that they would be provided additional time "to remedy" the "deficiency," after the Department issued a supplemental questionnaire.").
[68] *Id*. at 5.
[69] *Id*. at 6.
[70] *Id.* at 6-7.
[71] *Id*. at 7.

- Bayley Wood reported its affiliation with Yinhe M&C and thus had an obligation to disclose that company's affiliation with Shelter Forest International. Although Bayley Wood claims that Shelter Forest is a new company established in 2013 and is thus distinct from Shelter Forest International, record evidence shows that this was merely a name change. Shelter Forest simply took over the plywood business from Shelter Forest International, and even the company president (Ryan Loe) moved to the new company.[72]
- Bayley Wood has misconstrued the Department's language in the *Preliminary Determination*, that SFIA and SFII are operating as one and the same, to mean that the two companies are currently the same. The record reveals the disingenuousness of this argument, as both companies share the same president and list the same address as their principle place of business.[73]
- Bayley Wood's arguments that it was denied a meaningful opportunity to prove that SFIA and SFII are affiliated, or that the Department should conduct a "successor-in-interest" review, should be dismissed. The Department accepted Bayley Wood's factual information submission rebutting the petitioners' claims, even granting Bayley Wood an extension to file these documents and then meeting with Bayley Wood's counsel to discuss the information.[74]
- Evidence on the record indicates that the relationship between Bayley Wood and Shelter Forest continued. A Bayley Wood shareholder primarily handled Yinhe M&C's plywood business and founded Bayley Wood to continue plywood production. Shelter Forest's 2016 product brochure lists this Bayley Wood shareholder as Shelter Forest's Vice President of Production. Moreover, that brochure indicates that the Bayley Wood shareholder and Shelter Forest president Ryan Loe have a global supply chain partnership sourcing logs from Shensen Forestry, a reported Bayley Wood affiliate.
- Moreover, while Bayley Wood describes Yinhe M&C as a separate, unrelated venture due to different views about the company between shareholders, this claim is not supported by record evidence.[75] Although Yinhe M&C stopped the production of plywood at the time of the formation of Bayley Wood, it is likely that Yinhe M&C's "abandoned" equipment was instead used by Bayley Wood.[76] Thus, Bayley Wood and its affiliated companies are simply a continuation of the plywood business begun under Yinhe M&C.
- Despite the affiliation detailed above, Bayley Wood failed to include any information about Shelter Forest in any of its questionnaire responses.
- Bayley Wood again attempts to argue that the Department should not rely on the internet cached brochures that the petitioners placed on the record because they were created for SFIA's own marketing and promotional purposes. Bayley Wood's statements suggest that marketing and promotional material are inherently and completely false, which itself is illogical and disingenuous. The Department properly rejected such claims in its preliminary determination and should continue to do so here.
- This partnership is reflected in Shelter's promotional materials. According to its 2015 promotional brochure, Shelter created a "vertically integrated supply chain utilizing five top tier

[72] *Id*., at 8.
[73] *Id*. at 8-9.
[74] *Id*. at 9-10.
[75] *Id*. at 10.
[76] *Id*.

manufacturing facilities throughout China, managing the entire supply chain from manufacturing to final delivery."[77]

- Shelter's 2016 promotional brochure provides a step-by-step narrative of how Shelter and Bayley Wood's primary shareholder came to establish Bayley Wood, and specifically identifies this new production facility as being "Bayley Wood."[78]
- As found in numerous cases, verification of Bayley Wood is not required. As Bayley Wood failed to identify affiliated companies, the Department was deprived of the ability to thoroughly address the issue of cross-ownership, request questionnaire responses as necessary, and conduct a full investigation of Bayley Wood.
- Contrary to the GOC's arguments, the Department did not deny Bayley Wood the "opportunity to develop the record further." The Department provided Bayley Wood the opportunity to supplement the record when it filed its March 20, 2017 factual information submission. Furthermore, the Department is not required to accept further information following its preliminary determination, and all parties, including Bayley Wood, have been provided an opportunity to comment on the record prior to the final determination.[79]
- Bayley Wood's arguments regarding the timeliness or proper filing of the petitioners' new subsidy allegations and critical circumstances allegations have no bearing on Bayley Wood's decision to hide critical information from the Department regarding its various affiliated companies, or on the Department's proper application of total AFA for the *Preliminary Determination*.
- The Department correctly applied the provisions of section 776(b) of the Act and its AFA hierarchy in calculating an AFA rate for Bayley Wood in the *Preliminary Determination*.
- The Department did not violate any aspect of the SCM Agreement, as the Department did not fail to consider information submitted by Bayley Wood.[80]

Department Position: The Department continues to apply AFA for the final determination. As discussed in greater detail in the *Preliminary Determination*, by not disclosing the full extent of its affiliations as required by the Initial CVD Questionnaire, Bayley Wood failed to cooperate by not acting to the best of its ability to comply with our requests for information. Thus, the application of AFA pursuant to section 776(b) of the Act is warranted.

On March 20, 2017, the petitioners provided information indicating that Bayley Wood's operations, as well as those of other Chinese hardwood plywood producers, are being directed and controlled by a U.S. company, Shelter Forest.[81] Based on these and other facts on the record of this investigation, we find, as AFA, that there is affiliation between Bayley Wood and Shelter Forest that should have been reported to the Department, along with the information provided regarding the company's other affiliates. By not reporting these affiliated companies, Bayley Wood failed to provide information necessary for the Department's examination of cross-ownership and the attribution of subsidies, in accordance with 19 CFR 351.525. The failure to provide information critical to our examination of

[77] *Id*. at 12.
[78] *Id*. at 13.
[79] *Id*. at 22.
[80] *Id*. at 20-21.
[81] *See* Letter from the petitioners, "Petitioners' Comments on Bayley's Questionnaire Responses," dated March 20, 2017 (the petitioners' Affiliation Comments).

subsidy programs, as well as the attribution of benefits among cross-owned companies has seriously impeded this investigation. The weight of the record evidence leads us to this conclusion. The petitioners have provided ample documentation in support of their allegations with respect to the Shelter companies, including, from Plywood I: Company A's separate rate application, Shelter's collapsing request, and two promotional brochures from Shelter. Notably, Shelter's collapsing request contains an affidavit from Mr. Ryan Loe, who at that time was identified as the president of Shelter Forest International, detailing his company's relationship with its Chinese suppliers.[82]

Although Bayley Wood argues that the Department erred in finding affiliation because Shelter Forest and Shelter Forest International are not the same company, we disagree. Whatever business transition and/or change of name took place does not outweigh the fact that, during this POI, Shelter Forest materially directed and controlled operations of certain Chinese hardwood plywood producers/exporters, including Bayley Wood. As we explained in depth in the *Preliminary Determination*, and reiterate here, Bayley Wood was required to report all of its affiliates in response to the Department's initial questionnaire.[83]

In the *Preliminary Determination*, the Department examined Internet cached copies of two Shelter promotional brochures – one of which was issued in May 2015, and one of which was issued in December 2015, for distribution in 2016.[84] The information contained therein indicates that the relationship between Shelter and its associated Chinese producers, including Bayley Wood, has only deepened since the Plywood I investigation. According to the 2016 promotional brochure, Shelter had expanded its operations to cover five mills, as opposed to three mills in 2012, and the company has created a "vertically integrated supply chain utilizing five top tier manufacturing facilities throughout China, managing the entire supply chain from manufacturing to final delivery."[85] Among those in its supply chain, Shelter Forest identified "Bayley Wood" as a new TigerPLY production facility, and provided details about the company's establishment.[86] The catalog also identifies a supply relationship with a supplier of inputs used in the production of subject merchandise, Company C, which was identified as an affiliate of Bayley Wood by virtue of common shareholding.[87] Lastly, the 2016 brochure twice states that, at least as early as December 2015, Person A, who holds significant shares of Bayley Wood, was now also the Vice President of Production for Shelter Forest.[88] Although Bayley Wood contends that these cached copies are inherently unreliable, the nature of a cached document is such that the file was previously present on the website and thus publicly available. Moreover, we do not accept Bayley Wood's argument that these brochures are outdated or otherwise incorrect. These documents clearly refer to a period of time that coincides with the POI in this investigation. That the information in the brochures may have changed since the publication of those documents (a contention for which no party in this investigation has provided evidentiary support) is not pertinent to this investigation, nor do we find that any change affects the veracity of the documents with respect to the time period in which they were released.

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[82] *Id*. at Exhibit 3.
[83] *See* PDM at "Application of AFA: Bayley Wood."
[84] *See* the petitioners' Affiliation Comments at Exhibits 6 and 7.
[85] *Id*. at Exhibit 7.
[86] *Id*.
[87] *See* Bayley February 13, 2017 AQR, at Exhibit A-2.
[88] *See* the petitioners' Affiliation Comments, at Exhibit 7.

Furthermore, the Department does not agree with the arguments of the GOC and Bayley Wood that the Department was obligated to issue a deficiency letter or supplemental questionnaire to it or its affiliates with respect to the company's affiliation with either the Shelter Companies or Company D. First, with respect to Company D, Bayley Wood's decision not to report the full extent of its affiliations was inconsistent with the instructions in the Department's initial questionnaire, as well as the questionnaires issued to the affiliates that Bayley Wood did report, which clearly directed Bayley Wood to report all affiliated companies.[89] As we discussed at length in the *Preliminary Determination*, the instructions for reporting affiliated companies included a reference to section 771(33)(A) of the Act, which defined affiliations based on family relationships.[90]

Nonetheless, across multiple submissions, Bayley Wood continued to disregard the statutory language, *i.e.* including "lineal descendants,"[91] regarding the family relationships that exist between the owners of Bayley Wood and Company D.[92] Although Bayley Wood argues that the Department declined to investigate Bayley Wood's corporate affiliations, it ignores that the Department endeavored to do just that by issuing initial and supplemental questionnaires.[93] Bayley Wood is in essence arguing that the Department should have provided the company additional opportunities to report the information that the Department had originally requested in these questionnaires once the weight of the evidence on the record indicated that Bayley Wood had not reported all of its affiliations. Although Bayley Wood has argued that the Department had the opportunity to review Company D's questionnaire response since the *Preliminary Determination*, we continue to find that Bayley Wood failed to act to the best of its ability in providing the information requested of it.

At the time that the questionnaire was requested, the Department had yet to make any determination, preliminary or otherwise, regarding the adequacy of Bayley Wood's cooperation in this investigation. As we discussed in the *Preliminary Determination*, Bayley Wood failed to cooperate when it failed to report its affiliation with Company D in response to the Department's initial questionnaire issued on January 13, 2017. Bayley Wood, then, despite additional requests for information, failed to fully respond to the Department's questionnaires with respect to Company D over the two-month preceding the *Preliminary Determination*. As we have explained previously, we do not take issue with the timeliness of Company D's questionnaire response that was filed one week before the *Preliminary Determination*, but rather with Bayley Wood's decision to deprive the Department of the ability to fully investigate the issues of affiliation and cross-ownership. In considering the record of this investigation for the *Preliminary Determination*, including whether Bayley Wood failed to report other potentially affiliated companies, we found Bayley Wood's timely filing of the Company D response to be irrelevant given our finding that the company did not cooperate to the best of its ability. We are adopting for this final determination our reasoning as discussed in the *Preliminary Determination*, so that Bayley Wood "does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[94] For this same reason, we do not find persuasive the GOC's argument that the Department's choice to not examine the Company D response violates the SCM agreement because the lateness of Bayley Wood's decision to reveal its

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[90] *See* PDM at 26.

[91] *See* section 771(33)(A) of the Act.

[92] *See* PDM at 26.

[93] *See*, *e.g.*, Initial CVD Questionnaire; Letter from the Department, "Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Supplemental Questionnaire," dated March 8, 2017.

[94] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA) at 870.

affiliation with Company D significantly impeded the Department's ability to complete and investigation and, thus, renders the company wholly uncooperative in light of the facts and circumstances of this investigation.

Furthermore, Bayley Wood had ample opportunity to submit factual information rebutting the petitioners' claims regarding Bayley Wood's affiliations, and in fact did so,[95] even meeting with Department officials prior to the *Preliminary Determination* to discuss both its own submission on this matter and that filed by the petitioners.[96] Additionally, the cases cited by Bayley Wood to support its argument that the Department was required to send a deficiency questionnaire involve minor reporting deficiencies in which it was determined that the respondents were not given a sufficient opportunity to respond.[97] Bayley Wood's omission in this case went well beyond such minor deficiencies, and instead involved a complete failure to report certain affiliated parties despite having multiple opportunities to do so.

With regard to Bayley Wood's contention that the Department must verify the information it submitted, we disagree. When a party submits a substantially deficient response, the Department is under no obligation to use this information.[98] Under these circumstances, there is no requirement to verify the information.[99] If a respondent provides substantially incomplete questionnaire responses and the Department must then base the company's rate entirely on facts available, as in this case, then verification is "meaningless."[100] Moreover, we disagree with Bayley Wood's contention that section 782(i) of the Act requires the Department to verify information provided by the petitioners. It is the Department's practice to verify a party's own submitted information, and Bayley Wood has not argued or demonstrated otherwise. The Department's regulations, at 19 CFR 351.307, identify objects of interest at verification as "files, records, and personnel." Clearly, the factual information submitted by the petitioners in this case is not their own, nor are they in a position to provide the files, records and personnel that underlie the information provided by the Shelter Companies, which have made no entry of appearance in this CVD investigation.

As discussed above, and extensively and in great depth in the *Preliminary Determination*,[101] without complete information about the company's affiliations, the Department is unable to rely on the information submitted by Bayley Wood. Bayley Wood had several opportunities to reveal the extent

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[95] *See* Letter from Bayley Wood, "Hardwood Plywood Products from the People's Republic of China: Rebuttal to Petitioners' March 20, 2017 Comments on Bayley's Questionnaire," dated April 3, 2017; *see also* Letter from Bayley Wood, "Hardwood Plywood Products from the People's Republic of China: Rebuttal to Petitioners' April 4, 2017 Comments on the Initial Questionnaire Responses of Bayley's Affiliates," dated April 7, 2017.

[96] *See* Department Memorandum, "Ex-Parte Meeting with Respondents' Counsel," dated April 11, 2017.

[97] *See Agro Dutch*, 31 CIT 2047 (finding that failing to disclose an agreement regarding cash advances is not sufficient to show that an importer has not cooperated to the best of its ability); *China Kingdom*, 507 F. Supp. 2d 1337 (finding that a respondent's mistake in attributing data to the period of a prior review does not warrant disregarding all subsequent submissions).

[98] *See* section 782(e) of the Act which provides that the Department should use information submitted by interested parties even if the information does not meet all applicable requirements but only when, *inter alia*, "the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination …."

[99] *See Galvanized Steel Wire from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17430 (March 26, 2012) and accompanying Issues and Decision Memorandum, at 11.

[100] *Id*.

[101] *See* PDM at "Application of AFA: Bayley Wood".

and nature of its related parties and has failed to do so. Because of this, we continue to find that Bayley Wood failed to cooperate by not acting to the best of its ability to comply with our requests for information, and AFA pursuant to section 776(b) of the Act is warranted.

With respect to Bayley Wood's arguments that it should be treated as an "all others" company with respect to the new subsidy allegations, we disagree. Bayley Wood is still a mandatory respondent in this investigation; one that has repeatedly failed to act to the best of its ability. Treating Bayley Wood as if it were no longer a mandatory respondent would inappropriately reward the company by removing the deterrent effect of section 776 of the Act, effectively ensuring that the company would receive a more favorable result with respect to the NSA programs by failing to cooperate than if it had cooperated fully.[102]

Comment 2: Selection of Electricity AFA Benchmark

The petitioners

- The GOC failed to provide the time of day (TOD)[103] rates for all provinces as requested by the Department. As such, this has created a bifurcated set of benchmarks (one for those provinces where the GOC provided TOD rates, and another for those where they did not).[104]
- Because the GOC did not provide the TOD rates for all provinces, the Department should use the data from those provinces with TOD rates, calculate the average percentage difference between those provinces' "normal" electricity rates and their TOD rates, and then use that percentage difference to calculate TOD rates using the highest reported "normal" rate.

Sanfortune

- Sanfortune has provided complete data for its electricity usage, which the Department verified. Moreover, the GOC provided the TOD rate information for Shandong Province, where Sanfortune is located, as well as for the provinces used for the AFA benchmarks. As such, no further AFA is warranted.[105]

GOC

- There is no reason to apply an even more adverse set of electricity benchmarks. The rates in Shandong Province are a fluctuating percentage of what each firm's electricity rate is at the normal time and are not based on a special peak-valley-normal electricity schedule published by Shandong province.[106]
- To break from the Department's established practice and inflate the AFA benchmarks even further does not account for the considerable cooperation that the GOC did demonstrate. The petitioners' argument is based on the assumption that TOD rates are applicable to all provinces,

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[102] *See* SAA at 870.

[103] While parties have bracketed "time of day" in their briefs, we note that the fact that the GOC has electricity rates based on time periods is public information. *See* GOC Original Questionnaire Response at Exhibit F-5. *See also Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos from the PRC*), and accompanying IDM at Comment 1.

[104] *See* the petitioners' Second Rebuttal Brief at 2-4.

[105] *See* Sanfortune Rebuttal Brief at 1-4.

[106] *See* the GOC's Rebuttal Brief at 1-3; *see also* Letter from the GOC, "Certain Hardwood Plywood Products from the People's Republic of China, Case No. C-570-052: Second Supplemental Questionnaire Response," dated June 22, 2017 at 1-2 and Exhibit S-12.

when there is no record evidence to support this assumption. Further, by not just taking the highest rate calculated for each province but inflating that rate even further, the petitioners' recommended methodology is contrary to statutory requirements.

Department's Position: We disagree with the petitioners. First, as noted below in Comment 11, the Department continues to apply AFA with respect to the GOC for the Provision of Electricity for LTAR program. Second, as explained in the PDM, part of that AFA determination entails the use of the highest TOD benchmark rates from amongst those provinces whose rate schedules delineate such rates: "The benchmark rates we selected are derived from information from the record of the instant investigation and are the highest electricity rates on this record for the applicable rate and user categories."[107] This has been the Department's established practice,[108] and it continues to be so for this final determination. The record of this investigation and the rate schedules provided therein are consistent with what the GOC has submitted in other proceedings. Further, the record does not establish that every province in the PRC maintains a set TOD electricity rate schedule. Therefore, based on an evaluation of the available record evidence, we are continuing to apply our practice of assigning the highest TOD benchmarks from those provinces whose rate schedules provide TOD rate information.[109]

Comment 3: Whether Sanfortune Was Uncreditworthy and Whether Certain of Its Loans Should Be Treated as Long-Term Loans

The petitioners

- Record evidence demonstrates that in 2014 and 2015, Sanfortune was uncreditworthy within the meaning of the Department's regulations.[110]
- Sanfortune's financial indicators' current ratio and quick ratio were far below the creditworthiness benchmarks used by the Department.[111] Similarly, other financial indicators worsened in recent years as well.[112]
- An examination of record evidence indicates that certain of Sanfortune's loans should be treated as long-term loans.[113]
- This uncreditworthiness affects not only the loans that should properly be considered as long-term loans, but also certain allocable benefits for one of Sanfortune's land purchases and for certain grants it received during the AUL period.[114]

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[107] *See* PDM at 32.
[108] *See*, *e.g.*, *Chlorinated Isos from the PRC*; *see also Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Affirmative Determination*, 82 FR 14872 (March 23, 2017) (*HEDP Final*).
[109] *See HEDP Final* and accompanying IDM at 10 ("Hence, our preliminary electricity for LTAR calculation compared the companies' adjusted per-kWh electricity rates to the *AFA benchmark (the appropriate highest provincial per-kWh electricity rate in the PRC. . .*")) (emphasis added).
[110] *See* the petitioners' Case Brief at 5, *citing* Letter from the petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Uncreditworthiness Submission and Deficiency Comments on Sanfortune's April 3 Supplemental Questionnaire Responses," dated April 13, 2017 (Uncreditworthiness Submission).
[111] *Id*. at 6.
[112] *Id*. at 6-7.
[113] *Id*. at 7-9.
[114] *Id*. at 5 and 7.

Sanfortune

- Sanfortune Furniture was under construction in 2014-2015, and its construction costs were all booked in Sanfortune's books. Thus, it is understandable that this affected Sanfortune's profitability. The Department should not disregard this start-up cost to conclude that Sanfortune was uncreditworthy.[115]
- Record evidence clearly indicates that Sanfortune's loans were short-term loans. The Department examined select loan documents at verification and confirmed this fact.[116]

Department's Position: We agree with the petitioners that the record evidence indicates that Sanfortune was uncreditworthy in 2014 and 2015, consistent with 19 CFR 351.505(a)(4). However, we agree with Sanfortune that the record evidence shows that its loans were all short-term loans. For this investigation, the effect of the uncreditworthiness determination is thus limited to the allocable benefits for certain grants Sanfortune received during the AUL period.[117]

First, regarding the matter of whether Sanfortune's loans were short- or long-term in nature, we find that the record supports the conclusion that they were, in fact, short-term. The petitioners' argument for two of the loans in questions rests on the point that a general credit contract covering a certain number years indicates that the loans provided thereto were long-term loans. However, as Sanfortune explained, the general credit contract only stipulates that Sanfortune may apply for loans with up to a certain maximum amount, and that pursuant to that general contract, the period of the loans would be specified in the loan-to-deposit transfer voucher (*i.e.*, the receipt for a loan).[118] The Department examined one of these loans in detail at verification, and found Sanfortune's explanation and documentation to be accurate.[119] The petitioners then engage in speculation to argue that certain other loans with similar fact patterns should similarly be treated as long-term loans, but point to no record evidence to support their contention. Lastly, the petitioners proffer that two loans should be considered as long-term loans because they happened to be outstanding for one year and a day. The Department examined one of these loans in detail at verification, and the loan documentation identified a payment term of one year.[120] Whatever vagaries occurred regarding these two loans such that repayment dates happened to be one day more than a year, that does not change the fact that none of the loan documentation requested by the Department and provided by Sanfortune in its responses, or examined at verification, showed a repayment term for any loan longer than one year. In sum, the record evidence indicates that none of Sanfortune's loans fulfill the definition of a long-term loan per 19 CFR 351.102(b)(32).

The Department determines that the petitioners' uncreditworthiness submission satisfies the requirements for an uncreditworthiness allegation pursuant to 19 CFR 351.505(a)(6)(i) for 2014-

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[115] *See* Sanfortune's Rebuttal Brief at 6.
[116] *Id.* at 4-5.
[117] While the petitioners have noted that the uncreditworthiness determination would also apply to the allocable benefits for one of Sanfortune's purchases of land, the practical effect of the uncreditworthiness determination does not affect the benchmark interest rate for the year in question. For additional details that involve business proprietary information, *see* the Sanfortune Final Calculation Memorandum.
[118] *See* Letter from Sanfortune, "Hardwood Plywood Products from the People's Republic of China: Third Supplemental Questionnaire Response," dated August 7, 2017 at 2-3.
[119] *See* Sanfortune Verification Report at 6 and VE-10.
[120] *Id*.

2015. The petitioners have submitted information (*i.e.*, references to the respondent's own financial statements) establishing a reasonable basis to believe that Sanfortune is uncreditworthy, as well as a discussion of the record evidence relevant to the factors enumerated under 19 CFR 351.505(a)(4) for those years (discussed below).

The petitioners state that Sanfortune did not receive any loans from commercial banks from 2014-2015[121] in accordance with 19 CFR 351.505(a)(4)(i)(A) and (ii) and the Department's practice.[122] The petitioners' allegation also focuses on Sanfortune's current ratio, quick ratio, and debt-to-equity ratio.[123]

Accordingly, we have analyzed the information on the record below for 2014-2015 and we find that Sanfortune was uncreditworthy during those two years. We note that our analysis is based on Sanfortune's own financial data from its financial statements and that Sanfortune did not submit rebuttal information in response to the petitioners' allegations, as it was entitled to do pursuant to 19 CFR 351.301(c)(2)(vi).

Receipt by the Firm of Comparable Commercial Long-Term Loans

Sanfortune did not receive what the Department considers to be comparable long-term commercial loans during the years in which we have found the company to be uncreditworthy, within the meaning of 19 CFR 351.505(a)(4)(i)(A).[124]

Present and Past Indicators of the Firm's Financial Health, and Present and Past Indicators of the Firm's Ability to Meet its Costs and Fixed Financial Obligations with its Cash Flow

Consistent with past practice, we have placed significant emphasis on low current and quick ratios during the years in question. The Department has explained that:

> {t}hese ratios are highly relevant under 19 CFR 351.505(a)(4)(i)(B)-(C) because they are indicators of a firm's financial health and its ability to meet its costs and fixed financial obligations with cash flow. Unlike some of the other information we have been asked to consider for this analysis, the meaning of these ratios is clear: either the respondents have liquid funds available to cover upcoming obligations, or they do

[121] *See* Uncreditworthiness Submission.
[122] *See*, *e.g.*, *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) and accompanying IDM at Comment 5.
[123] *See* Uncreditworthiness Submission.
[124] *See* the discussion regarding Sanfortune's short-term loans from State-Owned Commercial Banks (SOCBs) *supra*; *see also* Sanfortune's Initial Questionnaire Response at Exhibit 3, and Letter from Sanfortune, "Hardwood Plywood Products from the People's Republic of China: Supplemental Questionnaire Response," dated April 3, 2017 (Sanfortune's First Supplemental Questionnaire Response) at Exhibit SQ1-5.

not. If they do not, they have no choice but to accumulate new debt in order to cover existing debt.[125]

The record reflects that Sanfortune's current and quick ratios were both well below the benchmarks of 2.0 and 1.0[126] during the period 2014-2015.[127] During the same period, its unadjusted debt-to-equity ratio was extremely high, and its adjusted debt-to-equity ratio increased.[128] The extremely high unadjusted debt-to-equity ratios and increasing adjusted debt-to-equity ratios confirm the Department's reasoning that high current and quick ratios lead to increasing debt levels.

Evidence of the Firm's Future Financial Position

There is no evidence on the record that would allow the Department to analyze Sanfortune's future financial position as if it were being viewed during the years in question, such as market studies, country and industry forecasts, and project and loan appraisals prepared prior to loan agreements.

Accordingly, we find that Sanfortune was uncreditworthy during the period 2014-2015 because it did not receive comparable long-term commercial loans, and it had current, quick, and debt-to-equity ratios that indicate uncreditworthiness during 2014-2015. Furthermore, no record evidence contradicts our determination. While Sanfortune argues that the start-up costs for Sanfortune Furniture negatively affected its profitability, its argument lacks specificity in terms of how such costs may have affected the indicators upon which the Department relies in making an uncreditworthiness determination.

Comment 4: Whether Two Grants Received by Sanfortune Should Be Consolidated

The petitioners

- The Department found in the *Preliminary Determination* that the GOC did not provide a complete response for certain grant programs used by Sanfortune. As such, the record does not establish that the amounts for two reported grants received on the same day, with similar names and from the same government agency, actually pertained to separate programs. Thus, the Department should combine the reported amounts in its calculations before conducting the "0.5 percent."[129]

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[125] *See*, *e.g.*, *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*, 7 FR 63788 (October 17, 2012) (*Solar Cells from the PRC*) and accompanying IDM at Comment 17.
[126] *See*, *e.g.*, *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Preliminary Intent To Rescind, in Part; 2014-2015*, 82 FR 12562 (March 6, 2017) and accompanying Preliminary Decision Memo at 14; unchanged in *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014-2015*, 82 FR 42792 (September 12, 2017).
[127] As the specific details about Sanfortune's ratios are business proprietary, *see* the Sanfortune Final Calculation Memorandum.
[128] *Id*.
[129] *See* the petitioners' Case Brief at 10-11.

Sanfortune

- Sanfortune provided a complete set of documents for the two grants at issue, and the Department verified that the amounts at issue were received for two separate programs through separate approvals.[130]

GOC

- Contrary to the petitioners' assertion, the GOC did provide a list of distinct programs that Sanfortune used, including the name of the program, the grant date, and the grant amount. There is no reason for the Department to conclude that the two distinct programs are one and to change the calculation.[131]

Department's Position: We disagree with the petitioners. The Department successfully verified the two grant programs in question at Sanfortune and confirmed that the amounts received did, in fact, pertain to two separate grant programs.[132]

Comment 5: Treatment of Sanfortune's Outstanding Time Drafts

The petitioners

- The Department should treat Sanfortune's outstanding time drafts as interest free loans. This financing method provides a benefit to Sanfortune, as its suppliers likely would have required onerous and expensive terms to provide direct credit to Sanfortune. [133]
- To calculate the benefit, the Department should compare the amount of benchmark interest that should have been paid during the period the time drafts were outstanding, based on the Department's Chinese benchmark lending rates, to the amount of bank charges that Sanfortune reportedly paid on each instrument. Furthermore, the Department should not make certain offsets.[134] Sanfortune's banks treated the deposits associated with the time drafts as standard commercial deposits and the company earned interest on the deposit amount. [135]

Sanfortune

- As the Department verified, a time draft is like a check payable by a certain time and has nothing to do with any credit extended to Sanfortune. [136]
- The petitioner is trying to mislead the Department by speculating that the time drafts were used to defer the immediate payments to the suppliers, ignoring that the Department verified and confirmed that the time drafts were for future payments.[137]
- If the supplier requests immediate payment, Sanfortune could not defer the payment with a time draft, as the bank will only make the payment when the time draft is mature, which is six months later. If the suppliers choose to cash out the money, they have to pay the interest, rather than Sanfortune owing interest on payments that were not due.[138]

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[130] *See* Sanfortune's Rebuttal Brief at 6-7.
[131] *See* the GOC's Rebuttal Brief at 4-5.
[132] *See* Sanfortune Verification Report at 7 and VE-9.
[133] *See* the petitioners' Case Brief at 11.
[134] *Id.* at 12.
[135] *Id*.
[136] *See* Sanfortune's Rebuttal Brief at 7.
[137] *Id*.
[138] *Id*.

Department's Position: We disagree with the petitioners that the time drafts Sanfortune used to pay its customers represent a type of countervailable subsidy. As stated in the Sanfortune Verification Report:

> Sanfortune officials explained that the company uses this form of payment because when discussing payment terms with their suppliers, Sanfortune will promise to pay them, for example, six months in the future. So, according to company officials, the time draft offers assurance to their customers that they will in fact be paid. Company officials also explained that the time draft is also tradeable, in that the supplier can endorse it, and then circulate it to another party. In other words, Sanfortune officials explained that it is a check payable by a certain time. Sanfortune officials explained that the company earns interest on the deposit amount, and that it is also advantageous to the suppliers because they can opt for early cash-out or can circulate the time draft, and the amount is guaranteed by the bank. We observed no inconsistencies with the information reported in the questionnaire responses.[139]

Thus, unlike the loans from the SOCB's that the Department continues to find countervailable (*see* Comment 10 below), Sanfortune's time drafts did not entail the use of any of the banks' funds, and did not provide a countervailable benefit.

Comment 6: Electricity for LTAR Benefit Attribution for Sanfortune

Sanfortune

- The Department should not attribute the electricity for Meters 4 and 5 because that electricity was consumed for the construction of Sanfortune Furniture.[140]
- In the PDM, the Department recognized that subsidies are generally countervailed against the company that received them, noting an exception where cross-ownership exists. The Department concluded, however, that Sanfortune was not cross-owned with any of its affiliated entities.[141]
- The Department verified that the electricity bills, invoices and payments reconciled to Sanfortune's accounting books and records, which proved that Sanfortune did not pay for Meters 4 and 5 in November and December 2015.[142]
- The Department appears to have concluded that Sanfortune received a subsidy merely because it paid an electricity bill on behalf of another company. However, the particular electricity at issue was actually used by another entity, Sanfortune Furniture. That is, the subsidy was conferred upon Sanfortune Furniture for its use of electricity to construct its own plant.[143]
- The Department must look beyond the form of the transaction to accord its decision to the economic reality of the transactions.[144] Should there be any benefit from electricity used by

[139] *See* Sanfortune Verification Report at 9.
[140] *See* Sanfortune's Brief at 4.
[141] *Id.* at 5, *citing* the PDM at 12-13.
[142] *Id.* at 5.
[143] *Id.* at 5.
[144] *Id.* at 5-6, *citing United States v. Eurodif S.A.*, 555 U.S. 305 (2009) (*Eurodif*).

Sanfortune Furniture, the benefit cannot legally be attributed to the subject merchandise produced by Sanfortune.

The petitioners

- The Department correctly attributed the subsidies arising from the purchase of electricity for LTAR to Sanfortune, consistent with Department's regulations because Sanfortune was the corporation that received the subsidy.[145]
- Sanfortune reported the purchases of the electricity that it claims was used by another company. However, Sanfortune does not contest that it paid for the electricity used at Meters 4 and 5 (at least until November 2015). Accordingly, Sanfortune is the corporation that received the subsidies for the purchase of electricity for LTAR.[146]
- Sanfortune's reliance on *Eurodif* is misplaced. That case addressed whether the Department could treat certain transactions as the sale of goods, as opposed to the sale of services, such that they may be subject to antidumping duties pursuant to the Act.[147]
- Sanfortune's claims that the Department must rely on economic reality and attribute benefits to the entity that actually benefits from the subsidy only further support the Department's decision. Sanfortune, not Sanfortune Furniture, was the entity that in the absence of the subsidies would have paid the higher prices for electricity. Accordingly, Sanfortune is the actual beneficiary.[148]

Department's Position: We agree with the petitioners. As an initial matter, we find that for the months of November and December 2015, Sanfortune did not pay for the electricity for Meters 4 and 5. The Department did not include the electricity for these two months in Sanfortune's calculations for the *Preliminary Determination*, and continues not to do so now. Nonetheless, we continue to find, as in the *Preliminary Determination*, that the electricity for Meters 4 and 5 for the previous months of the POI should be included in Sanfortune's calculations for the Electricity for LTAR program. Sanfortune's argument essentially rests on two principles: 1) that it was Sanfortune Furniture, rather than Sanfortune, that used the electricity for Meters 4 and 5; and 2) regardless, the electricity at issue cannot be attributed to Sanfortune whether or not it was the party that was invoiced for, and remitted payment for, the electricity at issue.[149]

As to Sanfortune's first point, certain facts regarding the relationship between Sanfortune and Sanfortune Furniture are business proprietary information, and those specifics are detailed in a separate memorandum.[150] Sanfortune has stated that Sanfortune Furniture became operational at a certain date during the POI.[151] Other record information indicates that operations did not begin in earnest until a later date during the POI.[152] Because Sanfortune was the party to which the electricity was billed and was responsible for paying until November 2015, it benefitted from the purchase of electricity for LTAR for Meters 4 and 5 up until that point; in other words, it was Sanfortune's own

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[145] *See* the petitioners' Second Rebuttal Brief at 3.
[146] *Id.* at 3.
[147] *Id.* at 4-5, *citing Eurodif*.
[148] *Id.* at 5-6.
[149] *Id*. at 4-6.
[150] *See* Department Memorandum "Business Proprietary Information Referenced in the Final Determination," dated concurrently with this memorandum.
[151] *Id*.
[152] *Id*.

business decision to decide how the electricity was to be used. Further, the petitioners correctly noted that the *Eurodif* case is inapposite to this issue. While Sanfortune attempts to tie the *Eurodif* case to the economic realities of its electricity purchases, for the reasons discussed above, such realities actually indicate that Sanfortune was the party that decided how the electricity for Meters 4 and 5 should be used, and was indeed the payor for this electricity, until November 2015. Sanfortune's second argument about attribution is similarly unavailing. While the Department's attribution regulations for cross-owned affiliates are detailed at 19 CFR 351.525(b)(6)(ii)-(v), those regulations are not germane here. As the petitioners have correctly observed, it is the Department's default rule, that a subsidy is attributed to the entity that received the subsidy, that is relevant here.[153] Therefore, we continue to include the electricity pertaining to Meters 4 and 5 (until November 2015) in Sanfortune's calculations.

Comment 7: Land for LTAR Benefit Attribution for Sanfortune

Sanfortune

- While Sanfortune reported purchasing four parcels of land during the AUL period, the fourth parcel pertained to Sanfortune Furniture.[154]
- There is no evidence to suggest that Sanfortune had plywood operations on this parcel of land. If the Department were to investigate Sanfortune Furniture for subsidization, there is no doubt that Sanfortune Furniture would not be able to excuse the Land for LTAR subsidy by saying that it was not the original purchaser of the land.[155]
- As expressed in the Electricity for LTAR issue above, the Department must look beyond the form of the transaction to accord its decision to the economic reality of the transactions.[156]
- Any benefit from the land used by Sanfortune Furniture cannot legally be attributed to the subject merchandise produced by Sanfortune, and should be excluded from the CVD margin calculation for Sanfortune in the final determination.[157]

The petitioners

- The Department correctly attributed the subsidies arising from the purchase of land for LTAR to Sanfortune, consistent with the Department's regulations because Sanfortune was the corporation that received the subsidy, including for the one parcel of land at issue.[158]
- Record evidence indicates that Sanfortune maintained ownership of the fourth parcel of land throughout the POI.[159]

[153] *See* 19 CFR 351.525(b)(6)(i).
[154] *See* Sanfortune's Brief at 7.
[155] *Id.* at 8.
[156] *Id.* at 8, *citing Eurodif*.
[157] *Id.* at 8.
[158] *See* the petitioners' Second Rebuttal Brief at 3.
[159] *Id.* at 5.

- Sanfortune does not contest that it purchased the land at issue. Sanfortune was the entity that in the absence of the subsidies would have paid the higher prices for land. Accordingly, Sanfortune is the actual beneficiary.[160]
- Sanfortune's reliance on *Eurodif* is misplaced here for the same reasons as expressed above for the Electricity for LTAR issue.[161]

Department's Position: We agree with the petitioners. As above, certain facts regarding the relationship between Sanfortune and Sanfortune Furniture, and the fourth parcel of land, are business proprietary information and are discussed in a separate memorandum.[162] Further, our reasoning here mirrors that of our position for the electricity issue immediately above. As an initial matter, nowhere does Sanfortune contest that it was the party that paid for and acquired the fourth parcel of land at issue. Again, Sanfortune's reliance on *Eurodif* is similarly unavailing here; how Sanfortune utilized the land when it purchased it was its own business decision, and does nothing to change the fact that it was the entity benefitting from the purchase of land for LTAR.[163] In other words, it was Sanfortune who benefitted from the land purchase, and not Sanfortune Furniture, because the record evidence demonstrates that Sanfortune was the party that purchased the land, decided how it was to be used, and maintained title to it during the POI.[164] Lastly, Sanfortune's arguments about how the Department might treat the fourth parcel of land if Sanfortune Furniture were the subject of a CVD investigation are purely speculative. Thus, we continue to include the fourth parcel of land in Sanfortune's calculations.

Comment 8: Whether Certain of Sanfortune's Loans Are Export Loans

Sanfortune

- The Department accepted the minor correction that certain loans reported in the company's loan spreadsheet were export loans and verified this fact. The Department should thus calculate the subsidy rate for these loans separately and offset the margin in the AD deposit rate calculation.

No other party commented on this issue.

Department's Position: We agree with Sanfortune. A review of the available record evidence indicates that the loans at issue are related to exports[165] and satisfy our definition of an export subsidy because they were contingent upon export performance.[166] Therefore, we will revise Sanfortune's final calculations accordingly.[167]

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[160] *Id.* at 3 and 5.
[161] *Id.* at 5-6.
[162] *See* Department Memorandum "Business Proprietary Information Referenced in the Final Determination," dated concurrently with this memorandum.
[163] *See* Sanfortune's First Supplemental Response at Exhibit SQ1-10.
[164] *Id.*
[165] *See* Sanfortune Verification Report at 2 and VE-1; *see also* Sanfortune's First Supplemental Response at Exhibit SQ1-8.
[166] *See* 19 CFR 351.514.
[167] *See* Sanfortune Final Calculation Memorandum.

Comment 9: Correction of Mistranslations in the GOC's Explanation of Transformer Capacities

Sanfortune

- The Department should correct mistranslations in the GOC's explanation of transformer capacities, as it did in a recent determination in which the same issue was present.[168]
- The GOC has relied in certain proceedings on an erroneous translation of the column headings "maximum demand" and "transformer capacity" that has resulted in the application of the incorrect transformer capacity and an overstatement of the associated benchmark.[169]
- The headings are misplaced in the translation version as "maximum demand" is listed as the translation for the column to the left whereas it is actually the translation for the column to the right.
- Similarly, "transformer capacity" is listed as the column heading to the right, but it is actually the translation for the column to the left.
- Therefore, the benchmark price for Sanfortune's basic fee should be 30 Yuan/KWH rather than 40 Yuan/KWH, under the correct English translations of the headings.

The petitioners did not comment on this issue.

Department's Position: We examined the record of this investigation as we did in the *MLWF 2013 Admin Review*,[170] and agree with Sanfortune that the English translations for the two column headings should be corrected. We have corrected the electricity calculations and adjusted the rate for Sanfortune accordingly.

Comment 10: Whether Policy Loans to the Hardwood Plywood Industry Are Countervailable

GOC

- In the *Preliminary Determination*, the Department did not provide evidence of any law or regulation that directs banks in China to direct lending to, or otherwise support, producers in the hardwood plywood industry generally or the hardwood plywood industry in particular.
- In making its finding that the GOC has a favorable lending policy for the hardwood plywood industry, the Department cites to the preamble of the Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation (No. 40 (2005)) (Decision 40) and to Chapter 8 (Industrial Optimization) of the "National Economic and Social Development of the Twelfth Five Year Plan of Shandong Province." Neither of these documents provide any particular government lending program directing SOCBs to extend preferential loans to the hardwood plywood industry.
- All loans negotiated between Sanfortune and its SOCB lenders were "purely based on market principles and business sustainability."[171]

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[168] *See Multilayered Wood Flooring from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 81 FR 32291 (May 23, 2016) (*MLWF 2013 Admin Review*) and accompanying IDM at Comment 2.

[169] *See* Letter from the GOC, "Certain Hardwood Plywood Products from the People's Republic of China, Case No. C-570-052: Initial Questionnaire Response," dated March 6, 2017 (GOC Initial Questionnaire Response), at Exhibit F4 (Electricity Price Schedules for All Provinces).

[170] *Id.*

[171] *See* the GOC's Second Brief at 3.

- Lending decisions made by SOCBs are governed by the Capital Rules for Commercial Banks as enacted by the China Banking Regulatory Commission which constrain SOCBs from making lending decisions that are not based on market principles, are free of any requirement to implement GOC industrial policies.
- Loans provided by SOCBs are not *de jure* specific. The directives cited to by the Department make reference to policies to support many different industries, but no specific references to the hardwood plywood industry.

The petitioners

- Contrary to the GOC's understanding, the Department's findings are based not on a specific program through which loans are granted, but instead are centered on the link between the GOC's industrial policies and lending.
- The Department has previously examined the Capital Rules in *CORE from the PRC* and found that they do not affect the conclusion that China's banking sector does not operate on a commercial basis and is subject to significant distortions.[172]
- Neither the statute nor the Department's practice require that a subsidy be limited to a single industry to be specific. Section 771(5A)(D) of the Act states that a subsidy is specific if it is limited to an enterprise or industry, or a group thereof.
- The Department has repeatedly found that a subsidy program can be specific if it applies to multiple industries so long as that group of industries is limited.[173]

Department's Position: We agree with the petitioners and continue to find that lending from SOCBs constitutes a financial contribution, pursuant to sections 771(5)(B) and 771(5)(D)(i) of the Act, that the PRC lending market is distorted, and that external benchmarks should be used to determine any benefits from this program. Additionally, we continue to find that loans provided to Sanfortune are specific within the meaning of section 771(5A)(D)(i) of the Act.

The record of this investigation indicates that policy considerations are a significant factor in lending decisions. For instance, the Catalogue for Industrial Structure Adjustment (2011) indicates that the industry under consideration falls within the "Encouraged" category;[174] under the general "building materials" heading, the Catalogue lists the development and production of materials such as "new walling and roofing materials," while in the "agriculture and forestry" category it lists the "development of technologies for wood-based composite materials and structural artificial boards," as well as the "production and comprehensive utilization of wood-based composite materials."

Decision 40 states in the preamble that "{a}ll relevant administrative departments shall speed up the formulation and amendment of policies on public finance, taxation, credit, land, import and export, *etc*., effectively intensify the coordination and cooperation with industrial policies, and further improve and promote the policy system on industrial structure adjustment" with respect to the listed industrial categories.[175] Decision 40 explicitly references the Catalogue and describes how

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[172] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) (*CORE from the PRC*) and accompanying IDM at 26-27.
[173] *Id.* at 10.
[174] *See* GOC Initial Questionnaire Response at Exhibit B-8.
[175] *Id.* at Exhibit B-10.

"encouraged" projects will be considered under government policies. For the "encouraged" projects, Decision 40 outlines several support options available to the government, including financing. In addition to establishing eligibility for certain benefits from the central government, the Catalogue also gives provincial and local authorities the discretion to implement their own policies to promote the development of favored industries.

Additionally, the 10th 5-year plan indicates that industrial development in the Eastern region (where Sanfortune is located) would be especially favored in terms of lending.[176] The plan explains that "{w}e should optimize the industry structure; give priority to new and high-tech industry, modern service industry and export trade. We should develop export-oriented economy; broad participat{ion} in international economic competition."[177]

That these various government directives and plans encourage lending to the hardwood plywood industry is significant. As the Department has previously found, commercial banks in the PRC follow the "guidance" of central planning authorities. Specifically, the Department has found that "Article 34 of Law of the People's Republic of China on Commercial Banks (Banking Law) states that banks should carry out their loan business 'under the guidance of the state industrial policies.' ... {Therefore} the Banking Law, in some measure, stipulates that lending procedures be based on the guidance of government industrial policy."[178] Thus, contrary to the GOC's arguments, there exists a link between the GOC's industrial policies and lending. Because of this, the Department continues to find that the loans provided to Sanfortune are made pursuant to GOC policies to support the hardwood plywood industry and are countervailable.

Comment 11: Whether the Department Should Apply AFA and Find the Provision of Electricity to Be Provided for LTAR

GOC

- The GOC has consistently stressed in its responses for this case, as well as prior CVD cases, that electricity prices are determined by the provincial governments within their jurisdictions and that the role of the National Development and Reform Commission is to review the electricity pricing schedules submitted by the provincial governments. As such, electricity prices in the PRC are based on market principles that take into account overall demand and supply present in the electricity market, as well as the costs of electricity generation and transmission.[179] Specifically, the GOC provided evidence that the State Grid Cooperation of

[176] *Id*. at Exhibit B-6.
[177] *Id.*
[178] *See 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 (OCTG IDM) at Comment 21; *CORE from the PRC* and accompanying IDM at Comment 5; *Solar Cells from the PRC* and accompanying IDM at 48; *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 71017 (March 23, 2012) (*Steel Wheels from the PRC*) and accompanying IDM at 67; *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78788 (December 31, 2014) and accompanying IDM at 52; *Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) and accompanying IDM at 5.
[179] *See* GOC Initial Questionnaire Response at 24.

China (SGCC) realized substantial profits from 2011 to 2015, and this profit undermines the Department's conclusion that electricity was provided at LTAR.[180]

- To demonstrate its best efforts to cooperate with the investigation, the GOC answered each and every question in the Electricity Appendix in the initial questionnaire.[181] The GOC applied its best efforts to answer the supplemental questionnaires issued by the Department as well, providing verifiable information sufficient for the Department to analyze the GOC's provision of electricity to the hardwood plywood industry and to determine that it is not a countervailable subsidy.[182]
- The Department provided no factual support for its conclusion that the GOC's provision of electricity for LTAR is specific to the hardwood plywood industry. The GOC stated that electricity prices are classified by end user categories such as residential use, agricultural use, large industries use, and/or industrial and commercial use that "are equally applied to all end users" regardless of specific industry or province and provided evidence to support this point in its Electricity Appendix.[183]
- The facts on the record, as described above, make clear that retail prices for electricity are set according to purchasing cost, transmission prices, transmission losses, and governmental surcharges, regardless of a particular firm's participation in a specific industry or location in a particular region, thus, in the final determination, the Department should reverse its decision to apply AFA for this program.

The petitioners

- The GOC did not cooperate to the best of its ability in responding to the Department's questionnaires. The Department found in the *Preliminary Determination* that the GOC did not provide any provincial specific information in either its initial response or supplemental response,[184] a finding the GOC did not contest.
- The GOC provided incomplete information with regard to this program, and because the information is incomplete the Department should continue to apply AFA.
- Moreover, there is information on the record which indicates that the provision of electricity for LTAR provides a financial contribution and is specific. As the Department explained when initiating an investigation into this program, the petitioners provided information that the NDRC establishes electricity rates for the provinces and employs these rates as a policy tool to promote and encourage the development of the hardwood plywood industry.[185]

Department's Position: We disagree with the GOC that electricity rates in the PRC are based on market principles, that the GOC answered each and every question, and that electricity for LTAR is not specific in this investigation. As an initial matter, the Department requested that the

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[180] *See* Letter from the GOC, "Certain Hardwood Plywood Products from the People's Republic of China, Case No. C-570-052: First Supplemental Questionnaire Response," dated April 3, 2017 (the GOC's First Supplemental Questionnaire) at 2.
[181] *Id*. at Exhibit F-1.
[182] *See* the GOC's First Supplemental Questionnaire at 4 – 6.
[183] *See* GOC Initial Questionnaire Response at 4.
[184] *See* PDM at 32.
[185] *See* Initiation Checklist at 7-8.

GOC provide information on how the provincial electrical tariff schedules were developed by the GOC's National Development and Reform Commission (NDRC). As noted in the *Preliminary Determination*, the GOC did not provide all of the requested information and therefore, we found the GOC to be uncooperative.[186] More specifically, in the *Preliminary Determination* we found that in both the Department's original questionnaire and the March 23, 2017, supplemental questionnaire, for each province in which a respondent is located, the Department asked the GOC to provide a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories.[187] The GOC provided no provincial-specific information in response to these questions in its initial questionnaire response.[188] The Department reiterated these questions in a supplemental questionnaire and the GOC did not provide the requested information in its supplemental questionnaire response.[189]

As a result of the GOC's unwillingness to be cooperative, the Department was unable to determine whether the electrical rates included in the electricity schedules submitted by the GOC were calculated based on market principles. While the GOC acknowledged the existence of the provincial price proposals,[190] the GOC withheld the actual price proposals without explaining why it could not submit such documents on the record of this proceeding, particularly as the Department permits parties to submit information under an APO for limited disclosure if it is business proprietary in nature. Moreover, while the GOC provided electricity data for all provinces, municipalities and autonomous regions,[191] this information is not germane to an analysis of how and why the prices in the tariff schedules in effect during the POR were drafted and implemented because the schedules themselves do not provide background information. The GOC also did not ask for additional time to gather and provide such information, nor did the GOC provide any other documents that would have answered the Department's questions.

The result of this lack of cooperation from the GOC in responding to our questions on this program was the Department's application of facts available with an adverse inference to the determination of the appropriate benchmark. Specifically, because the GOC provided the provincial electrical tariff schedules, the Department relied on this information for the application of facts available and, in order to make an adverse inference, the Department identified the highest rates among the schedules for each reported electrical category and used those as the benchmarks in the benefit calculations.[192]

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[186] *See* PDM at 31-32 (citing sections 776(a)(1), 776(a)(2)(A), and 776(b) of the Act and finding, based on an adverse inference, that the GOC's provision of electricity constitutes a financial contribution and is specific to the hardwood plywood industry within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively).
[187] *Id.*; *see also* Letter from the Department, "Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Questionnaire," dated January 17, 2017 (Initial CVD Questionnaire), at Section II, "Electricity Appendix," and the Department's first supplemental questionnaire to the GOC, dated March 23, 2017, at 3-5.
[188] *See* GOC Initial Questionnaire Response at 23-34.
[189] *See* the GOC's First Supplemental Questionnaire at 1-7.
[190] *See* GOC Initial Questionnaire Response at 23.
[191] *Id.* at Exhibit F-1.
[192] *See* PDM at 36-37.

The GOC also argues that there is no record information which indicates that there are no differences for electricity rates between industries. We agree with the GOC on this point. In the original questionnaire, we requested information from the GOC on specific industry electricity pricing rates in the Electricity Appendix, which included the following questions:

a. Please identify the pricing category and the rates in effect for the mandatory respondent or any reported "cross-owned" companies. In addition, please describe the types of industries included in the corresponding customer-pricing category and the number of users in the corresponding customer-pricing category.

b. Identify any "special industry sectors" or "encouraged" companies that receive preferential electricity rates.[193]

These questions demonstrate that the Department has attempted to obtain information on electricity pricing differences between industries and why they differ, which could have contributed to the Department's analysis of this program. Had the GOC been cooperative in responding to these questions, there may have been information on the record regarding differences in electrical rates for different industries. Contrary to its assertions, the GOC was not cooperative in responding to the Department's request for information, which precluded us from carrying out this analysis, and thus, the Department selected a benchmark based on an adverse inference. Accordingly, the Department has not made a determination, inherent or otherwise, related to this program being an industry-specific program. The GOC's refusal to answer questions related to electricity rates between industries prevented the Department from being unable to carry out this analysis. Thus, consistent with the *Preliminary Determination*, we find that the GOC's provision of electricity is specific within the meaning of section 771(5A) of the Act based on adverse inferences.

Comment 12: Whether the Department Should Apply AFA to Find That Land Was Provided to Sanfortune for LTAR

GOC

- The GOC has made clear that it there is no program through which it sold land at LTAR to SOEs or to other enterprises.[194] As evidence that no such program existed, the GOC provided the text of its Land Administration Law and Urban Real Estate Administration Law, in addition to the regulation implementing this law (the Regulation on Implementation of the Land Administration Law), stating that it did "not direct the prices of land or land-use rights, which are established by companies and the local governments or between the entities that transfer the land use rights."[195] The provision of land, or land-use rights, were not contingent on a firm's status or activity, which was confirmed by the GOC and Sanfortune reporting that Sanfortune was not a SOE.[196]
- The GOC also made clear that prices for land use rights are determined by "public bidding, public auction, and independent appraisal and negotiation pursuant to Article 29 of the Regulations on the Implementation of the Land Administration Law."[197]

[193] *See* Initial CVD Questionnaire at "Electricity Appendix."
[194] *See* GOC Initial Questionnaire Response at 26-27.
[195] *Id*. at 28.
[196] *Id*. at 2.
[197] *Id*.

- The application of AFA is not warranted and in the final determination the Department should use the evidence on the record to find that there was no provision of land for LTAR in this case.

The petitioners

- Although it asserts it cooperated to the best of its ability, the GOC does not directly address the failures identified by the Department and instead simply states it "provided ample evidence that no such program existed..." However, the GOC is not the party that determines what information is needed, it is required to provide the information requested, regardless of whether it believes the information to be necessary or relevant.
- Although the GOC argues that its "belief" that the provision of land use rights for LTAR was not contingent on a firms' status or activity, and confirmed Sanfortune is not a SOE, the investigation of this program is not limited to SOEs.[198] The Department's questionnaire requested the GOC provide information on whether respondents' land use rights were "contingent upon the firm's status (*e.g.*, state-owned enterprise, FIE, located in a particular geographical area, *etc*.) or activity (*e.g.*, production of a particular product, export sales, purchases form domestic suppliers, *etc*.)", therefore, whether Sanfortune is an SOE does not end the inquiry into this program. Based on the GOC's inadequate initial responses, the Department issued a supplemental questionnaire which specifically requested information on land use rights, however, the GOC failed to address the Department's specific questions, and once again asserted there is not a land rights for LTAR program.

Department's Position: We disagree with the GOC and have continued to countervail this program for the final determination. Our review of the GOC's initial and supplemental questionnaire responses shows that the GOC did not respond fully to certain sections regarding this program. Specifically, we asked the GOC to identify all instances in which it provided land or land-use rights to the mandatory respondents during the AUL.[199] Rather than responding directly to this question, the GOC instead referred the Department to the respondents' questionnaire responses.[200] Similarly, in response to our request to explain the basis upon which the land or land-use rights were provided (*i.e.*, status or activity) to the mandatory respondents, the GOC's response was not definitive, stating only that it "believes" these land or land-use rights provisions were not contingent upon the firm's status or activity.[201] The GOC's statement that it "believes" the provision of land or land-use rights is not contingent upon status or activities,[202] without providing any supporting evidence to corroborate this statement, is entitled to little weight. Also, while the GOC's first supplemental response provided some additional general explanation about the GOC's provision of land-use rights, it did not clarify the aforementioned deficiencies.[203] As in prior investigations, the Department finds unpersuasive the GOC's response that it "believes" that none of the land-use rights reported by respondents in this investigation were not contingent upon status or activities; moreover, the GOC provided no other evidence to demonstrate the basis for its "belief."[204] The information

[198] *See* Initiation Checklist at 9-10.
[199] *See* GOC Initial Questionnaire Response at 27.
[200] *Id*.
[201] *Id*.
[202] *Id*.
[203] *See* the GOC's First Supplemental Questionnaire Response, dated April 3, 2017, at 8-9.
[204] *See*, *e.g.*, *Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final*

requested regarding the provision of land and land-use rights to the mandatory respondents and the basis for which they were provided is crucial for our analysis to determine whether an alleged program is a financial contribution and specific. This type of information has been provided and verified in previous investigations.[205]

Comment 13: Whether the Department Should Apply AFA for the Specificity for Four of Sanfortune's Reported Grants

GOC

- After Sanfortune voluntarily reported four different grant programs in its initial questionnaire response, the Department gave the GOC less than two weeks to provide the detailed responses required in the standard appendices, which as it explained in its supplemental questionnaire, it was unable to do "given the time limitation and the complexity of the hierarchy and number of local governments involved."[206] Nowhere in the supplemental questionnaire did the Department, as 19 CFR 351.311 directs, explain itself as to why these four measures appeared to be countervailable subsidies and why it believed there was sufficient time in the ongoing investigation to include the discovered subsidies.[207]
- The Department did not explain why it had to apply AFA in its *Preliminary Determination* with regard to these four grants, which ignores the Department's obligation to apply an adverse inference only when "it is reasonable for Commerce to expect that more forthcoming responses should have been made, *i.e.* under circumstances in which it is reasonable to conclude that less than full cooperation has been shown."[208] Here, in determining whether the GOC cooperated to the best of its ability, the Department failed to assess the reasonableness of the GOC's explanation for why it could not provide the information requested within the Department's very tight deadline nor did it give any consideration to the considerable efforts that the GOC did make in attempting to comply with the Department's request.[209]
- The application of AFA to discovered subsidies here is also in violation of WTO obligations. Under Article 11.2 of the SCM Agreement, investigating authorities may not initiate investigations of alleged subsidies on the basis of "simple assertion, unsubstantiated by relevant evidence." Specifically, under Article 11.2(iii), sufficient evidence with regard to the "existence, amount, and nature of the subsidy" must be presented to initiate the investigation of another

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Determination with Final Antidumping Determination, 81 FR 43577 (July 5, 2016) and accompanying PDM at 12-14, unchanged in *Truck and Bus Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 8606 (January 27, 2017).

[205] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying IDM.

[206] *See* Letter from the GOC, "Certain Hardwood Plywood Products from the People's Republic of China, Case No. C-570-052: First Supplemental Questionnaire Response," dated April 3, 2017 at 14.

[207] *See* the Department's letter to the GOC, dated March 23, 2017.

[208] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1381-83 (Fed. Cir. 2003) (providing that failure to provide information by a set deadline or in the form or manner requested is not alone sufficient to conclude that a respondent was not acting to the best of its ability).

[209] Although the GOC did not provide these appendices, it did "issue information collection questionnaires, sent e-mails and made telephone calls to the local government" in attempt to receive the information. *See* the GOC's April 3 submission at 14.

program.[210] Therefore, the Department'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 the Department.

- Further, the Department's request for information under inexcusably tight deadlines is a violation of Article 12.1 of the SCM Agreement, which provides that investigating authorities must give interested parties "ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question." Therefore, in the final determination, the Department should reverse its determination regarding the four grants received by Sanfortune.

Department's Position: The GOC appears to have missed a key portion of the original questionnaire, which asks:

> Does the GOC (or entities owned directly, in whole or in part, by the GOC or any provincial or local government) provide, directly or indirectly, any other forms of assistance to producers or exporters of hardwood plywood products? ***Please coordinate with the respondent companies to determine if they are reporting usage of any subsidy program(s).*** For each such program, please describe such assistance in detail, including the amounts, date of receipt, purpose and terms, and answer all questions in the Standard Questions Appendix, as well as other appropriate appendices attached to this questionnaire.[211] (emphasis added).

As such, the GOC's coordination with Sanfortune and its response to questions concerning the four grant programs at issue was due to the Department March 6, 2017, the date it submitted its response to the original questionnaire. However, the GOC did not answer any questions with respect to these programs, thus, the Department provided it with a second chance to answer.[212] The GOC's response to the questions concerning the four grant programs at issue was due to the Department April 3, 2017, however, once again, the GOC did not respond to the questions. In sum, the Department provided two opportunities to the GOC covering 76 days to answer the above-stated question with respect to Sanfortune's four self-reported grants.[213] As such, the GOC's contention that the Department provided less than two weeks to answer questions with respect to these grants is simply untrue.

We disagree with the GOC's argument that it did not have to respond to the "Other Subsidy Program" questions in the original questionnaire and supplemental questionnaire, and that we do not have the authority to investigate these self-reported grants in the first place. Consistent with many past cases, we find that the refusal of the GOC to respond to the "Other Subsidy Program" questions

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[210] *See also* SCM Agreement, Article 11.3, which provides that "the authorities shall review the accuracy and adequacy of the evidence provided in the application to determine whether evidence is sufficient to justify the initiation of an investigation." Although the article does not specifically reference discovered information, it does support the proposition that the Department cannot find a countervailable subsidy as AFA merely because it failed to report "other government assistance." Rather, the Department must analyze the accuracy and adequacy of the information provided to determine whether there is sufficient evidence to initiate.

[211] *See* the Department's original questionnaire at "Electricity Appendix."

[212] *See* the Department's March 23, 2017 letter at 8.

[213] The date from the issuance of the Initial CVD Questionnaire, January 17, 2017, to April 3, 2017.

reflects an unwillingness to respond to the Department's requests for information.[214] Moreover, the GOC's obligation to respond to these questions is consistent with both the Act and the Department's regulations. Section 775 of the Act states that if, during a proceeding, the Department discovers "a practice that appears to provide a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition," the Department "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." U.S. law, as implemented through the Uruguay Round Agreements Act, is consistent with the WTO obligations of the United States.[215] Under 19 CFR 351.311(b), the Department will examine the practice, subsidy or subsidy program if the Department "concludes that sufficient time remains before the scheduled date for the final determination or final results of review." 19 CFR 351.311(d) provides that the Department will notify the parties to the proceeding of any subsidy discovered in any ongoing proceeding, and whether or not it will be included in the ongoing proceeding. As noted above, the GOC was required to coordinate with Sanfortune in providing responses to self-reported programs. In addition, the parties were notified of these programs by Sanfortune's reporting of them,[216] their inclusion in the proceeding based on the issuance of supplemental questionnaires concerning the programs,[217] and such notice is evident in the fact that interested parties commented on these programs for the final determination.

Comment 14: Whether JOC Yuantai Should Receive the All Others Rate, Rather than the AFA Rate

JOC Yuantai

- The Department should not have classified JOC Yuantai as a company receiving the AFA rate because JOC Yuantai timely filed a quantity and value questionnaire response,[218] and the Department should correct this error for the final determination.[219]

No other party commented on this issue.

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[214] *See*, *e.g.*, *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) (*Boltless Steel Shelving Units from the PRC*) and accompanying IDM at Comment XII; *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) and accompanying IDM at Comment 14; *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) and accompanying IDM at Comment 14; *Steel Wheels from the PRC* and accompanying IDM at 45-46; *Solar Cells from the PRC* and accompanying IDM at Comment 23; and *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) and accompanying IDM at Comment 30.
[215] *See*, generally, SAA at 656.
[216] *See* Sanfortune's initial questionnaire response, dated March 2, 2017, at 28-29 and Exhibit 14.
[217] *See* the Department's first supplemental questionnaire to Sanfortune, dated March 20, 2017, at 6.
[218] *See* Letter from JOC Yuantai, "JOC Yuantai International Trading Co., Ltd. Quantity & Value Questionnaire Response in the Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China's," dated December 22, 2016.
[219] *See* JOC Yuantai Case Brief at 2-3.

Department's Position: We agree with JOC Yuantai that it was inadvertently listed amongst the companies receiving the AFA rate, even though it had submitted a timely quantity and value response. Thus, for the final determination, JOC Yuantai will receive the all-others rate.

Comment 15: Critical Circumstances

U.S. Importers

- The Department should continue to make a negative final determination with respect to Sanfortune in the final determination, and should also make a negative final determination for all other exporters because the data do not show a massive increase in imports of the subject merchandise over a relatively short period.[220]
- The Department should take notice of the declaration and other critical circumstances information provided by the respondent parties earlier in this investigation.[221]

The petitioners

- In the *Preliminary Determination*, the Department properly analyzed shipment data and accordingly made an affirmative finding of critical circumstances.[222]
- The Department properly made affirmative findings of critical circumstances with respect to mandatory respondent Bayley Wood and the companies that did not respond to the Department's quantity and value questionnaire on the basis of AFA.[223]
- U.S. Importers offers no explanation as to why the Department should reverse its findings, so the Department should continue to find critical circumstances exist.[224]

Department's Position: We agree with both the petitioners and the U.S. importers, in part. For this final determination, the Department continues to apply AFA to Bayley Wood, as discussed in Comment 1 above. Additionally, the Department continues to apply AFA to those companies that did not respond to our Q&V questionnaire, as discussed above. As part of these AFA determinations, the Department's finding in the *Preliminary Determination* that critical circumstances exist with regard to imports of the merchandise under consideration shipped by Bayley Wood and by the companies not responding to the Q&V questionnaire, pursuant to sections 703(e) and 776(a) and (b) of the Act and 19 CFR 351.206, [225] remains unchanged and is hereby adopted for this final determination.

In determining whether there were massive imports from Sanfortune, we analyzed its respective monthly shipment data for the period of July 2016, through November 2016, compared to December 2016, through April 2017.[226] Based upon our analysis of Sanfortune's data in accordance with 19 CFR 351.206(i), we find that its shipments did not increase by more than 15 percent during the

[220] *See* U.S. Importers' Brief.
[221] *Id*. at 3.
[222] *See* the petitioners' Second Rebuttal Brief at 7.
[223] *Id*.
[224] *Id*.
[225] *See* PDM at 11.
[226] *See* Final Critical Circumstances Memorandum.

"relatively short period."[227] Therefore, we determine that the requirements of section 703(e)(1)(B) of the Act have not been satisfied, and that critical circumstances do not exist for Sanfortune.

In the *Preliminary Determination*, we found that critical circumstances existed with regard to imports of subject merchandise by "all other" exporters or producers of hardwood plywood from the PRC.[228] For this final determination, we analyzed, in accordance with 19 CFR 351.206(i), monthly shipment data for the period July 2016, through April 2017, using shipment data from the ITC Dataweb.[229] Per our practice, we subtracted the shipment data reported by Sanfortune from the ITC import data. The resulting data indicate there was not a massive increase in shipments, as defined by 19 CFR 351.206(h).[230] Therefore, we determine that the requirements of section 703(e)(1)(B) of the Act have not been satisfied, and that critical circumstances do not exist for "all other" exporters or producers of hardwood plywood from the PRC.

Lastly, because the Department's final affirmative critical circumstances determinations for Bayley Wood and those companies that did not respond to our Q&V questionnaire are based on AFA, and because the Department does not find critical circumstances for Sanfortune and for "all other" exporters or producers of hardwood plywood from the PRC, the arguments about the potential issue of seasonality raised by Far East American[231] are rendered moot.

Comment 16: All-Others Rate Calculation

U.S. Importers

- In the *Preliminary Determination*, the Department applied total adverse facts available to Bayley. To the extent that the Department continues to apply adverse facts available to Bayley in the final determination, it would be unfair to include Bayley's rate in the all-others rate applied to fully cooperative respondents.[232]

No other party commented on this issue.

Department's Position: We agree with the U.S. Importers. Section 705(c)(5)(A) of the Act provides that in the final determination, the Department shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates, and any rates based entirely under section 776 of the Act. For the final determination in this investigation, as described in Comment 1 above, the Department is assigning a rate based entirely on facts available to Bayley Wood. Therefore, the only rate that is not zero, *de minimis*, or based entirely on facts otherwise available is the rate calculated for Sanfortune. Consequently, the rate calculated for Sanfortune is also assigned as the rate for all-other producers and exporters for this final determination.

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[227] *Id.*
[228] *See* PDM at 11.
[229] *See* Final Critical Circumstances Memorandum.
[230] *Id.*
[231] *See* Letter with Attached Declaration from Far East American, dated April 10, 2017.
[232] *See* U.S. Importers' Brief at 2, and U.S. Importers' Letter at 2.

Comment 17: Presentation of Sanfortune's Drawer Slides at Verification

Sanfortune

- The Department's verification report indicates that the verification was not the time for argument. The Department misconstrued Sanfortune's purpose, as it was to provide visual assistance in support of its position that the drawer slides are not comparable to the merchandise within the scope of the proceeding.[233]

The petitioners

- The Department's explanation aligns with Sanfortune's claims of what the intention was in presenting the drawer slides to the Department. Sanfortune had opportunities to make arguments about the scope of the investigation and has done so.[234]
- The Department properly rejected Sanfortune's improper attempts to make arguments about the scope of the investigation at verification.[235]

Department's Position: We agree with the petitioners. In the verification outline provided to Sanfortune, we stated "Enclosed you will find the agenda we intend to follow at the *verification of questionnaire responses* of Linyi Sanfortune Wood Co., Ltd. (Sanfortune) in this investigation (emphasis added).[236] We additionally stated:

> Please note that verification is not intended to be an opportunity for the submission of new factual information. Information will be accepted at verification only when the information makes minor corrections to information already on the record or when information is requested by the verifiers, in accordance with the agenda below, to corroborate, support, and clarify factual information already on the record.[237]

Sanfortune's visual presentation and arguments neither made minor corrections to information on the record, nor were they specifically requested by the Department's verification team. Furthermore, as correctly noted by the petitioners, Sanfortune availed itself of the opportunities to make arguments about the scope of the investigation (including drawer slides), and the Department has taken into consideration its arguments in the various scope memoranda we have issued during the course of this investigation, as well as for the final determination.

Comment 18: Whether the Department Properly Initiated on the Petitioners' New Subsidy Allegations

The petitioners

- Pursuant to section 702(b)(i) of the Act, the Department must initiate a CVD investigation when a petitioner alleges the elements necessary for the imposition of a duty under section 701(a) of the Act and is accompanied by supporting information that is reasonably available.

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[233] *See* Sanfortune's Brief at 3.
[234] *Id*. at 6-7.
[235] *Id*. at 7.
[236] *See* the Department's letter to Sanfortune, dated August 24, 2017 at 1.
[237] *Id*. at 2.

- Section 775 of the Act provides the Department with the authority to investigate additional subsidies during the course of its CVD investigation.
- Parties' arguments that the petitioners' new subsidy allegations were untimely, or that the allegations were for programs that were not new and were thus unsuitable as a new subsidy allegation, are unfounded, as are parties' claims that the petitioners did not provide sufficient information to meet the standard of initiation on these programs.[238]
- The Department has broad discretion in setting, enforcing and extending deadlines in its proceedings.[239]
- The petitioners' request for an extension for its initial new subsidy allegations was proper, and the allegations were timely filed.
- The petitioners' request for an extension to file additional new subsidy allegations was also granted by the Department, and the allegations were timely filed.
- Although the Department may choose to defer an investigation into new subsidy programs, there is nothing requiring it to do so.
- Despite the respondents' claims to the contrary, it is clear that there was sufficient time for the Department to investigate newly alleged subsidy programs, as the Department chose to examine those programs, issued program-specific questionnaires, and even granted extensions to respondents to file their responses.
- Despite the respondents' claims that the newly alleged subsidies were not "new" subsidies, there is no statutory or regulatory basis for distinguishing between programs alleged in a petition, and those alleged during the course of an investigation.
- Each of the petitioners' new subsidy allegations met the standard for initiation, *i.e.*, proper allegations of financial contribution, benefit, and specificity.

Sanfortune and Bayley Wood

- The petitioners' new subsidy allegations were untimely, and by granting an untimely extension request from the petitioners, the Department contravened its stated and strictly enforced regulations and policy to not consider untimely extension requests unless the party demonstrates that extraordinary circumstances exist.
- The Department extended the original deadline for new subsidy allegations from March 6, 2017 at 5 p.m. until March 15, 2017 at 5 p.m.

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[238] *See*, *e.g.*, Letter from the GOC, "Certain Hardwood Plywood Products from the People's Republic of China, Case No. C-570-052: Response to Petitioners' New Subsidy Allegations," dated March 28, 2017; Letter from Sanfortune and Bayley Wood, "Hardwood Plywood Products from the People's Republic of China: Objection to Petitioners' March 15, 2017 New Subsidy Allegations Submission and Petitioners' March 15, 2017 Request for Extension of Time to Submit Additional New Subsidy Allegations," dated March 20, 2017; and Letter from various importers, "Investigation of Certain Hardwood Plywood Products from the People's Republic of China – Response to Petitioners' New Subsidy Allegations," dated March 28, 2017.

[239] *See*, *e.g.*, *Artisan Mfg. Corp. v. United States*, 978 F. Supp. 2d 1334, 1342 (CIT 2014) ("To carry out its responsibilities, Commerce necessarily must exercise discretion in setting, extending, and enforcing deadlines for the submission of requested information."); *Torrington Co. v. United States*, 68 F.3d 1347, 1351 (Fed. Cir. 1995) ("{A}gencies with statutory enforcement responsibilities enjoy broad discretion in allocating investigative and enforcement resources."); *Longkou Haimeng Machinery Co. v. United States*, 581 F. Supp. 2d. 1344, 1353,32 CIT 1142, 1151 (2008) (*Longkou Haimeng Machinery*) ("{A}ny assessment of Commerce's operational capabilities or deadline rendering must be made by the agency itself.").

- On March 15, 2017, the petitioners filed a request for an additional extension at 6:10 p.m., after the Department's established deadline.
- The petitioners provided no extraordinary circumstances to justify their late submission.
- The Department has provided no explanation for why it permitted the petitioners' late submission.
- The petitioners' statement in their extension request that they had "now become aware of one or more additional subsidy programs"[240] is patently false.
- The petitioners' "new" subsidy allegations filed on March 15, 2017 included the allegations regarding the provision of standing timber and cut timber for LTAR, allegations the petitioners were aware of from the previous plywood investigation.
- Likewise, the other "new" subsidy allegations filed on March 20, 2017, included the export buyer's and export seller's credits, of which the petitioners were well aware, citing to the program's operation as far back as 2009.
- The petitioners' counsel has previously filed numerous petitions alleging the EXIM Bank programs, so there is no possibility that they were not aware of this program when they filed the Petition in this investigation.
- The Department claimed to have no more time to investigate Bayley Wood by the end of March 2017, yet found time to investigate multiple new subsidy programs between April and October of 2017.
- The Department's disparate treatment of respondents and petitioners with respect to its resource allocations to the investigation was arbitrary and capricious. If the Department did not have sufficient time to consider Bayley Wood's questionnaires in the final determination then it should abandon all of its new subsidy findings in the final determination as well.
- The lateness of the Department's Post-Preliminary Analysis, the issuance of the calculations for Sanfortune, the short deadline for commenting on the documents, and the inability to file rebuttal briefs, contribute to the procedural unfairness of allowing the petitioners to file new subsidy allegations that were neither timely nor new.

Department's Position: The petitioners' new subsidy allegations were filed in three separate submissions between March 15 and 20, 2017.[241] The First NSA Submission, filed prior to the 5 p.m. deadline and containing the allegations related to the provision of standing timber, cut timber, urea, and formaldehyde for LTAR programs, is unquestionably timely based on the extension granted by the Department.[242] On March 15, 2017, the Department also extended the deadline for the petitioners to file additional new subsidy allegations.[243] We note, however, that the letter issued to the petitioners to memorialize this extension was issued on March 16, 2017. That letter specifically references a phone call with the petitioners' counsel prior to 5 p.m. on March 15, 2017. Shortly over

[240] *See* Letter from the petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Request for Extension of Time to Submit Additional New Subsidy Allegations," dated March 15, 2017.
[241] *See* Letter from the petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Initial New Subsidy Allegations," dated March 15, 2017 (First NSA Submission); "Certain Hardwood Plywood Products from the People's Republic of China: Additional New Subsidy Allegations," dated March 20, 2017 (Second NSA Submission); and "Certain Hardwood Plywood Products from the People's Republic of China: Clarification of Petitioners' Initial New Subsidy Allegations Submission," dated March 20, 2017 (Clarification Submission).
[242] *See* Letter from the Department, "CVD Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Extension Request to File New Subsidy Allegations," dated March 6, 2017.
[243] *See* Letter from the Department, "CVD Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Extension Request to File Additional New Subsidy Allegations," dated March 16, 2017.

an hour later, the petitioners filed their request for an additional extension, which we granted in writing the following day.

We acknowledge that the Department's regulation at 19 CFR 351.302(c) requires that an extension request be in writing and that such a written request must be made prior to the relevant filing deadline, absent extraordinary circumstances. However, regardless of whether the Department receives a written and timely filed extension request, the Department has the discretion under 19 CFR 351.302(b) to extend, for good cause, any time limit. Therefore, the petitioners' extension request, even if it was faulty as the respondents allege, is immaterial. Here, there was certainly good cause for the Department to extend the deadline, because section 775 of the Act, as described more below, places on the Department an independent obligation, separate from any new subsidy allegation, to examine practices that appear to be countervailable subsidies. In this case, because of the phone call with the petitioners on March 15, 2017, the Department was on notice that the petitioners might have potential information on more practices that could appear to be subsidies. This constitutes good cause for the Department to extend the deadline for filing the allegations and information. Therefore, we find that the petitioners' submissions of the First NSA Submission, Second NSA Submission, and Clarification Submission, as well as the March 15, 2017 extension request, were filed in a timely manner.[244]

With respect to the respondents' arguments that the petitioners' new subsidy allegations are not "new," we are unpersuaded. Section 775 of the Tariff Act of 1930 provides, in relevant part, that if, during the course of a CVD proceeding, the Department "discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition," then the Department "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." The relevant legislative history explains that this provision was meant to avoid "unnecessary separate" investigations and "increased expenses and burdens" by "including such practices within the scope of any current investigation…"[245] Within this statutory framework, the Department promulgated the deadline for the submission of factual information set out in the current version of its regulations, 19 CFR 351.301(c)(2)(iv), that a petitioner must file a countervailable subsidy allegation no later than 40 days before the preliminary determination, unless that deadline is extended by the Department. The regulation contains no mention of the "newness" of an allegation, nor does it prohibit any "second bite at the apple" for any program that the Department examined at the initiation phase of the investigation and which it declined to include in the investigation. Nor do the respondents cite to anything in support of their apparent contention that a petitioner must necessarily allege every possible program ever examined in a country, lest they be estopped from ever alleging a subsidy of which they may be, or may become, aware. This is contrary to the plain language of 19 CFR 351.301(c)(2)(iv), which allows a countervailable subsidy allegation up to 40 days prior to the preliminary determination in normal circumstances, unless extended by the Department for good cause.

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[244] *See Definition of Factual Information and Time Limits for Submission of Factual Information*, 78 FR 21246 (April 10, 2013), "We also note that the Department routinely grants extensions for the filing of new subsidy allegations in CVD proceedings."

[245] *See* Trade Agreements Act of 1979, Sen. Rep. No. 96-249, at 98 (1979).

Moreover, the courts have acknowledged that in conjunction with a petitioners' obligation to allege subsidy programs at least 40 days prior to the preliminary determination to ensure that the agency has sufficient time to investigate the allegation, there exists an "independent obligation" on behalf of the Department to investigate practices that reasonably appear to be countervailable if sufficient time remains before the final determination. Thus, regardless of the timeliness of the allegations under 19 CFR 351.301(c)(2)(iv), the courts have held that "Commerce must investigate only those allegations that reasonably appear to be countervailable and are discovered within a reasonable time prior to the completion of the investigation."[246] Given that the petitioners adequately supported their new subsidy allegations, the Department determined, appropriately, that there was reasonable time to examine the subsidies prior to the final determination.[247]

In response to the company respondents' claims that they were treated unfairly by the Department, we disagree. The timing of the Post-Preliminary Analysis affected all parties in this investigation equally. To the extent that Sanfortune and Bayley Wood were provided access to the Post-Preliminary Analysis on October 26, 2017, the same is true for the petitioners and the GOC. The same is true for release of the calculations the following day. The short briefing schedule, and the inability to file rebuttal briefs, were equally limited for all parties. Further, consistent with 19 CFR 351.301(c)(2)(vi), parties were accorded an opportunity to submit rebuttal, clarification, or corrections to the new factual information submitted in support of petitioners' new subsidy allegations. The Department considered comments submitted by interested parties in its post-preliminary analysis and, accordingly, considers comments submitted after the post-preliminary analysis here. We cannot find that the company respondents were prejudiced more than any other party in the investigation that was awaiting the results of the Post-Preliminary Analysis.

Comment 19: Whether the Provision of Urea for LTAR Is Countervailable

Sanfortune

- In *Chlorinated Isos from the PRC*, the Department determined that the provision of urea is not specific because it is consumed by at least nine different industries.
- The record does not support the finding that urea is provided to the hardwood plywood industry specifically.
- There are no new facts since *Chlorinated Isos from the PRC* that should alter the Department's understanding of the urea industry.
- The GOC has also stated that the urea industry in the PRC has not changed, and provided information that there continues to be no predominant user of urea during the POI.
- The GOC's failure to provide requested information on a small segment of the economy is hardly cause for an adverse inference.
- The information submitted by the GOC was not unsolicited, as characterized by the Department, but is directly relevant to the countervailability of the program, and was relied upon by the Department in making its finding regarding this program in *Chlorinated Isos from the PRC*.

[246] *See Bethlehem Steel Corp. v. United States*, 162 F.Supp.2d 639, 642-43 (CIT 2001) (internal quotations omitted).
[247] *See Longkou Haimeng Machinery* ("{A}ny assessment of Commerce's operational capabilities or deadline rendering must be made by the agency itself.").

GOC

- The Department's application of AFA is contrary to law because there is no evidence on the record to provide a basis for finding that the GOC did not act to the best of its ability to provide the information requested.
- There are no "facts otherwise available" to suggest that the provision of urea is specific.
- The GOC provided a complete response to every question asked by the Department in its standard questions appendix with respect to urea.
- The GOC did not respond to the input producer appendix because, as the Department previously found in *Chlorinated Isos from the PRC*, the provision of urea is not specific since urea is generally available.
- Evidence on the record demonstrates that, as in the *Chlorinated Isos from the PRC*, the agricultural industry remains the predominant user of urea.
- Even if the Department continues to find that the GOC did not act to the best of its ability, it should not apply this adverse inference to Sanfortune because it has "an obligation when drawing an adverse inference based on a lack of cooperation by a foreign government… to avoid collaterally impacting respondents to the extent practicable by examining the record for replacement information."[248]
- In providing its urea purchase list and the ownership information of its urea supplier, there is evidence on the record that demonstrates that Sanfortune did not purchase its urea from a government authority.
- The Department's AFA findings that Sanfortune's supplier of urea is a government authority are not supported by any facts or evidence on the record.

The petitioners

- The GOC, the only party that can provide the information requested, did not provide the necessary information for the Department to assess whether the provision of inputs is specific.
- Instead of providing the information requested by the Department, the GOC offered its own assessment of what information was applicable to the Department's analysis. It is the GOC's role to provide information requested by the Department, not to determine what information is relevant to the Department's analysis.

Department's Position: We continue to find that the provision of urea for LTAR constitutes a countervailable subsidy, and the application of AFA is warranted due to the GOC's failure act to the best of its ability to provide the information requested by the Department.

In its response to the initial NSA questionnaire, Sanfortune reported purchasing urea from suppliers within the PRC.[249] In the questionnaires issued to both Sanfortune and the GOC, we asked these respondents to coordinate with respect to the identification of Sanfortune's suppliers, so that the GOC could provide the information necessary for the Department to conduct its financial contribution analysis. The questionnaire issued to the GOC also instructs it to respond to the included input producer appendix, which provides important information regarding the input

[248] *See RZBC Shareholding Co. v. United States*, Ct. No. 15-22, Slip Op. 16-64 (CIT 2016).
[249] *See* Letter from Sanfortune, "Hardwood Plywood Products from the People's Republic of China: Second Supplemental Questionnaire Response," dated July 3, 2017 (Sanfortune NSA Questionnaire Response) at 2 and Exhibit SQ3-2.

suppliers and is used in the Department's determination of whether a company respondent's suppliers are "authorities" within the meaning of section 771(5)(B) of the Act.[250] The GOC did not respond to the input producer appendix in its initial NSA questionnaire response. However, it is apparent that the GOC was aware of its obligation to respond to the input producers appendix, as the GOC singled out one question regarding the role of the CCP in managing Sanfortune's identified suppliers. Instead of responding to the appendix as a whole, the GOC offered its interpretation of the importance of this one question to the Department's analysis, answering that none of Sanfortune's suppliers could be so controlled. The GOC also claimed that the provision of urea is not specific, apparently obviating the need for the Department to conduct its financial contribution analysis, which we find unpersuasive, as described further below.

The input producers appendix is not focused solely on an input supplier's affiliation with the CCP. The appendix requests additional information relating to the company, including its ownership, management structure, incorporation status, *etc*.[251] This information is necessary to determine whether a given supplier is an "authority" within the meaning of section 771(5)(B) of the Act. We noted the importance of this fact for the GOC in our GOC NSA Supplemental Questionnaire, specifically the fact that information on the record indicated that some suppliers of urea in the PRC are state-owned enterprises.[252] Thus, we again asked the GOC to provide a response to the input producers appendix for Sanfortune's urea suppliers.[253] Again, rather than provide the Department the requested information, the GOC argued that the program is not specific, and failed to provide the information requested with regard to Sanfortune's urea suppliers.
It is clear that the GOC was cognizant of the Department's request for the information asked for in the input producers appendix. Nonetheless, the GOC substituted its own judgment for that of the Department, determining for itself that no information regarding financial contribution was required, as the program could not be found specific. Thus, the Department could not review requested information with respect to financial contribution. Further, the Department had yet to make any findings with regard to the provision of urea for LTAR program. For the GOC to withhold information based on its own expectations of a preliminary finding is unacceptable. It is clear that the GOC failed to act to the best of its ability to provide the information that the Department requested on two separate occasions, and significantly impeded the Department's ability to conduct its investigation into this program. On this basis, the application of AFA is warranted in finding that the GOC provided a financial contribution to Sanfortune in the form of the provision of urea for LTAR, under sections 776(b) and 771(5)(D) of the Act, so that the GOC "does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[254]

With regard to specificity, we continue to find that the GOC failed to act to the best of its ability in providing the information requested by the Department in the questionnaires. As noted above, the Department issued two questionnaires to the GOC regarding this program. In addition to the input

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[250] *See* Letter from the Department, "Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: New Subsidy Allegations Questionnaire," (GOC NSA Questionnaire) at 1.
[251] *Id*.
[252] *See* Letter from the Department, "Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Questionnaire," dated July 25, 2017 (GOC NSA Supplemental Questionnaire) at 1.
[253] *Id.* at 2.
[254] *See* SAA at 870.

producers appendix, in the initial NSA questionnaire, we also requested that the GOC provide a response to the standard questions appendix, which requests information necessary for the Department's specificity analysis on both a *de jure* and *de facto* basis. The GOC responded to the standard questions appendix, providing the information necessary regarding *de jure* specificity.[255] However, the GOC provided none of the information necessary for the Department to determine whether the provision of urea for LTAR was limited to certain enterprises or industries,[256] stating only that the requested data "is not maintained by the GOC in the ordinary course of operations."[257] In its narrative response, the GOC instead noted the Department's specificity finding with regard to this program in *Chlorinated Isos from the PRC*, in which the Department found that the provision of urea was not specific.

We made it clear, however, that the information provided by the GOC in its initial NSA questionnaire response was not sufficient for the purposes of this investigation. Therefore, in our supplemental questionnaire, we asked the GOC to describe its efforts in gathering the information requested, to provide data from alternative sources within the PRC (*e.g.*, trade associations).[258] The GOC denied that any such data was available from alternative sources, despite demonstrating its ability to provide consumption data on urea in its initial NSA questionnaire response in support of its argument that the provision of urea for LTAR is not specific.[259] The GOC apparently considers this data sufficient to support a finding that the provision of urea for LTAR is not specific, because the Department relied on similar data in *Chlorinated Isos from the PRC*. First, we note that the POI in *Chlorinated Isos from the PRC*, 2012, is not contemporaneous with the POI in this investigation (2015). Furthermore, the records of these two investigations are distinct. The Department must base its determination in this investigation on the record of this investigation alone, and cannot consider all of the information that was underlying the specificity finding in *Chlorinated Isos from the PRC*. That is to say, it is not clear that the Department's finding in that investigation was based solely on urea consumption data provided by the GOC, to the exclusion of all other information requested by the Department. What the record of this investigation makes clear, however, is that the GOC did not provide the necessary information that was requested to conduct a complete *de facto* specificity analysis, despite being provided multiple opportunities to do so. Instead, the GOC provided information that was, in its own estimation, sufficient to reach the GOC's preferred determination. Because of the GOC's unwillingness to provide the information requested, we continue to find that the application of AFA under section 776(b) of the Act is warranted in finding the provision of urea *de facto* specific under section 771(5A)(D)(iii) of the Act.

Because we have found the application of AFA to be appropriate in both our financial contribution and specificity findings regarding the provision of urea for LTAR program, we continue to find, as we did in the Post-Preliminary Analysis, that this program is countervailable within the meaning of section 771(5) of the Act.

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[255] *See* Letter from the GOC, "Certain Hardwood Plywood Products from the People's Republic of China, Case No. C-570-052: New Subsidy Allegations Questionnaire Response," dated July 3, 2017 (GOC NSA Questionnaire Response) at Exhibit NSA-4.
[256] *See* section 771(5A)(D)(iii) of the Act.
[257] *See* GOC NSA Questionnaire Response at Exhibit NSA-4.
[258] *Id.* at 3.
[259] *Id.* at Exhibit NSA-5.

Comment 20: Whether the Provision of Formaldehyde for LTAR Is Countervailable

Sanfortune

- The information that the Department characterized as missing in the GOC's response, *i.e.*, "'whether there are sources at the national, provincial, municipal, or local levels to determine whether company owners, members of the board of directors or managers were officials or representatives of any of the above nine entities' of the Chinese Communist Party," was provided by the suppliers themselves, who attested to the fact that their managers have not and never have been an official or representative of any Communist Party or related Communist Party organization.
- The supporting documents provided by the GOC also support the claim that these suppliers are independent from the CCP.

GOC

- There is no basis for the Department's finding in the post-preliminary analysis that the GOC failed to act to the best of its ability when it found that the GOC did not explain whether the owners, directors, or managers of Sanfortune's formaldehyde producers were officials or representatives of the CCP, or that the GOC did not respond adequately to the Department's usage questions in the standard questions appendix.
- There are no "facts otherwise available" that suggest any of the formaldehyde producers were owned, directed, or supervised by any official or representative of the CCP.
- The GOC's response to the ownership questions in the input producer appendix, as well as the supporting documentation that it provided, including the articles of incorporation, the capital verification reports, the business licenses, ownership structure charts, equity transfer agreement and certifications for both companies that no owner, director, or supervisor was a member of the nine CCP entities identified by the Department, represent a full and complete response to the Department's questionnaire.
- If the Department considered the GOC's responses to the input producer appendix to be insufficient, it was obligated to notify the GOC and provide it with the opportunity to cure the deficiency.
- The Department made no factual finding or citation to evidence on the record that points to Sanfortune's formaldehyde suppliers being government authorities.
- With respect to the usage information requested in the standard questions appendix, it is unreasonable for the Department to conclude that the GOC did not act to the best of its ability in responding to the usage questions when it was unable to supply information that it does not have.

The petitioners

- The GOC, the only party that can provide the information requested, did not provide the necessary information for the Department to assess whether the provision of inputs is specific.
- Instead of providing the information requested by the Department, the GOC offered its own assessment of what information was applicable to the Department's analysis. It is the GOC's role to provide information requested by the Department, not to determine what information is relevant to the Department's analysis.

Department's Position: In the Post-Preliminary Analysis, the Department found that the application of AFA in finding that the GOC provided formaldehyde to Sanfortune was warranted. We affirm that finding for this final determination.

A significant part of the information we requested from the GOC concerned the level of state ownership and involvement of GOC or CCP officials in Sanfortune's reported formaldehyde suppliers during the POI. In the Post-Preliminary Analysis, the Department explained that it found the GOC's responses deficient in that it failed to "{e}xplain whether there are sources at the national, provincial, municipal, or local levels to determine whether company owners, members of the board of directors or managers were officials or representatives of any of the above nine entities" of the Chinese Communist Party.[260]

The GOC has argued its response was full and complete because it provided, in response to the questions in the input producers appendix, source documentation from Sanfortune's input suppliers, including articles of incorporation, capital verification reports, business licenses, ownership charts, and certifications from each supplier that no owner, director, or supervisor was an official or representative of the nine CCP entities listed in the Department's questionnaire.[261] However, we are not faulting the GOC for providing documentation from the suppliers, as was requested. What is lacking is information from the GOC or CCP itself that demonstrates that the officials of the input suppliers are not members of any of the nine CCP organizations.

In prior proceedings, the Department has determined that the GOC can in fact obtain information on CCP officials and CCP organizations. For instance, in the *2012 Citric Acid Review*, the GOC provided official government documentation regarding the CCP status of the owner of two input producers.[262] The Department has consistently determined that the GOC can obtain the CCP information we request,[263] and we see no reason to depart from these findings in the instant case. In this case, despite the fact that the Department provided opportunities for the GOC to respond to its questions regarding the "authority" status of input suppliers, the GOC simply provided alternative information from the companies themselves that are insufficient responses to our requests for information. The Department has explained to the GOC its understanding of the CCP's involvement in the PRC's economic and political structure in numerous prior PRC CVD proceedings, and has explained why it considers the information regarding the CCP's involvement in the PRC's economic and political structure to be relevant.[264] Despite the importance of the information requested in the

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[260] *See* GOC NSA Questionnaire at "Input Producers Appendix."
[261] *See* the GOC's NSA Brief at 17.
[262] *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) (*2012 Citric Acid Review*) and accompanying IDM at Comment 2.
[263] *See*, *e.g.*, *CORE from the PRC* and accompanying IDM at Comment 1; *Certain Uncoated Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 81 FR 3110 (January 20, 2016) (*Uncoated Paper from the PRC*) and accompanying IDM at Comment 1; *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 "GOC - Government Authorities under Provision of Seamless Tube Steel for Less Than Adequate Remuneration" (noting that the Department has explained its understanding of the CCP's involvement in the PRC's economic and political structure in numerous past proceedings).
[264] *See*, *e.g.*, *CORE from the PRC* and accompanying IDM at Comment 1; *Uncoated Paper from the PRC* and accompanying IDM at Comment 1.

input producer appendix, the GOC provided none of the requested information with regard to CCP officials and CCP primary organizations from its own sources.

Contrary to the GOC's assertions and objections to our questions, it is the prerogative of the Department, not the GOC, to determine what information is relevant to our analysis.[265] The Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be essential. In numerous previous cases, the Department has determined that CCP membership is relevant to companies—including purportedly private companies—in the PRC.[266] Specifically, the Department has determined that "the CCP meets the definition of the term 'government' for the limited purpose of applying the U.S. CVD law to China."[267] Further, the Department has found that PRC 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 a company's affairs.[268] Furthermore, the GOC provided no evidence that it attempted to obtain the information we requested.

The information we requested regarding Sanfortune's input producers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. Furthermore, because the GOC failed to cooperate to the best of its ability in responding to our requests for information, as we found in the Post-Preliminary Analysis, we continue to find that an adverse inference was warranted in selecting from among the facts available in accordance with section 776(b) of the Act.

With regard to our application of AFA in finding the provision of formaldehyde for LTAR to be specific, we found that necessary information to determine the specificity of this program was not on the record and that the GOC withheld requested information. In response to the usage questions that pertain to our *de facto* specificity analysis, the GOC initially stated that, "the data requested in this question is not maintained by the GOC in the ordinary course of operations."[269] We made it clear, however, that the information provided by the GOC in its initial NSA questionnaire response was not sufficient for the purposes of this investigation. Therefore, in our supplemental questionnaire, we asked the GOC to describe its efforts in gathering the information requested, to provide data from alternative sources within the PRC (*e.g.*, trade associations). The GOC denied that any such data was available from alternative sources, and again failed to provide any information that the Department could use to conduct its *de facto* specificity analysis. As such, the record remains incomplete in this regard. Therefore, we continue to find, as we did in the Post-Preliminary

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[265] *See NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); and *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided").

[266] *See Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission in Part; 2012-2013*, 80 FR 69638 (November 10, 2015) (*Sinks from the PRC*) and accompanying IDM at Comment 1; see also *CORE from the PRC* and accompanying IDM at Comment 1; *Uncoated Paper from the PRC* and accompanying IDM at Comment 1.

[267] *See Sinks from the PRC* and accompanying IDM at Comment 1; *Uncoated Paper from the PRC* and accompanying IDM at Comment 1.

[268] *See Sinks from the PRC* and accompanying IDM at Comment 1; *Uncoated Paper from the PRC* and accompanying IDM at Comment 1.

[269] *See* GOC NSA Questionnaire Response at Exhibit NSA-6.

Analysis, that we must rely on "facts available" in making our final determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. We continue to find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information, and therefore, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of formaldehyde for LTAR is specific within the meaning of section 771(5A)(D)(iii) of the Act.

Comment 21: Whether the GOC's Provision of Standing Timber, Cut Timber, and UF Resin, for LTAR Is Specific

GOC

- The Department has no basis to conclude that the GOC did not act to the best of its ability in responding to the questionnaires with respect to standing and cut timber, as well as UF resin.
- With regard to the provision of standing timber and UF resin for LTAR, Sanfortune could not have benefitted from the alleged programs because it did not purchase either standing timber or UF resin, and therefore the information requested was not relevant to the investigation.
- Although the Department asked the GOC to provide a response to the standard questions appendix with respect to both the standing timber and UF resin for LTAR programs, irrespective of Sanfortune's use of the program, it is of no matter as the Department made clear that Sanfortune was the sole mandatory respondent in this investigation.
- It is unlawful for the Department to apply AFA because the GOC did not provide usage information requested regarding the provision of cut timber for LTAR as requested in the standard questions appendix. Sanfortune's purchases of cut timber were imported from foreign producers.
- Under section 776(b) of the Act, the Department may only "use facts otherwise available in reaching the applicable determination." As the usage information regarding cut timber, the withholding of which was the basis for the Department's application of AFA, is not relevant to "reaching the applicable determination" with regard to Sanfortune.
- The GOC placed information on the record that shows that the provision of cut timber is not specific to the hardwood plywood industry since it includes a large number of manufacturing sectors extending beyond even the wood products industry in general.[270] The Department ignored this evidence, and failed to cite to any record evidence in making its finding.

The petitioners

- The GOC, the only party that can provide the information requested, did not provide the necessary information for the Department to assess whether the provision of inputs is specific.
- Instead of providing the information requested by the Department, the GOC offered its own assessment of what information was applicable to the Department's analysis. It is the GOC's role to provide information requested by the Department, not to determine what information is relevant to the Department's analysis.

Department's Position: For this final determination, we are upholding our findings regarding these programs, the provision of standing timber, cut timber, and UF resin for LTAR, from the

[270] *See* GOC NSA Questionnaire Response at 4-6 and Exhibits NSA-1 and NSA-2.

Post-Preliminary Analysis. In our initial NSA questionnaire, we requested that the GOC provide responses to both the standard questions and input producers appendices with respect to each of these three individual programs.[271] With respect to the standing timber and UF Resin programs, the GOC failed to respond to the information requested in these appendices in its initial NSA questionnaire response, citing Sanfortune's reported non-use of the programs. When asked again to provide responses to the usage questions from this appendix with respect to these two programs, irrespective of Sanfortune's reported use of the programs, the GOC again failed to provide the requested information.[272] For the provision of cut timber program, the GOC did provide a response to the standard questions appendix in its initial NSA questionnaire response, but did not provide the usage information necessary to the Department's *de facto* specificity analysis. The Department attempted to gather this information again in a supplemental questionnaire, and again the GOC failed to provide it, citing to Sanfortune's reported non-use of the program to explain the supposed irrelevancy of the requested information.[273]

To be clear, the information requested with respect to these three programs in the two questionnaires issued to the GOC regarding these programs is not irrelevant. The GOC seems to be predicating the need for this information on the assumption that Sanfortune is the only mandatory respondent in this investigation, and has argued as much in its post-preliminary brief. However, this assumption is incorrect. The Department is still undertaking this investigation with respect to *both* mandatory respondents, Sanfortune and Bayley Wood, and attempted to make this clear to the GOC when asking for information irrespective of Sanfortune's reported use or non-use of a program. Although total AFA was applied to Bayley Wood's use of subsidy programs in the *Preliminary Determination* due to the company's failure to fully cooperate, no final determination regarding the company has yet been made, obligating the Department to continue investigating the company's use of subsidies that were properly alleged and included in this investigation. As Bayley Wood's *use* of subsidies in the Post-Preliminary Analysis was based on total AFA as it was in the *Preliminary Determination*, in order to find those subsidies to be countervailable the Department must still establish the existence of both financial contribution and specificity. Both of these elements can only be established by examining information provided by the government, in this case the GOC. Hence, in our questionnaires to the GOC regarding these programs, we continued to pursue information necessary for our findings of financial contribution and specificity.

With the information necessary to determine financial contribution and specificity missing from the record, due to the GOC's refusal to provide the information requested, we find that an adverse inference is warranted in applying facts otherwise available, under sections 776(a) and (b) of the Act, in making a finding that these three programs provide a financial contribution with respect to Bayley Wood under section 771(5)(D) of the Act, and are specific under section 771(5A)(D)(iii) of the Act.

[271] *See* GOC NSA Questionnaire at 1-2.
[272] *See* GOC NSA Supplemental Questionnaire at 1-2.
[273] *Id.* at 1.

Comment 22: Whether the Department Should Correct the Ocean Freight Data Used in Calculating the Urea and Formaldehyde Benchmarks

The petitioners

- The Department correctly used world market prices as a benchmark for measuring the benefit from the provision of urea and formaldehyde for LTAR programs, in accordance with 19 CFR 351.511(a)(2)(ii).
- In applying ocean freight delivery charges to the benchmark data in accordance with 19 CFR 351.511(a)(2)(iv), the Department explained that it "used a simple overall average of all ocean freight rates for 'chemicals' in the parties' submissions."[274]
- In the Department's post-preliminary calculations for Sanfortune, the Department omitted a number of Maersk quotes submitted by the petitioners in their March 30, 2017, benchmark submission,[275] which was incorporated by reference into the petitioners' July 19, 2017, benchmark submission[276] for the new subsidy programs.
- The Department should revise its ocean freight calculation to include the omitted freight quotes.

No other parties commented on this issue.

Department's Position: We agree with the petitioners that the information on the record includes additional data regarding ocean freight costs that were not incorporated into the benchmark used to measure the benefit from the provision of urea and formaldehyde for LTAR in the post-preliminary analysis. As such, for this final determination, the Department will revise its benchmark calculation to include the data identified by the petitioners as missing from the post-preliminary calculation. In adding the additional Maersk quotes from the petitioners' March 30, 2017 submission, we observed that the first five quotes were duplicates (in terms of route, date, and freight cost) of the first five quotes submitted by the respondent parties. Therefore, we did not add these to the calculation again to avoid double-counting identical information, but we did use the remaining additional quotes submitted by petitioners.[277]

Comment 23: Whether Veneers Are Included as Part of the Program for the Provision of Cut Timber for LTAR

The petitioners

- In the petitioners' initial new subsidy allegations submission, the petitioners provided evidence indicating that the GOC provided standing and cut timber and veneers to Chinese producers of subject merchandise for LTAR.
- The petitioners provided information indicating that the Chinese market for standing and cut timber and veneers is distorted due to government control, and provided benchmark information.
- In initiating on the petitioners' new subsidy allegations, the Department did not indicate that it was excluding an investigation into the provision of veneers for LTAR.

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[274] *See* Post-Preliminary Analysis at 7-9.
[275] *See* Letter from the petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Rebuttal Benchmark Information," dated March 30, 2017.
[276] *See* Letter from the petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: NSA Benchmark Submission and Deficiency Comments on GOC NSA Response," dated July 19, 2017.
[277] *See* Sanfortune Final Calculation Memorandum.

- The Department incorporated evidence regarding the provision of veneers for LTAR into its initiation analysis.
- The Department should confirm that the provision of veneers is included in the investigation of cut timber for LTAR.
- Neither the GOC nor Sanfortune provided information related to the purchase or provision of veneers.
- Sanfortune identified itself as having purchased veneers, but provided no information on these purchases. Therefore, the Department should apply AFA to Sanfortune's use of this program.

Department's Position: We disagree with the petitioners' contention that veneers are included in the new subsidy allegations made by the petitioners during the course of this investigation, as the record does not support a finding that any such allegation was made. Between March 15, 2017 and March 20, 2017, the petitioners provided three separate submissions detailing separate new subsidy allegations. The first new subsidy allegations submission related to the programs involving the provision of standing and cut timber, as well as the provision of urea and formaldehyde for LTAR.[278] The subsequent submissions dealt with the EXIM Bank programs and the provision of UF resin for LTAR.[279]

Most relevant to the petitioners' argument is their Initial NSA Submission, which lists among its headings the "Provision of Standing and Cut Timber and Certain Wood Products for LTAR."[280] The petitioners note, in their Initial NSA Submission, that in the original Petition[281] they alleged that the GOC provides standing and cut timber to Chinese producers of subject merchandise at LTAR. The petitioners also submitted Chinese import and U.S. export data for logs in order to establish that a benefit was provided by the programs. The petitioners then acknowledged that the Department declined to initiate on the standing and cut timber for LTAR programs, citing to the insufficiency of the provided benefit data.

The Initial NSA Submission was essentially the petitioners' second attempt at curing the deficiencies of its allegations in the Petition. As such, in the Initial NSA Submission, the petitioners only addressed the areas in which the original allegations in the Petition were found to be deficient, incorporating by reference the original allegations from the Petition. As such, in assessing the petitioners' new subsidy allegations, we reviewed the original Petition from the initiation phase of the investigation, as described below.

In the Petition, the petitioners only alleged that "the GOC is providing timber to the hardwood plywood producers" for LTAR.[282] The Department sought further clarification regarding the

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[278] *See* Letter from the petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Initial New Subsidy Allegations," dated March 15, 2017 (Initial NSA Submission).
[279] *See* Letter from the petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Additional New Subsidy Allegations," dated March 20, 2017; and Letter from the petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Clarification of Petitioners' Initial New Subsidy Allegations Submission," dated March 20, 2017.
[280] *See* Initial NSA Submission at 2.
[281] *See* Letter from the petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties," dated November 18, 2016 (the Petition).
[282] *See* the Petition at page 17 of Volume III.

allegation, because it was unclear from the Petition whether the petitioners were alleging the provision of standing timber, cut timber, or both.[283] In its CVD Petition Supplement, the petitioners clarified that they were in fact alleging that the GOC was providing both standing timber and cut timber for LTAR to Chinese producers of subject merchandise.[284] Under the "Provision of Timber for LTAR" heading were subheadings for the "Provision of Standing Timber for LTAR" and the "Provision of Cut Timber for LTAR."[285] For both of the allegations listed in the subheadings, the petitioners alleged all of the elements of a subsidy, namely, financial contribution, benefit, and specificity.

Notably, the petitioners made no mention of veneers anywhere in Volume III of the Petition, the section of the Petition pertaining to the CVD investigation. Nor did the petitioners make any allegations or arguments referring to veneers or a veneer program in the CVD Petition Supplement. When the petitioners incorporated by reference those documents in their Initial NSA Submission, we analyzed their allegations regarding the elements of each program from the CVD Petition Supplement.

The petitioners' arguments relating to veneers seem to be based on arguments and information first appearing in the Initial NSA Submission. In that document, following a summarization of the Department's decision not to initiate on the standing and cut timber programs at the initiation phase of the investigation, and the incorporation by reference of the information contained in the Petition and the CVD Petition Supplement, is a subheading stating that "The Chinese Market for Standing and Cut Timber *and Veneers* Is Distorted By the GOC" (emphasis added). The submission also contains benchmark information related to domestic Chinese timber prices, softwood and hardwood, and veneers. These arguments related to veneers were not addressed or included in any previous submission from the petitioners. What is clearly lacking from the petitioners' arguments are the necessary elements of an LTAR allegation, including a narrative description of the program, financial contribution, benefit, and specificity.[286] The petitioners' veneer arguments are limited to the aspects of distortion and benchmarks.[287] If it were the intention of the petitioners to make an allegation that the GOC was providing veneers to producers of subject merchandise for LTAR, then providing distortion and benchmark information is putting the cart before the horse, as none of the basic factual information required to even consider whether the GOC provided a subsidy, that the subsidy is specific, and that it provides a benefit, is to be found anywhere on the record. The Department can only speculate as to the petitioners' intention in providing arguments related to the distortion of the veneer market in China and related benchmarks, and that we will not do. Unlike at the initiation stage of an investigation, when the Department may seek further information from petitioners to clarify or support allegations, it is not the Department's practice to request supplemental information regarding a petitioners' new subsidy allegations once an investigation is underway. Thus, we can only conclude that the petitioners' arguments regarding an investigation into the provision of veneers for LTAR by the GOC is unsupported by the record, which

[283] *See* Letter from the Department, "Petition for the Imposition of Countervailing Duties on Imports of Certain Hardwood Plywood Products from the People's Republic of China: Supplemental Questions," dated November 23, 2016.
[284] *See* Letter from the petitioners, "Certain Hardwood Plywood Products from the People's Republic of China: Response to the Department's November 23, 2016 Supplemental Questions Regarding Volume III of the Petition for the Imposition of Countervailing Duties," dated November 29, 2016 (CVD Petition Supplement).
[285] *See* CVD Petition Supplement at 2-7.
[286] *See* section 701(a) and section 771(5) of the Act.
[287] *See* Initial NSA Submission at 5-12.

demonstrates that the petitioners never made such an allegation at either the initiation stage of the investigation or as part of their new subsidy allegation submissions.

Comment 24: Export-Buyer's Program

GOC

- The Department's finding in the post-preliminary analysis that the GOC failed to "provide the requested information needed to allow the Department to fully analyze this program," and the subsequent application of AFA, is unwarranted as the Department failed to provide the GOC with any notice that its responses were deficient.
- When the Department receives a response that it deems deficient, it is obligated under section 782(d) of the Act to notify the respondent of the deficiency and to provide an opportunity to remedy that deficiency prior to applying AFA.
- The GOC responded to all the Department's questions in its initial new subsidies questionnaire. The Department asked no further questions regarding the program, and provided no opportunity to cure any deficiencies it may have identified.
- In the nearly four months between the GOC's NSA questionnaire response and the issuance of the post-preliminary analysis, the Department had ample time to highlight and address any deficiencies in the GOC's response.
- As the Department did not notify the GOC of any deficiencies in its response despite having ample time to do so, there is no legal basis to resort to the application of AFA.
- Under section 776(b)(1) of the Act, the Department may only apply AFA when a respondent "has failed to cooperate by not acting to the best of its ability to comply with a request for information." There is no basis for the Department to find that the GOC did not act to the best of its ability to provide the 2013 Revisions, because that information is not available to the GOC.
- Information on the record indicates that the EXIM Bank's 2013 Revisions are "internal to the bank, non-public, and not available for release."[288] As the GOC does not have the legal authority to compel the EXIM Bank to release its internal guidelines, it is not reasonable for the Department to expect the GOC to produce that information.
- In *Red Garden Foodstuff Co. v. United States*, the CIT reversed the Department's finding that a respondent did not act to the best of its ability to attain business records from its former owners which were not available to the respondent.[289]
- The Department cannot find a respondent to have not acted to the best of its ability merely because it does not provide the information in the form the Department requested. The GOC provided a thorough response explaining how the program worked with supporting documentation, previous questionnaire responses as requested by the Department, and an explanation of how use of the program could be verified. In its post-preliminary analysis, the Department did not address the financial contribution element of a subsidy in applying AFA to Sanfortune's use of the Export Buyer's Credit program.
- Even when applying AFA, the Department "must still make the necessary factual findings to satisfy the requirements for countervailability."[290]

[288] *See* the GOC's NSA Brief at 7.
[289] *See Red Garden Foodstuff Co. v. United States*, 815 F. Supp. 2d 1311, 1325 (CIT 2012).
[290] *See Changzhou Trina Solar Energy Co., Ltd. v. United States*, 195 F. Supp. 3d 1334,1350 (CIT 2016).

- In making its factual findings, the Department must search "the far reaches of the record" for facts that support the elements of a countervailability subsidy, and cannot ignore relevant facts on the record that contradict its conclusions.[291]
- The Department's finding that Sanfortune and Bayley Wood used this program, based on AFA, is insufficient without demonstrating a financial contribution from a government authority.
- The Department ignored record evidence that neither Sanfortune nor its U.S. customers could have received a financial contribution from the EXIM Bank. Notably, the GOC obtained a list of Sanfortune's U.S. customers, and checked that list against EXIM Bank records to demonstrate that none of the companies received funding.[292] Sanfortune also provided information demonstrating non-use.[293]
- Despite having the opportunity to verify information provided by Sanfortune and the GOC, the Department chose not to do so. Although the Department has discretion what to verify, if it chooses not to verify information, then the information is considered accurate.[294]
- Under section 771(5)(D) of the Act, a financial contribution requires a *direct* transfer of funds. As noted in the GOC's response, no direct financial contribution to Chinese respondents occurs under the Export Buyer's Credit program, as it is the importer contracting with EXIM Bank that is responsible for paying any loan.
- As there is no direct transfer of any loan or credit to a Chinese respondent, there can be no financial contribution under the statutory definition.
- Under section 771(5)(C) of the Act, the Department is not required to consider the effect of a subsidy when determining its existence. As such, when a subsidy is conferred on a foreign importer, the Department is not required to consider how this subsidy might later benefit a Chinese respondent.
- Section 776(a)(2)(A)-(D) of the Act requires that in applying AFA based on the withholding of information by the respondents, that that information be related to the applicable determination.
- While the Department may have the prerogative in determining the information that is necessary to an investigation, that mandate cannot be read so broadly that the Department can request any information of an interested party, and regardless of its relevance, make an AFA finding as a result of it not being on the record.
- In the post-preliminary analysis, the Department placed great emphasis on the $2 million contract minimum prerequisite for the program. But whether that provision remains in force is irrelevant in this investigation. The size of Sanfortune's export contracts was not at issue in this investigation, as Sanfortune reported that none of its U.S. customers used the Export Buyer's Credit program. Thus, the question of the minimum contract figure is not relevant in this instance.
- The 10.54 percent AFA rate that the Department applied for the Export Buyer's Credit program comes from a "Government Policy Lending" program that is not similar to the Export Buyer's Credit program, is uncorroborated, and punitive.

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[291] *Id.* at 1350.
[292] *See* GOC NSA Questionnaire Response at 16, 18.
[293] *See* Sanfortune NSA Questionnaire Response at 4-7.
[294] *See Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) and accompanying IDM at Comment 9.

- The treatment of the benefit for these two programs differ, as the Government Policy Lending program provides preferential interest rates from Chinese-owned financial institutions to Chinese respondents, whereas under the Export Buyer's Credit program, any benefit in the form of preferential rates is provided to the foreign importer, not the Chinese respondent.
- If the Department continues to apply AFA to the Export Buyer's Credit program, it should use the 2.06 percent rate calculated in the preliminary determination of *Aluminum Foil from the PRC*,[295] as both programs function similarly and are export contingent.
- The Department failed to comply with section 776(d)(2) of the Act when it defaulted to the highest possible rate without explaining why the GOC's cooperation was so deficient that resorting to such a rate was reasonable.

Sanfortune

- Section 782(d) of the Act requires the Department to issue a deficiency questionnaire when it determines that information provided by a respondent does not fully comply with a request for information.
- In its questionnaire response, the GOC provided information on the program generally, provided documentation on the program, provided that it issued a questionnaire to the China Ex-Im Bank concerning whether any of the mandatory respondents or affiliates obtained any export buyer's credit, and confirmed that the respondents and its affiliates did not benefit from the program.[296]
- The Department failed to identify any deficiencies with the GOC's NSA questionnaire response regarding the Export Buyer's Credit program, did not issue a further supplemental questionnaire regarding the GOC's response, yet still claimed the GOC's response regarding this program was deficient in its post-preliminary analysis.
- The deficiencies noted by the Department in the post-preliminary analysis were all addressed by the GOC in its initial questionnaire response, namely, that the 2013 guidelines could not be provided because they are internal and non-public, and that furthermore the 2000 Rules were still in effect. As such, the Department was not missing any information necessary to evaluate the program's current requirements.
- The Department also faulted the GOC for not responding to the standard questions appendix, even though the GOC explained that it did so because no respondents used the program and it was therefore not applicable. Moreover, the questions in that appendix were essential answered in the GOC's narrative responses.
- The Department bears the responsibility for its perceived "unsatisfactory state of the record" due to its failure to comply with section 782(d) of the Act.[297] "If Commerce was unclear… or needed further information…, then it was incumbent upon Commerce to ask relevant questions upon receipt of such information."[298]
- Both Sanfortune and the GOC explained that that the program was not used by Sanfortune or its customers, and provided supporting documentation to this effect from all of Sanfortune's customers.

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[295] *See Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 37844 (August 14, 2017) and accompanying IDM at 45.
[296] *See* GOC NSA Questionnaire Response at 15-20.
[297] *See China Kingdom*, 507 F. Supp. 2d at 1359.
[298] *See Agro Dutch* at 2059.

- All of the information provided by the GOC and Sanfortune was verifiable and the Department has previously verified non-use of this program in other investigations.[299]
- The Department has various means and techniques of verifying non-use of programs, and regularly does so, yet chose not to verify Sanfortune's reported non-use of this program in this investigation. The Department's choice not to verify Sanfortune's non-use of this program must result in a finding of non-use in the final determination.
- That Sanfortune did not purchase any export credit insurance as required by the program, and did not receive any loan distributions under the program, are further evidence of non-use by the company.
- The Department must select the best available information and support its decisions with substantial evidence.[300]
- Sanfortune acted to the best of its ability and submitted usable, complete, and verifiable responses to that effect.
- The Department's normal practice where the company respondents respond fully to the Department's requests for information, but the GOC fails to response adequately to the Department's questions, is to apply AFA to the benchmark information provided by the GOC, and to use the company's own data to measure the benefit.[301]
- Therefore, the Department must use Sanfortune's own data in determining the amount of benefit Sanfortune received under the Export Buyer's Credit program.
- As both Sanfortune and its U.S. customers stood ready to cooperate and verify their non-use of this program, the Department may not draw a purely speculative inference and conclusion that they received loans that attested to having not received.
- The Department's selection of the 10.54 percent rate applied to Sanfortune for the Export Buyer's Credit program was unreasonable and unsupported by substantial evidence. It is also extremely adverse, not related to this industry, and not connected to the program.
- The "Government Policy Lending" program selected from the *Coated Free Sheet Paper from the PRC* investigation is not similar to the Export Buyer's Credit program, based on the treatment of the benefit.
- Any benefit provided under the Export Buyer's Credit program is provided to the foreign importer, whereas benefits provided under the Government Policy Lending program are provided directly to the company respondent in the form of preferential interest rates. Such preferential interest rates would not accrue to a company respondent under the Export Buyer's Credit program.
- The Department should select a rate calculated from the Export Sellers' Credit program or another export-contingent loan program in this investigation. Alternatively, the Department can also select the rate applied to Hebei Jiheng Chemicals Co., Ltd. for its use of the Export Sellers' Credit program in *Chlorinated Isos from the PRC*, *i.e.*, 0.87 percent.[302]

[299] *See*, *e.g.*, *Chlorinated Isos from the PRC* and accompanying IDM at 15; *see also Boltless Steel Shelving Units from the PRC* and accompanying IDM at Comment X.
[300] *See Calgon Carbon Corp. v. United States*, (CIT 2011).
[301] *See Chlorinated Isos from the PRC* and accompanying IDM at 21.
[302] *Id.* at 14-15.

The petitioners

- The GOC failed to provide requested information necessary for the Department to analyze the Export Buyers' Credit program, and as such, the application of AFA is warranted here.
- The GOC is the only party that can provide information relating to the internal administration of this program, and because it refused to do so, the Department was unable to confirm Sanfortune's reported non-use of the program.
- Rather than cooperate with the Department, the GOC offered its own assessment of what information is applicable to the Department's analysis. The GOC's role is to provide the information requested by the Department.
- The Department's selection of the 10.54 percent *ad valorem* rate applied to the Export Buyer's Credit program is appropriate given the GOC's failure to provide complete information regarding this program. The rate selected is consistent with the most recently completed CVD investigation concerning this program.[303]
- As there are no other cooperating companies in this investigation, the Department's rate selection is consistent with its espoused AFA hierarchy, which has been upheld by the CIT.[304]

U.S. Importers

- The Department should reverse its finding in the Post-Preliminary Analysis that Sanfortune used this program, as Sanfortune cooperated fully with the Department's investigation and was not eligible to use the program.
- The Department could have verified Sanfortune's non-use of the program, but chose not to do so.
- The Department was obligated under section 782(d) of the Act to provide respondents with an opportunity to rectify any deficiencies it identified in their questionnaire responses.

Department's Position: In the Post-Preliminary Analysis, the Department found that the use of AFA was warranted in determining the countervailability of the Export Buyers' Credits program because the GOC did not provide the requested information needed to allow the Department to fully analyze this program. In the Post-Preliminary Analysis, we specifically cited to the GOC's failure to provide any response to the Department's standard questions appendix as requested, as well as its failure to provide a copy of the 2013 Administrative Measures revisions (2013 Revision). In addition to the standard questions appendix, our questionnaire to the GOC requested that it provide a copy of its 7th Supplemental Response in the Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China (Silica Fabric Response) as well as the "original and translated copies of any laws, regulations or other governing documents cited by the GOC" in that document.[305] The GOC was clearly cognizant of this second requirement, and partially complied with this request, providing the "Administrative Measures of Export Buyer's Credit of Export-Import Bank of China" (2000), and the "Implementing Rules for the Export Buyer's Credit of the Export-Import Bank of China" (1995) which were both cited in the Silica Fabric Response.[306]

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[303] *See Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017) and accompanying IDM at 11.
[304] *See Ozdemir Boru San. ve Tic. Ltd. Sti. v. United States*, No. 16-00206 at 15-16 (CIT 2017).
[305] *See* GOC NSA Questionnaire at 3.
[306] *See* GOC NSA Questionnaire Response at Exhibits NSA-9 and NSA-11.

As we explained in the Post-Preliminary Analysis, the documents cited to in the Silica Fabric Response included the 2013 Revisions. Our NSA questionnaire issued to the GOC asked for all documents cited to in the Silica Fabric Response, including the 2013 Revisions. Citing to the Silica Fabric Response, the GOC argues now, as it did in that investigation, that the 2013 Revisions are not available because they are "internal to the bank, non-public, and not available for release," and because the GOC does not have the legal authority to compel the EXIM Bank to provide the guidelines.[307]

We have previously addressed this argument, and found it to be unpersuasive. As we stated in *Silica Fabric from the PRC*,

> We requested the 2013 Administrative Measures revisions (2013 Revisions) because information on the record of this proceeding indicated that the 2013 Revisions affected important program changes. For example, the 2013 Revisions may have eliminated the USD 2 million contract minimum associated with this lending program. By refusing to provide the requested information, and instead asking the Department to rely upon unverifiable assurances that the 2000 Rules Governing Export Buyers' Credit remained in effect, the GOC impeded the Department's understanding of how this program operates and how it can be verified.[308]

The GOC has argued that the Department's emphasis on the minimum contract amount is misplaced, as Sanfortune did not use the program and therefore no threshold amounts were relevant to our investigation. This argument is misplaced for two reasons. As the Department explained above, in Comment 21, we are continuing to examine the applicability of subsidy programs to both Sanfortune and Bayley Wood. Based on AFA, we have continued to find that Bayley Wood used this program, which constitutes a financial contribution, as we did in Post-Preliminary Analysis. Following from this line of reasoning, it is reasonable to conclude that Bayley Wood's use of the program may be possible, given that the $2 million dollar threshold has been eliminated. Second, we do not know for certain that this threshold has been eliminated. That information is supposedly contained in the 2013 revisions, which the GOC has not provided, preventing us from conducting a thorough analysis of the how the program operates. We find the GOC's claims regarding its lack of authority unconvincing given that it claims it cannot compel the EXIM Bank to provide the 2013 Revisions as requested, but was able to convince the EXIM Bank to disclose customer-specific information regarding non-use of this program.[309] Moreover, while the GOC has claimed that section 782(d) of the Act requires that the Department provide a respondent an opportunity to remedy a deficiency identified in its submitted information. However, in this case, the record supports a finding that the GOC refused to provide the requested information regarding the 2013 Revisions, and that any further request for that necessary information would be fruitless. As such, when a respondent outright refuses to submit requested information, the Department is not obligated to pursue the issue further.

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[307] *See* the GOC's NSA Brief at 7.

[308] *See Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 27, 2017) (*Silica Fabric from the PRC*) and accompanying IDM at 12 (internal citations omitted).

[309] *See* GOC NSA Questionnaire Response at 18.

Additional information in the Silica Fabric Response indicates that the loans associated with this program are not limited to direct disbursements through the EX-IM Bank.[310] Specifically, the GOC stated that customers can open loan accounts for disbursements through this program with other banks.[311] The funds are first sent from the EX-IM Bank to the importer's account, which could be at the EX-IM Bank or other banks, and that these funds are then sent to the exporter's bank account.[312] Given the complicated structure of loan disbursements for this program, the Department's complete understanding of how this program is administered is necessary. Thus, the GOC's refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administered by the EXIM Bank, impeded the Department's ability to conduct its investigation of this program.

In addition, the standard questions appendix requested information that the Department requires in order to analyze the specificity and financial contribution aspects of this program, including translated copies of the laws and regulations pertaining to the program, identification of the agencies and types of records maintained for administration of the program, a description of the program and the program application process, program eligibility criteria, and program usage data. Rather than responding to the standard questions appendix as requested, the GOC only reported that Sanfortune did not use the program during the POI, and that the appendix was not applicable.[313]

Because of the GOC's failure to provide information as requested in response to the Department's request, we continue to find, pursuant to sections 776(a)(2)(A) and (2)(C) of the Act, that the use of facts otherwise available is appropriate in light of the GOC's refusal to provide the 2013 Revisions and a response to the standard questions appendix. Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding of information and significantly impeding this proceeding, without demonstrating efforts to provide the requested information, failed to cooperate by not acting to the best of its ability. Accordingly, we continue to find, as we did in the Post-Preliminary Analysis, that the application of AFA is warranted. The GOC has not provided sufficient information to determine whether this program limits the provision of Export Buyers' Credits to business contracts exceeding USD 2 million. Such information is critical to understanding how the Export Buyers' Credits program operates and is critical to the Department's program use determination.

Both the GOC and Sanfortune have argued that the program used as the basis for the 10.54 percent rate, the rate calculated for the "Government Policy Lending" program in *Coated Free Sheet Paper from the PRC*, is not similar to the Export Buyer's Credit program based on the treatment of the benefit. First, the parties argue that the benefit provided by the Export Buyer's Credit program accrues to the foreign importer, whereas the benefit provided under the Government Policy Lending program accrues directly to the respondent. However, this argument is unpersuasive. Our AFA hierarchy groups subsidies by the type of benefit involved. The Department has never been able to analyze fully the existence, amount or type of benefit from the Export Buyer's Credit program,

[310] *See* GOC NSA Questionnaire Response at Exhibit NSA-10.
[311] *Id.*
[312] *Id.*
[313] *See* GOC NSA Questionnaire Response at 12.

because of the GOC's perpetual non-cooperation. All we know is that the program is a lending program. Therefore, it is appropriate to use another lending program as the basis for the AFA rate.[314]

Moreover, we also disagree with arguments put forth by the GOC and Sanfortune that the Department should limit its selection of potential AFA rates to programs that are export contingent. Again, this ignores the "benefit" aspect of the hierarchy, and instead replaces it with a specificity comparison that is not called for in the statute and has not been utilized by the Department in applying its AFA hierarchy in the past. It also diminishes the deterrent aspect inherent in the Department's AFA methodology, which has been upheld in the past.[315]

We have corroborated that rate to the extent practicable, as described in the section above entitled "Use of Facts Otherwise Available and Adverse Inferences." In particular, in this case, the preferential policy lending rate of 10.54 percent is an appropriate rate to apply because it is a rate calculated in a CVD PRC final determination for a similar program based on the treatment of the benefit. For lending programs these may include, among other things, the size of the loan, the interest rate on the loan, the term of the loan, the benchmark interest rate selected, and the size of the company's sales. When selecting an AFA rate, the Department must rely on the facts otherwise available about the impact of such factors in the case at hand given the unverified record evidence regarding the program. In the absence of verified information to control for a comparison of such factors between another case and the case at hand, the Department corroborated the rate selected to the extent practicable, *i.e.*, by relying on a rate calculated for a similar program in a prior proceeding pertaining to the PRC.

[314] For similar reasons, we disagree with the GOC's arguments that the Department cannot countervail this program because there supposedly is no direct transfer of funds and because the Department does not consider the effects of a subsidy. These are substantive claims and arguments, but because of the GOC's non-cooperation, we do not have a full record on which to evaluate them. The GOC cannot benefit from its own non-cooperation.

[315] *See Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

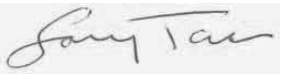
XI. RECOMMENDATION

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

☒ ☐

Agree Disagree

11/6/2017

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance