

UNITED STATES COURT OF INTERNATIONAL TRADE

**BAROQUE TIMBER INDUSTRIES
(ZHONGSHAN) CO., LTD. AND
RIVERSIDE PLYWOOD
CORPORATION,**

Plaintiffs,

and

**ZHEJIANG DADONGWU GREENHOME
WOOD CO., LTD., *et al.*,**

Consolidated Plaintiffs,

and

**LUMBER LIQUIDATORS SERVICES,
LLC,**

Plaintiff-Intervenor,

v.

UNITED STATES,

Defendant,

and

**AMERICAN MANUFACTURERS OF
MULTILAYERED WOOD FLOORING,**

Defendant-Intervenor.

Before: Timothy M. Reif, Judge

Consol. Court No. 22-00210

OPINION AND ORDER

[Sustaining in part and remanding in part Commerce's remand redetermination in the ninth administrative review of the countervailing duty order covering multilayered wood flooring from the People's Republic of China.]

Dated: October 9, 2026

Andrew T. Schutz, Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, of Washington, D.C., argued for plaintiffs Baroque Timber Industries (Zhongshan) Co., Ltd. and Riverside Plywood Corporation. With him on the brief were Jordan C. Kahn and Michael S. Holton.

Kristin H. Mowry, Mowry & Grimson, PLLC, of Washington, D.C., for consolidated plaintiffs Fine Furniture (Shanghai) Ltd. & Double F Limited. With her on the brief were Sarah Marie Wyss and Clemence D. Kim.

Tara K. Hogan, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., argued for the United States. Also on the brief were Brett A. Shumate, Assistant Attorney General and Patricia M. McCarthy, Director. Of counsel was Jon Zachary Forbes, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, D.C.

* * *

Reif, Judge: Before the court are the remand results of the U.S. Department of Commerce (“Commerce”) concerning the ninth administrative review of the countervailing duty (“CVD”) order on multilayered wood flooring (“MLWF” or “subject merchandise”) from the People’s Republic of China (“China”) for the period of review (“POR”) January 1 through December 31, 2019. *Final Results of Redetermination Pursuant to Court Remand* (“Remand Results”), ECF No. 85-1; *see also Multilayered Wood Flooring from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2019* (“*Final Results*”), 87 Fed. Reg. 36,305 (Dep’t of Commerce Jun. 16, 2022) and accompanying Issues and Decision Memorandum (“IDM”) (Dep’t of Commerce Jun. 10, 2022).

Baroque Timber Industries (Zhongshan) Co., Ltd., and Riverside Plywood Corporation (collectively, “Baroque” or “plaintiffs”)¹ challenge certain aspects of the Remand Results. Pls. Cmts. Opposing Remand Redetermination (“Pls. Br.”), ECF No. 100. Plaintiffs object specifically to the determinations of Commerce regarding: (1) the calculation of the benchmark prices for face and backboard veneers; (2) the calculation of the benchmark price for plywood; and (3) the use of adverse facts available (“AFA”) to find that Baroque’s input suppliers are government authorities. *See id.*

Fine Furniture (Shanghai) Ltd. and Double F Ltd. (collectively, “consolidated plaintiffs”) also challenge certain aspects of the Remand Results. Cmts. Opposing Final Remand Redetermination of Consolidated Pls. Fine Furniture (Shanghai) Limited and Double F Limited (“Consol. Pls. Br.”), ECF No. 97. Consolidated plaintiffs object specifically to the determinations of Commerce regarding: (1) the calculation of the benchmark prices for face and backboard veneers; and (2) the calculation of the benchmark price for plywood. Consolidated plaintiffs maintain also that the Remand Results do not comply with the Court’s remand order, are not supported by substantial evidence and are otherwise not in accordance with law. *See id.*

For the reasons discussed below, the court sustains in part and remands in part the Remand Results.

BACKGROUND

The court presumes familiarity with the facts as set out in *Baroque Timber Industries (Zhongshan) Co. v. United States* (“*Baroque I*”), 49 CIT __, __, 776 F. Supp.

¹ Baroque Timber is a cross-owned affiliate of Riverside Plywood.

3d 1290 (2025), and recounts only those facts relevant to the issues before the court on remand.

On April 3, 2025, the Court concluded that Commerce did not explain adequately: (1) Commerce's determination to include the UN Comtrade data and the ITTO Peru data to calculate the benchmarks for backboard and face veneer; (2) Commerce's determination to include the UN Comtrade data to calculate the plywood benchmark; and (3) Commerce's application of AFA to find certain of Baroque's input suppliers to be government authorities. See *id.* at ___, 776 F. Supp 3d at 1314.

On August 15, 2025, Commerce issued its draft remand redetermination and provided interested parties with an opportunity to comment. Remand Results at 2. On September 19, 2025, Commerce issued its final remand results. See *id.*

On January 30, 2026, consolidated plaintiffs filed their comments on the final remand results. Consol. Pls. Br. On February 2, 2026, plaintiffs filed their comments on the final remand results. Pls. Br. On March 20, 2026, defendant United States filed its response to plaintiffs' and consolidated plaintiffs' comments. Def. Cmts. Supporting Remand Redetermination ("Def. Br."), ECF No. 104.

On July 8, 2026, the Court heard oral argument. Oral Arg. Tr., ECF No. 113.

JURISDICTION AND STANDARD OF REVIEW

28 U.S.C. § 1581(c) grants to this Court "exclusive jurisdiction of any civil action commenced under section 516A or 517 of the Tariff Act of 1930." The court exercises jurisdiction pursuant to 28 U.S.C. §1581(c).

Section 516A of the Tariff Act of 1930 provides that in an action under 19 U.S.C. § 1516a(a)(2), the court will hold unlawful any determination, finding or conclusion that

is “unsupported by substantial evidence on the record, or otherwise not in accordance with law.”² 19 U.S.C. § 1516a(b)(1)(B)(i).

“Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Consol. Edison Co. of New York v. N.L.R.B.*, 305 U.S. 197, 229 (1938) (citations omitted). “The substantiality of evidence must take into account whatever in the record fairly detracts from its weight.” *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488 (1951).

For a reviewing court to “fulfill [its] obligation” to determine whether a determination of Commerce is supported by substantial evidence and in accordance with law, Commerce is required to “examine the record and articulate a satisfactory explanation for its action.” *CS Wind Viet. Co. v. United States*, 832 F.3d 1367, 1376 (Fed. Cir. 2016) (quoting *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1378 (Fed. Cir. 2013)).

Even so, the court will “uphold a decision of less than ideal clarity if the agency’s path may reasonably be discerned.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Bowman Transp., Inc. v. Ark.-Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974)); see also *NMB Sing. Ltd. v. United States*, 557 F.3d 1316, 1319 (Fed. Cir. 2009) (“Commerce must explain the basis for its decisions; while its explanations do not have to be perfect, the path of Commerce’s decision must be reasonably discernable to a reviewing court.”).

² Further citations to the Tariff Act of 1930, as amended, are to the relevant portions of Title 19 of the U.S. Code, 2018 edition.

“[T]he Court will not disturb an agency determination if its factual findings are reasonable and supported by the record as a whole, even if there is some evidence that detracts from the agency’s conclusion.” *Shandong Huarong Gen. Corp. v. United States*, 25 CIT 834, 837, 159 F. Supp. 2d 714, 718 (2001), *aff’d sub nom. Shandong Huarong Gen. Grp. Corp. v. United States*, 60 F. App’x 797 (Fed. Cir. 2003).

On remand, the Court will sustain Commerce’s determinations “if they are in accordance with the remand order, are supported by substantial evidence, and are otherwise in accordance with law.” *MacLean-Fogg Co. v. United States*, 39 CIT __, __, 100 F. Supp. 3d 1349, 1355 (2015).

DISCUSSION

I. Whether Commerce’s calculation of the benchmarks for veneer is supported by substantial evidence and otherwise in accordance with law

The court addresses first plaintiffs’ and consolidated plaintiffs’ challenge to Commerce’s calculation of the veneer benchmark. Specifically, plaintiffs and consolidated plaintiffs challenge Commerce’s inclusion of the UN Comtrade and ITTO Peru data because the data do not differentiate between backboard veneer and face veneer. Pls. Br. at 15-16; Consol. Pls. 8-9.

A. Additional Background

In the Final Results, Commerce determined to calculate separate benchmarks for backboard veneer and face veneer by averaging data that do not differentiate between backboard veneer and face veneer with data that do differentiate between two types of veneer. See IDM at 91-92.

The ITTO Ghana data are differentiated by backboard veneer and face veneer. The UN Comtrade data and the ITTO Peru data contain both backboard veneer and

face veneer and cannot be separated by veneer type. See GDLSK, Riverside Benchmark Data Submission (Nov. 23, 2022) (“Baroque Benchmark Pricing Information”) at Ex. 2, CR 101-116, PR 276-286.

To calculate the *backboard* veneer benchmark, Commerce averaged: (1) the UN Comtrade veneer data containing both backboard veneer and face veneer; (2) the ITTO veneer data from Peru containing both types of veneer; and (3) the ITTO data from Ghana containing only *backboard* veneer. IDM at 92. To calculate the *face* veneer benchmark, Commerce averaged: (1) the UN Comtrade veneer data containing both types of veneer; (2) the ITTO veneer data from Peru containing both types of veneer; and (3) the ITTO data from Ghana containing only *face* veneer. *Id.*

In *Baroque I*, plaintiffs argued that Commerce’s inclusion of the UN Comtrade data was “distortive of both” the face and backboard veneer benchmarks because the undifferentiated UN Comtrade data would “artificially lower[] one price and artificially increas[e] the other price.” *Baroque I*, 776 F. Supp. 3d at 1301. This Court concluded that Commerce failed to address adequately Baroque’s argument that the UN Comtrade and the ITTO Peru data were “overly broad and distortive” of the benchmark price as applied to Baroque’s purchases of both face and backboard veneer. *Id.* at 1302. The Court stated also that “[i]f, on remand, Commerce determines that it is unable to provide” an explanation of the reason that including these data does not distort the benchmark, “then Commerce is instructed to recalculate the benchmarks for face and backboard veneer using solely the ITTO Ghana data.” *Id.* at 1302-03.

On remand, Commerce continued to calculate the face and backboard veneer benchmarks using the same three data sources. See Remand Results at 18-21.

B. Legal framework

A countervailing duty is “a remedial measure that provides relief to domestic manufacturers by imposing duties upon imports of comparable foreign products that have the benefit of a subsidy from the foreign government.” *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1368 (Fed. Cir. 2014). The countervailing duty imposed shall be “equal to the amount of the net countervailable subsidy.” 19 U.S.C. § 1671(a).

A subsidy is countervailable if: (1) a government or public authority has provided a financial contribution; (2) a benefit is thereby conferred upon the recipient of the financial contribution; and (3) the subsidy is specific to a foreign enterprise or foreign industry, or a group of such enterprises or industries. 19 U.S.C. § 1677(5).

A benefit is conferred where “goods or services are provided for less than adequate remuneration,” which is “determined in relation to prevailing market conditions for the good . . . which is subject to the investigation or review.” *Id.* § 1677(5)(E)(iv). Prevailing market conditions include “price, quality, availability, marketability, transportation, and other conditions of purchase or sale.” *Id.* To determine whether goods were provided for less than adequate remuneration, “Commerce must determine the proper benchmark price.” *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1273 (Fed. Cir. 2012) (citing 19 C.F.R. § 351.511). The benchmark price is “the price that could have constituted adequate remuneration.” *Fine Furniture*, 748 F.3d at 1368.

To measure the adequacy of remuneration, Commerce “compares the respondent’s reported costs for the input in question . . . with the calculated benchmark price, which is representative of the market price for the good at issue.” *Beijing Tianhai*

Indus. Co. v. United States, 39 CIT ___, ___, 52 F. Supp. 3d 1351, 1356 n.9 (2015) (citing *Fine Furniture*, 748 F.3d at 1368). Under 19 C.F.R. § 351.511(a)(2), Commerce sets forth the “bases for identifying an appropriate market-based benchmark for measuring the adequacy of the remuneration of a government provided good or service.” *Id.*

In order of preference, the potential benchmarks are as follows:

(1) market prices from actual transactions within the country under investigation for the government-provided good (e.g., actual sales, actual imports, or competitively run government auctions) (“tier one” benchmarks); (2) world market prices that would be available to purchasers in the country under investigation (“tier two” benchmarks); or (3) prices consistent with market principles based on an assessment by the Department of the government-set price (“tier three” benchmarks).

Id. (citing *High Pressure Steel Cylinders from the People’s Republic of China*, 76 Fed. Reg. 64,301, 64,304 (Dep’t of Commerce Oct. 18, 2011)).

If there is no tier one benchmark—defined as a “useable market-determined price with which to make the comparison”—then Commerce will calculate a tier two benchmark that “measure[s] the adequacy of remuneration by comparing the government price to a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question.” 19 C.F.R. § 351.511(a)(2)(ii).

In calculating a tier two benchmark, if “there is more than one commercially available world market price,” Commerce is required to “average such prices to the extent practicable, making due allowance for factors affecting comparability.” *Id.* “These factors ensure that the composite benchmark reflects prevailing market conditions in the [producer’s] home country. [The factors] include ‘price, quality, availability, marketability, transportation, and other conditions of purchase or sale.’”

RZBC Grp. Shareholding Co. v. United States, 39 CIT __, __, 100 F. Supp. 3d 1288, 1305 (2015) (citing 19 U.S.C. § 1677(5)(E)).

“The court’s role is not to assess whether the benchmark data Commerce used was [sic] the ‘best available,’ but rather whether Commerce’s choice was reasonable.” *Guizhou Tyre Co. v. United States*, 42 CIT __, __, 348 F. Supp. 3d 1261, 1274 (2018) (citing *Peer Bearing Company-Changshan v. United States*, 27 CIT 1763, 1770, 298 F. Supp. 2d 1328, 1336 (2003)).

C. Analysis

The court concludes that it is not possible to conclude that Commerce’s determination in the Remand Results that the UN Comtrade and the ITTO Peru data are sufficiently “comparable” to Baroque’s veneer purchases is supported by substantial evidence.

In the Remand Results, Commerce stated that both veneer types are “classifiable under the same HS subheadings” and cannot be separated to support its decision to include the UN Comtrade and ITTO Peru data in both benchmark calculations. Remand Results at 21. Commerce also noted consistent with 19 CFR § 351. 511(a)(2)(i) the large dollar amounts of exports underlying the data, stating: “UN Comtrade data used in the plywood benchmark, are more reflective of a world market price, encompassing nearly one billion kilograms worth almost \$1.5 billion of world export sales from 75 countries.” *Id.* at 20. Notably, Commerce did not state “more reflective” than what other data and most importantly the *reasons* that the UN Comtrade data were more reflective on account of the quantities involved. How did those quantities compare to those of the alternative ITTO database?

Commerce next noted in explaining its choice to include the UN Comtrade and ITTO Peru data that while there were some variations of prices between face and core veneer, the variations among countries in the ITTO data from Ghana were even greater. *Id.* at 21. Finally, Commerce determined that the UN Comtrade and ITTO Peru data, which do *not* differentiate between the two types of veneer—face and core—were “comparable” to Baroque’s purchases. *Id.*

Plaintiffs argue that Commerce’s continued inclusion of the UN Comtrade and ITTO Peru data in the veneer benchmark calculations is unsupported by substantial evidence and contrary to law because, by “knowingly compar[ing] inputs of different quality,” Commerce did not adequately account for “prevailing market conditions.” Pls. Br. at 15.

Commerce has not provided a discernible path for its decision. *NMB Sing. Ltd.*, 557 F.3d at 1319 (“Commerce must explain the basis for its decisions; while its explanations do not have to be perfect, the path of Commerce’s decision must be reasonably discernable to a reviewing court.”); *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43 (“We will . . . uphold a decision of less than ideal clarity if the agency’s path may reasonably be discerned.”). On reading and rereading Commerce’s Remand Results, the court is left only to puzzle over Commerce’s elucidation and analysis.

The core of Commerce’s analysis appears to be announced in a paragraph in the Remand Results that begins on page 18 and concludes on page 19. In this paragraph, Commerce first repeats its own conclusion from Commerce’s final results that “Baroque’s backboard and face veneers differ sufficiently such that they require separate price benchmarks to most accurately calculate the benefit for the veneer for

LTAR [less than adequate remuneration] program.” Remand Results at 18-19 (citations omitted). Then, Commerce backs into a conclusion announced with nothing less than a double negative that Commerce intends to use the UN Comtrade data because the more appropriately separated ITTO data “do[] not necessitate the *exclusion* of” the UN Comtrade data.” *Id.* at 19 (emphasis supplied). Commerce continues with what might be described as a triple negative: “Put another way, this distinction *does not mean* that UN Comtrade data, which *do not reflect* the differences between backboard and face veneer, *are not still comparable* to Baroque’s purchases of both.” *Id.*

The court remands for Commerce to explain, consistent with 19 U.S.C. § 1677(5)(E)(iv), why the UN Comtrade and ITTO Peru data remain sufficiently comparable to Baroque’s purchases notwithstanding Commerce’s finding that face and backboard veneer differ in price and require separate benchmarks, and why inclusion of those data is consistent with Commerce’s obligation to account for “prevailing market conditions,” including “price” and “quality,” as required by 19 U.S.C. § 1677(5)(E)(iv).

If, on remand, Commerce determines that it is unable to provide such an explanation, then Commerce is instructed to recalculate the benchmarks for face and backboard veneer using solely the ITTO Ghana data.

II. Whether Commerce’s calculation of the benchmark for plywood is supported by substantial evidence and otherwise in accordance with law

The court addresses next plaintiffs’ and consolidated plaintiffs’ challenge to Commerce’s calculation of the plywood benchmark. Both plaintiffs and consolidated plaintiffs challenge Commerce’s inclusion of non-grade specific UN Comtrade data in Commerce’s tier two plywood benchmark calculation. See Pls. Br. at 4-13; Consol. Pls. Br. at 4-8.

A. Additional Background

In the Final Results, Commerce determined to calculate a benchmark price for plywood by taking an average of two datasets in the record: a dataset from the International Tropical Timber Organization (“ITTO”) containing plywood data from Brazil and Peru and a global dataset from the United Nations Comtrade database containing plywood from approximately 90 countries (“UN Comtrade”).³ See Wiley, AMMWFF Benchmark Pricing Information (Nov. 22, 2021) at Ex. 1-A, PR 256, 266-275; Husch Blackwell, Senmao Benchmark Pricing Information (Nov. 22, 2021) at Attachs. 1-3, CR 92-100, PR 257.

The plywood market is categorized into grades ranging from Grade A (highest quality) through Grades B and C, to Grade D (lowest quality), and also includes hybrid grades such as AA/BB or C/CC. The UN Comtrade data are not grade-specific, meaning that they cover all grades of plywood (grades A through D). *Id.*

The ITTO dataset contains only Grade C/CC plywood export prices from Brazil and Peru during the period of review.⁴ See GDLSK, Riverside Benchmark Data Submission (Nov. 23, 2021) (“Baroque Benchmark Pricing Information”) at Ex. 2, CR 101-116, PR 276-286. The parties agree that Baroque purchased only Grade C and

³ Commerce included also in its plywood benchmark calculation Stats.NZ export data. See Remand Results at 11-12. In its briefing, plaintiffs refer to the UN Comtrade and the Stats.NZ data collectively as “UN Comtrade” because both “global” datasets “represent export data by HTS code.” Pls. Br. at 2 n.1. Likewise, consolidated plaintiffs do not differentiate between these “global dataset[s]” and refer only to the UN Comtrade dataset. Consol. Pls. Br. at 1. The court does the same.

⁴ Petitioner provided monthly pricing data for plywood also from Ghana and Malaysia. However, Commerce excluded the ITTO data from those countries because Commerce agreed with Baroque that “these data do not describe its C/D grade plywood purchases.” Remand Results at 6.

Grade D plywood in the manufacture of its subject merchandise. See *Remand Results* at 6.

In *Baroque I*, this Court remanded to Commerce to explain adequately its decision to include the UN Comtrade data in its plywood benchmark calculation in light of “the information in the record demonstrating that the UN Comtrade data are overbroad, and, on that basis, may not be comparable for purposes of the plywood benchmark calculation.” *Baroque I*, 776 F. Supp. 3d at 1300. Specifically, the Court remanded for Commerce to consider “supplier certifications, expert testimony, and various articles and website printouts demonstrating that using data containing higher-grade plywood prices, such as the UN Comtrade data, would be distortive and inaccurate.” *Id.*

On remand, Commerce continued to calculate the tier two benchmark price for plywood by taking an average of the UN Comtrade data and the ITTO data for plywood from Brazil and Peru. See *Remand Results* at 12.

B. Analysis

For the reasons discussed below, the court concludes that Commerce's decision to average the UN Comtrade and ITTO data in calculating the plywood benchmark is supported by substantial evidence and otherwise in accordance with law.

In the *Remand Results*, Commerce continued to calculate the tier two benchmark price for plywood by taking an average of the UN Comtrade data—which included all grades of plywood—and the ITTO data from Brazil and Peru—which included grade C/CC plywood only. See *Remand Results* at 12. Commerce determined that “the record evidence does not support a conclusion that the UN Comtrade [benchmark] data

are overly broad or result in a distortion of the benchmark price applied to Baroque's purchases." *Id.* at 11-12. Commerce determined also that the UN Comtrade data are "sufficiently comparable to Baroque's purchases and appropriate for use as a benchmark." *Id.* at 12.

Plaintiffs and consolidated plaintiffs present two arguments that Commerce should have selected only the ITTO data from Brazil and Peru for the plywood benchmark calculation, rather than averaging the ITTO and the UN Comtrade data. See Pls. Br. 2-4; Consol. Pls. Br. at 3-4. First, plaintiffs and consolidated plaintiffs argue that Commerce's determination "ignore[d] the price distortion caused" by the particular grades included in the benchmark. Pls. Br. at 11; see *also* Consol. Pls. Br. at 8 (arguing that Commerce "failed to adequately address information in the record demonstrating that the UN Comtrade data are overbroad"). Second, plaintiffs and consolidated plaintiffs assert that Commerce failed to make "due allowance for factors affecting comparability" when averaging the UN Comtrade and ITTO datasets. Pls. Br. at 5; see *also* Consol Pls. Br. at 5. The court addresses each argument in turn.

1. Commerce's decision to include the UN Comtrade data is based on substantial evidence

Commerce in the Remand Results acknowledged the impact of grade on price, Remand Results at 12-13, but found: the "record evidence does not support a conclusion that the UN Comtrade [benchmark] data are overly broad or result in a distortion of the benchmark price" applied to Baroque's purchases. Remand Results at 28. Commerce provided three reasons for this conclusion.

First, Commerce noted that "species, as well as grade, impacts plywood prices." *Id.* at 17. Second, Commerce determined that, although grade affects plywood prices,

“the evidence does not indicate the magnitude of the effect of grade on price,” *Id.* at 32, and record evidence suggested that differences in price based on grade were “relatively minor.” *Id.* Finally, Commerce determined that, absent evidence regarding the exact grade composition of the UN Comtrade data, Commerce could not conclude that any price difference between the UN Comtrade data and Baroque’s plywood purchases was attributable entirely to grade. *Id.* at 15-16.

“The court’s role is not to assess whether the benchmark data Commerce used was [sic] the ‘best available,’ but rather whether Commerce’s choice was reasonable.” *Guizhou Tyre*, 348 F.Supp.3d at 1274. The court declines to substitute its judgment for that of Commerce. Accordingly, Commerce’s decision to include the UN Comtrade data in the benchmark calculation is based on substantial evidence.

2. Commerce’s decision to include the UN Comtrade data is not contrary to law

Next, plaintiffs and consolidated plaintiffs argue that, instead of averaging the UN Comtrade and ITTO data, Commerce should have relied exclusively on the ITTO data because that dataset is more product-specific to Baroque’s purchases. Pls. Br. at 6; Consol Pls. Br. at 7. These parties maintain that the ITTO data, which cover C/CC-grade plywood, are more “specific” to Baroque’s C/D-grade plywood purchases than the UN Comtrade data, which include all plywood grades. Pls. Br. at 9-10; see *also* Consol. Br. at 5 (arguing that “[t]he Court ha[d] been unambiguous about the importance of product-specificity in Commerce’s determination of [the] benchmark dataset”).

Defendant asserts that Commerce is not required to select a “most comparable” dataset simply “because there is another dataset available.” Def. Br. at 9. Defendant maintains also that, “[e]ven so, Commerce reasonably considered record evidence and

found that the UN Comtrade data was [sic] not necessarily less comparable than the ITTO data.” *Id.*

The statute provides clear guidance on how to determine a tier two benchmark. First, as a threshold matter, Commerce is required to identify whether there is more than one commercially available world market price in the record. To do so, Commerce “considers the similarity of the purchases in the benchmark information to the purchases in question,” Remand Results at 29, by considering “prevailing market conditions” such as “price” and “quality.” 19 U.S.C. § 1677(5)(E)(iv)).

With respect to this first step, Commerce expressly considered the factors affecting comparability—“[including] ‘price, quality, availability, marketability, transportation, and other conditions of purchase or sale,’” *RZBC Grp. Shareholding Co.*, 100 F. Supp. 3d at 1305 (citing 19 U.S.C. § 1677(5)(E))—and determined that the UN Comtrade data were “arguably more comparable to Baroque’s reported purchases” than the ITTO data in certain respects. Remand Results at 17.

For example, Commerce determined that species of wood affects both price and quality and that the UN Comtrade data were more species-specific than the ITTO data to Baroque’s reported plywood purchases. *Id.* at 17-18 (“none of the [ITTO] data are [sic] for plywood made of eucalyptus, which is the species of Baroque’s reported plywood purchases”). Commerce added that while both species and grade affect price, the record did not establish the magnitude or composition of the alleged *grade* distortion, whereas the *species* mismatch in the ITTO data was concrete. *Id.* at 32 (emphasis supplied). Commerce also noted that the relevant data shared the same HS subheading with Baroque’s plywood purchases. *Id.* at 17.

Consolidated plaintiffs cite a series of cases involving exports of solar panels from China for the proposition that Commerce is required to choose only the “most specific” dataset. See Consol. Pls. Br. at 5 (citing *Changzhou Trina Solar Energy Co. v. United States*, ___ CIT ___, 352 F. Supp. 3d 1316, 1332 (2018) (“*Trina Solar I*”); *Changzhou Trina Solar Energy Co. v. United States*, ___ CIT ___, 466 F. Supp. 3d 1287, 1294-5 (2020) (“*Trina Solar III*”)). The court refers to these cases as the *Trina Solar* cases. The *Trina Solar* cases are not apposite.

In *Trina Solar I*, Commerce averaged product-specific data with broader UN Comtrade data to calculate a benchmark for aluminum extrusions used in solar modules. Commerce explained that it included the less product-specific UN Comtrade data because those data provided monthly, rather than annual, price points. *Trina Solar I*, 42 CIT at ___, 352 F. Supp. 3d at 1332. The Court determined that Commerce's preference for monthly data could not overcome “vital comparability concerns” because “there is no statutory or regulatory basis for allowing this preference to overcome” those concerns. *Id.* Specifically, the Court concluded that Commerce failed to account adequately for the “factors affecting comparability” required under 19 C.F.R. § 351.511(a)(2)(ii). *Id.*; see also *Changzhou Trina Solar Energy Co. v. United States*, 2019 WL 5856438, at 6 (CIT Nov. 8, 2019) (“*Trina Solar II*”) (finding that Commerce did not “adequately account[] for ‘factors affecting comparability’” as required under 19 C.F.R. § 351.511(a)(2)(ii)).

Unlike in *Trina Solar*, in the instant case, Commerce considered adequately factors affecting comparability. As discussed, Commerce considered price, species and quality in evaluating the relative strengths of the two datasets. “The court’s role is not to

assess whether the benchmark data Commerce used was [sic] the ‘best available,’ but rather whether Commerce's choice was reasonable.” *Guizhou Tyre*, 348 F. Supp. 3d at 1274. The court finds that it was.

Finally, the regulation provides that if there is more than one available world market price, Commerce “will average such prices to the extent practicable, making due allowance for factors affecting comparability.” 19 C.F.R. § 351.511(a)(2)(ii). Commerce took this step. For the aforementioned reasons, Commerce's decision is not contrary to law and the court sustains Commerce's benchmark calculation for plywood.

III. Whether Commerce's application of AFA to find certain of Baroque's input suppliers to be government authorities was supported by substantial evidence and otherwise in accordance with law

A. Additional background

The court addresses next plaintiffs' challenge to Commerce's application of AFA to find certain of Baroque's input suppliers to be government authorities.

On Remand, Commerce continued to find that the Government of China (“GOC”) did not act to the best of its ability in responding to Commerce's requests for information about the ownership of the companies that produced and supplied inputs to Baroque. Specifically, plaintiffs argue that Commerce's application of AFA was unlawful because: (1) Commerce did not explain adequately its determinations that the GOC withheld responsive government documentation and failed to cooperate to the best of its ability; and (2) Commerce failed to explain adequately why the withheld government documentation—rather than other available non-government information—was required such that it was appropriate for Commerce to apply AFA to a cooperating respondent. See Pls. Br. 16-22.

For the reasons set forth below, the court concludes that Commerce determined reasonably that the GOC failed to provide the requested information regarding whether certain of Baroque's input suppliers are government authorities. The court concludes, however, that Commerce did not explain adequately why available non-government information could not fill the resulting gap before applying AFA against plaintiffs.

Accordingly, the court remands to Commerce to take the actions as set forth below.

1. Administrative proceeding and final results

On March 23, 2021, Commerce issued the GOC an initial questionnaire for the 2019 countervailing duty review. Dept. of Comm., Initial CVD Questionnaire (“Initial Questionnaire”) (Mar. 23, 2021) at 44, PR 78. In the Initial Questionnaire, Commerce asked the GOC for certain records to determine whether Baroque’s input suppliers are government authorities. *Id.* Commerce asked the GOC to “identify any individual owners, members of the board of directors, or senior managers who were Government or CCP officials during the POR.” *Id.* at II-41. Commerce noted that “these questions do not pertain to general membership in the CCP.” *Id.* Commerce requested also certain other records that would demonstrate the input suppliers were free from government influence. *See id.*

On May 20, 2021, the GOC submitted its response. GOC, Sec. II Questionnaire Response (“GOC Initial Questionnaire Response”) (May 20, 2021) at 8, CR 45, PR 115. In its response, the GOC provided Commerce “company-specific information” for 17 input suppliers, including “articles of incorporation, capital verification reports, company

by-laws, business licenses, and financial statements.” IDM at 57. The GOC provided also “certifications” from eight of the input suppliers that read:

All decisions and operations of the company are made independently, internally by the company, and not subject to any external interference by any third-party organizations, institutions, individuals, etc. Even If [sic] the company has established the primary [P]arty organization, the [P]arty organization does not participate in the company's daily operation and management. Even if the company's shareholders, directors, managers and other senior managers are the representatives of the People's Congresses and the CPPCC at all levels, their status will not affect the company's internal operation and management.

See GOC Initial Questionnaire Response, Ex. LTAR 2.

On August 4, 2021, Commerce issued the GOC a supplemental questionnaire in which it repeated the request for the GOC to “identify which owners, managers, and directors, were Chinese government or CCP officials during the POR.” Dept. of Comm., Section II Supplemental Questionnaire (Aug. 4, 2021) at 9, PR 139.

On August 25, 2021, the GOC provided its response to Commerce’s supplemental questionnaire. GOC, Supplemental Questionnaire Response (“GOC Supplemental Questionnaire Response”) (Aug. 25, 2021) at 8, CR 69, PR 154. In the GOC’s response, the GOC stated that it had “confirmed that, for the companies that the GOC was able to collect and submit requested documents . . . all of the owners, directors, or managers were not Chinese Government or CCP officials during the [period of review].” *Id.* at 16-17.

The GOC provided also “certifications” from eight more input suppliers, bringing the total number of “certifications” to 17. *Id.* at 14-17. These “certifications” also stated that the input suppliers operated independently and are not influenced by the CCP or other external entities. See *id.*

2. *Baroque I*

In *Baroque I*, this Court held that “Commerce determined reasonably that necessary information was missing from the record” because the GOC failed to provide information needed to assess whether certain of Baroque’s input suppliers are government authorities. 776 F. Supp. 3d at 1307-08. The Court upheld Commerce’s determination for two reasons.

First, the Court determined that Commerce explained adequately why the “certifications” provided by the input suppliers denying GOC or CCP involvement were insufficient. *Id.* at 1307. Specifically, the Court concluded that Commerce determined reasonably that the company “certifications” did not definitively deny GOC or CCP involvement and that the “internal company statements” and “verbal affirmations” offered to support the suppliers’ independence from GOC or CCP control were insufficient to substantiate those certifications. *Id.* at 1307-08. Second, the Court determined that Commerce explained adequately why supporting government documentation was necessary in light of Commerce’s statement that “Chinese law

requires the establishment of CCP organizations in all companies.” *Id.* at 1307 (quoting IDM at 58).⁵

However, the Court held that Commerce’s application of AFA to find that certain of Baroque’s input suppliers are government authorities was not in accordance with law because Commerce did not provide the GOC with “adequate notice and an opportunity to remedy its deficient responses, as required by 19 U.S.C. § 1677m(d).” *Id.* at 1308.

Therefore, the Court remanded for Commerce to:

- (1) identify with specificity the deficiencies in the GOC’s initial or supplemental responses to the nine entities, CCP officials and other related questions; (2) describe clearly the nature of each deficiency and what information could correct that deficiency; (3) if Commerce continues to determine that supporting

⁵ In the IDM Commerce cites *Certain Metal Lockers and Parts Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 86 Fed. Reg. 35,741 (Dep’t of Commerce July 7, 2021) and accompanying IDM (Dep’t of Commerce June 28, 2021) at cmt. 5 (“*Metal Lockers*”), in support of its statement that Chinese law “requires” the establishment of CCP organizations in all companies. See IDM at 58. *Metal Lockers*, in turn, cites a 2012 memorandum for that proposition. See *Metal Lockers* at cmt. 5 (citing *Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People’s Republic of China: An Analysis of Public Bodies in the People’s Republic of China in Accordance with the WTO Appellate Body’s Findings in WTO DS379*,” dated May 18, 2012 (“2012 Public Bodies Memo”). The 2012 Public Bodies Memo, however, describes the 2006 Company Law inconsistently on this point. See 2012 Public Bodies Memo at 33-37. At one point, the Memo states that “[t]he 2006 Company Law . . . states that an organization of CCP *shall* be set up in all companies.” *Id.* at 35 (citing Article 19 of the 2006 *Company Law*) (emphasis supplied). Elsewhere, however, the Memo quotes Article 19 of the 2006 Company Law as providing that the CCP “may, according to the Constitution of the Chinese Communist Party, establish its branches in companies,” and characterizes Article 19 as affirming the Party’s “right” to establish Party committees in public and private enterprises. *Id.* at 9, 33 & n.140. Accordingly, on remand, Commerce shall: (1) clarify whether Article 19 *requires* the establishment of a CCP organization in every company or instead *permits* the CCP to establish such an organization; and (2) explain the extent to which the difference between these two interpretations of the Chinese legal instrument affects the ability of Commerce to rely upon the representations presented by the GOC in this case.

government documentation is necessary information, request that information explicitly from the GOC; and (4) provide the GOC an opportunity to remedy any specified deficiencies.

Id. at 1310.

3. Remand proceeding and remand results

On June 24, 2025, Commerce issued the GOC a remand questionnaire regarding 17 of Baroque's input suppliers that had provided "certifications." 2019 Countervailing Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China: Supplemental Questionnaire Pursuant to Ct. Remand ("Remand Questionnaire") (June 24, 2025) at 4, PRR 1.

Question 1 of the Remand Questionnaire asked for "government documentation, such as CCP records, supporting the GOC's claim that no individual owners, members of the board of directors, or senior managers who [sic] were Government or CCP officials during the POR." *Id.* at 5. Question 3 of the Remand Questionnaire asked the GOC to provide, for each input supplier: (1) "documentation to establish how they confirmed none of their senior staff were members of the CCP"; and (2) "published biographies in 2019 of all senior staff members of each input producer, including, but not limited to executive directors, managing directors, *etc.*" *Id.* at 5-6.

On July 11, 2025, the GOC provided its remand questionnaire response to Commerce. See Response from The Inter-Global Trade Law Group PLLC Pertaining to Multilayered Wood Flooring from the People's Republic of China: Remand Supplemental Questionnaire ("GOC Remand Questionnaire Response") (July 11, 2025), PRR 8.

In response to Question 1—the request for “government documentation” confirming that “no individual owners, members of the board of directors, or senior managers . . . were Government or CCP officials during the POR”—the GOC stated that it had “no central governmental database to search for the requested information” and that the GOC’s “commerce administration does not require companies to provide such government information.” *Id.* at 4. Therefore, the GOC stated that it could not “provide the government documentation as requested by the Department.” *Id.* Instead of government documentation, the GOC submitted “certifications” from nine of those 17 input suppliers denying the existence of a CCP primary Party organization within their companies. *See id.* Ex. RSQ-2. Those nine “certifications” stated that “the number of CCP members in the company is less than three” and that, accordingly, “there is no primary Party organization within the company.” *See id.* Ex. RSQ-2.

In response to the first request in Question 3—the request for “documentation to establish how [each input supplier] confirmed none of their senior staff were members of the CCP”—the GOC stated that “[o]nce a new employee was hired, the personal information of the employees, including whether they are CCP members, would normally be provided to the Human Resources department of the company.” *Id.* at 8-9. In response to the second request in Question 3—the request for the “published biographies in 2019 of all senior staff members of each input producer”—the GOC stated that it had *attempted* to collect biographies/resumes from each supplier but was able to collect resumes from only six of the 17 input suppliers. *Id.* at 8; *see also id.* at Ex. RSQ-2.

Of the remaining 11 input suppliers that did not provide biographies, one input supplier provided photocopies of the identification cards of the supplier's upper-level officials in an attempt to demonstrate that none was a Chinese national. See *id.* at Ex. RSQ-2. Two input suppliers responded stating that their companies had gone out of business and no longer had access to the requested information.⁶ *Id.* Instead, those suppliers provided signed declarations stating that: "None of the executives such as individual shareholders, executive directors and managers of the Company was the officers [sic] of the Communist Party of China, National People's Congress, Chinese People's Political Consultative Conference or the government." *Id.* Five input suppliers did not provide any biographies or other information responsive to Question 3. *Id.*; see, e.g. (one company responding to the GOC: "[i]t is too complicated, there is no way to do this. And the requested information is for 5-6 years ago. Is there any easier way?"). And the GOC did not provide responses from the remaining three input suppliers.⁷ See *id.* The GOC submission does not state whether the GOC (a) did not seek responses from these companies, (b) sought but did not receive responses, or (c) sought and received responses, but chose not to submit them to Commerce. *Id.*

On September 19, 2025, Commerce issued its Remand Results. In the Remand Results, Commerce continued to apply facts otherwise available with an adverse inference to find "that CCP officials are present in each of Baroque's privately-owned

⁶ One company said it was terminated in 2024. GOC Remand Questionnaire Response, Ex. RSQ-2. Another said it was terminated on June 1, 2025. *Id.*

⁷ Missing from the remand record are either responses from, or evidence of a failed attempt by the GOC to reach out to the remaining three suppliers. See *id.* at Ex. RSQ-2.

input producers as individual owners, managers, and members of the boards of directors, and that this gives the CCP, as the Government, meaningful control over the companies and their resources.” Remand Results at 42.

B. Analysis

1. Whether Commerce determined reasonably that the GOC withheld requested information and failed to cooperate to the best of its ability

a. Legal framework

A countervailable subsidy may be found where the entity providing the subsidy is an “authority.” 19 U.S.C. § 1677(5)(B). An “authority” is defined as “a government of a country or any public entity within the territory of the country.” *Id.*

Commerce may make determinations on the basis of the facts otherwise available whenever “necessary information is not available on the record” or “an interested party or any other person”: (1) withholds information requested by Commerce; (2) fails to submit such information on time or in the form and manner requested by Commerce; (3) significantly impedes the proceedings; or (4) provides information that Commerce is unable to verify. 19 U.S.C. § 1677e(a); *see also* 19 C.F.R. § 351.308(a).

In selecting from facts otherwise available, Commerce may use an inference that is adverse to the interests of a party “if [that] party has failed to cooperate by not acting to the best of its ability to comply with a request for information.” 19 U.S.C. § 1677e(b)(1)(A); *see also* 19 C.F.R. § 351.308(c). A respondent’s failure to cooperate to “the best of its ability” is determined by “assessing whether [the] respondent has put forth its maximum effort to provide Commerce with full and complete answers to all

inquiries in an investigation.” *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

b. Application of legal framework

The court addresses first whether Commerce determined reasonably that the GOC: (1) withheld requested government information as to whether any of the input suppliers’ “owners, members of the board of directors or managers” are GOC or CCP officials; and (2) failed to cooperate to the best of its ability in responding to Commerce’s request.

In *Baroque I*, the Court determined that it was reasonable for Commerce to decide to rely on *government* documentation to make the finding noted above. See 776 F. Supp. 3d. at 1307-08; Remand Results at 23. However, in that proceeding, plaintiffs argued that Commerce had failed to provide the GOC with notice and an opportunity to remedy its deficient responses, as required by 19 U.S.C. § 1677m(d), by not explicitly requesting such *government* documentation. 776 F. Supp. 3d. at 1309-10. The Court noted that “Commerce’s questionnaires did not specifically request government documentation,” *id.* at 1309, and determined that Commerce failed to provide the GOC with adequate notice that Commerce sought supporting *government* documentation demonstrating that the input suppliers’ owners, directors and senior managers are not government officials. *Id.* at 1310.

On remand, Commerce followed the Court’s instruction and explicitly requested supporting *government* documentation from the GOC. See Remand Questionnaire at 5. In response, the GOC failed to provide *any* government documentation. See GOC Remand Questionnaire Response at 4.

In the Remand Results, Commerce determined that the GOC withheld the requested government documentation and “failed to cooperate by not acting to the best of its ability to comply with this request for information.” Remand Results at 25. Therefore, pursuant to 19 U.S.C. § 1677e(b)(1)(A), Commerce continued to apply AFA to find that “CCP officials are present in each of Baroque’s privately-owned input producers as individual owners, managers, and members of the boards of directors, and that this gives the CCP, as the Government, meaningful control over the companies and their resources.” Remand Results at 42.

Plaintiffs argue that the GOC did not withhold responsive government records because such records do not exist. Pls. Br. at 18-19. In support, plaintiffs cite only to the GOC’s assertion that it does not maintain a “central membership database” of GOC or CCP officials and the GOC’s subsequent provision of certain limited information from *private companies* that the GOC had obtained. *Id.* Commerce first noted that its request was not limited to a “central governmental database,” which was all that the GOC alleged that it did not have. Remand Results at 24-25. Commerce noted specifically that it “did not limit the scope of its question” so that the GOC could provide whatever documentation best supported its claim. *Id.* at 24 (citing Remand Questionnaire at 5). Indeed, Commerce underscored in its Remand Results that its request to the GOC was “intentionally open-ended.” *Id.* at 39.

Notwithstanding Commerce’s efforts to elicit *any* responsive information, the GOC “did not suggest any alternative form in which it could provide the requested government documentation,” including records maintained at the “provincial or any other level of government.” *Id.* at 24. Commerce noted that the GOC’s response “implies that

the CCP, at all levels, maintains no records *or any other mechanism*” for determining whether company officials are affiliated with the CCP. *Id.* at 25. Commerce added: “[g]iven that the CCP Constitution requires that all organizations with enough CCP members form primary [P]arty organizations, it strains credulity that the CCP has no records with which it can track whether this requirement is followed.” *Id.* at 41 (citing *Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People’s Republic of China: An Analysis of Public Bodies in the People’s Republic of China in Accordance with the WTO Appellate Body’s Findings in WTO DS379*, dated May 18, 2012 (“2012 Public Bodies Memo”)).

Commerce cited also the GOC’s response in a prior proceeding to support Commerce’s conclusion that the CCP and the GOC maintain records concerning CCP members and GOC officials. Commerce noted that in *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, the GOC provided “documentation from the government, including the CCP importantly, that attests to its records of officials.” *Id.* (citing *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 Fed. Reg. 78,799 (Dep’t of

Commerce December 31, 2014), and accompanying IDM (Dep't of Commerce Dec. 22, 2014) at cmt. 2 (“*Citric Acid*”)); *see also* IDM at 58 (citing *Citric Acid* at cmt. 2).⁸

Given Commerce’s open-ended request, the GOC’s failure to identify or propose any alternative source of government documentation, the CCP Constitution’s requirement that qualifying enterprises establish primary Party organizations and the GOC’s demonstrated ability in *Citric Acid* to provide government and CCP records concerning officials, the court concludes that Commerce determined reasonably that the GOC was capable of providing government documentation that could be responsive to Commerce’s request and that the GOC failed to do so.

Plaintiffs next assert that, even if the GOC could provide “some sort of limited local or sub-national CCP database, to the extent that one even exists,” such a database “would not sufficiently answer Commerce’s question because it would not, and could not possibly, cover” all nine CCP entities. Pls. Br. at 19. Plaintiffs emphasize that Commerce’s request encompasses “every level of society in China and hundreds, if not thousands, of entities.” *Id.*

Commerce responded to this argument by explaining that the GOC could have consulted multiple databases. Remand Results at 24-25. Commerce stated that the GOC could have provided records, for example, from databases “for each of [sic]

⁸ In *Citric Acid*, the GOC submitted “a certified letter from the CCP Committee of the village indicating” that the owner of the input suppliers was not the Secretary for the Party Committee during the POR and “established at verification through official government documentation provided by the GOC and the CCP” that the owner of the input suppliers did not serve as Secretary for the Party during the POR. *Citric Acid* at cmt. 2. This government documentation included “stamped originals of an election notification from the CCP Committee” of the town showing that another person had been elected Secretary before the POR. *Id.*

jurisdictions where the nine entities are located.” *Id.* at 39-40. As the Federal Circuit has held: the potential breadth of Commerce’s request does not relieve the GOC of its obligation to “put forth its maximum effort to provide Commerce with full and complete answers.” *Nippon Steel Corp.*, 337 F.3d at 1382. Commerce explained further that “only the GOC has the understanding of what government documents it, including the CCP, maintain [sic] and what they demonstrate.” Remand Results at 40. Commerce therefore stated that it could only “suggest” examples of responsive records because “the GOC did not address whether such information exists, nor did it explain whether there was some other source for independently confirming and documenting the GOC’s claims.” *Id.* As in *Yama Ribbons*, Commerce expected reasonably for the GOC to explain what efforts it undertook to locate responsive government records. *Yama Ribbons & Bows Co. v. United States*, 48 CIT __, __, 719 F. Supp. 3d 1388, 1396 (2024) (upholding Commerce’s determination that “the government of China made no serious effort to obtain the information Commerce requested”).

Accordingly, in view of the GOC’s failure to provide the requested information or to explain adequately its efforts to obtain that information, the court concludes that Commerce determined reasonably that the GOC withheld requested government information and failed to cooperate to the best of its ability.

2. Whether Commerce explained adequately that only government documentation could establish whether CCP or GOC officials are present in Baroque’s input suppliers

The court addresses next whether Commerce determined reasonably that government documentation—and *only* government documentation—is necessary to

analyze whether Baroque's input suppliers are government authorities.⁹

As noted, the GOC refused to provide *any* government documentation relating to the presence or absence of CCP members or GOC officials in supplier companies. See Remand Results at 22-23, 39. Instead, the GOC submitted responses that it obtained from some of Baroque's input suppliers, including: (1) company "certifications" denying CCP Party organization presence in the company; (2) biographies of owners, directors and managers; and (3) identification documents for some individual owners and directors. GOC Remand Questionnaire Response at 4-9; see *also id.* Ex. RSQ-2. The GOC asserted that the additional company documentation demonstrated that "there is no primary [P]arty organization established in these companies" and that "there are no senior members being [sic] government or CCP officials." *Id.* at 4.

Plaintiffs maintain that, because Commerce's application of AFA based on the GOC's noncooperation adversely affects cooperating respondents, "Commerce should have accepted . . . alternative, verifiable information proffered even though it did not technically meet the 'government documentation' request." Pls. Br. at 22.

a. Legal framework

Section § 1677e(b) provides that when Commerce finds that an "interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information," Commerce may "use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." 19 U.S.C. § 1677e(b).

Because Commerce "has no subpoena power," *Nan Ya Plastics, Corp. v. United States*,

⁹ Commerce stated that "government documentation, independent of the input suppliers, [is] necessary for fully evaluating the influence and control the GOC (through the CCP) has over the input suppliers." Remand Results at 8.

810 F.3d 1333,1388 (Fed. Cir. 2016), “AFA is ‘an essential investigative tool’” in antidumping and countervailing duty proceedings. *Deacero S.A.P.I. de C.V. v. United States*, 996 F.3d 1283, 1297 (Fed. Cir. 2021) (quoting *Uruguay Round Agreements Act* (“URAA”), *Statement of Administrative Action* (“SAA”), H.R. Doc. No. 103-316, vol. 1, at 868 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4198)).

Accordingly, “[t]he purpose of the adverse facts statute is to provide respondents with an incentive to cooperate with Commerce’s investigation.” *Maverick Tube Corp. v. United States*, 857 F. 3d 1353, 1360 (Fed. Cir. 2017) (alteration in original) (quoting *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012)). The incentive function of AFA is most direct when the adverse inference affects the noncooperating party itself: the possibility of an adverse result encourages the noncooperating party to provide Commerce with the requested information. When the adverse inference instead or additionally affects a cooperating party, however, a party experiencing an adverse consequence is not the party whose cooperation Commerce seeks to induce.

When an adverse inference “collaterally” affects a cooperating respondent, rather than the interested party that “failed to cooperate,” an additional question arises because § 1677e(b) authorizes an inference “adverse to the interests of *that* party”—i.e., the interested party that failed to cooperate to the best of its ability. See *Fine Furniture*, 748 F.3d at 1370-71 (emphasis supplied) (“The dispute in this case centers on the phrase ‘that party,’ which has its antecedent basis in the words ‘interested party.’” (quoting 19 U.S.C. § 1677e(b))). In *Fine Furniture*, the Federal Circuit concluded that § 1677e(b) permits Commerce to draw an adverse inference based on a foreign government’s noncooperation because the statutory definition of an “interested party”

includes “the government of a country in which [the subject] merchandise is produced or manufactured.” *Id.* at 1371 (alteration in original) (quoting 19 U.S.C. § 1677(9)(B)). The Federal Circuit reasoned also that this “collateral effect[] . . . has the potential to encourage the government of China to cooperate so as not to hurt its overall industry.” *Id.* at 1373.

That permissible “collateral effect” does not, however, expand the informational gap that Commerce may fill through an adverse inference. The adverse inference must remain directed at the information that is missing because of the noncooperating party. In *Fine Furniture*, the Federal Circuit emphasized that Commerce “did not apply adverse inferences to substitute for any information that was actually submitted,” but instead used adverse inferences to fill the gap created by the GOC’s failure to provide the requested information. *Id.* at 1372-73. The Federal Circuit explained further that Commerce did not select the adverse result “to punish the cooperating plaintiff, but rather to provide a remedy for the government of China’s failure to cooperate.” *Id.* at 1373.

Consistent with these parameters, this Court has held more recently that: “[i]t is well established . . . that Commerce may seek the information it needs from the exporting government in a countervailing duty proceeding and, in appropriate circumstances, may invoke its authority under 19 U.S.C. § 1677e(b), even if the result is a collateral adverse effect upon a cooperating party.” *Yama Ribbons and Bows Co. v. United States*, 46 CIT ___, ___, 606 F. Supp. 3d 1345, 1352-53 (2022) (citing *Fine Furniture*, 748 F.3d at 1372-73). “Commerce should seek to avoid this adverse effect if

the necessary information is present elsewhere on the record.” *Id.* at 1353 (citing *Trina Solar I*, 42 CIT at ___, 352 F. Supp. 3d at 1325).¹⁰

This Court has addressed Commerce’s application of AFA based on government noncooperation where Commerce sought information concerning whether private input producers were government “authorities.” See *Yama Ribbons & Bows Co. v. United States*, 46 CIT ___, ___, 611 F. Supp. 3d 1394, 1404-05 (2022) (sustaining Commerce’s application of AFA to determine that private input suppliers of synthetic yarn and caustic soda were government authorities); *Jiangsu Senmao Bamboo and Wood Indus. Co. v. United States*, 49 CIT ___, ___, 769 F. Supp. 3d 1344, 1395-97 (2025) (sustaining Commerce’s application of AFA to determine that privately owned suppliers of poplar core sheets were government “authorities”); see also *Mosaic Co. v. United States*, 46 CIT ___, ___, 589 F. Supp. 3d 1298, 1324 (2022) (sustaining Commerce’s application of AFA based on Russian government’s failure to provide requested information concerning whether private input producer was government authority).

b. Application of legal framework

In the cases discussed above involving the GOC, Commerce sought information to determine whether private input suppliers were government “authorities,” and the GOC provided no government documentation and no information obtained from the

¹⁰ The court observes that in prior cases, this Court stated that Commerce should “seek to avoid such impact if *relevant* information exists elsewhere on the record.” See, e.g., *Trina Solar I*, 42 CIT at ___, 352 F. Supp. 3d at 1325 (emphasis supplied) (citing *Archer Daniels Midland Co. v. United States*, 37 CIT 760, 769, 917 F. Supp. 2d 1331, 1342 (2013)). The court treats the terms “necessary” and “relevant” in context as addressing the same concept: reliable information elsewhere on the record on which Commerce may depend to fill the gap created by a government’s noncooperation.

suppliers themselves. See *Yama*, 611 F. Supp. 3d at 1404-05 (GOC provided no POR-specific information concerning CCP or government involvement in the suppliers); *Jiangsu Senmao*, 769 F. Supp. 3d at 1395-97 (GOC provided no requested information concerning CCP or government involvement in the suppliers). In this case, the GOC again provided no government documentation; however, the GOC provided what it characterized as “direct information” obtained from some of Baroque’s input suppliers. GOC Remand Questionnaire Response at 4.

The question presented, therefore, is whether Commerce explained adequately why that “direct information” does not constitute “relevant” or “necessary information . . . elsewhere on the record” such that Commerce could rely on that information to determine whether CCP members or government officials are present in those suppliers. The ordinary meaning of the word “relevant” informs this inquiry. Merriam-Webster defines “relevant” as “having significant and demonstrable bearing on or relation to the matter at hand” and as “providing evidence tending to prove or disprove the matter at issue or under discussion.” *Relevant*, Merriam-Webster.com Dictionary, Merriam-Webster, [<https://www.merriam-webster.com/dictionary/relevant>] (last visited Sept. 28, 2026).

Plaintiffs as noted concede that the supplier statements denying CCP party presence, as well as biographies and identification documents of certain owners, directors and managers “did not technically meet the ‘government documentation’ request”; however, plaintiffs argue that these submissions provided “alternative, verifiable information” that plaintiffs claim is “sufficient factual information to demonstrate that the relevant suppliers are not government authorities.” Pls. Br. at 22. Plaintiffs

maintain also that company human-resources records identify CCP presence such that these records could be used to verify the accuracy of the supplier statements denying CCP party presence, biographies, and identification documents. *Id.* at 21.

In the Remand Results, Commerce provided two reasons that Commerce continued to decline to rely on the information from the private input suppliers.

i. Whether Commerce considered adequately the additional private-company information provided on remand

Commerce's first reason for declining to rely on the information from the private input suppliers was that the suppliers' "certifications"—which stated that each company had fewer than three CCP members (and therefore no primary Party organization)—“lack particular details for examining possible government involvement in each company.” Remand Results at 38.

In *Baroque I*, the Court accepted as reasonable Commerce's explanation that company “certifications” denying CCP influence were insufficient because they were “*pro forma* in nature.” 776 F. Supp. 3d. at 1307. In the IDM, Commerce explained that the “certifications” provided by the input suppliers “do not definitively deny the involvement by the government or the CCP in these suppliers; rather, they merely state rhetorically that even if there was some CCP presence in the company, it has no bearing on the company's management and operations.” IDM at 58.¹¹

¹¹ The “certifications” stated that “[a]ll decisions are made independently” and that “[e]ven if the company's shareholders, directors, managers and other senior managers are the representatives of the People's Congresses and the CPPCC at all levels, their status will not affect the company's internal operation and management.” GOC Initial Questionnaire Response, Ex. RSQ-2.

On Remand, however, the GOC provided “certifications” from nine of Baroque’s input suppliers that “there is [sic] no individual owners, members of the board of directors, or senior managers who were [GOC] or CCP officials during the POR in these input producers.” GOC Remand Questionnaire Response at 8. The “certifications” provided by the GOC state that the company in question “has not established a primary Party organization of the [CCP], because the number of party members in our company is less than three, and the conditions for establishing a [P]arty organization have not been met.” *Id.*, Ex. RSQ-2.¹² The GOC submitted also biographies and/or identification cards for the individual shareholders, directors and managers of six input suppliers to support the suppliers’ representations to the GOC that those individuals are not CCP members. *Id.*¹³ The GOC stated also that “Commerce may decide to verify the input suppliers” by cross-checking the company’s human resource records. *Id.* at 5.

Commerce did not address this additional information, stating only that “the company certifications are pro forma in nature and lack particular details for examining possible government involvement in each company.” Remand Results at 38.

Commerce did not explain *why* these “certifications” were “pro forma in nature” or

¹² Commerce recognizes that a CCP committee branch or “primary organization” is required to be “formed in any enterprise with three or more party members, regardless of state-ownership.” See, e.g., Remand Results at 8 n.46.

¹³ One supplier stated that it had “no individual shareholders” and that “all senior personnel are non-Chinese nationals.” GOC Remand Questionnaire Response, Ex. RSQ-2. The supplier asserted that because CCP membership is limited to Chinese nationals, the company’s “senior personnel” could not be CCP members and submitted identification documents and passports supporting the nationality of those “senior personnel”. *Id.*

identify what “particular details” are necessary for Commerce to examine possible government involvement in each company. *Id.*

In sum, Commerce’s comment is not sufficient for the court to conclude that Commerce had a reasonable basis for its decision. Commerce on remand is directed to explain, consistent with this decision, *the reasons that* the information from private companies furnished by the GOC “lack[s] particular details for examining possible government involvement in each company.” *Id.* If Commerce is unable to provide such reasons, Commerce is directed to reconsider its conclusion.

ii. Whether Commerce explained adequately why government documentation is necessary to assess the reliability of private-company information

Commerce’s second set of reasons for continuing to decline to rely on the information from the private input suppliers was as follows: that “given the significant influence of the CCP and GOC in the Chinese economic system and the lack of public reporting requirements, company information and documentation cannot replace government documentation in our analysis of whether the GOC/CCP may exert a controlling influence over a given input supplier.” *Id.* at 37-38. On that basis, Commerce asserted also that “verification of such [private] information without the necessary corroborating government documentation would be pointless.” *Id.* at 38. Commerce’s statement itself contains two reasons: (1) the absence of public reporting requirements concerning an individual’s CCP or GOC affiliation; and (2) the significant influence of the CCP and GOC in the Chinese economic system. *Id.* at 37-38.

In support of its findings concerning the influence of the CCP and GOC in the Chinese economic system, Commerce relied on the 2019 Update and the 2012 Public

Bodies Memo. See Remand Results at 23-24 (citing Memorandum, “Public Bodies Analysis Memo,” dated Oct. 5, 2021, Attach. 1, *Update of the 2012 Public Bodies Analysis of State-Invested Enterprises in China for Countervailing Duty Purposes*, dated Feb. 27, 2019 (“2019 Update”), at 28-29, and Attach. 2, 2012 Public Bodies Memo, and Attach., Letter from Shauna Biby, Christopher Cassel & Timothy Ruby, Office of Policy, Import Administration, to Paul Piquado, Assistant Secretary for Import Administration, re: *The Relevance of the Chinese Communist Party for the Limited Purpose of Determining Whether Particular Enterprises Should Be Considered to Be “Public Bodies” Within the Context of a Countervailing Duty Investigation* (May 18, 2012) (“Relevance of the CCP”)).

The court addresses in turn whether, in light of these record materials, each of Commerce’s stated reasons adequately explains why Commerce concluded that government documentation was necessary.

(1) Absence of Public Reporting Requirements

First, Commerce explained that “input producers are not required to report or record in their internal records and documents whether any company owners, members of the board of directors or managers are [CCP or GOC officials].” Remand Results at 36. The absence of a reporting requirement *could* provide a basis for the court to determine that Commerce’s conclusion was reasonable. However, Commerce’s explanation does not provide a “reasonably discernible . . . path” for its decision. *NMB Sing. Ltd.*, 557 F.3d at 1319. Commerce does not explain or document clearly what it means when it says that there is no requirement to disclose, record or report. Remand Results at 36. Further, Commerce does not make clear why the absence of such a

disclosure/reporting requirement leads to Commerce's conclusion that information maintained by the private companies cannot reliably establish whether: (1) their owners, directors, or managers are CCP or GOC officials; (2) a primary Party organization exists within the company; or (3) a company is meeting or failing to meet the requirement under Chinese law that the company "shall provide necessary conditions to facilitate the activities of the Party" in that company. 2012 Public Bodies Memo at 33 n.140.

To meet its obligation, Commerce must clarify and expand its explanation on these points regarding the lack of a public reporting requirement.

To begin, Commerce will need to state clearly whether: (1) there is an official published document of the CCP or GOC that requires CCP members or officials to include that information in their biographies or in other documents reported to the company at which they work; and (2) there is an official published document of the CCP or GOC that in turn requires information so reported to appear in company records, including biographies, identification documents or other human-resource records. If both conditions are met, Commerce will need to include in its determination precise citations to the pertinent Chinese legal instrument(s) that establish these conditions. Conversely, if there are no such disclosure/reporting requirements established under CCP or GOC law, Commerce will need to explain why claims by a private company provide a demonstrably reliable basis for the Department of Commerce to reply upon those claims in applying 19 U.S.C. § 1677e(b). See *Fine Furniture*, 748 F.3d at 1372-73.

Commerce did not include such an explanation. It is for Commerce, not the court, to determine whether the information provided by the GOC to Commerce that the

GOC solicited from private companies could or could not reliably establish the CCP or GOC status of all relevant individuals or activities by the CCP or GOC related to the company in question, and for Commerce to support that determination with reasoned explanation. *See Al Ghurair Iron & Steel LLC v. United States*, 65 F.4th 1351, 1362 (Fed. Cir. 2023) (explaining that a reviewing court cannot “supply a reasoned basis for [Commerce’s] action that [Commerce] itself has not given”) (alteration in original) (citation omitted).

(2) Significant influence of the CCP or GOC in Chinese economic system

Commerce’s second reason that private-company information cannot substitute for government documentation concerns the “significant influence of the CCP and GOC in the Chinese economic system.” Remand Results at 37. Commerce stated in its 2019 Update, confirming the analysis of the 2012 Public Bodies Memo, that “certain enterprises that have little or no formal government ownership are public bodies if Commerce determines that the government exercises meaningful control over them.” 2019 Update at 28.

Commerce stated that “record evidence demonstrates that the CCP exerts significant control over economic activities in China.” Remand Results at 23. Commerce added that “record evidence also demonstrates that the GOC exercises meaningful control over private entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.” *Id.* at 23-24 (citing 2012 Public Bodies Memo and 2019 Update).

Commerce relied on the 2012 Public Bodies Memo for these statements concerning the CCP's role in China's economy and the mechanisms through which CCP involvement may facilitate government control over private enterprises.¹⁴ In the 2012 Public Bodies Memo, Commerce examined the extent of government control over Chinese enterprises for purposes of determining whether those entities constitute public bodies. Relevant here, Commerce considered whether CCP presence in private enterprises may demonstrate government control and explained that Commerce's "case-by-case analysis" may consider, among other factors, "the presence of government or CCP officials on the board or in management" and "the existence and role of a Party committee." 2012 Public Bodies Memo at 38.

As part of that analysis, Commerce identified and examined two official published legal instruments governing the establishment of CCP organizations within private enterprises: (1) the 2006 Company Law; and (2) the CCP Constitution. See *id.* at 33-38. With respect to the 2006 Company Law, Article 19 provides that the CCP "may, according to the *Constitution of the Chinese Communist Party*, establish its branches in companies to carry out activities of the Chinese Communist Party" and that "[t]he

¹⁴ The 2012 Public Bodies Memo was prepared as part of Commerce's implementation, under section 129 of the Uruguay Round Agreements Act, of the WTO Appellate Body's decision in *United States—Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R. See *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 39 CIT __, __, 61 F. Supp. 3d 1306, 1315-16 (2015). Commerce has since relied on the analysis in subsequent CVD proceedings involving imports from China. See, e.g., *Certain Metal Lockers and Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 86 Fed. Reg. 35,741 (Dep't of Commerce July 7, 2021) and accompanying IDM (Dep't of Commerce June 28, 2021) at cmt. 5; *Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2018*, 86 Fed. Reg. 40,462 (Dep't of Commerce July 28, 2021), and accompanying IDM at cmt. 1.

company shall provide necessary conditions to facilitate the activities of the Party.” *Id.* at 33 & n.140; see also Relevance of the CCP at 10. Commerce characterized Article 19 as “affirm[ing] the Party’s right to establish Party committees in both public and private enterprises.” Relevance of the CCP at 10. With respect to the CCP Constitution, Commerce explained that “[i]n accordance with the *CCP Constitution*, all organizations, including private commercial enterprises, are required to establish ‘primary organizations of the party’ (or ‘Party committees’) if the firm employs at least three party members.” *Id.* at 35.

Commerce explained also that the CCP exercises a significant and growing role in Chinese enterprises, including private enterprises, noting that “[t]he party has cells in most big companies” and that “there has been a concerted effort to establish party committees in private enterprises,” including “with occasional cash incentives.” *Id.* at 35-36 (citation omitted).

In this same memo, Commerce highlighted also the lack of transparency surrounding the precise role and influence of the CCP within enterprises. See *id.* at 36. Commerce added that the limited information available to it indicated that the CCP may exercise significant influence over company affairs: the CCP “holds meetings that shadow formal board meetings and often trump their decisions” and “often gets involved in business planning and works with management to control pay.” *Id.* (citation omitted).

The 2012 Public Bodies Memo and the 2019 Update, which Commerce placed on the record and then cited from, may support an inference that information maintained by private companies does not reveal the full extent of CCP or government involvement. Commerce, however, did not make clear precisely how Commerce’s findings in the

2012 Public Bodies Memo or the 2019 Update specifically buttressed Commerce's conclusion in this case: in particular, the conclusion that—based on officially published legal instruments of the CCP and GOC coupled with the lack of specificity and transparency related to such instruments—only government documentation would suffice. Again, the court cannot supply that reasoning for Commerce. *See Al Ghurair Iron & Steel*, 65 F.4th at 1362.

C. Remand instructions

In accord with the foregoing, on remand, Commerce shall further explain or reconsider its application of AFA on the basis that: (1) CCP or GOC officials are present among the relevant owners, directors and managers of Baroque's input suppliers; (2) primary Party organizations are present within the relevant input suppliers where there are three or more CCP members, pursuant to the CCP Constitution; or (3) a Chinese company "shall provide necessary conditions to facilitate the activities of the Party." 2012 Public Bodies Memo at 33 n.19. Commerce shall explain its statement that the information concerning private companies furnished by the GOC "lack[s] particular details for examining possible government involvement in each company," Remand Results at 38, including what particular details are lacking and why those details are

necessary to Commerce's analysis.¹⁵ If Commerce cannot support its determination in this case that only government documentation can fill the gap in the record, Commerce shall address whether the information identified by plaintiffs constitutes "necessary information [that] is present elsewhere on the record" on which Commerce may rely. *Yama Ribbons*, 606 F. Supp. 3d at 1353.

As Commerce applies the remand instructions enumerated below, Commerce shall address two challenges that it appears to face in determining whether information provided by the input suppliers constitutes "necessary information . . . elsewhere on the record" that could "avoid" the collateral adverse effect of the GOC's noncooperation. *Id.* The first challenge relates to the potentially broad or vague terms used in the only Chinese legal instruments that have been made available to Commerce for the record in this proceeding. Commerce shall state whether those terms leave unclear the precise scope or nature of activities by the CCP or GOC in or related to private companies and

¹⁵ In conducting this analysis, the court notes that Commerce is not required to supplement the record to support plaintiffs' position. Rather, plaintiffs bear the burden of identifying information capable of filling the gap created by the GOC's failure to provide government documentation. *Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014) ("The burden of creating an adequate record lies with the interested parties, not with Commerce.") (citing *QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011)). That burden, however, does not relieve Commerce of its obligation to support its determination with substantial evidence. See *SeAH Steel VINA Corp. v. United States*, 950 F.3d 833, 847 (Fed. Cir. 2020) ("While 'the burden of creating an adequate record lies with [interested parties], . . . Commerce must, nonetheless, support its decision with substantial evidence.'" (quoting *QVD Food*, 658 F.3d at 1324)). Commerce therefore must consider the "relevant information" that plaintiffs have identified and explain whether that information is capable of filling the gap. Plaintiffs, however, ultimately bear the burden of identifying and producing the purported alternative information. Section 1677m(e) does not require Commerce to use deficient information merely because it has been submitted; among other things, the information must be submitted timely, be "verifiable," and not be "so incomplete that it cannot serve as a reliable basis for reaching the applicable determination." 19 U.S.C. § 1677m(e)(2)-(3).

individuals that in turn may prevent Commerce from relying on representations of certain private companies and individuals.

The second challenge is what Commerce describes as the lack of transparency, including related to the *application and implementation* by the CCP and GOC, respectively, of those two legal instruments—or others of which Commerce may not even be aware given the GOC’s failure to cooperate in this proceeding. See 2012 Public Bodies Memo at 36 (noting the “lack of transparency” surrounding the precise role and influence of the CCP within private companies). In that regard, the 2012 and 2019 memoranda as well as the questionnaires issued to the GOC in this proceeding evince a substantial effort by Commerce to obtain information from the GOC about the legal instruments and actions of the CCP and GOC. In response, the only official published instruments of the CCP or the GOC that the GOC has provided, or that Commerce has found through public sources, are the CCP Constitution and the 2006 Company Law. See Public Bodies Memo at 33-37.

Further in this respect, the court notes with concern the GOC’s comment that it was “unable to require the CCP” to provide Commerce’s requested information because the CCP is “not [a] government[] agenc[y].” *Jiangsu Senmao*, 769 F. Supp. 3d at 1395. (citation omitted). This circumstance presents a particular challenge for Commerce where information necessary to its investigation is held by an entity that Commerce has found “exerts significant control over economic activities in China,” Remand Results at 23, yet information from that entity cannot be provided by the GOC. See *a/so* 2019 Update at 2 n.3 (stating that the CCP is “particularly concerned with its authority over the economy because economic growth is so critical to advancing the cause of

socialism and building a strong nation”); see *also* Relevance of the CCP at 11-12 n.34 (quoting the CCP Constitution as providing that the CCP “leads the people in developing the socialist market economy”).

That concern is particularly acute where Commerce determines that information held by the CCP is necessary to assess the completeness and reliability of private-company information. In such circumstances, the inability to obtain that information through the GOC may leave a gap in the record that Commerce must address under the facts-otherwise-available framework, 19 U.S.C. § 1677e(a), and, where the requirements of 19 U.S.C. § 1677e(b) are satisfied, through the use of an adverse inference.

Consistent with the above, Commerce on remand shall:

(1) Address whether the CCP, the GOC, or one of the nine entities may maintain information concerning an individual’s CCP or GOC affiliation that the individual’s private employer may not maintain or have access to. Commerce shall explain whether it is reasonable to conclude based on the record, including the responses of the GOC, that a company despite any best efforts does not know what it does not know—i.e., that an individual may possess a CCP or GOC affiliation of which the company has no reliable knowledge or record.

(2) Explain whether the various forms through which the CCP or GOC may exercise meaningful control over a private enterprise—including (1) the establishment of a primary Party organization, (2) the presence of CCP or GOC officials among the owners, directors or senior managers of an enterprise or (3) the requirement under Article 19 of the 2006 Company Law that a company “shall provide necessary

conditions to facilitate the activities of the Party,” 2012 Public Bodies Memo at 33 n.19—bear on Commerce’s determination that government documentation is necessary for Commerce to consider company documentation a reliable basis on which to reach Commerce’s determination.

(3) Explain, based on the record and official published instruments of the CCP or GOC, the precise meaning of the terms (1) “necessary conditions,” (2) “facilitate” and (3) “the activities of the Party” in Article 19, based on official published instruments of the CCP or GOC. Commerce shall then explain: (i) whether and how the CCP’s ability to establish “branches” within private companies, the requirement that companies “facilitate” those branches’ “activities”, and the required establishment of “primary Party organizations” in certain enterprises demonstrate that company documentation cannot reliably establish an individual’s CCP or GOC affiliation; and (ii) whether and how the lack of transparency surrounding CCP activities, including as confirmed by the GOC, *Jiangsu Senmao*, 769 F. Supp. 3d at 1395, within individual enterprises limits Commerce’s ability to know what information may be missing from company documentation and, in turn, whether verification could establish that such documentation is complete and reliable.

(4) Address whether the absence of a requirement—under (1) the 2006 Company Law, (2) the CCP Constitution or (3) any other official, published instrument of the CCP or GOC that have been provided to or that may be accessed publicly by Commerce—that a CCP member or GOC official report that affiliation publicly or provide such information to a company may affect the reliability of *company* information concerning whether an individual has any such affiliation. Commerce’s IDM and

Remand Results suggest but leave unclear the conclusion that, due to the lack of reporting requirements as noted above, company information is insufficient of itself to establish whether an individual has a CCP or GOC affiliation. To the extent that Commerce relies on the absence of such a requirement to conclude that company records do not provide a reliable basis to conclude that an individual does or does not have a CCP or GOC affiliation, Commerce shall explain the significance of the absence of such a requirement. In particular, Commerce shall state its conclusion clearly and address whether, because there is no such requirement, any such affiliation may not appear in an individual's biography, human-resources records or other such documentation. Conversely, if Commerce determines that the absence of such a requirement does not prevent such records from providing a reliable basis to reach a valid conclusion as to an individual's possible affiliation, Commerce shall explain why that is the case.

(5) Explain (a) whether the “significant influence of the CCP and GOC in the Chinese economic system,” Remand Results at 37-38, is a basis for its determination and, if so, (b) how this “significant influence” relates to the issues of government and company documentation in Points (1) – (4).

(6) Address plaintiffs' assertion that “Commerce relies on official company information all the time to demonstrate usage of government subsidy programs,” and that “[i]t is not clear why this would not be sufficient to demonstrate whether the company itself has a primary [P]arty organization.” Pls. Br. at 21. The court notes that plaintiffs did not specify to which purposes they referred. In that regard, if Commerce does not understand what purposes are being suggested by plaintiffs, Commerce shall

direct the parties to identify any such purposes and their relevance to the current inquiry in this case. Commerce shall explain whether its reliance on company information in other contexts is comparable to reliance on the company information proffered by the GOC here.

(7) Explain, if Commerce determines that company records do not reliably establish the presence or absence of CCP or GOC affiliation, the purpose to be served by seeking additional company documentation or verification of any such documentation. In doing so, Commerce shall address the GOC's statement that "Commerce may decide to verify the input suppliers," by cross-checking the companies' human-resources records, GOC Remand Questionnaire Response at 5, and explain how, if such records may themselves be insufficiently reliable, Commerce could use those records to verify other information consistent with 19 U.S.C. § 1677m(i). Commerce shall also explain why it requested this additional information in the first instance if, as Commerce now appears to maintain, information obtained from the companies is not reliable.¹⁶

(8) Address (a) whether the record contains official published legal instruments of the CCP or GOC that provide that CCP membership is limited, without exception, to Chinese nationals and, if so, (b) how based on the record in this proceeding the CCP or GOC verifies an individual's nationality and eligibility for CCP membership.

¹⁶ Question 3 of the Remand Questionnaire, for example, specifically requested "published biographies in 2019 of all senior staff members of each input producer, including, but not limited to executive directors, managing directors, etc." Remand Questionnaire at 5.

CONCLUSION

In conclusion, the court sustains in part and remands in part Commerce's Remand Results. For the foregoing reasons, it is hereby

ORDERED that Commerce's calculation of the benchmarks for veneer is remanded for further explanation; it is further

ORDERED that Commerce's calculation of the plywood benchmark is sustained; it is further

ORDERED that Commerce's decision to apply AFA to find certain of Baroque's input suppliers are government authorities is remanded for Commerce to explain further or reconsider consistent with the court's foregoing instructions; it is further

ORDERED that Commerce shall file with the court its second remand redetermination within 90 days following the date of this Opinion and Order; it is further

ORDERED that the moving parties shall have 30 days from the filing of the remand redetermination to submit comments to the court; and it is further

ORDERED that should the moving parties submit comments, defendant shall have 21 days from the date of filing of the last comment to submit a response.

SO ORDERED.

/s/ Timothy M. Reif
Timothy M. Reif, Judge

Dated: October 9, 2026
New York, New York