



C-570-054  
Investigation  
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MEMORANDUM TO: Carole Showers  
Executive Director, Office of Policy  
performing the duties of  
Deputy Assistant Secretary for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Affirmative  
Determination: Countervailing Duty Investigation of Certain  
Aluminum Foil from the People's Republic of China

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## I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain aluminum foil (aluminum foil) from the People's Republic of China (PRC), as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act).

## II. BACKGROUND

### A. Initiation and Case History

On March 9, 2017, the Department received a countervailing duty (CVD) and antidumping duty (AD) petition concerning imports of aluminum foil from the PRC, filed in proper form by the Aluminum Association Trade Enforcement Working Group (the petitioner).<sup>1</sup> On March 28, 2017, the Department initiated the CVD investigation of aluminum foil from the PRC.<sup>2</sup> The

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<sup>1</sup> See "Petition for the Imposition of Countervailing Duties on Imports of Certain Aluminum Foil from the People's Republic of China," dated March 9, 2017 (Petition).

<sup>2</sup> See *Certain Aluminum Foil from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 82 FR 15688 (March 30, 2017) (*Initiation Notice*).



initial allegations and supplements to the Petition are described in the CVD Initiation Checklist.<sup>3</sup> On March 28, 2017, Xiamen Xiashun Aluminum Foil Co., Ltd. (Xiashun) requested that the Department investigate it as a voluntary respondent.<sup>4</sup>

In the *Initiation Notice*, we stated that, following the standard practice in CVD investigations, we would, where appropriate, select respondents based on U.S. Customs and Border Protection (CBP) entry data for specified Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation during the period of investigation (POI).<sup>5</sup> Section 777A(e)(1) of the Act directs the Department to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if the Department determines it is therefore not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise that can reasonably be examined.

The Department obtained data for entries made for U.S. imports under the HTSUS numbers 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000 during the POI, and released the data to the interested parties for comment on March 29, 2017.<sup>6</sup> On April 3 and 6, 2017, Jiangsu Zhongji Lamination Materials Co., Ltd. (Zhongji) and Xiamen Xiashun Co., Ltd. (Xiashun), Chinese producers and/or exporters of subject merchandise, filed comments on the CBP data.<sup>7</sup> On April 6, 2017, the petitioner also filed comments.<sup>8</sup>

In their comments, both Zhongji and Xiashun asserted that the CBP data could not be considered a complete or accurate basis on which to select mandatory respondents. Both parties argued that the Department should use an alternative respondent selection methodology in this investigation.<sup>9</sup> The petitioner stated in its comments that the Department should continue to rely on the CBP data, as they correctly reflect entries of the subject merchandise into the United States during the POI,<sup>10</sup> and requested that the Department select three respondents due to the

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<sup>3</sup> See Countervailing Duty Investigation Initiation Checklist: Certain Aluminum Foil from the People's Republic of China from the People's Republic of China, dated March 28, 2017 (CVD Initiation Checklist).

<sup>4</sup> See Xiashun Letter re: Aluminum Foil from the People's Republic of China: Request for Voluntary Treatment—Xiamen Xiashun Aluminum Foil Co., Ltd., dated March 28, 2017.

<sup>5</sup> See *Initiation Notice*, 82 FR at 15690.

<sup>6</sup> See Department Letter to all interested parties, dated March 29, 2017.

<sup>7</sup> See Zhongji Letter re: Certain Aluminum Foil from the People's Republic of China: Request for Quantity & Value Questionnaires," dated April 3, 2017 (Zhongji Comments) and Xiashun Letter re: Aluminum Foil from the People's Republic of China: Xiamen Xiashun Aluminum Foil Co., Ltd.—Comments on CBP Data, dated April 6, 2017 (Xiashun Comments). See also Zhongji Letter re: Certain Aluminum Foil from the People's Republic of China: Submission of Information Regarding Respondent Selection, dated April 24, 2017 (Zhongji's April 24, 2017 Submission).

<sup>8</sup> See Petitioner Letter re: Certain Aluminum Foil from the People's Republic of China--Petitioners' Comments on CBP Data and Respondent Selection, dated April 6, 2017 (Petitioner Comments).

<sup>9</sup> See Zhongji Comments at 1-3 and Xiashun Comments at 1-2.

<sup>10</sup> See Petitioner Comments at 2-3.

relatively low import coverage of the top Chinese producers and exporters of subject merchandise (according to the CBP data) in comparison to other investigations.<sup>11</sup>

Based on our analysis of the CBP data, and taking the parties' comments into consideration, we determined that the CBP data are an appropriate basis on which to select respondents for individual examination in this investigation.<sup>12</sup> As outlined in the Department's Respondent Selection Memorandum, based upon the CBP data, the Department selected Loften Aluminum (Hong Kong) Limited (Loften HK) and Jiangsu Zhongji Lamination Materials Co., Ltd.(Zhongji) as mandatory respondents.<sup>13</sup> Consistent with section 777A(e)(2)(A)(ii) of the Act, Loften HK and Zhongji accounted for the largest import volumes of the subject merchandise under consideration during the POI.

On April 28, 2017, the Department issued a CVD questionnaire to the Government of the PRC.<sup>14</sup> On May 12, 2017, Loften HK notified the Department that it was unable to participate in the instant investigation.<sup>15</sup> On May 17, 2017, the Department additionally selected Manakin Industries, LLC (Manakin Industries), which CBP data indicated as the next largest producer and/or exporter of aluminum foil to the United States during the POI.<sup>16</sup> By letter dated May 19, 2017, Manakin Industries requested that the Department rescind its selection as a respondent, arguing that, notwithstanding what the CBP data indicate, it is a U.S. importer, not a Chinese manufacturer or exporter, of subject merchandise from the PRC.<sup>17</sup> On June 9, 2017, to allow for consideration of Manakin Industries' arguments, the Department additionally selected Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd. (Dingsheng HK), which CBP data indicated as the next largest producer and/or exporter of aluminum foil to the United States.<sup>18</sup>

On May 15, May 18, May 19, and June 14, 2017, we received comments from Xiashun, Shanghai Shenhua Aluminum Foil Co., Ltd (Shenhua), Manakin Industries, and Dingsheng HK, respectively, regarding the selection of additional respondents.<sup>19</sup> Xiashun requested to be

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<sup>11</sup> *Id.*, at 3-5.

<sup>12</sup> See Memorandum, "Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Respondent Selection," dated April 28, 2017 (Respondent Selection Memorandum). For further discussion of the arguments submitted by all interested parties, see Respondent Selection Memorandum at 2-4.

<sup>13</sup> *Id.*, at 7-9.

<sup>14</sup> See Department Letter re: Countervailing Duty Questionnaire, dated April 28, 2017 (Initial CVD Questionnaire). On May 11, 2017, the Department issued an addendum to the CVD questionnaire to the Government of the PRC, see Letter from the Department to the Government of the PRC, dated May 6, 2016 (Government of the PRC First Supplemental Questionnaire).

<sup>15</sup> See Loften HK's Letter re: Certain Aluminum Foil from the People's Republic of China—Notice of Non-Participation as Mandatory Respondent, dated May 12, 2017 (Loften HK May 12, 2016 Submission).

<sup>16</sup> See Memorandum, "Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Selection of Additional Mandatory Respondent," dated May 17, 2017 (Second Respondent Selection Memorandum).

<sup>17</sup> See Manakin Industries' Letter, "Re: Response to Factual Information Placed on the Record by the Department & Request to Be Deselected as Mandatory Respondent," dated May 19, 2017.

<sup>18</sup> See Memorandum, "Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Selection of Additional Mandatory Respondent," dated June 9, 2017 (Third Respondent Selection Memorandum).

<sup>19</sup> See Xiashun Letter re: Aluminum Foil from the People's Republic of China: Request to be Selected as Mandatory Respondent—Xiamen Xiashun Aluminum Foil Co., Ltd., dated May 15, 2017 (Xiashun Mandatory Respondent

selected as a mandatory respondent because Loften HK declined to participate in the investigation, and Xiashun had previously requested to be investigated as a voluntary respondent.<sup>20</sup> Shenhua requested to be selected as a mandatory respondent, contending that the Department's selection of Manakin Industries was inappropriate, and that Shenhua accounted for the largest volume of exports to the United States in the CBP data.<sup>21</sup>

Manakin Industries requested that it be deselected as a mandatory respondent, arguing that the Department misunderstood the CBP data with regard to select Manakin Industries.<sup>22</sup> In particular, Manakin Industries argued that it is not located in the PRC, or cross-owned with any PRC entities, including Suzhou Manakin Aluminum Processing Technology Co., Ltd. (Suzhou Manakin).<sup>23</sup> Dingsheng HK requested that it be deselected as a mandatory respondent because it is also not located in the PRC, and argued that being selected late in the proceeding would make it difficult for the Department to meet its statutory requirements for the preliminary determination.<sup>24</sup> The Department notified Manakin Industries and Dingsheng HK that it continues to require questionnaire responses from both entities.

On May 12, May 26, and June 27, 2017, Zhongji, voluntary requestor Xiashun, Manakin Industries, and Dingsheng HK, respectively, timely filed their affiliation questionnaire responses to the Department's Initial CVD Questionnaire.<sup>25</sup> On May 24, June 2, and July 17, 2017, Zhongji, Manakin Industries, and Dingsheng HK, respectively, timely submitted their supplemental affiliation responses.<sup>26</sup> On June 12, June 30, and July 20, 2017, Zhongji, the Government of the PRC, Manakin Industries, and Dingsheng HK, respectively, timely filed their full Section III responses to the Department's Initial CVD Questionnaire.<sup>27</sup> Also on June 12,

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Request); Shenhua Letter re: Aluminum Foil from the People's Republic of China: Comment on Second Respondent Selection, dated May 18, 2017 (Shenhua Second Respondent Selection Comments); Manakin Industries Letter re: Certain Aluminum Foil from the People's Republic of China: Response to Factual Information Placed on the Record by the Department & Request to Be Deselected as Mandatory Respondent, dated May 19, 2017 (Manakin Industries Respondent Selection Comments); Dingsheng HK Letter re: Comments on Additional Respondent Selection and Request to De-Select; Countervailing Duty Investigation of Aluminum Foil from the People's Republic of China, C-570-054," dated June 14, 2017 (Dingsheng HK Respondent Selection Comments).

<sup>20</sup> See Xiashun Mandatory Respondent Request at 1.

<sup>21</sup> See Shenhua Second Respondent Selection Comments at 1 – 2 and 4.

<sup>22</sup> See Manakin Industries Respondent Selection Comments.

<sup>23</sup> *Id.*, at 2-5.

<sup>24</sup> See Dingsheng HK Respondent Selection Comments at 2-6.

<sup>25</sup> See Zhongji's May 12, 2017 Affiliation Response (Zhongji AFFR); Xiashun's May 12, 2017 Affiliation Response (Xiashun AFFR); Manakin Industries May 26, 2017 Affiliation Response (Manakin Industries AFFR); and Dingsheng HK June 27, 2017 Affiliation Response (Dingsheng HK AFFR).

<sup>26</sup> See Zhongji's May 24, 2017 Supplemental Affiliation Response. At the Department's request, Zhongji timely resubmitted this response on June 12, 2017 with certain bracketing removed. See Department Letter re: Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Proprietary Treatment of Company Information, dated June 2, 2017; see also Zhongji's June 12, 2017 Supplemental Affiliation Response (Zhongji June 12, 2017 SAFFR); see also Manakin Industries' June 2, 2017 Supplemental Affiliation Response (Manakin Industries June 2, 2017 SAFFR) and Dingsheng HK's July 17, 2017 Supplemental Affiliation Response (Dingsheng HK July 17, 2017 SAFFR).

<sup>27</sup> See Zhongji's June 12, 2017 Initial Questionnaire Response (Zhongji June 12, 2017 IQR); Government of the PRC's June 12, 2017 Initial Questionnaire Response (Government of the PRC June 12, 2017 IQR); Manakin Industries' June 30, 2017 Initial Questionnaire Response (Manakin Industries June 30, 2017 IQR); and Dingsheng HK's July 20, 2017 Initial Questionnaire Response (Dingsheng HK July 20, 2017 IQR).

2017, Xiashun withdrew its request for voluntary respondent status.<sup>28</sup> On June 28 and July 20, 2017, the Government of the PRC timely filed its additional full Section III response to the Department's Initial CVD Questionnaire regarding Manakin and Dingsheng HK, respectively.<sup>29</sup> The Government of the PRC, Manakin Industries, and Zhongji filed responses to additional supplemental questionnaires between May 24 and July 28, 2017, as discussed below.

## **B. Postponement of Preliminary Determination**

On May 17, 2017, based on a request by the petitioner,<sup>30</sup> the Department postponed the deadline for the preliminary determination to the full 130 days permitted under sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).<sup>31</sup>

## **C. Period of Investigation**

The POI is January 1, 2016, through December 31, 2016.

## **III. SCOPE COMMENTS**

In accordance with the preamble to the Department's regulations,<sup>32</sup> we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and we encouraged all parties to submit comments within 20 calendar days of the signature date of that notice.<sup>33</sup>

We received comments concerning the scope of the AD and CVD investigations of aluminum foil from the PRC. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determination of the companion AD investigation, which is due no later than October 4, 2017.

## **IV. SCOPE OF THE INVESTIGATION**

The merchandise covered by this investigation is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to

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<sup>28</sup> See Xiashun Letter re: Aluminum Foil from the People's Republic of China: Withdrawal of Request for Voluntary Respondent Status — Xiamen Xiashun Aluminum Foil Co., Ltd., dated June 12, 2017.

<sup>29</sup> See Government of the PRC's June 28, 2017 Initial Questionnaire Response (Government of the PRC June 28, 2017 IQR); see also Government of the PRC's July 20, 2017 Initial Questionnaire Response (Government of the PRC July 20, 2017 IQR).

<sup>30</sup> See Petitioner Letter re: "Certain Aluminum Foil from the People's Republic of China – Petitioner's Request to Postpone Preliminary Determination," dated May 4, 2017.

<sup>31</sup> Per Department practice, because the fully-extended preliminary determination date fell on Saturday, August 5, 2017, the Department tolled the preliminary determination deadline until Monday, August 7, 2017. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005); see also *Certain Aluminum Foil from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 82 FR 22646 (May 17, 2017).

<sup>32</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>33</sup> See *CVD Initiation*, 82 FR at 15688.

ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope.

Excluded from the scope of this investigation is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on only one side of the aluminum foil, as well as etched capacitor foil and aluminum foil that is cut to shape.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above. The products under investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000. Further, merchandise that falls within the scope of this proceeding may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

## **V. INJURY TEST**

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On April 24, 2017, the ITC preliminarily determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of aluminum foil from the PRC.<sup>34</sup>

## **VI. APPLICATION OF THE CVD LAW TO IMPORTS FROM THE PRC**

On October 25, 2007, the Department published its final determination in *CFS PRC*, where we found that:

{G}iven the substantial differences between the Soviet-style economies and China’s economy in recent years, the Department’s previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.<sup>35</sup>

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<sup>34</sup> See *Certain Aluminum Foil from China: Investigation Nos. 701-TA-570 and 731-TA-1346 (Preliminary)*, Publication 4684, May 2017; see also *Certain Aluminum Foil from China*, 82 FR 19751 (April 28, 2017).

<sup>35</sup> See *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS PRC*), and accompanying Issues and Decision Memorandum (IDM) at Comment 6.

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.<sup>36</sup> Furthermore, on March 13, 2012, Public Law 112-99 was enacted which makes clear that the Department has the authority to apply the CVD law to countries designated as non-market economies (NMEs) under section 771(18) of the Act, such as the PRC.<sup>37</sup> The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.<sup>38</sup>

## **VII. SUBSIDIES VALUATION**

### **A. Allocation Period**

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.<sup>39</sup> The Department finds the AUL in this proceeding to be 12 years, pursuant to 19 CFR 351.524(d)(1) and the U.S. Internal Revenue Service Publication 946 (2016), “Appendix B - Table of Class Lives and Recovery Periods” (IRS Pub. 946).<sup>40</sup> The 12-year period corresponds to IRS Pub. 946 asset class, under “34.0 “Manufacture of Fabricated Metal Products.” The Department notified the respondents of the 12-year AUL in the Initial CVD Questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

Accordingly, for non-recurring subsidies, we applied the “0.5 percent test,” as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the year in which the assistance was approved. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than over the AUL.

### **B. Attribution of Subsidies**

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provide additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

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<sup>36</sup> See, *e.g.*, *Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP PRC Final*), and accompanying IDM at Comment 1.

<sup>37</sup> Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

<sup>38</sup> See Public Law 112-99, 126 Stat. 265 §1(b).

<sup>39</sup> See 19 CFR 351.524(b).

<sup>40</sup> See U.S. Internal Revenue Service Publication 946 (2016), “How to Depreciate Property” at Table B-2: Table of Class Lives and Recovery Periods.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.<sup>41</sup>

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>42</sup>

### Dingsheng HK

As discussed above, we selected Dingsheng HK as a mandatory respondent. Dingsheng HK reported that it is a trading company that exports, but does not produce, subject merchandise.<sup>43</sup> Dingsheng HK reported that, during the POI, it exported subject merchandise produced by its parent company, Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd. (Jiangsu Dingsheng). Jiangsu Dingsheng submitted full questionnaire responses on behalf of its cross-owned producers of subject merchandise: Hangzhou Teemful Aluminum Co., Ltd. (Teemful), Hangzhou Five Star Aluminum Co., Ltd. (Five Star), Hangzhou DingCheng Aluminum Co., Ltd. (Dingcheng), and Luoyang Longding Aluminum Co., Ltd. (Longding).<sup>44</sup> Jiangsu Dingsheng also submitted full questionnaire responses on behalf of its holding company, Hangzhou Dingsheng Industrial Group Co., Ltd. (Dingsheng Group).

Further, Jiangsu Dingsheng reported that in addition to exporting subject merchandise produced by itself, and its cross-owned affiliates, it also exported subject merchandise during the POI through three affiliated trading companies: Hangzhou Dingsheng Import & Export Co., Ltd. (Dingsheng IE), Walson (HK) Trading Co., Limited (Walson HK), and Dingsheng HK. Accordingly, Jiangsu Dingsheng provided full questionnaire responses for Dingsheng IE and

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<sup>41</sup> See *CVD Preamble* at 65401.

<sup>42</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>43</sup> See *Dingsheng HK July 20, 2017 IQR* at 13.

<sup>44</sup> *Id.*, at 11.

Walson HK. Pursuant to 19 CFR 351.525(c), benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing the subject merchandise that is sold through the trading company.

Below, we address the affiliations of Jiangsu Dingsheng's cross-owned producers of subject merchandise, and holding company, which we are examining in order to establish a CVD rate for Dingsheng HK.

As discussed above, Jiangsu Dingsheng reported that it is the parent company of Teemful, Five Star, Dingcheng, Dingsheng IE, and Dingsheng HK. Further, Jiangsu Dingsheng stated that in 2010-2013, it was the majority shareholder of Longding, a Chinese producer of subject merchandise. Based on information on the record, we preliminarily determine that cross-ownership exists in accordance with 19 CFR 351.525(b)(6)(vi), among the aforementioned companies through common ownership by Jiangsu Dingsheng.

As explained above, Jiangsu Dingsheng, Teemful, Five Star, Longding, and Dingcheng produced the subject merchandise and were cross-owned during segments of the AUL. Therefore, we are preliminarily attributing the benefit from subsidies that Teemful, Five Star, Longding, and Dingcheng received to the combined unconsolidated sales (net of intercompany sales) of Jiangsu Dingsheng, Teemful, Five Star, Longding, and Dingcheng, pursuant to 19 CFR 351.525(b)(6)(ii). Further, because Jiangsu Dingsheng is a parent company, for subsidies provided directly to Jiangsu Dingsheng, we are using Jiangsu Dingsheng's consolidated sales (net of intercompany sales) as the denominator pursuant to 19 CFR 351.525(b)(6)(iii).<sup>45</sup> To the extent that subsidies were provided to Dingsheng Group, we are attributing any benefit to the consolidated sales (net of intercompany sales) of Dingsheng Group, also in accordance with 19 CFR 351.525(b)(6)(iii).<sup>46</sup> Attribution with respect to Dingsheng IE and Dingsheng HK is discussed above. All companies reported above on behalf of Dingsheng HK are collectively referred to as the Dingsheng companies.

### Zhongji

As discussed above, we selected Zhongji as a mandatory respondent. Zhongji responded to the Department's questionnaires on behalf of itself, Shantou Wanshun Package Material Stock Co., Ltd. (Shantou Wanshun), Jiangsu Huafeng Aluminum Industry Co., Ltd. (Jiangsu Huafeng), and

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<sup>45</sup> See *Certain Softwood Lumber Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 19657 (April 28, 2017), and accompanying IDM at 16. See also *Coated Paper PRC* IDM at Comment 35.

<sup>46</sup> As consolidated sales were not provided for Dingsheng Group, we have attributed all subsidies received by Dingsheng Group to the unconsolidated sales of Dingsheng Group, and the cross-owned producers of subject merchandise. For further discussion, see Memorandum, "Preliminary Determination Calculation Memorandum for Dingsheng Aluminum (Hong Kong) Trading Co., Ltd.," dated August 7, 2017 (Dingsheng HK Preliminary Calculation Memorandum) at 2-3.

Jiangsu Zhongji Lamination Materials Co., (HK) Ltd. (Zhongji HK).<sup>47</sup>

Pursuant to 19 CFR 351.525(b)(6)(i), we attributed subsidies received by Zhongji to the sales of Zhongji. As explained in the Zhongji Preliminary Determination Calculation Memorandum, we preliminarily find that Shantou Wanshun is the parent company of Zhongji and maintains its own operations.<sup>48</sup> We, therefore, attributed subsidies received by Shantou Wanshun to its sales, consolidated with the sales of its subsidiaries, pursuant to 19 CFR 351.525(b)(6)(iii).

Pursuant to 19 CFR 351.525(b)(6)(iv), for subsidies received by an input supplier whose production of inputs is primarily dedicated to the production of the downstream subject merchandise by a cross-owned producer, the Department attributes the benefit to the combined sales of the input and downstream products produced by both corporations, excluding the sales between the two corporations. Jiangsu Huafeng supplied aluminum foil stock, to use as a key input in Zhongji's production of subject merchandise during the POI.<sup>49</sup> As explained in the Zhongji Preliminary Determination Calculation Memorandum, we preliminary find Jiangsu Huafeng to be a cross-owned input provider to Zhongji.<sup>50</sup> Accordingly, pursuant to 19 CFR 351.525(b)(6)(iv), we are attributing subsidies received by Jiangsu Huafeng to its total sales plus the sales of Zhongji, net of inter-company sales.

Lastly, Zhongji reported that, during the POI, all of its sales to the United States were made through Zhongji HK, a company wholly owned by Zhongji.<sup>51</sup> Further, Zhongji owns Zhongji HK in its entirety.<sup>52</sup> Therefore, we are examining Zhongji HK together with Zhongji as a cross-owned trading company. Pursuant to 19 CFR 351.525(c), for subsidies provided to a trading company that exports subject merchandise, the benefits are cumulated with benefits from subsidies provided to the firm that is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated. Thus, we are cumulating the benefits from subsidies received by Zhongji HK with the benefits from subsidies received by Zhongji based on the relative share, by value, of Zhongji HK's exports to the United States of subject merchandise that was produced by Zhongji during the POI.

### *Export Value Adjustment*

Zhongji reported that Zhongji HK issued invoices with a mark-up for all of Zhongji's sales of subject merchandise to the United States.<sup>53</sup> Therefore, Zhongji requested that the Department

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<sup>47</sup> Volume I of the Zhongji June 12, 2017 IQR pertains to Zhongji, Volume II to Shantou Wanshun, Volume III to Jiangsu Huafeng, and Volume IV to Zhongji HK. Subsequent supplemental questionnaire responses pertain to all companies.

<sup>48</sup> See Memorandum, "Countervailing Duty Investigation: Certain Aluminum Foil from the People's Republic of China: Preliminary Determination Calculation Memorandum for Zhongji Lamination Materials Co., Ltd.," dated concurrently with this memorandum (Zhongji Preliminary Calculation Memorandum).

<sup>49</sup> See Zhongji's July 3, 2017 Supplemental Questionnaire Response (Zhongji July 3, 2017 SQR) at 9.

<sup>50</sup> See Zhongji Preliminary Calculation Memorandum.

<sup>51</sup> See Zhongji AFFR at 3 and at Exhibit 1.

<sup>52</sup> *Id.*, at Exhibit 1.

<sup>53</sup> See Zhongji June 12, 2017 IQR Volume IV at 9 – 10.

make an adjustment to the calculation of the subsidy rate to account for the mark-up between the export value from the PRC and the entered value of subject merchandise produced by Zhongji into the United States.<sup>54</sup>

Citing *Multilayered Wood Flooring PRC* to support its request, Zhongji contends that its shipments met the requisite six criteria for an export value adjustment: 1) U.S. invoices via Zhongji HK include a mark-up from the invoice issued from Zhongji to Zhongji HK; 2) Zhongji and Zhongji HK are affiliated; 3) the U.S. invoice issued by Zhongji HK establishes the customs value to which CVD duties would be applied; 4) there is a one-to-one correlation between the Zhongji HK and Zhongji invoices, *e.g.* between sales reference numbers and quantities; 5) Zhongji HK ships the subject merchandise directly to the United States; and 6) the invoices can be tracked as back-to-back invoices that are identical, with the exception of price.<sup>55</sup> Zhongji provided two sets of sales documentation to demonstrate that it met these criteria.<sup>56</sup>

As Zhongji noted in reference to *Multilayered Wood Flooring PRC*,<sup>57</sup> the Department has, in the past, adjusted the calculation of the subsidy rate when the sales value used to calculate that subsidy rate does not match the entered value of the merchandise, *e.g.*, where subject merchandise is exported to the United States with a mark-up from an affiliated company, and where the respondent can demonstrate that the six criteria enumerated above are met. Because the information submitted by Zhongji supports its claim and the information also permits an accurate calculation of the adjustment, we have preliminarily made an adjustment to the entered value. Specifically, and with respect to the total POI sales and POI export sales of Zhongji and Shantou Wanshun, we subtracted the total sales value of all merchandise produced by Zhongji and sold to Zhongji HK.<sup>58</sup> We then added the total sales value of all merchandise produced by Zhongji and sold by Zhongji HK. Consequently, we accounted for mark-ups from the invoices issued from Zhongji to Zhongji HK. For additional information, *see* the Zhongji Preliminary Calculation Memorandum.

### C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or the total combined sales of the

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.*, at 8 – 10; *see also Multilayered Wood Flooring from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011) (*Multilayered Wood Flooring PRC*), and accompanying IDM at 7 – 8.

<sup>56</sup> *See* Zhongji June 12, 2017 IQR at Volume IV, Exhibit 6; *see also* Zhongji's July 14, 2017 Supplemental Questionnaire Response (Zhongji July 14, 2017 SQR) at Exhibit 5.

<sup>57</sup> *See Multilayered Wood Flooring PRC* and accompanying IDM at 7 – 8.

<sup>58</sup> We did not apply this adjustment to Jiangsu Huafeng because it did not export any merchandise or sell any subject merchandise during the POI. We did not apply this adjustment to Zhongji HK because the mark-up between the export value from the PRC and the entered value of subject merchandise produced by Zhongji into the United States is already included in Zhongji HK's POI sales values.

cross-owned affiliates, as described above). Where the program has been found to be contingent upon export activities, we used the recipient's total export sales as the denominator. All sales used in our net subsidy rate calculations are net of intra-company sales. For a further discussion of the denominators used, *see* the preliminary calculation memoranda.<sup>59</sup>

## VIII. BENCHMARKS AND INTEREST RATES

The Department is investigating loans received by the Dingsheng companies, the Dingsheng trading companies, and Zhongji and its cross-owned companies, from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies received by the mandatory respondents.<sup>60</sup> The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

### A. Short-Term and Long-Term Renminbi (RMB)-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, the Department uses comparable commercial loans reported by the company as a benchmark.<sup>61</sup> If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we “may use a national average interest rate for comparable commercial loans.”<sup>62</sup>

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS PRC*, loans provided by PRC banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.<sup>63</sup> In an analysis memorandum dated July 21, 2017, the Department has conducted a re-assessment of the lending system in China.<sup>64</sup> Based on this re-assessment, the Department has concluded that, despite reforms to date, the Government of the PRC's role in the system continues to fundamentally distort lending practices in the PRC in terms of risk pricing and resource allocation, precluding the use of interest rates in the PRC for CVD benchmarking or discount rate purposes. Consequently, we preliminarily find that any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For

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<sup>59</sup> See Dingsheng HK Preliminary Calculation Memorandum and Zhongji Preliminary Calculation Memorandum.

<sup>60</sup> See 19 CFR 351.524(b)(1).

<sup>61</sup> See 19 CFR 351.505(a)(3)(i).

<sup>62</sup> See 19 CFR 351.505(a)(3)(ii).

<sup>63</sup> See *CFS PRC Final IDM* at Comment 10.

<sup>64</sup> See Memorandum to the File Placing “Review of China's Financial System Memorandum” on the Record, dated July 24, 2017.

example, in *Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.<sup>65</sup>

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *CFS PRC* and later updated in *Thermal Paper PRC*.<sup>66</sup> Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS PRC*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, the PRC fell in the lower-middle income category.<sup>67</sup> Beginning in 2010, however, the PRC was classified in the upper-middle income category and remained there from 2011 to 2014.<sup>68</sup> Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2014. This is consistent with the Department's calculation of interest rates for recent CVD proceedings involving PRC merchandise.<sup>69</sup>

After the Department identifies the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation, the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators.

In each of the years from 2003-2009 and 2011-2014, the results of the regression analysis reflected the expected, common-sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.<sup>70</sup> For 2010, however, the regression does not yield that outcome for the PRC's income group.<sup>71</sup> This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis

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<sup>65</sup> See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Lumber Canada Final*), and accompanying IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

<sup>66</sup> See *CFS PRC Final IDM* at Comment 10; see also *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper PRC*), and accompanying IDM (*Thermal Paper IDM*) at 8-10.

<sup>67</sup> See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups> ("World Bank Country Classification"); see also, Memorandum to the File, "Interest Rate Benchmark Memorandum," dated August 1, 2017 (Interest Rate Benchmark Memorandum).

<sup>68</sup> See World Bank Country Classification.

<sup>69</sup> See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying Preliminary Decision Memorandum at "Benchmarks and Discount Rates" (unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp PRC Final*)).

<sup>70</sup> See Interest Rate Benchmark Memorandum.

<sup>71</sup> *Id.*

used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009 and 2011-2014. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund (IMF), and they are included in that agency's International Financial Statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010-2014 and "lower middle income" for 2001-2009.<sup>72</sup> First, we did not include those economies that the Department considered to be NMEs for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we remove any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.<sup>73</sup> Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.<sup>74</sup>

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.<sup>75</sup>

In *Citric Acid PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where "n" equals or approximates the number of years of the term of the loan in question.<sup>76</sup> Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.<sup>77</sup>

The resulting inflation-adjusted benchmark lending rates are provided in the Dingsheng HK Preliminary Calculation Memorandum and the Zhongji Preliminary Calculation Memorandum.

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

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

<sup>74</sup> *Id.*

<sup>75</sup> See, e.g., Thermal Paper IDM at 10.

<sup>76</sup> See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid PRC Final*), and accompanying IDM at Comment 14.

<sup>77</sup> See Interest Rate Benchmark Memorandum.

## **B. Foreign-Currency-Denominated Loans**

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is following the methodology developed over a number of successive PRC investigations. For U.S. dollar (USD) short-term loans, the Department used as a benchmark the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rate for companies with a BB rating.

Zhongji HK is located in Hong Kong and reported receiving outstanding financing from overseas branches of Chinese SOCBs denominated in Hong Kong dollars and USD during the POI.<sup>78</sup> Zhongji HK did not provide information regarding short-term loans from commercial banks for the Department's specific consideration as comparable commercial loans. We, therefore, are using publicly available IMF Hong Kong lending rate data as a benchmark to measure the benefit received from Zhongji HK's short-term loans, pursuant to 19 CFR 351.505(a)(1).<sup>79</sup>

## **C. Discount Rates**

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the Government of the PRC provided non-recurring subsidies.<sup>80</sup> The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the Dingsheng HK Preliminary Calculation Memorandum and the Zhongji Preliminary Calculation Memorandum.

## **D. Government Provision of Land for Less Than Adequate Remuneration (LTAR) Benchmark**

As explained in detail in previous investigations, the Department cannot rely on the use of the so-called "tier one" and "tier two" benchmarks described above to assess the benefits from the provision of land for LTAR in the PRC. Specifically, in *Sacks PRC*, the Department determined that "Chinese land prices are distorted by the significant government role in the market," and hence, no usable "tier one" benchmarks exist.<sup>81</sup> Furthermore, the Department also found that "tier two" benchmarks (world market prices that would be available to purchasers in the PRC) are not appropriate.<sup>82</sup> Accordingly, consistent with Department's past practice, we are relying on the use of so called "tier three" benchmarks for purposes of calculating a benefit for this program.

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<sup>78</sup> See Zhongji July 3, 2017 SQR at 12; see also Zhongji Preliminary Calculation Memorandum.

<sup>79</sup> See 19 CFR 351.505(a)(3)(ii); see also Zhongji Preliminary Calculation Memorandum.

<sup>80</sup> See Dingsheng HK Preliminary Calculation Memorandum and Zhongji Preliminary Calculation Memorandum; see also Interest Rate Benchmark Memorandum.

<sup>81</sup> See, e.g., *Laminated Woven Sacks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007) (unchanged in *Sacks PRC*).

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

For this investigation, the petitioner submitted industrial land prices from Thailand, adjusted for inflation.<sup>83</sup> The Department used this benchmark in the CVD investigations of *Solar Cells PRC* and *ITDCs PRC*.<sup>84</sup> We initially selected this information in the *Sacks PRC* investigation after considering a number of factors, including national income levels, population density, and producer's perceptions that Thailand is a reasonable alternative to the PRC as a location for Asian production.<sup>85</sup> We find that these benchmarks are suitable for this preliminary determination, adjusted accordingly for inflation, to account for any countervailable land received by the Dingsheng companies and Zhongji during the AUL of this investigation.<sup>86</sup>

## E. Input Benchmarks

We selected benchmarks for determining the benefit from the provision of primary aluminum and steam coal at LTAR in accordance with 19 CFR 351.511. 19 CFR 351.511(a)(2) sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As discussed in the "Use of Facts Otherwise Available and Adverse Inferences" section, we are relying on "tier two" (world market) prices for the input benchmarks for these programs.

We received data submissions from certain parties for the Department to consider using as "tier two" benchmarks for primary aluminum. Dingsheng HK and the Dingsheng companies submitted a summary table of primary aluminum prices from the London Metal Exchange (LME),<sup>87</sup> and the petitioner submitted data from Global Trade Atlas (GTA) specific to several tariff numbers. Specifically, the petitioner submitted pricing data for HTS subheadings 7601.10

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<sup>83</sup> See Petitioner Letter re: Certain Aluminum Foil from the People's Republic of China - Petitioners' Submission of Factual Information to Measure Adequacy of Remuneration, dated July 21, 2017 (Petitioner Benchmark Submission) at 3 and Attachment 1.

<sup>84</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells PRC*), and accompanying IDM (*Solar Cells IDM*), at 6 and Comment 11; *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 21316 (April 11, 2016) (*ITDCs PRC*), and accompanying IDM at 13.

<sup>85</sup> The complete history of our reliance on this benchmark is discussed in the above-referenced *Solar Cells IDM*. In that discussion, we reviewed our analysis from the *Sacks PRC* investigation and concluded the CBRE data remained a valid land benchmark.

<sup>86</sup> See Dingsheng HK Preliminary Calculation Memorandum and Zhongji Preliminary Calculation Memorandum.

<sup>87</sup> See Dingsheng Letter re: HK Dingsheng Benchmark Submission: Countervailing Duty Investigation on Aluminum Foil from the People's Republic of China (C-570-054), dated July 21, 2017 (Dingsheng Benchmark Submission), at Exhibit 1.

(aluminum not alloyed) and 7601.20 (aluminum alloys) as potential benchmarks for primary aluminum inputs.<sup>88</sup>

With respect to the primary aluminum input for Jiangsu Dingsheng, we are not using the LME prices submitted by Dingsheng HK and the Dingsheng companies because these are a summary of raw data that were not included in the submission, which, for that reason, we find unverifiable and, thus, unreliable for our benchmarking purposes. Instead, we are relying on the raw GTA pricing data from the petitioner related to HTS subheadings 7601.10 and 7601.20, which reflect the primary aluminum input purchased by Jiangsu Dingsheng to use in the production of subject merchandise. This approach is consistent with *Aluminum Extrusions PRC 2012 Review* and *Aluminum Extrusions PRC 2013 Review*.<sup>89</sup>

With respect to steam coal, Jiangsu Dingsheng reported purchases of bituminous coal and Zhongji reported purchase of anthracitic coal during the POI.<sup>90</sup> We, therefore, are basing our preliminary calculations regarding the provision of steam coal for LTAR on discrete benchmarks specific to bituminous and anthracitic coal. Dingsheng HK, the Dingsheng companies and the petitioner submitted data for bituminous coal benchmarking. However, the petitioner's submission is a summary of GTA data, while Dingsheng HK's and the Dingsheng companies' data lack specific HTS subcategory information; consequently, we obtained GTA data separately for HTS subcategory 2701.12 (bituminous coal). For anthracitic coal, we are using publicly available world market price data sourced from GTA, as submitted by the petitioner.<sup>91</sup>

With respect to ocean freight expenses, Zhongji submitted ocean freight data for shipping a twenty-foot container to Shanghai from various ports around the world from Xeneta, a freight rate market intelligence firm.<sup>92</sup> While information on the record submitted by Dingsheng HK and the Dingsheng companies demonstrates that they ship from a port near Shanghai,<sup>93</sup> the Xeneta data are not actual price quotes. As the Department adjusts the benchmark price to reflect charges that companies would have paid, and as no additional parties submitted ocean freight information, we are preliminarily relying on information sourced from Maersk Shipping Line, representing actual price quotes for the shipment of cargo (*e.g.*, aluminum and glass) from

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<sup>88</sup> See Petitioner Letter re: Certain Aluminum Foil from the People's Republic of China- Petitioners' Submission of Factual Information to Measure Adequacy of Remuneration, dated July 21, 2017 (Petitioner Benchmark Submission), at Attachment 2.

<sup>89</sup> See *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78788 (December 31, 2014) (*Aluminum Extrusions PRC 2012 Review*) and accompanying IDM at 28; see also *Aluminum Extrusions from the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review*, 80 FR 77325 (December 14, 2015) (*Aluminum Extrusions PRC 2013 Review*), and accompanying IDM at 55. We note that the petitioner submitted a data summary table, however, we utilized the raw data in our benchmark calculation.

<sup>90</sup> See Dingsheng HK July 20, 2017 IQR at 49; see also Zhongji July 3, 2017 SQR at 10.

<sup>91</sup> See Petitioner Benchmark Submission at Attachment 2.

<sup>92</sup> See Zhongji Letter re: Certain Aluminum Foil from the People's Republic of China: Benchmark Submission, dated July 21, 2017 (Zhongji Benchmark Submission).

<sup>93</sup> See Dingsheng HK July 20, 2017 IQR at 49.

various points around the world to Shanghai, China.<sup>94</sup> The Department has used this type of data in previous cases, including *Silica Fabric PRC*.<sup>95</sup>

Regarding inland freight, the Dingsheng companies indicated that they only made one freight payment in May 2016 for transporting primary aluminum from the nearest port, Zhenjiang Dagang Port, to Jiangsu Dingsheng's factory. The relevant contract shows that the price for transporting the input, including value-added tax (VAT), totaled 27 RMB per metric ton for a distance of 14.8 kilometers.<sup>96</sup> Therefore, we used the respective per-unit inland freight expense in the benchmark calculation and subtracted VAT from the contract price, as it has already been included in the benchmark price.

## **IX. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES**

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply "facts otherwise available" (FA) if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.<sup>97</sup>

Section 776(b) of the Act further provides that the Department may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, the Department's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a

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<sup>94</sup> *Id.*, at Exhibit 11.

<sup>95</sup> See *Silica Fabric PRC* IDM at Comment 11.

<sup>96</sup> See Dingsheng HK July 20, 2017 IQR at 49.

<sup>97</sup> On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this investigation.

timely manner.”<sup>98</sup> The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>99</sup>

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>100</sup> It is the Department’s practice to consider information to be corroborated if it has probative value.<sup>101</sup> In analyzing whether information has probative value, it is the Department’s practice to examine the reliability and relevance of the information to be used.<sup>102</sup> However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.<sup>103</sup>

Finally, under the new section 776(d) of the Act, the Department may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>104</sup>

For purposes of this preliminary determination, we are applying AFA in the circumstances outlined below.

#### **A. Application of FA: Dingsheng HK and Walson HK**

Dingsheng HK and Walson HK claim that, as Hong Kong entities, they were not eligible to apply for, use, or benefit from, any of the alleged subsidy programs.<sup>105</sup> Similarly, Zhongji HK, Zhongji’s Hong Kong trading company, initially stated that it was not eligible for the alleged subsidy programs. However, over the course of the proceeding and in response to the Department’s supplemental questionnaires, Zhongji HK subsequently reported receiving loans from a branch or subsidiary of a PRC SOCB or other PRC state-owned financial institution.<sup>106</sup>

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<sup>98</sup> See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe PRC Final*); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>99</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA’) at 870.

<sup>100</sup> See, e.g., SAA at 870.

<sup>101</sup> See SAA at 870.

<sup>102</sup> See, e.g., SAA at 869.

<sup>103</sup> See SAA at 869-870.

<sup>104</sup> See section 776(d)(3) of the Act.

<sup>105</sup> See *Dingsheng HK* July 20, 2017 IQR at 10 and 20.

<sup>106</sup> See *Zhongji* July 3, 2017 SQR at 12.

In light of Zhongji HK's reporting of subsidies received from PRC financial institutions, we question the statements by Dingsheng HK and Walson HK that they were not eligible to receive loan subsidies from the Government of the PRC. However, we did not have time, before this preliminary determination, to follow up with Dingsheng HK and Walson HK. Accordingly, we find that necessary information is not available on the record, within the meaning of section 776(a)(1) of the Act. Therefore, we will rely on the facts otherwise available to determine a rate from the policy lending program for Dingsheng HK and Walson HK. We are applying to Dingsheng HK and Walson HK the program subsidy rate calculated for the Dingsheng companies' additional trading company, Dingsheng IE. We may continue to seek additional information from Dingsheng HK and Walson HK following this preliminary determination.

## **B. Application of FA: Dingsheng IE**

As discussed in the "Subsidies Valuation Section" above, pursuant to 19 CFR 351.525(c), benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing the subject merchandise that is sold through the trading company. It is the Department's practice to cumulate benefits based on the ratio of trading companies' total exports of subject merchandise produced by the relevant producer, or producers, during the POI (based on value). Dingsheng IE submitted sales information regarding exports of subject merchandise. However, it did not submit information indicating the value of its exports of subject merchandise produced by the specific producers from which it sourced that merchandise. Accordingly, we find that necessary information is not available on the record, within the meaning of section 776(a)(1) of the Act. Therefore, we will rely on the facts otherwise available to determine the ratio used to cumulate benefits received by Dingsheng IE with benefits from subsidies provided to the firm which is producing the subject merchandise that is sold through the trading company.

Dingsheng IE reported receiving preferential financing during the POI.<sup>107</sup> Additionally, Dingsheng IE reported receiving certain "Other Subsidies" throughout the AUL.<sup>108</sup> As facts otherwise available, we will cumulate all benefits Dingsheng IE received under these programs with the Dingsheng companies.

## **C. Application of Total AFA: Loften HK, Manakin Industries, and Suzhou Manakin**

### *Loften HK*

As noted in the "Initiation and Case History" section above, the Department selected Loften HK as a mandatory respondent.<sup>109</sup> On May 12, 2017, Loften HK notified the Department that it was unable to respond to the Department's Initial CVD Questionnaire.<sup>110</sup> Accordingly, we preliminarily determine that Loften HK withheld necessary information that was requested of it, failed to provide information within the deadlines established, and significantly impeded this

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<sup>107</sup> See Dingsheng HK July 20, 2017 IQR at 20 and Exhibit P.A.1.

<sup>108</sup> *Id.*, at 55 and Exhibits P.G.1-P.G.7.

<sup>109</sup> See Respondent Selection Memorandum.

<sup>110</sup> See Loften HK May 12, 2017 Submission.

proceeding. Thus, the Department is relying on facts otherwise available in making our preliminary determination with respect to Loften HK, pursuant to sections 776(a)(2)(A)-(C) of the Act. Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b)(1) of the Act, because, by not responding to the Department's Initial CVD Questionnaire, Loften HK did not cooperate to the best of its ability to comply with the request for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted to ensure that Loften HK does not obtain a more favorable result by failing to cooperate than if it had fully complied with our request for information. Therefore, we are adversely inferring from Loften HK's decision not to participate in this investigation that it used all the programs on which we initiated an investigation and applying an AFA rate for each program.

### *Manakin Industries and Suzhou Manakin*

Upon Loften HK's refusal to participate in the investigation, the Department selected Manakin Industries as an additional mandatory respondent, based on the CBP entry data and publicly available information demonstrating that it is a producer/and or exporter of subject merchandise.<sup>111</sup>

As explained above, Manakin Industries argues that it is not an exporter of subject merchandise from the PRC, but rather, is a U.S. importer.<sup>112</sup> Manakin Industries explains in the Manakin Industries Respondent Selection Comments and in the Manakin Industries June 2, 2017 SAFFR, that it acts as an importer of record for purchases of subject merchandise from its Chinese sales office, Suzhou Manakin.<sup>113</sup> However, we find that the record, while deficient for the reasons explained further below, does not support Manakin Industries' contention that it operates strictly as a U.S. importer. Documentation and descriptions of these sales processes demonstrate that Manakin Industries purchases the subject merchandise from entities in the PRC and resells it prior to importation into the United States.<sup>114</sup> This is consistent with other indications in the record pointing to Manakin Industries operating in the PRC through either actual staff or agents acting on its behalf.<sup>115</sup> While Manakin Industries claims that some of this information is not what it appears to be,<sup>116</sup> we find these claims unpersuasive. When the Department initially requested that Manakin Industries clarify the relationship between Manakin Industries and Suzhou Manakin and provide supporting documentation, Manakin Industries claimed that Suzhou Manakin was not involved in the shipments the Department is attributing as Manakin Industries exports.<sup>117</sup> Instead, Manakin Industries states that Manakin Industries arranges

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<sup>111</sup> See Second Respondent Selection Memorandum.

<sup>112</sup> See Manakin Industries' June 2, 2017 Supplemental Affiliation Response (Manakin Industries June 2, 2017 SAFFR), at SQ-1.

<sup>113</sup> *Id.* See also Letter from Manakin Industries re: Certain Aluminum Foil from the People's Republic of China: Summary of Reasons Why Manakin is Not a Valid Mandatory Respondent; Request for Meeting, dated June 14, 2017, at 4.

<sup>114</sup> See Manakin Industries June 2, 2017 SAFFR at SQ-1.

<sup>115</sup> Certain record information indicative of this situation is business proprietary in nature and, thus, cannot be publicly identified here.

<sup>116</sup> See, e.g., Manakin Industries' July 24, 2017 Supplemental Questionnaire Response (Manakin Industries July 24, 2017 SQR) at 1-5.

<sup>117</sup> See Manakin Industries SAFFR at SQ-1; see also Manakin Industries AFFR at 5.

purchases of subject merchandise from unaffiliated mills and exporters, which is then exported to the United States.<sup>118</sup> We then requested clarification, a second time, of the exact role that Suzhou Manakin maintains in Manakin Industries' supply chain. In the Manakin Industries July 17, 2017 SQR, Manakin Industries explains that Suzhou Manakin acts as a liaison between Manakin Industries and the unrelated mills, and Suzhou Manakin provides "sourcing and logistics support" to Manakin Industries' sales activity.<sup>119</sup> With respect to Suzhou Manakin's operations, Suzhou Manakin states that all of its exports were made to Manakin Industries and that it purchased subject merchandise from three unaffiliated Chinese producers during the POI.<sup>120</sup>

Based on the Department's assessment of the record information as indicating that Manakin Industries and Suzhou Manakin undertake joint operations to purchase and export subject merchandise, *i.e.*, they jointly function as trading companies, we sought information from both companies pursuant to the requirements under 19 CFR 351.525(c).<sup>121</sup> As Suzhou Manakin reported exporting subject merchandise produced by Chinese companies, Manakin Industries and Suzhou Manakin, as joint trading companies, were required to respond on behalf of these three unaffiliated Chinese producers. Instead of providing the requested responses, they refused to provide the three requested responses from the unaffiliated Chinese producers, stating that they lack "the budget that would be required to answer the questionnaire for the three unrelated companies."<sup>122</sup> The Department requires responses from producers of the subject merchandise from which trading companies sourced, in order to cumulate the benefits provided to the producers with the benefits (if any) provided to the trading companies, pursuant to 19 CFR 351.525(c). Regardless of whether a particular company is selected as a mandatory respondent, the Department must conduct the same level of analysis of each producer's subsidization as it would for a mandatory respondent.<sup>123</sup> Thus, without a full response from their producers, we are unable to calculate a subsidy rate for Manakin Industries and Suzhou Manakin as trading companies. In sum, the Department's ability to determine the amount of subsidization of subject merchandise exported by Manakin Industries and its joint trading company Suzhou Manakin has been stymied by the incomplete and evasive responses from the companies.

Accordingly, we preliminarily determine that Manakin Industries and Suzhou Manakin withheld necessary information that was requested of them and significantly impeded this proceeding. Therefore, the Department will rely on facts otherwise available in making our preliminary determination with respect to Suzhou Manakin and Manakin Industries, pursuant to sections 776(a)(2)(A)-(C) of the Act. Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by refusing to provide responses to the Department's Initial CVD Questionnaire for the three unaffiliated Chinese producers, we find that Manakin Industries and Suzhou Manakin did not cooperate to the best of their abilities to comply with the request for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted to ensure that Manakin Industries and Suzhou Manakin do not

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<sup>118</sup> *Id.*

<sup>119</sup> See Manakin Industries July 24, 2017 SQR at SQ-3.

<sup>120</sup> See Manakin Industries June 30, 2017 IQR at 4, Section II.

<sup>121</sup> See Initial CVD Questionnaire at Section III, "Affiliated Companies" section.

<sup>122</sup> See Manakin Industries June 30, 2017 IQR at 4, Section II.

<sup>123</sup> See 19 CFR 351.525(b)(6)(i)-(vi), 351.525(b)(7), and 351.525(c).

obtain a more favorable result by failing to cooperate than if they had fully complied with our request for information. In applying AFA, we will attribute one AFA rate to the combined Manakin Industries/Suzhou Manakin entity.

### *Application of AFA*

Based on the above discussion, we are adversely inferring from Loften HK's decision not to participate in this investigation and Manakin Industries and Suzhou Manakin's repeated failures to provide requested information and documentation that these companies used all the programs on which the Department initiated an investigation.

It is the Department's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.<sup>124</sup> When selecting AFA rates, section 776(d) of the Act provides that the Department may use any countervailable subsidy rate applied for the same or similar program in a countervailable duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.<sup>125</sup> Accordingly, when selecting AFA rates, if we have cooperating respondents, as we do in this investigation, we first determine if there is an identical program in the investigation and use the highest calculated rate above zero for the identical program. If there is no identical program that resulted in a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate above *de minimis* for the identical program.<sup>126</sup> If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de*

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<sup>124</sup> See, e.g., *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009) and accompanying IDM Memorandum at "Application of Facts Available, Including the Application of Adverse Inferences"); see also *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions PRC Final*), and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

<sup>125</sup> See, e.g., *Shrimp PRC*, and accompanying IDM at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

<sup>126</sup> For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

*minimis* rate from any non-company specific program in a CVD case involving the same country that the company’s industry could conceivably use.<sup>127</sup>

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>128</sup> The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.<sup>129</sup>

The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.<sup>130</sup> Furthermore, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>131</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>132</sup>

In determining the AFA rates that we are preliminarily applying to Loften HK, Manakin Industries, and Suzhou Manakin, we are guided by the Department’s methodology detailed above. We begin by selecting, as AFA, the highest calculated program-specific above-zero rates determined for the cooperating respondents in the instant investigation. Accordingly, we are applying the highest applicable subsidy rate calculated for the Dingsheng companies, the Dingsheng trading companies or Zhongji for the following programs:<sup>133</sup>

- Policy Loans to the Aluminum Foil Industry
- Export Seller’s Credits

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<sup>127</sup> See *Shrimp PRC Final IDM* at 13-14.

<sup>128</sup> See SAA at 870.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*, at 869-870.

<sup>131</sup> See section 776(d) of the Act.

<sup>132</sup> See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

<sup>133</sup> We note that respondents benefited from additional programs that were reported or discovered during the course of this proceeding. For the purposes of calculating the AFA rate, however, we are only referencing those programs on which we initiated this investigation.

- Export Buyer’s Credits
- VAT Exemptions on Imported Equipment in Encouraged Industries
- VAT Rebates on Domestically-Produced Equipment
- Government Provision of Land for Less Than Adequate Remuneration
- Government Provision of Primary Aluminum for LTAR
- Provision of Steam Coal for LTAR
- Provision of Electricity for LTAR

In applying an AFA rate for the following income tax reduction programs on which the Department initiated an investigation, we are drawing an adverse inference that each of the three companies paid no PRC income tax during the POI:

- Income Tax Reduction for High and New Technology Enterprises (HNTEs)
- Income Tax Reduction for Research & Development (R&D) under the Enterprise Income Tax Law (EITL)
- Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization
- Income Tax Deductions/Credits for Purchase of Special Equipment

The standard income tax rate for corporations in the PRC in effect during the POI was 25 percent.<sup>134</sup> Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the five programs, combined, provide a 25 percent benefit). Consistent with past practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.<sup>135</sup>

For all other programs not mentioned above, we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a PRC CVD investigation or administrative review. For this preliminary determination, we are able to match, based on program names, descriptions, and benefit treatments, the following programs to the same programs from other PRC CVD proceedings:

- Preferential Loans to State Owned Enterprises (SOEs)<sup>136</sup>

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<sup>134</sup> See CVD Initiation Checklist at 20.

<sup>135</sup> See, e.g., *Aluminum Extrusions PRC Final* IDM at “Application of Adverse Inferences: Non-Cooperative Companies.”

<sup>136</sup> Consistent with recent investigations, we are using a single AFA rate for “Government Policy Lending” and “Preferential Loans to SOEs,” because an analysis of these two allegations in this investigation reveals that they would apply to the same loans provided by SOCBs. See, e.g., *Grain-Oriented Electrical Steel from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 59221 (October 1, 2014), and accompanying IDM (GOES IDM) at 7; see also *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper Investigation Amended Final*), and accompanying MEM at “Revised Net Subsidy Rate for the Gold Companies” (discussing revised subsidy rate for “Preferential Lending to the Coated Paper Industry”). This document is proprietary in

- Export Loans from Chinese State-Owned Banks (SOCBs)<sup>137</sup>
- Equity Infusions into Nanshan Aluminum<sup>138</sup>
- Exemptions for SOEs from Distributing Dividends<sup>139</sup>
- Stamp Tax Exemption on Share Transfers Under Non-Tradeable Share Reform<sup>140</sup>
- Deed Tax Exemption for SOEs Undergoing Mergers or Restructures<sup>141</sup>
- Government of the PRC and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands<sup>142</sup>
- The State Key Technology Fund Project<sup>143</sup>
- Foreign Trade Development Fund Grants<sup>144</sup>
- Grants for Energy Conservation and Emission Reduction<sup>145</sup>
- Grants for the Retirement of Capacity<sup>146</sup>
- Grants for the Relocation of Productive Facilities<sup>147</sup>
- Grants to Nanshan Aluminum<sup>148</sup>

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for each of the AFA Companies to be 79.25 percent *ad valorem*. The Appendix contains a chart summarizing our calculation of this rate.

#### **D. Application of AFA: Export Buyer’s Credit**

##### *Government of the PRC*

The Department preliminarily determines that the use of AFA is warranted in determining the countervailability of the Export Buyer’s Credit program because the Government of the PRC did

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nature. However, the public version, which has been placed on the record of this investigation, identifies the revised subsidy rate on which we are relying.

<sup>137</sup> See *Coated Paper Investigation Amended Final* and accompanying Ministerial Error Memorandum (MEM) at “Revised Net Subsidy Rate for the Gold Companies” (regarding “Preferential Lending to the Coated Paper Industry”).

<sup>138</sup> This alleged program is unique to Nanshan Aluminum and specific under section 771(5A)(D)(i) of the Act. We, therefore, are not including this program in our calculation of the AFA rate calculation.

<sup>139</sup> See *Chlorinated Isocyanurates from the People’s Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Isos PRC*) and accompanying IDM (*Isos IDM*) at 13-14 (“Special Fund for Energy Saving Technology”).

<sup>140</sup> See *New Pneumatic Off-the-Road Tires From the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010) (*OTR Tires Preliminary AR*) (“C. VAT and Import Duty Exemptions on Imported Material”), unchanged in *New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011) (*OTR Tires Final AR*).

<sup>141</sup> *Id.*

<sup>142</sup> See *Isos IDM* at 13 – 14 (“Special Fund for Energy Saving Technology”).

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> This alleged program is unique to Nanshan Aluminum and specific under section 771(5A)(D)(i) of the Act. We, therefore, are not including this program in our calculation of the AFA rate calculation.

not provide the requested information needed to allow the Department to fully analyze this program. In our Initial CVD Questionnaire, we requested that the Government of the PRC provide the information requested in the Standard Questions Appendix “with regard to all types of financing provided by the China ExIm under the Buyer Credit Facility.”<sup>149</sup> The Standard Questions Appendix requested various information that the Department requires in order to analyze the specificity and financial contribution of this program, including the following: translated copies of the laws and regulations pertaining to the program, identification of the agencies and types of records maintained for administration of the program, a description of the program and the program application process, program eligibility criteria, and program use data. Rather than responding to the questions in the Appendix, the Government of the PRC stated that it had confirmed “{n}one of the U.S. customers of Zhongji or its reported affiliated companies used the alleged program during the POI. Therefore, the relevant appendix is not applicable.”<sup>150</sup> The Government of the PRC responded in the same manner with respect to Manakin Industries and the Dingsheng companies.<sup>151</sup>

In its initial questionnaire response, the Government of the PRC stated that the EX-IM Bank confirmed that it strictly limits the provision of Export Buyer’s Credits to business contracts exceeding USD 2 million.<sup>152</sup> In that same response, the Government of the PRC provided a copy of its *7th Supplemental Response in the Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China*.<sup>153</sup> Information in that document indicates that the Government of the PRC revised this program in 2013 to eliminate this minimum requirement.<sup>154</sup> Thus, we also requested in our Initial CVD Questionnaire that the Government of the PRC also provide original and translated copies of any laws, regulations or other governing documents cited by the Government of the PRC in the Export Buyer’s Credit Supplemental Questionnaire Response. This request included the 2013 *Administrative Measures* revisions (2013 Revisions) to the Export Buyer’s Credit program. In its response, the Government of the PRC failed to provide the 2013 Revisions.<sup>155</sup> We, therefore, again requested that the Government of the PRC provide the 2013 Revisions.<sup>156</sup> Through its response to the Department’s initial and supplemental questionnaires, the Government of the PRC has twice refused to provide the requested information or any information concerning the 2013 program revision, which is necessary for the Department to analyze how the program functions.

We requested the 2013 *Administrative Measures* revisions (2013 Revisions) because information on the record of this proceeding indicated that the 2013 Revisions affected important program changes. For example, the 2013 Revisions may have eliminated the USD 2 million contract

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<sup>149</sup> See Initial CVD Questionnaire at Section II, part II, at 4.

<sup>150</sup> See Government of the PRC June 12, 2017 IQR at 16.

<sup>151</sup> See Government of the PRC June 28, 2017 IQR at 8; see also Government of the PRC July 20, 2017 IQR at 17.

<sup>152</sup> See Government of the PRC June 12, 2017 IQR at 19.

<sup>153</sup> *Id.*, at Exhibit A3-3 (Export Buyer’s Credit Supplemental Questionnaire Response).

<sup>154</sup> *Id.*; see also Memorandum to the File, “Placing Information on the Record,” dated July 27, 2017, at Document 1 (Citric Acid Verification Report) at 2.

<sup>155</sup> See Government of the PRC June 12, 2017 IQR at 18.

<sup>156</sup> See Government of the PRC’s July 5, 2017 Supplemental Questionnaire Response (Government of the PRC July 5, 2017 SQR) at 9.

minimum associated with this lending program.<sup>157</sup> By refusing to provide the requested information, and instead asking the Department to rely upon unverifiable assurances that the 2000 Rules Governing Export Buyers' Credit remained in effect, the Government of the PRC impeded the Department's understanding of how this program operates and how it can be verified.

Additional information in the Government of the PRC's initial questionnaire response also indicated that the loans associated with this program are not limited to direct disbursements through the EX-IM Bank.<sup>158</sup> Specifically, this record information indicates that customers can open loan accounts for disbursements through this program with other banks.<sup>159</sup> The funds are first sent from the EX-IM Bank to the importer's account, which could be at the EX-IM Bank or other banks, and that these funds are then sent to the exporter's bank account.<sup>160</sup> Given the complicated structure of loan disbursements for this program, the Department's complete understanding of how this program is administrated is necessary. Thus, the Government of the PRC's refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administrated by the EX-IM Bank, impeded the Department's ability to conduct its investigation of this program.

Pursuant to sections 776(a)(2)(A) and (2)(C) of the Act, when an interested party withholds information requested by the Department and significantly impedes a proceeding, the Department uses facts otherwise available. We find that the use of facts otherwise available is appropriate in light of the Government of the PRC's refusal to provide the 2013 Revisions. Further, pursuant to section 776(b) of the Act, we find that the Government of the PRC, by virtue of its withholding of information and significantly impeding this proceeding, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted. The Government of the PRC has not provided enough information to determine whether the EX-IM Bank limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million. Such information is critical to understanding how the Export Buyer's Credits program operates and is critical to the Department's program use determination.

The Government of the PRC July 5, 2017 SQR indicated the Government of the PRC's refusal to provide information about the internal administration of the program.<sup>161</sup> The Government of the PRC is the only party that can answer questions about the internal administration of this program, and, thus, absent the requested information, the Government of the PRC's and respondent company's claims of non-use of this program are not verifiable. Therefore, we determine that the Government of the PRC has not cooperated to the best of its ability and, as AFA, find that the respondents used and benefited from this program.<sup>162</sup>

Based on the AFA rate selection hierarchy described above, for this program we are using an

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<sup>157</sup> See Citric Acid Verification Report.

<sup>158</sup> See Government of the PRC June 12, 2017 IQR at Exhibit A3-3.

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

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

<sup>161</sup> See Government of the PRC July 5, 2017 SQR at 9.

<sup>162</sup> See Petition at 29 – 31.

AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in the *Coated Paper PRC* proceeding, as the rate for these companies.<sup>163</sup> Additionally, based on the methodology also described above for corroborating secondary information, we have corroborated the selected rate to the extent possible and find that the rate is reliable and relevant for use as an AFA rate for the Export Buyer's Credits program.

## **E. Application of AFA: Government Provision of Land for LTAR**

### *Government of the PRC*

The Department is investigating the provision of land for LTAR to SOEs and/or companies located within special economic zones (SEZ) throughout the PRC.<sup>164</sup> Our review of the Government of the PRC's initial and supplemental questionnaire responses shows that it did not respond fully to multiple requests for information regarding this program. Specifically, we asked the Government of the PRC to identify all instances in which it provided land or land-use rights to any mandatory respondent during the AUL.<sup>165</sup> Rather than respond directly to this question, the Government of the PRC instead referred the Department to Zhongji's questionnaire response and the Dingsheng HK July 20, 2017 IQR.<sup>166</sup> Similarly, in response to our request to explain the basis upon which the land or land-use rights were provided (*i.e.*, status or activity) to the mandatory respondents,<sup>167</sup> the Government of the PRC provided an ambiguous response, stating only that it "believes" these land or land-use rights provisions were not contingent upon the firm's status or activity.<sup>168</sup> As in prior investigations, the Department finds unpersuasive the Government of the PRC's response that it "believes" that none of the land-use rights reported by respondents in this investigation were not contingent upon status or activities; moreover, the Government of the PRC provided no other evidence to demonstrate the basis for its "belief."<sup>169</sup>

The information requested regarding the provision of land and land-use rights to the mandatory respondents and the basis for which they were provided is crucial for our analysis to determine whether an alleged program is a financial contribution and is specific under the relevant provisions of sections 771(5)(D) and 771(5A) of the Act. This type of information has been provided by the Government of the PRC and verified in previous investigations.<sup>170</sup> Thus,

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<sup>163</sup> See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper PRC*) (revised rate for "Preferential Lending to the Coated Paper Industry" program).

<sup>164</sup> See CVD Initiation Checklist at 21.

<sup>165</sup> See Initial CVD Questionnaire at Section II, part II, at 8.

<sup>166</sup> See Government of the PRC June 12, 2017 IQR at 65. See also Government of the PRC July 20, 2017 at 54.

<sup>167</sup> See Initial CVD Questionnaire at Section II, part II, at 8.

<sup>168</sup> *Id.*, at 66.

<sup>169</sup> See, e.g., *Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Determination*, 81 FR 43577 (July 5, 2016), and accompanying Preliminary Decision Memorandum at 12-14, unchanged in *Truck and Bus Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 8606 January 27, 2017.

<sup>170</sup> See, e.g., *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary*

we preliminarily find that the Government of the PRC withheld requested information that was available to it.

Further, the Department requested all government laws or regulations regarding the provision of land in the provinces, counties and/or municipalities or cities in which the mandatory respondents' SEZs are located. In its initial questionnaire response, the Government of the PRC provided only national-level regulations regarding land provision. We, therefore, again requested all local planning documents regarding land use rights acquired by the respondent companies throughout the AUL period. The Government of the PRC referred to the aforementioned national-level regulations and in addition, provided provincial regulations.<sup>171</sup> It failed to provide the requested local planning documents.

Given that the Government of the PRC has provided information regarding the provision of land and land-use rights in previous proceedings, we preliminarily determine that the Government of the PRC has the necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in issuing its preliminary determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, by failing to provide information that that it is otherwise able to provide, we preliminarily find that the Government of the PRC did not act to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the Government of the PRC's provision of land for LTAR constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. For details regarding the remainder of our analysis for this program, *see* the "Government Provision of Land for LTAR" section below.

#### **F. Application of AFA for the Provision of Primary Aluminum and Steam Coal for LTAR**

##### *Government of the PRC – Whether Certain Primary Aluminum and Steam Coal Producers Are "Authorities"*

As discussed below under "Programs Found to Be Countervailable," the Department examined whether the Government of the PRC provided primary aluminum and steam coal for LTAR to the Dingsheng companies and Zhongji. We asked the Government of the PRC to provide information regarding the specific companies that produced primary aluminum and steam coal which the Dingsheng companies and Zhongji purchased during the POI. Specifically, we sought information from the Government of the PRC which would allow us to analyze whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.<sup>172</sup> In prior CVD

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*Affirmative Countervailing Duty Determination*, 72 FR 71360, 71363 (December 17, 2007) and accompanying Preliminary Determination Memorandum (PDM) at page 10 ("we examined these companies' land-use rights agreements and discussed the agreements with the relevant government authorities") (unchanged in the *OTR Tires from the PRC Final Determination*).

<sup>171</sup> See Government of the PRC July 5, 2017 SQR at 11 – 12.

<sup>172</sup> See Memorandum to the File, "Public Bodies Memorandum," dated July 27, 2017 (Public Bodies Memorandum).

proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an “authority” within the meaning of section 771(5)(B) of the Act and that the price paid by the respondent for the input was for less than adequate remuneration LTAR.<sup>173</sup>

In addition to the Initial CVD Questionnaire, the Department issued supplemental questionnaires to the Government of the PRC regarding its response to the alleged subsidy programs.<sup>174</sup> In the Department’s Initial CVD Questionnaire, we asked the Government of the PRC to respond to the specific questions regarding the producers of primary aluminum and steam coal and to respond to the *Input Producer Appendix* for each producer which produced the primary aluminum and steam coal purchased by the Dingsheng companies and Zhongji.<sup>175</sup> We instructed the Government of the PRC to coordinate with the Dingsheng companies and Zhongji to obtain a complete list of the primary aluminum and steam coal producers, including the producers of inputs purchased through a supplier.<sup>176</sup> In response to the Initial CVD Questionnaire, the Dingsheng companies (*i.e.*, Jiangsu Dingsheng) identified certain of the companies that produced and supplied the primary aluminum purchases during the POI,<sup>177</sup> which the Government of the PRC confirmed in its questionnaire responses.<sup>178</sup>

With respect to Jiangsu Dingsheng’s purchases of primary aluminum, while the Government of the PRC ultimately provided the identities of certain of the producers of primary aluminum inputs, the Government of the PRC did not provide all of the information requested in the Initial CVD Questionnaire to the Government of the PRC, as discussed below. In regards to Jiangsu Dingsheng’s and Zhongji’s purchases of steam coal during the POI, while the Government of the PRC provided the identities of certain producers of steam coal, we are unable to corroborate this information as Jiangsu Dingsheng stated that it attempted to provide information regarding the producers of the steam coal, but was unable to obtain the information from its input suppliers.<sup>179</sup> Consequently, all producers that supplied Jiangsu Dingsheng with steam coal during the POI are listed as “unknown.”

With regard to the Government of the PRC, in our initial and supplemental questionnaire to the Government of the PRC,<sup>180</sup> the Department requested certain information be provided with

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<sup>173</sup> See, e.g., *Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying IDM at “Hot-Rolled Steel for Less Than Adequate Remuneration”; *Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying IDM at “Provision of Wire Rod for Less than Adequate Remuneration.”

<sup>174</sup> See Initial CVD Questionnaire, at Section II, “Input Producer Appendix;” see also Government of the PRC July 5, 2017 SQR at 1.

<sup>175</sup> See Initial CVD Questionnaire, at Section II, “Provision of Primary Aluminum for LTAR.”

<sup>176</sup> *Id.*, at Section II, “Provision of Goods or Services for LTAR.”

<sup>177</sup> See Dingsheng HK July 20, 2017 IQR at 47-48 and Exhibit P.E.2.1.

<sup>178</sup> See Government of the PRC July 20, 2017 IQR at 61.

<sup>179</sup> See Dingsheng HK July 20, 2017 IQR at 48.

<sup>180</sup> See Initial CVD Questionnaire, at Section II, “Input Producer Appendix;” see also Government of the PRC July 5, 2017 SQR at 1.

respect to both the majority government-owned and non-majority government-owned enterprises. We address each group below.

With respect to the steam coal producers within China, the Government of the PRC provided no information on government ownership. The Government of the PRC did not provide any information on its involvement in the industry, nor on its ownership interest within majority government-owned and non-majority government-owned entities. Instead of providing the requested information, the Government of the PRC stated that, “the data is not available.”<sup>181</sup>

With respect to those primary aluminum producing enterprises that the Government of the PRC identified as majority government-owned,<sup>182</sup> we note that the Department made multiple requests for the Government of the PRC to provide the articles of incorporation and capital verification reports of all majority government-owned enterprises.<sup>183</sup> The Government of the PRC provided partial information (*i.e.*, the corporate profile, shareholder structure, and articles of association) with respect to only one of the majority government-owned enterprises. Despite the Department’s requests, the Government of the PRC did not provide the articles of incorporation and capital verification reports for any of the majority government-owned enterprises.<sup>184</sup> As explained in the Public Bodies Memorandum,<sup>185</sup> record evidence demonstrates that producers in the PRC that are majority-owned by the government possess, exercise, or are vested with, governmental authority.<sup>186</sup> Record evidence demonstrates that the Government of the PRC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.<sup>187</sup> Therefore, in light of our prior findings and the Government of the PRC’s failure to provide rebuttal information to the contrary, we determine that these enterprises are “authorities” within the meaning of section 771(5)(B) of the Act.

With respect to those primary aluminum producing entities that were reported as being non-majority government-owned enterprises that produce primary aluminum purchased by Jiangsu Dingsheng and Zhongji during the POI, while the Government of the PRC provided website screenshots of certain business registrations for some of the input producers of Jiangsu Dingsheng, the Government of the PRC did not provide other relevant documentation requested by the Department, including company by-laws, annual reports, and tax registration documents, and articles of association.<sup>188</sup>

Additionally, while the Department made attempts to obtain ownership and management information for all of the respondents’ primary aluminum and steam coal producers, the Government of the PRC did not provide the requested information. For instance, in the Government of the PRC July 20, 2017 IQR, the Government of the PRC stated in response to the

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<sup>181</sup> See Government of the PRC July 20, 2017 IQR at 104.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> See Government of the PRC July 20, 2017 IQR at Exhibits D-1, D-2, D-18, and D-19.

<sup>185</sup> See Public Bodies Memorandum.

<sup>186</sup> *Id.*, at 35-36 and sources cited therein.

<sup>187</sup> *Id.*

<sup>188</sup> See Government of the PRC July 20, 2017 IQR at Exhibit D-1 and D-2.

Department's request for CCP information of the primary aluminum producers, that it is "beyond the capacity of the Government of the PRC to access information requested by the Department in this regard," and refused to provide the requested information.<sup>189</sup> In response to the Department's supplemental questionnaire, in which the Department reiterated the same requests for information, the Government of the PRC again refused to provide a complete response with regard to all requested documentation of producers of primary aluminum in the PRC.<sup>190</sup>

As discussed above, the Government of the PRC did not provide complete responses to our numerous requests for information with respect to primary aluminum and steam coal producers which the Government of the PRC claimed to be non-majority government-owned enterprises, including requests for information pertaining to ownership or management by CCP officials. Such information is necessary to our determination of whether the input producers are authorities within the meaning of section 771(5)(B) of the Act. Therefore, we determine that necessary information is not available on the record, and that the Government of the PRC withheld information that was requested of it with regard to the input purchases by Jiangsu Dingsheng and Zhongji.<sup>191</sup> Accordingly, the Department must rely on "facts otherwise available" in reaching a determination in this respect. Further, we find that the Government of the PRC failed to cooperate by not acting to the best of its ability to comply with requests for information regarding the producers of the primary aluminum and steam coal from which Jiangsu Dingsheng and Zhongji purchased during the POI because the Government of the PRC did not provide the requested information.<sup>192</sup> Consequently, we find that an adverse inference is warranted in the application of facts available.<sup>193</sup>

In sum, as AFA, we determine that all of the domestic Chinese producers that produced the steam coal purchased by Jiangsu Dingsheng and Zhongji during the POI are "authorities" within the meaning of section 771(5)(B) of the Act.<sup>194</sup> Relying on AFA, we also determine that the non-government owned domestic producers of the primary aluminum purchased by Jiangsu Dingsheng are "authorities" within the meaning of section 771(5)(B) of the Act.

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<sup>189</sup> *Id.*, at 73 and Government of the PRC June 12, 2017 IQR, at 68-70.

<sup>190</sup> *Id.*, at Government of the PRC July 5, 2017 SQR, at 1-4.

<sup>191</sup> See sections 776(a)(1) and (a)(2)(A) of the Act.

<sup>192</sup> See sections 776(a) and (b) of the Act.

<sup>193</sup> See section 776(b) of the Act.

<sup>194</sup> See *Aluminum Extrusions From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 75 FR 54302 (September 7, 2010) (*Aluminum Extrusions Investigation Preliminary Determination*) at 54306 (unchanged in *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC Investigation*)); *Aluminum Extrusions From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2010 and 2011*, 78 FR 34649 (June 10, 2013) (*Aluminum Extrusions First Review Preliminary Results*) and the accompanying PDM at "Provision of Primary Aluminum for Less Than Adequate Remuneration (LTAR)" (unchanged in *Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) (*Aluminum Extrusions from the PRC First Review*)); and *Aluminum Extrusions From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2012*, 79 FR 36009 (June 25, 2014) (*Aluminum Extrusions Second Review Preliminary Results*) and the accompanying PDM at "Provision of Primary Aluminum for LTAR." (unchanged in *Aluminum Extrusions from the PRC Second Review*).

*Government of the PRC – Whether the Provisions of Primary Aluminum and Steam Coal are Specific*

The Department asked the Government of the PRC to provide a list of industries in the PRC

Provide a list of industries in the PRC that purchase primary aluminum and steam coal directly, using a consistent level of industrial classification. Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use whatever resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.<sup>195</sup>

The Department requests such information for purposes of its *de facto* specificity analysis. The Government of the PRC submitted an incomplete list of data requested for the primary aluminum and steam coal industries. In response to the Department’s request for such documentation relating to the primary aluminum and steam market industries, the Government of the PRC submitted lists of industrial categories without further description, discussion of the methodology used to collect such data, and the source of all data collected.<sup>196</sup>

Therefore, consistent with past proceedings,<sup>197</sup> we preliminarily determine that necessary information is not available on the record and that the GOC has withheld information that was requested of it, and, thus, that the Department must rely on “facts available” in making our preliminary determination, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOC’s provisions of primary aluminum and steam coal are specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

*Government of the PRC – Whether the Steam Coal Market is Distorted*

In the Department’s Initial CVD Questionnaire, we asked the Government of the PRC to respond to specific questions regarding the PRC steam coal industry and market for the POI.<sup>198</sup> Specifically, we asked the GOC to:

- Provide the following information concerning the steam coal industry in the PRC for the POI, including an explanation of the sources used to compile the information:

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<sup>195</sup> See Initial CVD Questionnaire at Section II.

<sup>196</sup> See Government of the PRC July 20, 2017 IQR at Exhibits D-11 and D-21.

<sup>197</sup> See *Utility Scale Wind Towers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012), and accompanying IDM (*Wind Towers PRC IDM*) at Comment 13.

<sup>198</sup> See *e.g.*, Initial CVD Questionnaire, Section II, “Provision of Steam Coal for LTAR – Questions Regarding the Steam Coal Industry” (Industry and Market Questions).

- a. The total number of producers.
  - b. The total volume and value of Chinese domestic consumption of steam coal and the total volume and value of Chinese domestic production of steam coal.
  - c. The percentage of domestic consumption accounted for by domestic production.
  - d. The total volume and value of imports of steam coal.
  - e. The percentage of total volume and (separately) value of domestic production that is accounted for by companies in which the Government maintains a majority ownership or a controlling management interest, either directly or through other Government entities. Please also provide a list of the companies that meet these criteria.
  - f. If the share of total volume and/or value of production that is accounted for by the companies identified in paragraph “e”, above, is less than 50 percent, please provide the following information:
    - i. The percentage of total volume and value of domestic production that is accounted for by companies in which the Government maintains some, but not a majority, ownership interest or some, but not a controlling, management interest, either directly or through other Government entities.
    - ii. A list of the companies that meet the criteria under sub-paragraph “i”, above.
    - iii. A detailed explanation of how it was determined that the government has less than a majority ownership or less than a controlling interest in such companies, including identification of the information sources relied upon to make this assessment.
  - g. A discussion of what laws, plans or policies address the pricing of steam coal, the levels of production of steam coal, the importation or exportation of steam coal, or the development of steam coal capacity. Please state which, if any, central and sub-central level industrial policies pertain to the steam coal industry.
- If there is a steam coal association in the PRC, please provide the rules or guidelines under which it operates and a list of its members.
  - Are there any or have there been in the POI any export or price controls on steam coal or any price floors or ceilings established?
  - Please state the VAT and import tariff rates in effect for steam coal during January 1, 2016 through December 31, 2016 and the prior two years.
  - Was there an export tariff or quota on steam coal during the POI? If so, please report the tariff rate or quota amount in effect and provide a translated copy of the regulation/law in which the export tariff rate or quota is reported.

The Department requests such information to inform its analysis of the degree of the Government of the PRC’s presence in the market and whether such presence results in the distortion of prices. With respect to steam coal, in its Government of the PRC July 20, 2017 IQR, the Government of the PRC failed to provide the number of producers in which it maintains

an ownership or management interest or the total production volumes of steam coal by such producers.<sup>199</sup> Instead of providing the requested information, the Government of the PRC simply stated that the information was not available.<sup>200</sup>

The Department preliminarily determines that the Government of the PRC's refusal to provide the information requested constitutes a lack of cooperation. The Government of the PRC has previously provided, and the Department has verified, information from other government databases concerning the value and volume of production by enterprises producing input products.<sup>201</sup> Moreover, the Department has verified the operation of the Government of the PRC's "Enterprise Credit Information Publicity System," which requires that the administrative authorities release detailed information of enterprises and other entities and is intended to bring clarity to companies registered in the PRC.<sup>202</sup> Based on this experience, the Department is aware that this system is a national-level internal portal that holds certain information regarding any PRC-registered company. Among other information, each company must upload its annual report, make public whether it is still operating, and update any changes in ownership. The Government of the PRC has stated that all companies operating within the PRC maintain a profile in the system, regardless of whether they are private or an SOE. Therefore, we determine that information related to the operation and ownership of companies within the steam coal industry is in fact available to the Government of the PRC.

Additionally, regarding a discussion of what laws, plans or policies address the pricing of steam coal, the levels of production of steam coal, the importation or exportation of steam coal, and the development of steam coal capacity, the Government of the PRC stated that "the provision of steam coal is dictated by market forces and not by any plan that sets the levels of production of steam coal or the development of steam coal."<sup>203</sup> Further, the Government of the PRC provided documentation which it claims demonstrated that there are no limits, economic or legal in nature, placed on the various industries in the PRC that may purchase steam coal.<sup>204</sup> While the Government of the PRC placed on the record some information in relation to economic and business activities in the PRC, it failed to respond to other requests for information necessary to our analysis, as noted above.

Because the Government of the PRC refused to provide requested information regarding the steam coal industry in the PRC, *i.e.*, information regarding the total volume and value of domestic production that is accounted for by companies in which the government maintains an ownership or management interest either directly or through other government entities, we

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<sup>199</sup> See Government of the PRC July 20, 2017 IQR at 104.

<sup>200</sup> *Id.*

<sup>201</sup> See *e.g.*, *Citric Acid PRC; 2013 Review*.

<sup>202</sup> See *Countervailing Duty Investigation of Stainless Steel Sheet and Strip From the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016) and accompanying Preliminary Decision Memorandum at 21-22 (unchanged in *Countervailing Duty Investigation of Stainless Steel Sheet and Strip From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017)).

<sup>203</sup> *Id.*, at 106.

<sup>204</sup> *Id.*

determine that the Government of the PRC withheld necessary information with regard to the PRC steam coal industry and market for the POI.<sup>205</sup> Further, because the Government of the PRC refused to respond to the Department's information on laws, plans, policies specific to pricing, production, cross-border trades, and development capacity of steam coal, we find that the Government of the PRC failed to cooperate by not acting to the best of its ability to comply with our request for information necessary for our analysis of the steam coal market in the PRC, despite the fact that it was able to provide similar information in another proceeding. Consequently, we find that an adverse inference is warranted in the application of facts available.<sup>206</sup>

Accordingly, as adverse facts available, we preliminarily determine that the Government of the PRC's involvement in the steam coal market in the PRC results in significant distortion of the prices of steam coal such that they cannot be used as a tier one benchmark and, hence, the use of an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the Provision of Steam Coal for LTAR.

For further information on this program, *see* "Programs Found to Be Countervailable" below.

## **E. Application of AFA: Provision of Electricity for LTAR**

### *Government of the PRC*

The Government of the PRC did not provide complete responses to the Department's questions regarding the alleged provision of electricity for LTAR. These questions requested information needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act.

In order for the Department to analyze the financial contribution and specificity of this program, we requested that the Government of the PRC provide information regarding the roles of provinces, the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC in electricity price adjustments. Specifically, the Department requested, *inter alia*: Provincial Price Proposals for each province in which mandatory respondents or any company "cross-owned" with those respondents is located for applicable tariff schedules that were in effect during the POI; all original NDRC Electricity Price Adjustment Notice(s) that were in effect during the POI; the procedure for adjusting retail electricity tariffs and the role of the NDRC and the provincial governments in this process; the price adjustment conferences that took place between the NDRC and the provinces, grids and power companies with respect to the creation of all tariff schedules that were applicable to the POI; the cost elements and adjustments that were discussed between the provinces and the NDRC in the price adjustment conferences; and how the NDRC determines that the provincial level price bureaus have accurately reported all relevant cost elements in their price proposals

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<sup>205</sup> *See* Initial CVD Questionnaire, at Section II, "Input Producer Appendix;" *see also* Government of the PRC July 5, 2017 SQR at 1-4.

<sup>206</sup> *See* section 776(b) of the Act.

with respect to generation, transmission and distribution. The Department requested this information in order to determine the process by which electricity prices and price adjustments are derived, identify entities that manage and impact price adjustment processes, and examine cost elements included in the derivation of electricity prices in effect throughout the PRC during the POI.

In its initial questionnaire response, the Government of the PRC stated that, as of the issuance of the “NDRC Notification on Lowering the On-Grid Price of Coal-Fired Electricity and Electricity for Industrial and Commercial-Use {2015 No. 748}”,<sup>207</sup> the NDRC no longer reviews, *i.e.* approves, electricity pricing schedules submitted to it by the provinces.<sup>208</sup> Therefore, according to the Government of the PRC, Provincial Price Proposals did not exist during the POI.<sup>209</sup> Further, the Government of the PRC stated that, as a result of Notice 748, provincial price departments develop and establish grid and electricity sales prices.<sup>210</sup> According to the Government of the PRC, the NDRC only requires that tariff schedules established by the provinces be placed on the record of the NDRC.<sup>211</sup> Consequently, according to the Government of the PRC, the NDRC no longer has any impact on prices, which are set autonomously at the provincial level. The Government of the PRC added that interprovincial and interregional electricity price adjustments and prices are based upon market principles and negotiations between parties.<sup>212</sup> Finally, the Government of the PRC states that the NDRC issued an updated price adjustment notice, Number 3105, on December 27, 2015.<sup>213</sup> In a subsequent questionnaire response, the Government of the PRC confirmed that Notices 748 and 3105 are the most recent central government measures mandating delegation of what it claims to be electricity pricing authority to the provinces.<sup>214</sup>

Notice 748 is based upon consultations between the NDRC and the National Energy Administration.<sup>215</sup> Article 1 contained therein stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour.<sup>216</sup> Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts.<sup>217</sup> Article 2 indicates that the “price space” formed due to this price reduction “{s}hall be mainly used to lower the sales price of electricity for industrial and commercial use.”<sup>218</sup> Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity.<sup>219</sup> Articles 6 and 7, respectively, indicate that provincial pricing authorities “{s}hall make and distribute the on-grid price of electricity and specific plans of the price adjustment in accordance

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<sup>207</sup> See Government of the PRC June 12, 2017 IQR at Exhibit E4-1 (Notice 748).

<sup>208</sup> *Id.*, at 79.

<sup>209</sup> *Id.*, at 82.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*, at 79.

<sup>213</sup> *Id.*, at Exhibit E4-2 (Notice 3105).

<sup>214</sup> See Government of the PRC’s July 21, 2017 Supplemental Questionnaire Response (Government of the PRC July 21, 2017 IQR) at 5.

<sup>215</sup> See Government of the PRC June 12, 2017 IQR at Exhibit E4-1.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

with the average standard of price adjustment in Annex 1 and submit filings to the National Development and Reform Commission,” and that the “{a}forementioned electricity price adjustment shall be enforced since April 20<sup>th</sup>, 2015.”<sup>220</sup> Lastly, Article 10 directs that, “Administrative departments at all levels in charge of pricing shall guarantee the implementation of the price adjustment.”<sup>221</sup>

NDRC Notice 3105, also based upon consultations between the NDRC and the National Energy Administration, directs additional price reductions, and stipulates at Articles II and X, that local price authorities shall implement in time the price reductions included in its Annex and report resulting prices to the NDRC.<sup>222</sup> Consequently, both Notice 748 and Notice 3105 explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Neither Notice 748 nor Notice 3105 explicitly stipulates that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions, as the Government of the PRC states to be the case.<sup>223</sup> Rather, both notices indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices, by mandating average price adjustment targets with which the provinces are obligated to comply in setting their own specific prices.<sup>224</sup>

With respect to price derivation at the provincial level, the Department requested specific information regarding how increases in cost elements led to retail price increases, the derivations of those cost increases, how cost increases were calculated, and how cost increases impacted final prices. The Government of the PRC failed to provide complete responses to these requests. Specifically, it failed to provide the specific derivation of increases in cost elements and the methodology used to calculate cost element increases.<sup>225</sup> Instead, and in sum, the Government of the PRC asserted that “{e}lectricity rates are fully reflective of the changes in the supply and demand of the market,” and did not provide any documentation to support its claim.<sup>226</sup> Lastly, the Government of the PRC failed to explain how final price increases were allocated across the respondents’ provinces and across tariff end-user categories.<sup>227</sup>

In a supplemental questionnaire, the Department requested that the Government of the PRC identify the legislation which may have eliminated the Provincial Price Proposals. The Government of the PRC referred the Department to Notice 748 and Notice 3105.<sup>228</sup> As discussed above, these two documents, issued by the NDRC, direct provinces to reduce prices by amounts specific to provinces. They neither explicitly eliminate Provincial Price Proposals nor define distinctions in price-setting roles between national and provincial pricing authorities. Additionally, we requested that the Government of the PRC explain whether the province-specific price reductions indicated in Notice 748 were required to be adopted by all provinces.

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<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*, at Exhibit E4-2.

<sup>223</sup> *Id.*, at 83.

<sup>224</sup> *See, e.g.*, Notice 748 Article 10 and Notice 3105 Articles II and X.

<sup>225</sup> *See* Government of the PRC June 12, 2017 IQR at 84 – 85.

<sup>226</sup> *Id.*, at 85.

<sup>227</sup> *Id.*

<sup>228</sup> *See* Government of the PRC July 21, 2017 IQR at 5.

The Government of the PRC responded that, “[N]otice 748 does not serve as the NDRC’s notice of control over the provincial electricity price adjustments, rather, such notice only indicates that the NDRC promotes electricity policy objectives at the macro level.”<sup>229</sup> This response does not accord with the directive language in Notice 748, as discussed above. Finally, we requested that the Government of the PRC explain how the NDRC monitors compliance with the price changes directed in Notice 748 and what action the NDRC would take were any province not to comply with the directed price changes. The Government of the PRC responded that the NDRC only requires provinces to report established provincial prices to the NDRC.<sup>230</sup> It failed to explain what actions the NDRC would take in the event of non-compliance with directed price changes.<sup>231</sup>

The Department additionally requested that the Government of the PRC explain, with supporting documentation, how the pricing values indicated in the Appendix to Notice 748 were derived, including the specific factors or information relied upon by the NDRC. In response, the Government of the PRC merely repeated its initial explanation, as discussed above.<sup>232</sup> Subsequently, the Government of the PRC failed to identify and provide the sources of information on which this explanation was based.<sup>233</sup> We asked the Government of the PRC whether Notice 748 and Notice 3105 coincided with price changes set forth at the provincial level. It did not respond directly, but rather only reasserted that these notices delegate price setting authority to the provinces.<sup>234</sup>

In addition to our request for a detailed explanation of how the NDRC derived the price reduction amounts indicated in Notice 748 and Notice 3105, we requested that the Government of the PRC explain the factors and information the Jiangsu Province and Guangdong Province price bureaus relied upon to generate their submitted price adjustments and tariffs.<sup>235</sup> In its response, the Government of the PRC repeated its previously submitted, aforementioned responses regarding price derivation, *i.e.* that “price authorities” investigate price and cost, and that, for a variety of reasons, electricity rates reflect market supply and demand.<sup>236</sup> As part of its response to this question, the Government of the PRC again failed to provide requested sources and relevant documentation to support its statements.<sup>237</sup>

As explained above, the Government of the PRC failed on multiple occasions to explain the roles and nature of cooperation between the NDRC and provinces in deriving electricity price adjustments. Further, the Government of the PRC failed to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by provinces

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<sup>229</sup> *Id.*, at 6.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*, at 7.

<sup>233</sup> *Id.*, at 8.

<sup>234</sup> *Id.*

<sup>235</sup> See Government of the PRC June 12, 2017 IQR at Exhibits E4-5 and E4-6. Both the Jiangsu Province and Guangdong Province price adjustment notices indicate compliance with the price reductions stipulated in Notice 748.

<sup>236</sup> See Government of the PRC July 21, 2017 IQR at 9.

<sup>237</sup> *Id.*

themselves. Consequently, we preliminarily determine that the Government of the PRC withheld information that was requested of it for our analysis of financial contribution and specificity and, thus, the Department must rely on “facts available” in making our preliminary determination.<sup>238</sup> Moreover, we preliminarily determine that the Government of the PRC failed to cooperate by not acting to the best of its ability to comply with our request for information. We also note that the Government of the PRC did not ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available.<sup>239</sup> In drawing an adverse inference, we find that the Government of the PRC’s provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. The Government of the PRC failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments. Therefore, we are also drawing an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.<sup>240</sup> The benchmark rates we selected are derived from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, *see* the “Provision of Electricity for LTAR” section.

## **F. Application of AFA: Provision of “Other Subsidies” as Specific**

### *Government of the PRC*

In response to Zhongji’s self-reporting of “Other Subsidies” in its initial questionnaire response,<sup>241</sup> and to the Government of the PRC’s statement in its initial questionnaire response that an answer to the Department’s question regarding “Other Subsidies” was premature absent a more specific inquiry,<sup>242</sup> we issued a supplemental questionnaire to the Government of the PRC requesting full questionnaire responses regarding Zhongji’s reported “Other Subsidies.” In its response, the Government of the PRC provided information as to program utilization by the respondents, the years of receipt of the subsidies, and the amounts received, *i.e.*, the same information previously provided by Zhongji.<sup>243</sup> Additionally, the Government of the PRC stated that, considering time constraints, it was “{u}nable to collect all the necessary information to provide a full response to the standard appendix.<sup>244</sup>

The Dingsheng companies reported use of other subsidies during the AUL, in response to the Department’s request that companies report other subsidies used during the AUL. In response to the same request for government information regarding these other subsidies reported used by

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<sup>238</sup> *See* section 776(a)(2)(A) of the Act.

<sup>239</sup> *See* section 776(b) of the Act.

<sup>240</sup> *See* section 776(b)(4) of the Act.

<sup>241</sup> *See* Zhongji 2017 IQR a Volume I page 31, Volume II page 26, and Volume III page 21.

<sup>242</sup> *See* Government of the PRC June 12, 2017 IQR at 91. The Government of the PRC provided identical responses regarding “Other Subsidies” in its initial questionnaire responses regarding Manakin Industries and Dingsheng HK. *See* Government of the PRC June 28, 2017 IQR at 25; *see also* Government of the PRC July 20, 2017 IQR at 126.

<sup>243</sup> *See* Government of the PRC July 5, 2017 SQR at 14 and Exhibit S-11.

<sup>244</sup> *Id.*

the Dingsheng companies, the Government of the PRC stated that “an answer to this question is premature absent a more direct inquiry supported by credible evidence and the initiation of a discrete investigation by the Department.”<sup>245</sup>

Based upon the above, we preliminarily determine that necessary information to determine whether these reported “Other Subsidies” are specific is not available on the record and that the Government of the PRC has withheld information that was requested of it, and, thus, that the Department must rely on “facts available” in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the Government of the PRC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that these “Other Subsidies” reported by the Dingsheng companies and Zhongji constitute a financial contribution pursuant to section 771(5)(D) of the Act and are specific within the meaning of section 771(5A) of the Act.

#### **G. Application Facts Available: Inland Freight Value for Provision of Steam Coal for LTAR Program**

In its questionnaire response, Zhongji did not report the amount that it pays for inland freight. This amount is necessary to calculate Zhongji’s benefit under the Provision of Steam Coal for LTAR program. Therefore, pursuant to section 776(a)(1) of the Act, as facts available, we are applying to Zhongji’s steam coal purchases Dingsheng HK’s reported inland freight value of 27 RMB per metric ton, as described the “Benchmarks and Interest Rates” section above.

### **X. ANALYSIS OF PROGRAMS**

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following:

#### **A. Programs Preliminarily Determined to Be Countervailable**

##### **1. Policy Loans to the Aluminum Foil Industry**

The Department is examining whether the Government of the PRC has encouraged the development of the aluminum foil industry through financial support from SOCBs and government policy banks, such as the China Development Bank. The Department has countervailed policy lending programs in previous investigations.<sup>246</sup>

When examining a policy lending program, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support such objectives or goals. Where such plans or policy directives exist, then it is

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<sup>245</sup> See Government of the PRC July 20, 2017 IQR at 126.

<sup>246</sup> See, e.g., *Drawn Stainless Steel Sinks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013) and accompanying IDM (Steel Sinks IDM) at 24-25.

our practice to find that a policy lending program exists that is *de jure* specific to the targeted industry (or producers that fall under that industry) within the meaning of section 771(5A)(D)(i) of the Act. Once that finding is made, we rely upon the analysis undertaken in *CFS PRC*<sup>247</sup> to further conclude that national and local government control over the SOCBs render the loans a government financial contribution.

The Dingsheng companies and Zhongji and certain of its cross-owned companies, reported having loans from PRC SOCBs that were outstanding during the POI.<sup>248</sup> The Department preliminarily finds that these loans provide countervailable subsidies under a policy lending program directed at the aluminum foil industry. Record information indicates the Government of the PRC placed great emphasis on targeting the aluminum foil industry for development throughout recent years. For example, the “*National 10<sup>th</sup> Five-Year Plans of Economic and Social Development of the 10th Five-Year Plan for National Economic and Social Development (2001-2005)*” indicates that the acceleration of industrial restructuring and reorganization would be undertaken with the objective of the development of industrial products, including the raw materials industry, and more specifically, alumina.<sup>249</sup> The “*National 11<sup>th</sup> Five-Year Plans of Economic and Social Development (2006-2010)*” calls for the development of aluminum processing and enhancement of the “{c}omprehensive utilization level of aluminum industrial resources.”<sup>250</sup> The “*National 12<sup>th</sup> Five-Year Plans of Economic and Social Development (2011-2015)*” indicates the restructuring of key industries should include new progress in R&D, integrated resources utilization, energy conservation, and emission reduction by the smelting and building material industries.<sup>251</sup> The current “*National 13<sup>th</sup> Five-Year Plans of Economic and Social Development (2016-2020)*” continues these objectives, and identifies the nonferrous metals industry as a “key” industry for which the service supporting system, including finance, taxation, insurance, and investment platforms should be perfected.<sup>252</sup>

Additional record evidence indicates financial support directed specifically toward certain encouraged industries, including the aluminum industry. For example, the “*Decision of the State Council on Promulgating the Interim Provisions Promoting Industrial Structure Adjustment for Implementation (Guo Fa {2005} No. 40)*” (Decision 40) indicates that the “*Catalogue for the Guidance of Industrial Structure Adjustment*” is an important basis for investment guidance and government administration of policies such as public finance, taxation, and credit.”<sup>253</sup> Decision 40 further indicates that projects in “encouraged” industries shall be provided credit support in compliance with credit principles.”<sup>254</sup> The “*Catalogue for the Guidance of Industrial Structure Adjustment*” (2005) specifically includes aluminum, and the development of production technology within it, as encouraged.<sup>255</sup> The “*Nonferrous Metal Development Plan*

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<sup>247</sup> See *CFS PRC Final IDM* at Comment 8.

<sup>248</sup> See Dingsheng HK July 20, 2017 IQR at 20 and Exhibit P.A.1; see also Zhongji June 12, 2017 IQR Volume I at 10 and Volume II at 9; see also Zhongji July 3, 2017 SQR at 12.

<sup>249</sup> See Government of the PRC June 12, 2017 IQR Exhibit A1-11 at page 11.

<sup>250</sup> *Id.*, Exhibit A1-12 at page 16.

<sup>251</sup> *Id.*, Exhibit A1-13 at page 10.

<sup>252</sup> See Government of the PRC July 5, 2017 SQR Exhibit S-6 at 1.

<sup>253</sup> See Government of the PRC June 12, 2017 IQR Exhibit A1-23 at Chapter III Article 12.

<sup>254</sup> *Id.*, at Chapter III Articles 13, 14, and 17.

<sup>255</sup> See Government of the PRC July 5, 2017 SQR Exhibit S-7 at Section I.VII.7.

(2016-2020)” describes the nonferrous metal industry as an important foundation of the manufacturing industry and support for the “{r}ealization of manufacturing power.”<sup>256</sup> Further, priority is indicated for the development of aluminum foil.<sup>257</sup> Lastly, “*Notice of Guidelines on Accelerating the Adjustment of Aluminum Industry Structure* (2006)” indicates that, “Aluminum is an important raw material for the development of the national economy.”<sup>258</sup> This document indicates targeted financial support for the aluminum sector:

According to the national macro-control, industrial policy and credit requirements, the financial institutions shall conduct reasonable allocation of credit funds. For alumina enterprises and electrolytic aluminum enterprises that meet the national industrial policies, market access conditions and credit principles, it is required to continue to give credit support; for enterprises of non-compliance with national industrial policy and market access conditions with backward technology and are listed in prohibited items or eliminated, shall not be provided with any form of credit support.<sup>259</sup>

Thus, given the evidence demonstrating the Government of the PRC’s objective of developing the nonferrous metal sector, and more specifically the aluminum industry, through preferential loans, we preliminarily determine there is a program of preferential policy lending specific to producers of aluminum foil within the meaning of section 771(5A)(D)(i) of the Act. We also preliminarily find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are “authorities.” The loans provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.<sup>260</sup> To calculate the benefit from this program, we used the benchmarks discussed above under the “Subsidy Valuation” section.<sup>261</sup> To calculate the net countervailable subsidy rate under this program we divided the benefit by the appropriate sales denominator, as described in the “Subsidies Valuation” section above.

On this basis, we preliminarily determine subsidy rates of 5.65 percent and 3.10 percent *ad valorem* for the Dingsheng companies and Zhongji, respectively.

## **2. Export Seller’s Credit**

The Dingsheng companies reported that Jiangsu Dingsheng obtained and made interest payments on loans received under the Export Seller’s Credit program during the POI from EIBC.<sup>262</sup> The Government of the PRC identified Jiangsu Dingsheng as a recipient of loans under the Export Seller’s Credits program.<sup>263</sup>

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<sup>256</sup> See Government of the PRC June 12, 2017 IQR Exhibit A1-21 at 1.

<sup>257</sup> *Id.*, at 34.

<sup>258</sup> *Id.*, Exhibit A1-19 at 1.

<sup>259</sup> *Id.*, at 4.

<sup>260</sup> See section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a).

<sup>261</sup> See 19 CFR 351.505(c).

<sup>262</sup> See Dingsheng HK July 20, 2017 IQR at 22 and Exhibit P.A.1.

<sup>263</sup> See Government of the PRC July 20, 2017 IQR at 7.

Consistent with *PET Resin PRC* and *Citric Acid from the PRC*, we find that the loans provided by the Government of the PRC under this program constitute a financial contribution under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act.<sup>264</sup> The loans also provide a benefit under section 771(5)(E)(ii) of the Act in the amount of the difference between what the recipient paid for the loans and what it would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings and, therefore, this program is specific pursuant to sections 771(5A)(B) of the Act.<sup>265</sup>

To calculate the benefit under this program, we compared the amount of interest paid against the export loans to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term interest rates discussed above in the “Benchmarks and Discount Rates” section. To calculate the net countervailable subsidy rate for the Dingsheng companies, we divided the benefits by the appropriate total export sales denominator (exclusive of inter-company sales), as described in the “Subsidies Valuation” section, above.

On this basis, we preliminarily determine the net countervailable subsidy rate to be 2.06 percent *ad valorem* for the Dingsheng companies.<sup>266</sup>

### **3. Export Buyer’s Credit**

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our preliminary determination regarding the Government of the PRC’s provision of Export Buyer’s Credit on AFA. Thus, we determine that the Government of the PRC’s provision of Export Buyer’s Credit confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. Further, we determine on the basis of AFA that the Dingsheng companies and Zhongji benefited from this program during the POI within the meaning of section 771(5)(E) of the Act.<sup>267</sup> On this basis, we determine a countervailable subsidy rate of 10.54 percent *ad valorem* for the Dingsheng companies and Zhongji.

### **4. Income Tax Reduction for HNTEs**

The Dingsheng companies reported that Jiangsu Dingsheng used this program during the POI,<sup>268</sup> and Zhongji reported that it used this program during the POI.<sup>269</sup> Under Article 28.2 of the Corporate Income Tax Law of the People’s Republic of China and Article 93 of the Implementation Regulations for the Corporate Income Tax Law of the People’s Republic of

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<sup>264</sup> See *Citric Acid PRC* IDM at 13 and *PET Resin PRC* IDM at 32.

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> See Petition at 29 – 31.

<sup>268</sup> See Dingsheng HK July 20, 2017 IQR at 26.

<sup>269</sup> See Zhongji June 12, 2017 IQR Volume I at 14 and Volume II at 13.

China, the income tax a firm pays is reduced from the standard rate if an enterprise is recognized as an HNT. <sup>270</sup> The Department previously found this program to be countervailable. <sup>271</sup>

Based upon the information submitted by the Dingsheng companies and Zhongji, Jiangsu Dingsheng, Zhongji, and Shantou Wanshun each paid a reduced income tax rate on the tax returns filed during the POI. <sup>272</sup> In accordance with Article 28.2 of the tax law, they paid an income tax rate of 15 percent, instead of the standard corporate income tax rate of 25 percent. <sup>273</sup>

Consistent with our determination in *Warmwater Shrimp*, we preliminarily determine that this tax incentive constitutes a financial contribution in the form of revenue foregone by the Government of the PRC and confers a benefit in the amount of tax savings, as provided under sections 771(5)(D)(ii) and 771(5)(E) of the Act. We further determine that the income tax reduction afforded by this program is limited as a matter of law to certain enterprises whose products are designated as being in “high-tech fields with state support,” and, hence, is *de jure* specific, under section 771(5A)(D)(i) of the Act.

We calculated the benefit as the difference between taxes Jiangsu Dingsheng, Zhongji and Shantou Wanshun would have paid under the standard 25 percent tax rate and the taxes that the companies actually paid under the preferential 15 percent tax rate, as reflected on their tax returns filed during the POI, as provided for under 19 CFR 351.509(a)(1) and (b)(1). We treated the tax savings as a recurring benefit consistent with 19 CFR 351.524(c)(1). With regard to Jiangsu Dingsheng, we then divided the benefit by Jiangsu Dingsheng’s consolidated sales during the POI. With regard to Zhongji, we then divided the benefit by Zhongji’s total sales during the POI and by Shantou Wanshun’s consolidated sales during the POI. We then summed the two benefit amounts. On this basis, we preliminarily determine countervailable subsidy rates of 0.28 percent and 0.31 percent *ad valorem* for the Dingsheng companies and Zhongji, respectively.

## **5. Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law**

Under Article 30.1 of the Enterprise Income Tax Law of the PRC, which became effective January 1, 2008, companies may deduct R&D expenses incurred in the development of new technologies, products, or processes from their taxable income. <sup>274</sup> Article 95 of the Regulations on the Implementation of Enterprise Income Tax Law of the PRC (Decree 512 of the State Council, 2007) provides that, if eligible research expenditures do not form part of the intangible assets value, an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount. <sup>275</sup> Where these expenditures form the value of certain intangible assets,

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<sup>270</sup> See Government of the PRC June 12, 2017 IQR at 23; see also Zhongji June 12, 2017 IQR Volume I at Exhibit 23.

<sup>271</sup> See, e.g., *Shrimp PRC Final* and accompanying IDM at 25.

<sup>272</sup> *Id.*; see also Dingsheng HK July 20, 2017 IQR at 26.

<sup>273</sup> *Id.*

<sup>274</sup> See Government of the PRC June 12, 2017 IQR at 33.

<sup>275</sup> *Id.*, at Exhibit C1-2.

the expenditures may be amortized based on 150 percent of the intangible assets' costs.<sup>276</sup>

Article 4 of the “Circular of the State Administration of Taxation on Printing and Issuing the Administrative Measures for the Pre-tax Deduction of Enterprises’ Expenditures for Research and Development (for Trial Implementation)” (Circular 116) states that enterprises engaged in hi-tech R&D, including aluminum producers, may deduct certain expenditures, as listed in the “Hi-tech Sectors with Primary Support of the State Support and the Guideline of the Latest Key Priority Developmental Areas in the High Technology Industry (2007).”<sup>277</sup>

We preliminarily determine that this program provides a countervailable subsidy. This income tax deduction is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also find that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with R&D in eligible high-technology sectors and, thus, is *de jure* specific under section 771(5A)(D)(i) of the Act. The Department has previously found this program to be countervailable.<sup>278</sup>

The Dingsheng companies reported that Jiangsu Dingsheng and Five Star used this program during the POI.<sup>279</sup> Additionally, Zhongji and Shantou Wanshun reported using this program during the POI.<sup>280</sup> To calculate a benefit for the four companies, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated the amount of tax each company would have paid absent the tax deductions at the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax credit). We then divided the tax savings by the appropriate total sales denominator for each company, respectively. We then summed the benefit amounts.

On this basis, we preliminarily determine subsidy rates of 0.04 percent and 0.16 percent *ad valorem* for the Dingsheng companies and Zhongji, respectively.

## **6. Import Tariff and VAT Exemptions on Imported Equipment for Encouraged Industries**

Circular of the State Council on Adjusting Tax Policies on Imported Equipment (GUOFA {1997} No. 37) exempts FIEs and certain domestic enterprises from VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into a prescribed list of non-eligible items, in order to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.<sup>281</sup> As of January 1, 2009, the Government of the PRC discontinued VAT exemptions under this program, but

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<sup>276</sup> *Id.*

<sup>277</sup> See Memorandum to the File, “Placing Information on the Record,” dated July 27, 2017, at Document 2, Exhibit S2-4 to S2-6.

<sup>278</sup> See *Solar Cells PRC* and accompanying IDM at 17.

<sup>279</sup> See Dingsheng HK July 20, 2017 IQR at 31.

<sup>280</sup> See Zhongji June 12, 2017 IQR at Volume I page 17 and Volume II page 17.

<sup>281</sup> See Government of the PRC June 12, 2017 IQR at 44.

companies can still receive import duty exemptions.<sup>282</sup> Over the AUL, Jiangsu Dingsheng, Teemful, Longding, and Zhongji reported receiving VAT and tariff exemptions under this program.<sup>283</sup> The Department has previously found VAT and tariff exemptions under this program to confer countervailable subsidies.<sup>284</sup>

Consistent with these earlier cases, we preliminarily determine that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions constitute a financial contribution in the form of revenue foregone by the Government of the PRC and they provide a benefit to the recipient in the amount of VAT and tariff savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the VAT and tariff exemptions afforded by the program are specific under section 771(5A)(D)(i) of the Act, because the program is limited to certain enterprises, *i.e.*, domestic enterprises involved in “encouraged” projects.

Since these exemptions are provided for, or tied to, the capital structure or capital assets of a firm, the Department treated them as a non-recurring benefits and applied our standard methodology for non-recurring grants to calculate the subsidy rate.<sup>285</sup> Specifically, where the benefits exceeded 0.5 percent of the relevant sales of that year, we allocated the amount of the VAT and/or tariff exemptions over the AUL.<sup>286</sup> In the years that the benefits received by each company under this program did not exceed 0.5 percent of relevant sales for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described in the section “Subsidies Valuation” above to calculate the amount of the benefit allocable to the POI. Those benefits expensed or allocated to the POI were then used as the basis for calculating the net subsidy rate by dividing the total POI benefit by the total sales denominator. On this basis, we calculated subsidy rates of 0.02 percent and 0.73 percent *ad valorem* for the Dingsheng companies and Zhongji, respectively.

## **7. VAT Rebates on Domestically-Produced Equipment**

Pursuant to the “Trial Administrative Measures on Purchase of Domestically Produced Equipment by FIEs, (GUOSHUIFA (1999) No. 171),” the Government of the PRC refunds the VAT on purchases of domestically-produced equipment by foreign invested enterprises (FIEs) if the equipment does not fall into the non-duty exemptible catalog and if the value of the equipment does not exceed the total investment limit of an FIE.<sup>287</sup> Zhongji reported using this program, and according to the Government of the PRC, was an FIE when it used the program.<sup>288</sup> The Department has previously found VAT rebates under this program to confer countervailable

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<sup>282</sup> *Id.*, at 44 and 53.

<sup>283</sup> See Zhongji June 12, 2017 IQR Volume I at 21 and Dingsheng HK July 20, 2017 IQR at 36.

<sup>284</sup> See, e.g., *Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 39202 (June 10, 2010) (*Wire Decking PRC*) and accompanying IDM at 25-27.

<sup>285</sup> See 19 CFR 351.524(b).

<sup>286</sup> See 19 CFR 351.524(c)(2)(iii) and (d)(2).

<sup>287</sup> See Government of the PRC June 12, 2017 IQR at 56; see also Zhongji June 12, 2017 IQR at Volume I Exhibit 17.

<sup>288</sup> See Zhongji June 12, 2017 IQR at Volume I page 23; see also Government of the PRC June 12, 2017 IQR at 55.

subsidies.<sup>289</sup> The Department preliminarily determines the rebates under this program are a financial contribution in the form of revenue foregone by the Government of the PRC and they provide a benefit to the recipients in the amount of the tax savings.<sup>290</sup> Further, we preliminarily determine that the VAT rebates are contingent upon the use of domestic over imported equipment and, hence, specific under section 771(5A)(A) and (C) of the Act.

Since this indirect tax incentive is provided for, or tied to, the capital structure or capital assets of a firm, as reported by Zhongji, the Department treated it as a non-recurring benefit and allocated the benefit to Zhongji over the AUL.<sup>291</sup> To calculate a benefit under this program, for those years in which the VAT rebates were greater than or equal to 0.5 percent of sales, we allocated the rebate amount over the AUL. We used the discount rates described above in the “Subsidies Valuation” section to calculate the amount of the benefit allocable to the POI.

On this basis, we determine a countervailable subsidy rate of 0.06 percent *ad valorem* for Zhongji.

## **8. Government Provision of Land for LTAR**

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the Government of the PRC’s provision of land for LTAR on AFA. Therefore, we determine that the Government of the PRC’s provision of land constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act.

The Dingsheng companies reported that Dingsheng Group, Longding, and Five Star acquired land-use rights during the AUL.<sup>292</sup> For this preliminary determination, we find that these three Dingsheng companies received allocated land-use rights for LTAR, constituting a financial contribution under section 771(5)(D)(iii) of the Act. As discussed under “Use of Facts Otherwise Available and Adverse Inferences,” we find that this subsidy is specific under section 771(5A) of the Act. Jiangsu Huafeng, Zhongji’s cross-owned input supplier, reported acquiring land-use rights in an SEZ during the AUL.<sup>293</sup>

To determine the benefit pursuant to section 771(5)(E)(iv) of the Act, we first multiplied the Thailand industrial land benchmarks discussed above under the “Benchmarks and Discount Rates” section, by the total area of the aforementioned companies’ land. We then subtracted the net price actually paid for the land to derive the total unallocated benefit. We next conducted the “0.5 percent test” of 19 CFR 351.524(b)(2) for the year(s) of the relevant land-rights agreement by dividing the total benefit for the respective year(s) by the relevant sales. For those benefits that pass the 0.5 percent test, we allocated the total benefit amounts across the terms of the land-use agreement, using the standard allocation formula of 19 CFR 351.524(d), and determined the

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<sup>289</sup> See *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products PRC*) and accompanying IDM at 18-19.

<sup>290</sup> See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

<sup>291</sup> See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

<sup>292</sup> See Dingsheng HK July 20, 2017 IQR at 41-46.

<sup>293</sup> See Zhongji June 12, 2017 IQR Volume III at 16.

amount attributable to the POI. We then divided this amount by the appropriate total sales denominator, as discussed in the “Subsidies Valuation” section.

On this basis, we preliminarily determine subsidy rates of 1.16 percent and 0.67 percent *ad valorem* for the Dingsheng companies and Zhongji, respectively.

## **9. & 10. Government Provision of Primary Aluminum and Steam Coal for LTAR**

The Department is examining whether the Government of the PRC or other “authorities” within the PRC provided the Dingsheng companies or Zhongji with primary aluminum and steam coal for LTAR. The Dingsheng companies reported that Jiangsu Dingsheng purchased primary aluminum and bituminous coal during the POI.<sup>294</sup> Zhongji reported that Jiangsu Huafeng, a cross-owned input supplier, purchased anthracitic coal during the POI.<sup>295</sup> Hereafter, we refer to both types of coal as steam coal.

### *Financial Contribution*

The Government of the PRC reported certain producers of primary aluminum to be majority-owned by the government. As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.<sup>296</sup> As such, we find that the Government of the PRC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.<sup>297</sup>

As discussed above in section “Use of Facts Otherwise Available and Adverse Inferences,” we find that the Government of the PRC’s refusal to provide certain information regarding the remaining primary aluminum and steam coal producers from whom respondents sourced their input purchases warrants the use of AFA. As AFA, we find that these remaining producers are “authorities” within the meaning of section 771(5)(B)(i) of the Act and that the respondents received financial contributions from them.

As described above, in the “Use of Facts Otherwise Available and Adverse Inferences” section of this memorandum, for purchases of primary aluminum and steam coal where Jiangsu Dingsheng reported “unknown” for the producer information, we are determining that, as facts available, the “unknown” producers are also “authorities” at the same ratio as the known domestic producers. Because all of the known domestic producers are “authorities,” we find that all of the unknown primary aluminum and steam coal producers are also “authorities” within the meaning of section 771(5)(B) of the Act.

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<sup>294</sup> See Dingsheng HK July 20, 2017 IQR at 49-50.

<sup>295</sup> See Zhongji July 3, 2017 SQR at 10.

<sup>296</sup> See Memorandum to the File, “Placing Information on the Record,” dated July 27, 2017.

<sup>297</sup> See *OCTG PRC* and accompanying IDM at 6.

### *Specificity*

Additionally, as explained in the “Use of Facts Otherwise Available and Adverse Inferences” section of this memorandum above, we preliminarily determine that the Government of the PRC is providing primary aluminum and steam coal to a limited number of industries and enterprises, and, hence, that the subsidies under these programs are specific pursuant to section 771(5A)(D)(iii) of the Act.

### *Market Distortion*

With respect to primary aluminum, in its Government of the PRC July 20, 2017 IQR, the Government of the PRC indicates that the PRC produces over 99 percent of the primary aluminum it consumes, and about 37 percent of domestic consumption is from companies the Government of the PRC identifies as SOEs.<sup>298</sup> Further, the Government of the PRC reported that a 30 percent export tariff was imposed on primary aluminum during the POI and the two years immediately prior, discouraging primary aluminum exports from the PRC.<sup>299</sup> Thus, given the substantial government share in the market, coupled with the restriction on exports in the form of the export taxes, we preliminarily determine that the domestic market for primary aluminum was distorted through the intervention of the Government of the PRC during the POI and the two years immediately prior.

With respect to steam coal, as discussed above at “Use of Facts Otherwise Available and Adverse Inferences,” we have determined that, as AFA, the domestic market for steam coal is distorted through the intervention of the Government of the PRC.

### *Benefit*

In order to determine the existence and amount of any benefit conferred by the producers to the respondent companies pursuant to section 771(5)(E)(iv) of the Act, we followed the methodology described in 19 CFR 351.511(a)(2) to identify a suitable benchmark for primary aluminum. The Department’s regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. The potential benchmarks listed in the regulation, in order of preference, are: (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); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) prices consistent with market principles based on an assessment by the Department of the government-set price (tier three).<sup>300</sup>

As discussed above, because the Department is finding that the PRC markets for primary aluminum and steam coal were distorted by government involvement, we are selecting external benchmark prices, *i.e.*, “tier two” or world market prices, consistent with 19 CFR

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<sup>298</sup> See Government of the PRC July 20, 2017 IQR at 76.

<sup>299</sup> *Id.*, at 79.

<sup>300</sup> See 19 CFR 351.511(a)(2).

351.511(a)(2)(ii) and the *CVD Preamble*. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under “tier two,” the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices we included ocean freight and inland freight that would be incurred to deliver inputs to the respondents’ production facilities. We then added to the benchmark prices the appropriate import duties applicable to imports of primary aluminum and steam coal into the PRC, as provided by the Government of the PRC.<sup>301</sup> Additionally, we added the appropriate VAT of 17 percent to the benchmark prices.<sup>302</sup>

We compared these monthly benchmark prices to Jiangsu Dingsheng’s and Zhongji’s reported purchase prices for individual domestic transactions, including VAT and delivery charges. Based on this comparison, we preliminarily determine that a benefit exists for Jiangsu Dingsheng in the amount of the difference between the benchmark prices and the prices Jiangsu Dingsheng paid. We divided the total benefits by the appropriate consolidated sales denominator, as discussed in the “Subsidies Valuation Information” section.

For the reasons discussed above, we have calculated subsidy rates of 6.79 percent and 0.13 percent *ad valorem* for the Dingsheng companies for the provisions of primary aluminum and steam coal for LTAR, respectively.<sup>303</sup>

Jiangsu Huafeng, Zhongji’s cross-owned input supplier, reported purchasing anthracitic coal during the POI.<sup>304</sup> The calculation of the benefit received by Jiangsu Huafeng resulted in a rate that is less than 0.005 percent *ad valorem*, and, as such, does not have an impact on Zhongji’s overall subsidy rate.<sup>305</sup> Consistent with our past practice, we did not include this program in our net subsidy rate calculations for Zhongji.

## **11. Provision of Electricity for LTAR**

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our preliminary determination regarding the Government of the PRC’s provision of electricity for LTAR on facts otherwise available. Therefore, we preliminarily determine that the Government of the PRC’s provision of electricity confers a financial contribution as a provision of a good under section 771(5)(D)(iii) of the Act and is specific under section 771(5A)(D) of the Act.

For determining the existence and amount of any benefit under this program, we selected the highest non-seasonal provincial rates in the PRC for each electricity category (*e.g.*, “large industry,” “general industry and commerce”) and “base charge” (either maximum demand or

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<sup>301</sup> Consistent with *Citric Acid PRC; 2011 Review*, we have utilized the Most Favored Nation import duty rate because it reflects the general tariff rate applicable to world trade. *See Citric Acid PRC; 2011 Review* IDM at 90.

<sup>302</sup> *See* Petitioner Benchmark Submission, at Exhibit 9.

<sup>303</sup> *See* Attachment 2 for the underlying calculation.

<sup>304</sup> *See* Zhongji July 3, 2017 SQR at 10.

<sup>305</sup> *See* Zhongji Preliminary Calculation Memorandum.

transformer capacity) used by the respondent. Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a category.

Consistent with our approach in *Wind Towers PRC*,<sup>306</sup> we first calculated the respondents' variable electricity costs by multiplying the monthly kilowatt hours (kWh) consumed at each price category (*e.g.*, peak, normal, and valley, where appropriate) by the corresponding electricity rates paid by the respondent during each month of the POI.<sup>307</sup> Next, we calculated the benchmark variable electricity costs by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity costs paid by the respondent during the POI from the monthly benchmark variable electricity costs.

To measure whether the Dingsheng companies or Zhongji received a benefit with regard to their base rate (*i.e.*, either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to the companies by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the companies' consumption quantities by the highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by the companies during the POI from the benchmark base rate costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from the respondent's variable electricity payments and base rate payments.<sup>308</sup>

To calculate the net subsidy rates attributable to the Dingsheng companies and Zhongji, we divided the benefit by total POI sales of respondent producers as described in the "Subsidies Valuation" section above. On this basis, we preliminarily determine that the Dingsheng companies and Zhongji received countervailable subsidy rates of 0.95 percent and 0.71 percent *ad valorem*, respectively.

## **12. "Other Subsidies"**

The Dingsheng companies and Zhongji reported receiving various non-recurring grants from the Government of the PRC during the POI and throughout the AUL period.<sup>309</sup> As discussed in the "Use of Facts Available and Adverse Inferences" section above, the Department preliminarily determines that these grants constitute a financial contribution under section 771(5)(D)(i) of the Act, and that they are specific under section 771(5A) of the Act. The Department further preliminarily determines that these grants each confer a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504(a). To calculate the benefit received under these programs, the Department followed the methodology described in 19 CFR 351.524. Grants

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<sup>306</sup> See *Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers PRC*), and accompanying IDM (*Wind Towers IDM*).

<sup>307</sup> See *Wind Towers IDM* at 21-22.

<sup>308</sup> See *Dingsheng HK Preliminary Calculation Memorandum*; see also *Zhongji Preliminary Calculation Memorandum*.

<sup>309</sup> See *Dingsheng HK July 20, 2017 IQR* at 55 and Exhibits P.G.1-P.G.7; see also *Zhongji June 12, 2017 IQR* a Volume I page 31, Volume II page 26, and Volume III page 21.

under the programs listed below were received by the mandatory respondents during the POI. To calculate the *ad valorem* subsidy rate for these grants, the Department divided the benefit conferred under each of these programs by the appropriate POI sales denominator – total sales or total export sales – depending on the nature of the subsidy program.

The Dingsheng companies and Zhongji and certain of its cross-owned companies self-reported receiving measurable benefits under multiple programs.<sup>310</sup> Based on the methodology outlined above, the Department preliminarily determines a cumulative *ad valorem* subsidy rate of 0.71 percent and 0.28 percent for the Dingsheng companies and Zhongji for these programs, respectively.

**B. Programs Preliminarily Determined Not to Be Used by the Dingsheng Companies and Zhongji**

1. Preferential Loans for SOEs
2. Export Loans from Chinese State-Owned Banks
3. Equity Infusions into Nanshan Aluminum
4. Dividends for SOESs from Distributing Dividends
5. Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization
6. Income Tax Deductions/Credits for Purchase of Special Equipment
7. Stamp Tax Exemption on Share Transfers Under Non-Tradeable Share Reform
8. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring
9. Government of the PRC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands
10. The State Key Technology Renovation Project Fund
11. Foreign Trade Development Fund Grants
12. Grants for Energy Conservation and Emission Reduction
13. Grants for the Retirement of Capacity
14. Grants for the Relocation of Productive Facilities
15. Grants for Nanshan Aluminum

**XI. ITC NOTIFICATION**

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

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<sup>310</sup> These programs are as follows for Zhongji: Export Credit Insurance Subsidy; Scientific and Technological Innovation Incentive; and Equipment Interest Subsidies. The programs are as follows for Shantou Wanshun: Subsidy for Science and Technology Entrepreneurship Team and 2015 Support fund for Special Permanent Residence by Financial Bureau of Shantou Bonded Area. The one measurable “Other Subsidy” that Jiangsu Huafeng received was Refund of Tax. With respect to the “Other Subsidies” received by the Dingsheng Companies, see the Dingsheng HK Preliminary Calculation Memorandum.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

## **XII. DISCLOSURE AND PUBLIC COMMENT**

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.<sup>311</sup> Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.<sup>312</sup>

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>313</sup> This summary should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.<sup>314</sup> Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined. Prior to the date of the hearing, the Department will contact all parties that submitted case or rebuttal briefs to determine if they wish to participate in the hearing. The Department will then distribute a hearing schedule to the parties prior to the hearing and only those parties listed on the schedule may present issues raised in their briefs.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.<sup>315</sup> Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,<sup>316</sup> on the due dates established above.

## **XIII. VERIFICATION**

As provided in section 782(i)(1) of the Act, we intend to verify the factual information submitted in response to the Department's questionnaires.

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<sup>311</sup> See 19 CFR 351.224(b).

<sup>312</sup> See 19 CFR 351.309(c)(1)(i) and (d)(1).

<sup>313</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>314</sup> See 19 CFR 351.310(c).

<sup>315</sup> See 19 CFR 351.303(b)(2)(i).

<sup>316</sup> See 19 CFR 351.303(b)(1).

**XIV. CONCLUSION**

We recommend that you approve the preliminary findings described above.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

8/7/2017

**X**

*Carole Showers*

Signed by: CAROLE SHOWERS

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Carole Showers  
Executive Director, Office of Policy  
performing the duties of  
Deputy Assistant Secretary for Enforcement and Compliance

**APPENDIX**

**AFA Rate Calculation**

	<b>Program Name</b>	<b>AFA Rate</b>	<b>Source</b>
1.	Policy Loans to the Aluminum Foil Industry		Calculated – Dingsheng Companies
2.	Preferential Loans for SOEs	5.65%	Highest Rate for Similar Program Based on Benefit Type
3.	Export Loans from Chinese State-Owned Banks	10.54%	Highest Rate for Similar Program Based on Benefit Type
4.	Export Seller’s Credit	2.06%	Calculated – Dingsheng Companies
5.	Export Buyer’s Credit	10.54%	Highest Rate for Similar Program Based on Benefit Type
6.	Equity Infusions into Nanshan Aluminum	N/A	N/A
7.	Exemptions for SOEs from Distributing Dividends	0.58%	Highest Rate for Similar Program Based on Benefit Type
8.	Income Tax Reduction for HNTes		Highest Rate for Similar Program Based on Benefit Type
9.	Income Tax Deductions for R&D Expenses under the EITL	25.00%	Highest Rate for Similar Program Based on Benefit Type
10.	Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization		Highest Rate for Similar Program Based on Benefit Type
11.	Income Tax Deductions/Credits for Purchase of Special Equipment		Highest Rate for Similar Program Based on Benefit Type
12.	Import Tariff and VAT Exemptions on Imported Equipment in Encouraged Industries	0.73%	Calculated – Zhongji
13.	VAT Rebates on Domestically-Produced Equipment	0.06%	Calculated – Zhongji
14.	Stamp Tax Exemption on Share Transfers Under Non-Tradeable Share Reform	9.71%	Highest Rate for Similar Program Based on Benefit Type
15.	Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring	9.71%	Highest Rate for Similar Program Based on Benefit Type

16.	Government Provision of Land for LTAR	0.67%	Calculated – Dingsheng Companies
17.	Government Provision of Primary Aluminum for LTAR	1.16	Calculated – Dingsheng Companies
18.	Provision of Steam Coal for LTAR	0.13	Calculated – Dingsheng Companies
19.	Provision of Electricity for LTAR	0.95%	Calculated – Dingsheng Companies
20.	Government of the PRC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands	0.58%	Highest Rate for Similar Program Based on Benefit Type
21.	The State Key Technology Renovation Project Fund	0.58%	Highest Rate for Similar Program Based on Benefit Type
22.	Foreign Trade Development Fund Grants	0.58%	Highest Rate for Similar Program Based on Benefit Type
23.	Grants for Energy Conservation and Emission Reduction	0.58%	Highest Rate for Similar Program Based on Benefit Type
24.	Grants for the Retirement of Capacity	0.58%	Highest Rate for Similar Program Based on Benefit Type
25.	Grants for the Relocation of Productive Facilities	0.58%	Highest Rate for Similar Program Based on Benefit Type
26.	Grants for Nanshan Aluminum	N/A	N/A

**Total AFA Rate:**

**80.97%**