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

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

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Determination in the Countervailing Duty Investigation of
Aluminum Wire and Cable from the People's Republic of China

I. SUMMARY

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

II. BACKGROUND

A. Initiation and Case History

On September 21, 2018, we received antidumping duty (AD) and countervailing duty (CVD) petitions concerning AWC from China, filed in proper form, on behalf of Encore Wire Corporation (Encore) and Southwire Company, LLC (Southwire) (collectively, the petitioners).¹ Pursuant to section 702(b)(4)(A)(ii) of the Act, we invited representatives of the Government of China (GOC) for consultations with respect to the Petition; however, the GOC did not request

¹ See Petitioners' Letter, "Petitions for the Imposition of Antidumping Duties and Countervailing Duties on Imports of Aluminum Wire and Cable from the People's Republic of China," (September 21, 2018) (Petition).

consultations.² We describe the supplements to the Petition in the *Initiation Notice* and accompanying CVD Initiation Checklist.³ On October 18, 2018, we published the initiation of the CVD investigation of AWC from China.⁴

On October 9, 2018, we released the U.S. Customs and Border Protection (CBP) entry data under Administrative Protective Order and requested comments regarding the data and respondent selection.⁵ We stated in the *Initiation Notice* that, if appropriate, we intended to base the selection of mandatory respondents on CBP entry data for the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁶ The petitioners timely submitted comments on the CBP data and companies shown therein.⁷

On November 7, 2018, pursuant to section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2) we selected Changfeng Wire & Cable Co. Ltd. (Changfeng), Shanghai Silin Special Equipment Co., Ltd. (Silin), and Shanghai Yang Pu Qu Gong (Qu Gong), as mandatory respondents.⁸ We issued our countervailing duty questionnaire to the GOC, with instructions to forward the questionnaire to the mandatory respondents.⁹

On November 30, 2018, we received a request for partial relief from responding to the CVD questionnaire from Silin, a trading company that exported subject merchandise produced by seven manufacturers during the period of investigation (POI).¹⁰ On the same day, we received timely responses to the affiliation section of the initial questionnaire from Changfeng and Silin.¹¹ Silin filed its affiliation response on behalf of itself, and four of its suppliers: Mingda Wire and Cable Group Co., Ltd. (Mingda Cable), Qingdao Cable Co., Ltd. (Qingdao Cable), Shandong Zhongzhou Cable Co., Ltd. (Zhongzhou Cable), and Shanghai Xinqi Cable Technology Co., Ltd. (Xinqi Cable).

On December 14, 2018, we granted Silin's request for relief in part, and clarified which companies were required to submit full responses to the CVD questionnaire.¹² We received

² See Commerce Letter, "Invitation for Consultations to Discuss the Countervailing Duty Petition," dated September 24, 2018.

³ See *Aluminum Wire and Cable from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 83 FR 52805 (October 18, 2018) (*Initiation Notice*) and accompanying CVD Initiation Checklist.

⁴ See *Initiation Notice*.

⁵ See Memorandum, "Aluminum Wire and Cable from the People's Republic of China; Release of Customs Data from U.S. Customs and Border Protection," dated October 9, 2018 (CBP Data Memo).

⁶ See *Initiation Notice*, 83 FR at 52807.

⁷ See Petitioners' Letter, "Aluminum Wire and Cable from China: Petitioners' Comments Regarding Respondent Selection," dated October 23, 2018 (Petitioners' Respondent Selection Comments).

⁸ See Memorandum, "Countervailing Duty Investigation of Aluminum Wire and Cable from the People's Republic of China: Respondent Selection," dated November 7, 2018 (Respondent Selection Memo).

⁹ See Commerce Letter, "Countervailing Duty Questionnaire," dated November 9, 2018 (Initial Questionnaire).

¹⁰ See Silin's Letter, "Aluminum Wire and Cable from the People's Republic of China – Silin Request for Partial Relief from CVD Questionnaires for Suppliers," dated November 30, 2018 (Silin's Request for Partial Relief).

¹¹ See Silin's November 30, 2018 Affiliation Response (Silin AFFQR); see also Changfeng's November 30, 2018 Affiliation Response (Changfeng AFFQR).

¹² See Commerce Letter, "Request for Partial Relief from Questionnaires, Extension of Time, and Request for Clarification in the Countervailing Duty Investigation of Aluminum Wire and Cable from the People's Republic of China," dated December 14, 2018 (Partial Relief Letter).

timely questionnaire and supplemental questionnaire responses from Silin and its four producers,¹³ Changfeng¹⁴ and the GOC.¹⁵ Qu Gong did not submit any questionnaire responses, nor did it request an extension of time to file a response.

Encore filed new subsidy allegations (NSAs) on February 9, 2019.¹⁶ We initiated on these allegations on March 22, 2019,¹⁷ and we issued an NSA questionnaire the same day.¹⁸ However, because of the timing of these allegations, we have not received information concerning these allegations from the GOC and the mandatory company respondents. We intend to issue a post-preliminary analysis for these alleged programs after this preliminary determination.

The respondents and Encore timely submitted data for Commerce to consider using as benchmarks in the less than adequate remuneration programs subsidy rate calculations.¹⁹ Encore also filed pre-preliminary comments for Commerce to consider when making its preliminary determination.²⁰

B. Postponement of Preliminary Determination

On November 27, 2018, based on a request from the petitioners,²¹ Commerce postponed the deadline for the preliminary determination until February 19, 2019, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(e).²² Subsequently, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December

¹³ See Silin's February 5, 2019 Supplemental Affiliation Response (Silin SAFFQR); Silin's and its four producers February 5, 2019 Initial Questionnaire Responses (Silin IQR, Zhongzhou IQR, Xinqi Cable IQR, Qingdao Cable IQR, and Mingda Cable IQR); Silin's and its suppliers' March 5, 2019, Supplemental Questionnaire Response (Silin *et al* SQR).

¹⁴ See Changfeng's February 22, 2019 Supplemental Affiliation Response (Changfeng AFFQR); Changfeng's February 5, 2019 Initial Questionnaire Response (Changfeng IQR); and Changfeng's March 5, 2019, Supplemental Questionnaire Response (Changfeng SQR).

¹⁵ See GOC's February 5, 2019 Initial Questionnaire Response (GOC IQR); and GOC's March 6, 2019, Supplemental Questionnaire Response (GOC SQR).

¹⁶ See Letter from Encore, "Aluminum Wire and Cable from China: New Subsidy Allegations," dated February 20, 2019 (but filed on February 19, 2019).

¹⁷ See Memorandum, "Decision Memorandum on New Subsidy Allegations," dated March 22, 2019.

¹⁸ See Letters to the GOC, Changfeng, and Silin, all entitled, "Countervailing Duty Investigation on Aluminum Wire and Cable from the People's Republic of China: New Subsidy Allegations Questionnaire," dated March 22, 2019.

¹⁹ See Letter from Changfeng and Silin, "Aluminum Wire and Cable from the People's Republic of China – Benchmark Submission," dated March 4, 2019, and Letter from Encore, "Aluminum Wire and Cable from China: Petitioners' Submission of Factual Information to Measure the Adequacy of Remuneration of Land Provided by the Government of China to the Mandatory Respondents," dated March 4, 2019.

²⁰ See Letter from Encore, "Aluminum Wire and Cable from China: Domestic Industry's Pre-Preliminary Comments, dated March 13, 2019.

²¹ See Letter from Encore to Commerce, "Aluminum Wire and Cable from China: Petitioner's Request for Postponement of the Preliminary Determination," dated November 14, 2018.

²² See *Aluminum Wire and Cable from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 83 FR 60822 (November 27, 2018).

22, 2018, through the resumption of operations on January 29, 2019.²³ As a result, the revised deadline for the preliminary determination in this investigation is now April 1, 2019.²⁴

C. Period of Investigation

The period of investigation (POI) is January 1, 2017, through December 31, 2017. This period corresponds to the most recently completed calendar year in accordance with 19 CFR 351.204(b)(2).

III. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,²⁵ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, the scope, of aluminum wire and cable.²⁶ On October 19, 2018, Commerce requested that interested parties address certain aspects of the scope language as included in the *Initiation Notice*.²⁷ Specifically, Commerce asked that parties address the use of the word "equipment" in the following sentence: "The scope of the investigation{s} specifically excludes conductors that are included in equipment already assembled at the time of importation."²⁸ Commerce also requested that parties comment on whether the exclusion is redundant given other language in the scope description that excludes wire and cable products in lengths less than six feet (in other words, is all wire and cable included in equipment less than six feet in any case).²⁹ On October 31, 2018, Encore and Southwire separately submitted comments on the scope language.³⁰

In its comments, Encore stated that it intended the word "equipment" to denote "electrical appliances, whether fully or partially assembled at the time of importation."³¹ It also noted that the exclusion language regarding conductors included in assembled equipment was "likely superfluous," since it is not aware of any AWC products greater than six feet in length that are actually included in electrical appliances at the time of importation.³² Southwire stated that it intended the word "equipment" to denote "electrical appliances, whether fully or partially

²³ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

²⁴ In this case, the tolled deadline falls on a weekend. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. 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).

²⁵ See *Antidumping Duties: Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²⁶ See *Initiation Notice*, 83 FR at 52805.

²⁷ See Memorandum, "Antidumping and Countervailing Duty Investigations of Aluminum Wire and Cable from the People's Republic of China: Request for Scope Comments," dated October 19, 2018.

²⁸ *Id.*

²⁹ *Id.*

³⁰ See Letter from Encore, "Aluminum Wire and Cable from China: Petitioner's Comments on Scope," dated October 31, 2018 (Encore Scope Comments) and Letter from Southwire, "Aluminum Wire and Cable from the People's Republic of China: Scope Comments," dated October 31, 2018 (Southwire Scope Comments).

³¹ See Encore Scope Comments at 2.

³² *Id.*

assembled at the time of importation.”³³ Southwire also suggested modifying the scope language to exclude “aluminum wire and cable products in lengths less than six feet, whether or not included in equipment already assembled at the time of importation.”³⁴ We received no other comments on the scope language.

Upon review of the comments above, we have preliminarily determined to adopt Southwire’s suggested modification because it eliminates the need for a more precise definition of “equipment.” The revised language simply excludes AWC less than six feet in length, regardless of whether it is part of an assembled product. Moreover, the modified language appears to be consistent with the comments of the other petitioner, Encore, which acknowledge the redundancy between excluding AWC less than six feet in length and AWC included in equipment.

The revised scope language is provided below.

IV. SCOPE OF THE INVESTIGATION

The scope of the investigation covers aluminum wire and cable, which is defined as an assembly of one or more electrical conductors made from 8000 Series Aluminum Alloys (defined in accordance with ASTM B800), Aluminum Alloy 1350 (defined in accordance with ASTM B230/B230M or B609/B609M), and/or Aluminum Alloy 6201 (defined in accordance with ASTM B398/B398M), provided that: (1) at least one of the electrical conductors is insulated; (2) each insulated electrical conductor has a voltage rating greater than 80 volts and not exceeding 1000 volts; and (3) at least one electrical conductor is stranded and has a size not less than 16.5 thousand circular mil (kcmil) and not greater than 1000 kcmil. The assembly may: (1) include a grounding or neutral conductor; (2) be clad with aluminum, steel, or other base metal; or (3) include a steel support center wire, one or more connectors, a tape shield, a jacket or other covering, and/or filler materials.

Most aluminum wire and cable products conform to National Electrical Code (NEC) types THHN, THWN, THWN-2, XHHW-2, USE, USE-2, RHH, RHW, or RHW-2, and also conform to Underwriters Laboratories (UL) standards UL-44, UL-83, UL-758, UL-854, UL-1063, UL-1277, UL-1569, UL-1581, or UL-4703, but such conformity is not required for the merchandise to be included within the scope.

The scope of the investigation specifically excludes aluminum wire and cable products in lengths less than six feet, whether or not included in equipment already assembled at the time of importation.

The merchandise covered by the investigation is currently classifiable under subheading 8544.49.9000 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the scope may also enter under HTSUS subheading 8544.42.9090. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

³³ See Southwire Scope Comments at 2.

³⁴ *Id.*

V. INJURY TEST

Because China 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 China materially injure, or threaten material injury to, a U.S. industry. On November 9, 2018, the ITC determined that there is reasonable indication that an industry in the United States is materially injured by reason of imports of AWC from China.³⁵

VI. ALIGNMENT

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioners’ request,³⁶ we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of AWC from China. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than August 12, 2019, unless postponed.³⁷

VII. APPLICATION OF THE CVD LAW TO IMPORTS FROM CHINA

On October 25, 2007, Commerce published its final determination in *CFS from China*, 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.³⁸

Commerce affirmed its decision to apply the CVD law to China in numerous subsequent determinations.³⁹ Furthermore, on March 13, 2012, Public Law 112-99 was enacted which makes clear that Commerce 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 China.⁴⁰ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.⁴¹

³⁵ See *Aluminum Wire and Cable from China; Determinations*, 83 FR 56101 (ITC November 9, 2018).

³⁶ See Letter from the petitioners, “Aluminum Wire and Cable from China: Petitioners’ Letter,” “Aluminum Wire and Cable from China: Petitioners’ Request for Alignment of the Final Countervailing Duty and Antidumping Duty Final Determinations,” dated March 11, 2019.

³⁷ See *Aluminum Wire and Cable from the People’s Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 83 FR 60822 (November 27, 2018).

³⁸ See *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*) and accompanying Issues and Decision Memorandum (CFS IDM) at Comment 6.

³⁹ 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 Issues and Decision Memorandum (IDM) at Comment 1.

⁴⁰ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

⁴¹ See Public Law 112-99, 126 Stat. 265 §1(b).

VIII. DIVERSIFICATION OF CHINA'S ECONOMY

Concurrently with this decision memorandum, Commerce is placing the following excerpts from the *China Statistical Yearbook* from the National Bureau of Statistics of China on the record of this investigation: Index Page; Table 14-7: Main Indicators on Economic Benefit of State owned and State-holding Industrial Enterprise by Industrial Sector; Table 14-11: Main Indicators on Economic Benefit of Private Industrial Enterprise by Industrial Sector.⁴² This information reflects a wide diversification of economic activities in China. The industrial sector in China alone is comprised of 37 listed industries and economic activities, indicating the diversification of the economy.

IX. SUBSIDIES VALUATION

A. Allocation Period

Commerce 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.⁴³ Commerce finds the AUL in this proceeding to be 12 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service 946 (2016), "Appendix B – Table of Class Lives and Recovery Periods" (IRS Pub. 946).⁴⁴ Commerce notified the respondents of this 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 across the AUL.

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce 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.

⁴² See Memorandum, "China Statistical Yearbook Memorandum," dated concurrently with this memorandum.

⁴³ See 19 CFR 351.524(b).

⁴⁴ 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 another corporation(s) in essentially the same ways it can use its own assets. This section of Commerce’s regulations states that this standard will normally be met where there is a majority of voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *CVD Preamble* to Commerce’s regulations further clarifies Commerce’s cross-ownership standard. According to the *CVD 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.⁴⁵

Thus, Commerce’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 Commerce’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.⁴⁶

Silin

As noted above, on November 30, 2018, Silin notified Commerce that it is a trading company that exports but does not produce subject merchandise. Silin reported that it exported subject merchandise produced by seven unaffiliated manufacturers, including Mingda Cable, Qingdao Cable, Zhongzhou Cable, and Xinqi Cable.⁴⁷ Silin also reported that its subsidiary, Jiangxi Silin International Cable Co., Ltd. (Jiangxi Silin), is also a producer of subject merchandise; however, Silin did not buy, sell, or export any of Jiangxi Silin’s merchandise during the POI.⁴⁸

Mingda Cable, Qingdao Cable, Zhongzhou Cable, and Xinqi Cable submitted full questionnaire responses as suppliers to Silin. Commerce exempted three additional suppliers from providing a response to the questionnaire, given their relatively insignificant share of the volume of Silin’s exports of subject merchandise.⁴⁹ As noted above, in determining a deposit rate for a nonproducing trading company such as Silin, Commerce’s regulations state that we may calculate a subsidy rate for each of the supplying producers and combine each producer’s rate with the trading company’s own subsidy rate to establish a deposit rate for the trading company.

⁴⁵ See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

⁴⁶ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-04 (CIT 2001).

⁴⁷ See Silin’s Request for Partial Relief at 1.

⁴⁸ *Id.* at 5.

⁴⁹ See Partial Relief Letter.

Our practice has been to derive a weighted average of the subsidy rates of the supplying producers, which when combined with the trading company's own subsidy rate, establishes a single deposit rate for the trading company for all its subject merchandise exports, regardless of producer.⁵⁰ Accordingly, because Silin did not export any of Jiangxi Silin's merchandise during the POI, its subsidies are not factored into the weighted average of the producers' rates or otherwise into the cash deposit rate determined for Silin. In the CVD context, this means Commerce needs to identify and measure any subsidies provided to each producer, determine the benefits allocable to the POI, and calculate a net countervailable subsidy rate for each producer. Thus, regardless of whether a particular producer is selected as a mandatory respondent, Commerce must conduct the same level of analysis of each producer's subsidization as it would for a mandatory respondent, including an analysis of the producer's corporate affiliations for the purposes of attributing any subsidy benefit under our attribution rules at 19 CFR 351.525(b)(6)(i)-(vi), 351.525(b)(7) and 351.525(c).

Below we address the affiliations of Silin, as well as Mingda Cable, Qingdao Cable, Xinqi Cable, and Zhongzhou Cable, the producer-suppliers of subject merchandise to Silin that we are examining in order to establish a CVD deposit rate for Silin.

Silin

Silin reported numerous affiliated companies. Of these companies, we determined that Jiangxi Silin was Silin's only affiliate that both met Commerce's cross-ownership regulatory definition, as it is majority-owned by Silin, and was also a producer of subject merchandise.⁵¹ Jiangxi Silin provided a full questionnaire response; however, as discussed above, we preliminarily determine that because Jiangxi Silin did not sell or export any subject merchandise to or through Silin during the POI, we are not attributing the benefit of any subsidies received by Jiangxi Silin to Silin.⁵² Therefore, we preliminarily determine that Silin's affiliated companies either are not cross-owned or do not meet any of the attribution conditions set forth in 19 CFR

⁵⁰ See, e.g., *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014) and accompanying IDM at 7-9. See also *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 30288, 30309 (June 14, 1996), under "Suspension of Liquidation" (in which Commerce noted that "We calculated the *ad valorem* rate for Agritalia, an export trading company, by weight averaging, based on the value of exports to the United States represented by each of Agritalia's suppliers, the adjusted subsidy rate for each supplier and adding to this rate the subsidy rate calculated for Agritalia based on subsidies it received directly."); see also *Certain Pasta From Italy: Final Results of the Fourth Countervailing Duty Administrative Review*, 66 FR 64214 (December 12, 2001) ("*Italy Pasta*"). While Commerce did not explicitly discuss averaging in the later decision, averaging is implied by the fact that Commerce examined two major suppliers to Agritalia, then derived just one deposit rate for Agritalia. *Id.*, 66 FR at 64215 and accompanying IDM in the "Subsidies Valuation Methodology" section under "Attribution;" see also *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557, 28559 (May 21, 2010) (*Pre-Stressed Concrete Steel Wire*) and accompanying IDM at 8-9. As in the Italy Pasta review, Commerce did not explicitly discuss averaging in this decision, but averaging is implied in the attribution for trading company Fasten I&E, for which Commerce examined more than one producer but assigned a single deposit rate to Fasten I&E's parent, the Fasten Group Corporation.

⁵¹ See 19 CFR 351.525(b)(vi); see also Silin Calculation Memorandum.

⁵² See Jiangxi Silin February 5, 2019 IQR at page 3.

351.525(b)(6)(ii)-(v); as a result, we have not included these affiliated companies in our subsidy analysis.

Mingda Cable

Mingda Cable, a producer of subject merchandise, as well as a supplier to Silin, reported numerous affiliates.⁵³ Two of these companies (we will refer to these companies as Mingda Affiliate I and Mingda Affiliate IV) currently meet the cross-ownership definition set forth in 19 CFR 351.525(b)(6)(vi).⁵⁴ Mingda Affiliate I produced and sold an input which is primarily dedicated to the production of the downstream subject merchandise. Mingda Affiliate IV produced and sold insulation and shielding material (an input primarily dedicated to the production of the downstream subject merchandise). 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 merchandise by a cross-owned producer, Commerce attributes the benefit to the combined sales of the input and downstream products produced by both corporations, excluding the sales between the two corporations. Accordingly, pursuant to 19 CFR 351.525(b)(6)(iv), we attributed subsidies received by Mingda Affiliates I and IV to their respective total sales plus the sales of Mingda Cable (the producer of subject merchandise), net of inter-company sales. For this preliminary determination, we are treating the GOC's provision of electricity for LTAR as subsidies that have been transferred to Mingda Affiliate IV through an affiliate of Mingda Affiliate IV, pursuant to 19 CFR 351.525(b)(6)(v).⁵⁵

Qingdao Cable

Qingdao Cable, a producer and exporter of subject merchandise as well as a supplier of Silin, reported numerous affiliates.⁵⁶ Each of the reported affiliates meet the cross-ownership definition set forth in 19 CFR 351.525(b)(6)(vi).⁵⁷ Of these cross-owned companies, we requested complete questionnaire responses from companies we will refer to as Qingdao Affiliate I and Qingdao Affiliate II, due to information on the record indicating their potential involvement in the production of subject merchandise. Qingdao Affiliate I stated that it was established in the POI as a holding company without any production or sales activities⁵⁸ and provided its business license which corroborates its reported date of establishment.⁵⁹ Due to its recent incorporation, Qingdao Affiliate I stated that it did not have any audited financial statements; however, it did submit its 2018 income tax return which provides no indication of operations, consistent with its claim.⁶⁰ Qingdao Affiliate II reported that it is a producer of non-subject merchandise, as well as a supplier of packing materials to Silin.⁶¹ We preliminarily

⁵³ See Silin AFFQR at Exhibit 3. The names of the affiliates and their ownership and control details are business proprietary information (BPI).

⁵⁴ See Silin Calculation Memorandum.

⁵⁵ *Id.*

⁵⁶ See Silin AFFQR at Exhibit 4. The names of the affiliates and their ownership and control details are BPI.

⁵⁷ The names of the affiliates and their ownership and control details are BPI, *see* Silin Calculation Memorandum.

⁵⁸ See Qingdao Affiliate I February 5, 2019 IQR at 2.

⁵⁹ *Id.* at Exhibit 3.

⁶⁰ *Id.* at 4 and Exhibit 2.

⁶¹ See Silin AFFQR at 5.

determine that the packing materials provided by Qingdao Affiliate II do not constitute input products primarily dedicated to the production of the downstream products produced by Qingdao Cable, as described in 19 CFR 351.525(b)(6)(iv).

We requested additional information and documentation concerning Qingdao Cable's remaining cross-owned affiliates which were reported as having no operating activities.⁶² Qingdao Cable provided documentation, including financial statements, demonstrating that the companies either ceased operation prior to the POI or are shell companies without any production or sales activities. Therefore, we preliminarily determine that Qingdao Cable's cross-owned companies do not meet the attribution conditions set forth in 19 CFR 351.325(b)(6)(ii)-(v), thus we have excluded these companies from our subsidy analysis.

Xinqi Cable

Xinqi Cable, a producer and supplier of subject merchandise to Silin, reported multiple affiliates,⁶³ some of which are considered cross-owned pursuant to 19 CFR 351.525(b)(6)(vi).⁶⁴ Of these cross-owned companies, we required a complete questionnaire response from Xinqi Affiliate I, which reported supplying Xinqi Cable with flame-resistant material used in the production of subject merchandise.⁶⁵ We preliminarily determine that the input supplied by Xinqi Affiliate I is primarily dedicated to the production of downstream products including aluminum wire and cable within the meaning of 19 CFR 351.524(b)(6)(iv). Therefore, we are attributing subsidies received by Xinqi Affiliate I to the combined sales of the input supplier and producer, excluding inter-company sales, in accordance with 19 CFR 351.525(b)(6)(iv).

We preliminarily determined that we did not require a complete questionnaire from Xinqi Cable's other cross-owned affiliates, which we will refer to as Xinqi Affiliate II and Xinqi Affiliate III.⁶⁶ In Xinqi Cable's Initial Questionnaire Response, it reported that its production and office facilities are located on land belonging to Xinqi Affiliate II and Xinqi Affiliate III.⁶⁷ Additionally, Xinqi Cable uses electricity purchased by Xinqi Affiliate II for the production of subject merchandise.⁶⁸ For this preliminary determination, we are treating the GOC's provision of electricity and land for LTAR as subsidies that have been transferred to Xinqi Cable through Xinqi Affiliates II and III, pursuant to 19 CFR 351.525(b)(6)(v).

Zhongzhou Cable

Zhongzhou Cable, a producer and supplier of subject merchandise to Silin, responded to Commerce's questionnaire on behalf of itself and a former entity that was absorbed by Zhongzhou Cable before the POI. Zhongzhou Cable reported that, other than the entity it absorbed, it did not have any affiliated companies involved or engaged in the sale, purchase,

⁶² See Partial Relief Letter.

⁶³ The names of the affiliates and their ownership and control details are BPI, see Silin Calculation Memorandum.

⁶⁴ Xinqi Affiliate I, Xinqi Affiliate II, and Xinqi Affiliate III are cross-owned; see Silin Calculation Memorandum.

⁶⁵ See Silin AFFR at page 5.

⁶⁶ The names of the affiliates and their ownership and control details are BPI, see Silin Calculation Memorandum.

⁶⁷ See Xinqi Cable February 5, 2019 IQR at 20.

⁶⁸ *Id.* at 21.

marketing, and production of subject merchandise.⁶⁹ Therefore, we will attribute subsidies received by Zhongzhou Cable to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

Changfeng

Changfeng responded to Commerce's questionnaire on behalf of itself, reporting that it did not have any affiliated companies involved or engaged in the sale, purchase, marketing, and production of subject merchandise.⁷⁰ Therefore, we will attribute subsidies received by Changfeng to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce 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 (or the total combined sales of the cross-owned affiliates less intercompany sales) as the denominator, 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 detailed explanation of the denominators used, *see* the Preliminary Calculation Memoranda prepared for this preliminary determination.⁷¹

X. BENCHMARKS AND INTEREST RATES

Commerce is investigating loans received by Qingdao Cable, Mingda Cable and its cross-owned affiliates, Zhongzhou Cable, and Changfeng from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.⁷² The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

A. Short-Term and Long-Term Loan 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, Commerce uses comparable commercial loans reported by the company as a benchmark.⁷³ If the

⁶⁹ *See* Silin AFFQR at Exhibit 5.

⁷⁰ *See* Changfeng AFFQR.

⁷¹ *See* Memorandum, "Preliminary Determination Calculations for Silin," dated concurrently with this memorandum (Silin Preliminary Calculation Memo); *see also* Memorandum, "Preliminary Determination Calculations for Changfeng," dated concurrently with this memorandum (Changfeng Preliminary Calculation Memo) (collectively, Preliminary Calculation Memoranda).

⁷² *See* 19 CFR 351.524(b)(1).

⁷³ *See* 19 CFR 351.505(a)(3)(i).

firm did not have any comparable commercial loans during the period, Commerce’s regulations provide that we “may use a national average interest rate for comparable commercial loans.”⁷⁴

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 from China*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.⁷⁵ In an analysis memorandum dated July 21, 2017, Commerce conducted a re-assessment of the lending system in China.⁷⁶ Based on this re-assessment, Commerce concluded that, despite reforms to date, the GOC’s role in the system continues to fundamentally distort lending practices in China in terms of risk pricing and resource allocation, precluding the use of interest rates in China for CVD benchmarking or discount rate purposes. Consequently, we preliminarily find that any loans received by the respondent 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, Commerce is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with Commerce’s practice.⁷⁷

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China* and more recently updated in *Thermal Paper from China*.⁷⁸ Under that methodology, we first determine which countries are similar to China 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 from China*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, China fell in the lower-middle income category.⁷⁹ Beginning in 2010, however, China fell within the upper-middle income category and remained there from 2011 to 2017.⁸⁰ 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

⁷⁴ See 19 CFR 351.505(a)(3)(ii).

⁷⁵ See *CFS from China* and accompanying IDM at Comment 10.

⁷⁶ See “Review of China’s Financial System Memorandum,” under cover dated concurrently with this memorandum.

⁷⁷ See, e.g., *Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review*; 2015, 82 FR 46754 (October 6, 2017) and accompanying Preliminary Decision Memorandum at 21 (unchanged in *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2015, 83 FR 16055 (April 13, 2018) (*OTR from China 2015 Final Results*)).

⁷⁸ See *CFS from China* and accompanying 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 from China*) and accompanying IDM at 8-10.

⁷⁹ See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups>; see also Memorandum “Interest Rate Benchmark Memorandum,” dated concurrently with this memorandum (Interest Rate Benchmark Memorandum).

⁸⁰ *Id.*

discount rates for 2010-2017. This is consistent with Commerce’s calculation of interest rates for recent CVD proceedings involving Chinese merchandise.⁸¹

After Commerce identifies the appropriate interest rates, the next step in constructing the benchmark has been 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 2011-2017, 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.⁸² For 2010, however, the regression does not yield that outcome for China’s income group.⁸³ 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 used since *CFS from China* to compute the benchmarks for the years from 2001-2009 and 2011-2017. 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 2010-2017 and “lower middle income” for 2001-2009.⁸⁴ First, we did not include those economies that Commerce considered to be non-market economies 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 Commerce 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.⁸⁵ Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.⁸⁶

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

⁸¹ 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 from China*)).

⁸² See Interest Rate Benchmark Memorandum; see also Preliminary Calculation Memoranda.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

benchmark for long-term loans. To address this problem, Commerce 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.⁸⁷

In *Citric Acid from China*, 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.⁸⁸ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁸⁹

The resulting inflation-adjusted benchmark lending rates are provided in the Preliminary Calculation Memoranda.⁹⁰

B. 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 GOC provided non-recurring subsidies.⁹¹ The interest rate benchmarks and discount rates used in our preliminary calculations are provided in Preliminary Calculation Memoranda.

C. Benchmarks for Government Provision of Primary Aluminum at Less Than Adequate Remuneration

We selected benchmarks for determining the benefit from the provision of primary aluminum at LTAR in accordance with 19 CFR 351.511. The basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR is set forth under 19 CFR 351.511(a)(2). 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.

The respondents submitted aluminum world export data from UN Comtrade for HTS subheading 7601.10 (aluminum not alloyed) as a potential benchmark for primary aluminum inputs, as well as monthly ocean freight rates from a variety of world ports to Shanghai between January 2017, and December 2017, as reported by Maersk Line. No other party provided benchmark information for primary aluminum or the transportation of primary aluminum.

⁸⁷ See, e.g., *Thermal Paper from China* and accompanying IDM at 10.

⁸⁸ 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 from China*), and accompanying IDM at Comment 14.

⁸⁹ See Interest Rate Benchmark Memorandum.

⁹⁰ See Preliminary Calculation Memoranda.

⁹¹ *Id.*; see also Interest Rate Benchmark Memorandum.

With respect to the primary aluminum input for Mingda Affiliate I, we are relying on the UN Comtrade data from the respondents related to HTS subheading 7601.10, which reflects the primary aluminum input purchased by Mingda Affiliate I and sold to Mingda Cable for use in the production of subject merchandise. For our preliminary calculations, we are relying on the ocean freight data submitted by the respondents because it is contemporaneous with our POI and specifically for the transportation of aluminum.

Regarding inland freight, Mingda Affiliate I reported that it does not incur inland freight expenses for purchases of primary aluminum. It therefore reported an offer from a forwarding company to Mingda Cable regarding the freight expense of finished goods from Mingda Cable to a nearby port (about equidistant as the port near Mingda Affiliate I). We received no other information on inland freight expenses. Therefore, we used this freight expense in the benchmark calculations for Mingda Affiliate I.

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

As explained in detail in previous investigations, Commerce 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 China. Specifically, in *Sacks from China*, Commerce determined that “Chinese land prices are distorted by the significant government role in the market,” and hence, no usable “tier one” benchmarks exist.⁹² Furthermore, Commerce also found that “tier two” benchmarks (world market prices that would be available to purchasers in China) are not appropriate.⁹³

On October 2, 2018, Commerce completed a memorandum analyzing developments in China’s land market since 2007.⁹⁴ The Land Analysis Memorandum was prepared to assess the continued application of Commerce’s land for LTAR benchmark methodology, as established in 2007 in *Sacks from China*.⁹⁵ As discussed in the Land Analysis Memorandum, although reforms in China’s land markets have improved the use-rights of some landholders, such improvements have not been comprehensive, and reforms have been implemented on an *ad hoc* basis.⁹⁶ The reforms to date have not addressed the fundamental institutional factors that underlie the Chinese government’s monopoly control over land-use, which precludes landholders from putting their

⁹² 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 *Laminated Woven Sacks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Sacks from China*)).

⁹³ *Id.*

⁹⁴ See Memorandum, “Land Analysis Memorandum,” dated concurrently with this memorandum (Land Memorandum) (containing a memorandum titled “Benchmark Analysis of the Government Provision of Land-Use Rights in China for Countervailing Duty Purposes,” dated October 2, 2018).

⁹⁵ *Id.* at 2.

⁹⁶ *Id.*

land to its best use and realizing the market value of their landholdings.⁹⁷ The GOC still owns all land in China, and exercises direct control over the sale of land-use rights and land pricing in the primary market and indirect control in the secondary market.⁹⁸

As a result, and consistent with our methodology established in *Sacks from China*, we determine that we cannot use any first-tier, domestic Chinese land prices for benchmarking purposes. We also determine that because land is generally not simultaneously available to an in-country purchaser while located and sold out-of-country on the world market, we cannot use second-tier world prices as a benchmark for land-use rights. Finally, because land prices in China are not consistent with market principles and reflect the government's control and allocation of land-use on an administrative basis, we will continue to use land-use prices outside of China as a third-tier benchmark. Accordingly, consistent with our past practice, we are relying on the use of so-called "tier three" benchmarks for purposes of calculating a benefit for this program.

For this investigation, the petitioners submitted industrial land prices from "Asian Market view Reports" by CB Richard Ellis for Thailand for 2010.⁹⁹ Commerce used this benchmark in the CVD investigations of *Solar Cells from China* and *ITDCs from China*,¹⁰⁰ and more recently in *Steel Racks*.¹⁰¹ We initially selected this information in the *Sacks from China* investigation after considering a number of factors, including national income levels, population density, and producers' perceptions that Thailand is a reasonable alternative to China as a location for Asian production.¹⁰² We find that these benchmarks are suitable for this preliminary determination, adjusted accordingly for inflation, to account for any countervailable land received by respondents during the AUL of this investigation.¹⁰³

We will continue to examine benchmark prices on a case-by-case basis and will consider the extent to which proposed benchmarks represent prices in a comparable setting (*e.g.*, a country proximate to China; the country's level of economic development, *etc.*). Therefore, we invite parties to submit alternative benchmark data that is consistent with the guidance provided in *Sacks from China* and the Land Analysis Memorandum.¹⁰⁴ Parties will have seven days after the issuance of this memorandum to provide information to rebut, clarify, or correct information in the Land Analysis Memorandum.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ See Petitioners' Benchmark Submission at Attachment 3.

¹⁰⁰ See *Solar Cells from China Final* and accompanying IDM at 6 and Comment 11; see also *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 from China*) and accompanying IDM at 13.

¹⁰¹ See *Certain Steel Racks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 62297 (December 3, 2018) (*Steel Racks*) and accompanying Preliminary Decision Memorandum at 35-36.

¹⁰² The complete history of our reliance on this benchmark is discussed in the above-referenced *Solar Cells from China* and accompanying IDM. In that discussion, we reviewed our analysis from the *Sacks from China* investigation and concluded the CBRE data remained a valid land benchmark.

¹⁰³ See Preliminary Calculation Memoranda.

¹⁰⁴ See Land Analysis Memorandum at 30-31.

XI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply “facts otherwise available” (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 Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that Commerce 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, Commerce’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 {Commerce} with complete and accurate information in a timely manner.”¹⁰⁵ Commerce’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁰⁶

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “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.”¹⁰⁷ It is Commerce’s practice to consider information to be corroborated if it has probative value.¹⁰⁸ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.¹⁰⁹ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.¹¹⁰

Finally, under section 776(d) of the Act, Commerce 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

¹⁰⁵ 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 from China 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).

¹⁰⁶ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I (1994)(SAA) at 870.

¹⁰⁷ See, e.g., SAA at 870.

¹⁰⁸ See SAA at 870.

¹⁰⁹ See, e.g., SAA at 869.

¹¹⁰ See SAA at 869-870.

that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce 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.¹¹¹

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

A. Application of Total AFA: Qu Gong

Qu Gong

As noted in the “Initiation and Case History” section above, Commerce selected Qu Gong as a mandatory respondent.¹¹² Qu Gong did not reply to our questionnaire. Accordingly, we preliminarily determine that Qu Gong withheld necessary information that was requested of it, failed to provide information within the deadlines established, and significantly impeded this proceeding. Thus, Commerce is relying on facts otherwise available in making our preliminary determination with respect to Qu Gong, 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 Commerce’s Initial CVD Questionnaire, Qu Gong 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 Qu Gong 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 Qu Gong’s decision not to participate in this investigation that it used all the programs on which we initiated an investigation, which we have not found to be not countervailable, and we are applying an AFA rate for each program. In addition, the mandatory respondents reported receiving numerous other grants that were not alleged in the petition. We are adversely inferring the Qu Gong used all of these additional grants.

Application of AFA

Based on the above discussion, we are adversely inferring from Qu Gong’s decision not to participate in this investigation that these companies used all the programs which Commerce is investigating.

It is Commerce’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.¹¹³ When selecting AFA rates, section 776(d) of the Act provides

¹¹¹ See section 776(d)(3) of the Act.

¹¹² See Respondent Selection Memorandum.

¹¹³ 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)

that Commerce 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.¹¹⁴ 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.¹¹⁵ 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 minimis* rate from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use.¹¹⁶

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”¹¹⁷ The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.¹¹⁸

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.¹¹⁹ Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party

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 from China Final*), and accompanying IDM at “Application of Adverse Inferences: Non-Cooperative Companies.”

¹¹⁴ *See, e.g., Shrimp from China*, 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”).

¹¹⁵ 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.”

¹¹⁶ *See Shrimp from China Final* IDM at 13-14.

¹¹⁷ *See* SAA at 870.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 869-870.

failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.¹²⁰

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.¹²¹

In determining the AFA rates that we are preliminarily applying to Qu Gong, we are guided by Commerce’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 Silin (and its suppliers) and Changfeng for the following programs:

- Government Provision of Electricity for LTAR
- Government Provision of Land Use-Rights for LTAR to Aluminum Wire and Cable Producers
- Government Provision of Primary Aluminum for LTAR
- Policy Loans to Aluminum Wire and Cable Industry
- Certain Other Subsidies¹²²

In applying an AFA rate for the following income tax reduction programs on which the Commerce initiated an investigation, we are drawing an adverse inference that Qu Gong paid no Chinese income tax during the POI:

- Income Tax Reductions for High or New Technology Enterprises
- Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law
- Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization
- Tax Incentives for Businesses in China (Shanghai) Pilot Free Trade Zone

The standard income tax rate for corporations in China in effect during the POI was 25 percent.¹²³ 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 four programs, combined, provide a 25 percent benefit). Consistent with past practice, application of

¹²⁰ See section 776(d) of the Act.

¹²¹ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

¹²² Changfeng, Silin, and Silin’s suppliers reported numerous other subsidies. For subsidies for which we calculated a rate for these companies, we are using the rate calculated in the AFA rate calculation.

¹²³ See GOC IQR at 35.

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.¹²⁴

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

- Deed Tax Exemption for State-Owned Enterprises (SOEs) Undergoing Mergers or Restructuring¹²⁵
- Exemptions for SOEs from Distributing Dividends¹²⁶
- Export Loans from Chinese State-Owned Banks (SOCBs)¹²⁷
- Export Buyer's Credits¹²⁸
- Export Seller's Credits¹²⁹
- Foreign Trade Development Fund Grants¹³⁰
- GOC and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands¹³¹
- Grants for Energy Conservation and Emission Reduction¹³²
- Grants for the Retirement of Capacity¹³³
- Import Tariff and VAT Exemptions on Imported Equipment for Encouraged Industries¹³⁴
- Income Tax Deductions/Credit for Purchase of Special Equipment¹³⁵

¹²⁴ See, e.g., *Aluminum Extrusions from China Final* IDM at “Application of Adverse Inferences: Non-Cooperative Companies.”

¹²⁵ 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), unchanged in the final (see *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 from China*)).

¹²⁶ See *Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos from China*) and accompanying IDM at 13-14 (“Special Fund for Energy Saving Technology”).

¹²⁷ 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 from China 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”).

¹²⁸ *Id.*

¹²⁹ See *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011) and accompanying IDM at 12.

¹³⁰ See *Chlorinated Isos from China* at 13 – 14 (“Special Fund for Energy Saving Technology”).

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ See *OTR Tires from China*.

¹³⁵ *Id.*

- Preferential Loans to SOEs¹³⁶
- Provision of Land and Land-Use Rights for LTAR to SOEs¹³⁷
- Provision of Land-Use Rights for LTAR in Nanching Economic Development Zone¹³⁸
- Provision of Steam Coal for LTAR¹³⁹
- Tax Grants, Rebates, and Credits in Yixing Economic Development Zone¹⁴⁰
- The State Key Technology Project Fund¹⁴¹
- VAT Rebates on Domestically-Produced Equipment¹⁴²
- Certain Other Subsidies¹⁴³

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for Qu Gong to be 164.16 percent *ad valorem*. The Appendix contains a chart summarizing our calculation of this rate.

B. Application of AFA: Export Buyer’s Credit

Government of China

Commerce preliminarily determines that the use of AFA is warranted in determining the countervailability of the Export Buyer’s Credit program because the GOC did not provide the requested information needed to allow Commerce to fully analyze this program. In our Initial CVD Questionnaire, we requested that the GOC 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.”¹⁴⁴ The Standard Questions Appendix requested various information that Commerce 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 GOC stated that “{n}one of the respondents applied for, used, or benefited from, this alleged program during the POI. Therefore, this question is not applicable, and as a consequence, the corresponding appendix is not applicable.”¹⁴⁵

¹³⁶ See *Coated Paper from China Investigation Amended Final*.

¹³⁷ See *Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 53473 (November 16, 2017) (*Hardwood Plywood*).

¹³⁸ *Id.*

¹³⁹ See *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People’s Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018) and accompanying IDM at 17.

¹⁴⁰ See *OTR Tires from China*.

¹⁴¹ See *Chlorinated Isos from China* at 13 – 14 (“Special Fund for Energy Saving Technology”).

¹⁴² See *Certain Magnesia Carbon Bricks from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 75 FR 45472 (August 2, 2010) and accompanying IDM at 10.

¹⁴³ As noted above, Changfeng, Silin, and Silin’s suppliers reported numerous other subsidies. The subsidies in this section are the subsidies for which we did not calculate a rate for Changfeng, Silin, and Silin’s suppliers.

¹⁴⁴ See Initial CVD Questionnaire at Section II, part II, at 6.

¹⁴⁵ See GOC IQR at 17.

In its initial questionnaire response, the GOC 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.¹⁴⁶ In that same response, the GOC 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*.¹⁴⁷ Information in that document indicates that the GOC revised this program in 2013 to eliminate this minimum requirement.¹⁴⁸ Thus, we requested in our Initial CVD Questionnaire that the GOC also provide original and translated copies of any laws, regulations or other governing documents cited by the GOC 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 GOC failed to provide the 2013 Revisions.¹⁴⁹ We, therefore, again requested that the GOC provide the 2013 Revisions.¹⁵⁰ Through its response to Commerce's initial and supplemental questionnaires, the GOC has twice refused to provide the requested information or any information concerning the 2013 program revision, which is necessary for Commerce to analyze how the program functions.

We requested the 2013 Revisions because information on the record of this proceeding indicated that the 2013 Revisions affected important program changes. For example, the 2013 Revisions may have eliminated the USD 2 million contract minimum associated with this lending program.¹⁵¹ By refusing to provide the requested information, and instead asking Commerce to rely upon unverifiable assurances that the 2000 Rules Governing Export Buyers' Credit remained in effect, the GOC impeded Commerce's understanding of how this program operates and how it can be verified.

Additional information in the GOC's initial questionnaire response also indicated that the loans associated with this program are not limited to direct disbursements through the EX-IM Bank.¹⁵² Specifically, this record information indicates that customers can open loan accounts for disbursements through this program with other banks.¹⁵³ 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.¹⁵⁴ Given the complicated structure of loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary. Thus, the GOC's refusal to provide the 2013 Revisions, which provide internal guidelines for how this program is administered by the EX-IM Bank, impeded Commerce's ability to conduct its investigation of this program.

¹⁴⁶ *Id.* at Exhibit II.B.10.

¹⁴⁷ *Id.* at 19 and Exhibit II.B.11 (Export Buyer's Credit Supplemental Questionnaire Response). *See also* *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017).

¹⁴⁸ *Id.*; *see also* Memorandum to the File, "Countervailing Duty Investigation of Aluminum Wire and Cable from the People's Republic of China: Placing Information on the Record," dated concurrently with the memorandum, at Attachment 1 (Citric Acid Verification Report) at 2.

¹⁴⁹ *See* GOC IQR at 19.

¹⁵⁰ *See* GOC SQR at 3.

¹⁵¹ *See* Citric Acid Verification Report.

¹⁵² *See* GOC February 5, 2019 IQR at Exhibit II.B.11.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

Importantly, the GOC also refused to provide a list of all partner/correspondent banks involved in disbursement of funds under the program, informing Commerce that its request “is not applicable,” and also noting that it was unable to compel the EX-IM Bank to provide such a list.¹⁵⁵ Commerce cannot verify claims of non-usage, whether originating with the respondents or their U.S. customers, if it does not know the names of the intermediary banks that might appear in the books and records of the recipient of the credit (*i.e.*, the loan) or the cash disbursement made pursuant to the credit. There will not necessarily be an account in the name “EX-IM Bank” in the books and records (*e.g.*, subledger, tax return, bank statements) of either the exporter or the U.S. customer.

Pursuant to sections 776(a)(2)(A) and (2)(C) of the Act, when an interested party withholds information requested by Commerce and significantly impedes a proceeding, Commerce uses facts otherwise available. We find that the use of facts otherwise available is appropriate in light of the GOC’s refusal to provide the 2013 Revisions. Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding of information and significantly impeding this proceeding, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted. The GOC has not provided complete information concerning the administration and operation of the program, such as how exactly loans are disbursed under the program (*e.g.*, the 2013 Revisions), possibly through intermediate or correspondent banks, the identities of which the GOC has withheld from Commerce, or whether the EX-IM Bank employs threshold criteria, such as minimum USD 2 million contract value. Such information is critical to understanding how the Export Buyer’s Credits program operates, and thereby is also critical to Commerce’s ability to verify and determine usage of this program.

The GOC March 6, 2019, SQR indicated the GOC’s refusal to provide information about the internal administration of the program.¹⁵⁶ The GOC is the only party that can answer questions about the internal administration of this program, and, thus, its failure to provide the requested information further undermines Commerce’s ability to verify claims of non-use. Commerce cannot verify non-use at the EX-IM Bank without a complete set of administrative measures on the record that would provide guidance to Commerce in querying the records and electronic databases of the EX-IM Bank.¹⁵⁷ Similarly to the obstacles we would face in attempting to verify usage at the exporter or U.S. customer, Commerce would not know what indicia to look

¹⁵⁵ See GOC March 6, 2019 SQR at 4

¹⁵⁶ *Id.* at 3.

¹⁵⁷ Commerce also notes the GOC has a history of refusing to provide Commerce with adequate access to its books and records relevant to understanding this program. See, *e.g.*, *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) and accompanying IDM at 92 (“At verification, the GOC repeatedly denied Department officials the opportunity to examine the basis for the GOC’s contention that none of the company respondents in this investigation, or their customers, used this program during the POI. . . . Despite repeated requests to verify the basis of statements made on the record of this investigation, the GOC refused to allow the Department to query the databases and records of the Ex-Im Bank to establish the accuracy of its non-use claim.”).

for in searching for usage or even what records or databases we need to examine in conducting the verification (*i.e.*, without a complete set of laws, regulations, administrative measures, Commerce would not even know what books and records the EX-IM Bank maintains in the ordinary course of its operations). Essentially, Commerce is unable to verify in a meaningful manner the little information on the record indicating non-usage (*e.g.*, the claims of the GOC and emails and certifications from U.S. customers), pursuant to section 776(a)(2)(D) with the exporters, U.S. customers, or at the EX-IM Bank itself given the refusal of the GOC to provide the 2013 Revisions and a complete list of correspondent/partner/intermediate banks. Therefore, we determine that the GOC has not cooperated to the best of its ability and, as AFA, find that the respondents used and benefited from this program.

Based on the AFA rate selection hierarchy described above, for this program we are using an AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in the *Coated Paper from China Investigation Amended Final* proceeding, as the rate for these companies.¹⁵⁸ 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.

C. Application of AFA for the Provision of Primary Aluminum for LTAR

Government of China – Whether Certain Primary Aluminum Producers Are “Authorities”

As discussed below under “Programs Found to Be Countervailable,” Commerce examined whether the GOC provided primary aluminum for LTAR to Changfeng and Silin (collectively, the respondents). We asked the GOC to provide information regarding the specific companies that produced primary aluminum which the respondents purchased during the POI. Specifically, we sought information from the GOC which would allow us to analyze whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.¹⁵⁹ In prior CVD proceedings involving China, Commerce 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 the price paid by the respondent for the input was for less than adequate remuneration LTAR.¹⁶⁰

In addition to the Initial CVD Questionnaire, Commerce issued a supplemental questionnaire to the GOC regarding its response to the alleged subsidy programs.¹⁶¹ In Commerce's Initial CVD Questionnaire, we asked the GOC to respond to the specific questions regarding the producers of

¹⁵⁸ See *Coated Paper from China Investigation Amended Final* (revised rate for “Preferential Lending to the Coated Paper Industry” program).

¹⁵⁹ See Memorandum, “Public Bodies Memorandum,” dated concurrently with this memorandum (Public Bodies Memorandum).

¹⁶⁰ 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.”

¹⁶¹ See Initial CVD Questionnaire, at Section II, “Input Producer Appendix;” *see also* GOC SQR at 5-11.

primary aluminum and to respond to the *Input Producer Appendix* for each producer which produced the primary aluminum purchased by the respondents.¹⁶² We instructed the GOC to coordinate with the respondents to obtain a complete list of the primary aluminum producers, including the producers of inputs purchased through a supplier.¹⁶³ In response to the Initial CVD Questionnaire, Mingda Affiliate I identified certain of the companies that produced and supplied the primary aluminum purchases during the POI, which the GOC confirmed in its questionnaire responses.¹⁶⁴

With respect to Mingda Affiliate I's purchases of primary aluminum, while the GOC ultimately provided the identities of certain of the producers of primary aluminum inputs, it did not provide all of the information requested of it in the Initial CVD Questionnaire, as discussed below.

In our initial and supplemental questionnaire to the GOC,¹⁶⁵ Commerce requested certain information be provided with respect to both the majority government-owned and non-majority government-owned enterprises. We address each group below.

With respect to those primary aluminum-producing enterprises that the GOC identified as majority government-owned, we note that Commerce made multiple requests for the GOC to provide the articles of incorporation and capital verification reports of all majority government-owned enterprises.¹⁶⁶ The GOC provided partial information (*i.e.*, basic registration and shareholder structure) with respect to the government-owned enterprises. Despite Commerce's requests, the GOC did not provide the articles of incorporation and capital verification reports for any of the majority government-owned enterprises.¹⁶⁷

As explained in the Public Bodies Memorandum,¹⁶⁸ record evidence demonstrates that producers in China that are majority-owned by the government possess, exercise, or are vested with, governmental authority.¹⁶⁹ Record evidence demonstrates that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.¹⁷⁰ Therefore, in light of our prior findings and the GOC'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 Mingda Affiliate I during the POI, while the GOC provided ownership structure information, the GOC

¹⁶² See Initial CVD Questionnaire, at Section II, "Provision of Primary Aluminum for LTAR."

¹⁶³ *Id.* at Section II, "Provision of Goods or Services for LTAR."

¹⁶⁴ See GOC IQR at 54.

¹⁶⁵ See Initial CVD Questionnaire, at Section II, "Input Producer Appendix;" see also GOC SQR at 6.

¹⁶⁶ See GOC IQR at 56, 57, and GOC SQR at 5.

¹⁶⁷ *Id.*

¹⁶⁸ See Public Bodies Memorandum.

¹⁶⁹ *Id.* at 35-36 and sources cited therein.

¹⁷⁰ *Id.*

did not provide other relevant documentation requested by Commerce, including company by-laws, annual reports, and tax registration documents, and articles of association.¹⁷¹

Additionally, while Commerce made attempts to obtain ownership and management information for all of the respondents' primary aluminum producers, the GOC did not provide the requested information. For instance, in the GOC February 5, 2019 IQR, the GOC responded to Commerce's request for CCP information of the primary aluminum producers by stating that it could not obtain the requested information.¹⁷² In response to Commerce's supplemental questionnaire, in which Commerce reiterated the same requests for information, the GOC again refused to provide a complete response with regard to all requested documentation.¹⁷³

As discussed above, the GOC did not provide complete responses to our numerous requests for information with respect to primary aluminum producers which the GOC 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 GOC withheld information that was requested of it with regard to the input purchases by Mingda Affiliate I.¹⁷⁴ Accordingly, Commerce must rely on "facts otherwise available" in reaching a determination in this respect. Further, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with requests for information regarding the producers of the primary aluminum from which Mingda Affiliate I purchased during the POI because the GOC did not provide the requested information.¹⁷⁵ Consequently, we find that an adverse inference is warranted in the application of facts available.¹⁷⁶

In sum, as AFA, we preliminarily determine that the non-government-owned domestic producers of the primary aluminum purchased by Mingda Affiliate I are "authorities" within the meaning of section 771(5)(B) of the Act.

Government of China – Whether the Provision of Primary Aluminum is Specific

Commerce asked the GOC to provide a list of industries in China that purchase primary aluminum:

Provide a list of the industries in China that purchase primary aluminum 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

¹⁷¹ See GOC IQR at Exhibit II.E.a.2 and Exhibit II.E.a.3.

¹⁷² *Id.* at 71-72.

¹⁷³ See GOC SQR at 5-11.

¹⁷⁴ See sections 776(a)(1) and (a)(2)(A) of the Act.

¹⁷⁵ See sections 776(a) and (b) of the Act.

¹⁷⁶ See section 776(b) of the Act.

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.¹⁷⁷

Commerce requests such information for purposes of its *de facto* specificity analysis. The GOC submitted an incomplete list of data requested for the primary aluminum industry.¹⁷⁸ In response to Commerce's request for such documentation relating to the primary aluminum industry, the GOC submitted a chart of industrial categories without further description, discussion of the methodology used to collect such data, and the source of all data collected.¹⁷⁹ We asked again for this information in a supplemental questionnaire, and the GOC again failed to provide the value of the inputs purchased by industry, the relevant classification guidelines, and the identity of the industry in which the companies under investigation are classified.¹⁸⁰

Therefore, consistent with past proceedings,¹⁸¹ 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 Commerce 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 preliminarily find that the GOC's provision of primary aluminum is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

E. Application of AFA: Provision of Electricity for LTAR

Government of China

The GOC did not provide complete responses to Commerce'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 Commerce to analyze the financial contribution and specificity of this program, we requested that the GOC 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, Commerce 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

¹⁷⁷ See Initial CVD Questionnaire at Section II.

¹⁷⁸ See GOC IQR at Exhibit II.E.a.11.

¹⁷⁹ *Id.* at 80-81.

¹⁸⁰ See SQR at 9-11.

¹⁸¹ 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 from China* IDM) at Comment 13.

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 with respect to generation, transmission and distribution. Commerce 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 China during the POI.

In its initial questionnaire response, the GOC stated that, as of the issuance of the “Notice on Reducing the On-Grid Electricity Price of Coal-Fired Electricity from NDRC (2015)”,¹⁸² the NDRC no longer reviews, *i.e.* approves, electricity pricing schedules submitted to it by the provinces.¹⁸³ Therefore, according to the GOC, Provincial Price Proposals did not exist during the POI.¹⁸⁴ Further, the GOC stated that, as a result of Notice 748, provincial price departments develop and establish grid and electricity sales prices.¹⁸⁵ Consequently, according to the GOC, the NDRC no longer has any impact on prices, which are set autonomously at the provincial level. The GOC added that interprovincial and interregional electricity price adjustments and prices are based upon market fundamentals and negotiations between parties.¹⁸⁶ Finally, the GOC states that the NDRC issued an updated price adjustment notice, Number 3105, on December 27, 2015.¹⁸⁷ The GOC stated that Notices 748 and 3105 were the central government measures mandating delegation of what it claims to be electricity pricing authority to the provinces in effect during the POI.¹⁸⁸

Notice 748 is based upon consultations between the NDRC and the State Energy Bureau.¹⁸⁹ Article 1 contained therein stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour.¹⁹⁰ Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts.¹⁹¹ Article 2 indicates that the “reduction of coal-fired power generation price” will be “mainly used for reducing the price of industrial and commercial electricity.”¹⁹² Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity.¹⁹³ Articles 6 and 7, respectively, indicate that provincial pricing authorities are to “develop and issue specific adjustment plan of electricity

¹⁸² See GOC IQR at Exhibit II.E.c.5 (Notice 748).

¹⁸³ *Id.* at 95-96.

¹⁸⁴ *Id.* at 99.

¹⁸⁵ *Id.* at 92.

¹⁸⁶ *Id.* at 92-93.

¹⁸⁷ *Id.* at Exhibit II.E.c.4 (Notice 3105).

¹⁸⁸ *Id.* at 96-97.

¹⁸⁹ See GOC IQR at Exhibit II.E.c.5.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

price and sales price in accordance with the...average price adjustment standards of Annex 1, and reported to our Commission for the record,” and that the “above price adjustment should be implemented since April 20, 2015.”¹⁹⁴ Lastly, Article 10 directs that, “Local price departments shall organize and arrange carefully to put in place the electricity price adjustment measures.”¹⁹⁵

NDRC Notice 3105, 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.¹⁹⁶ 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 GOC states to be the case.¹⁹⁷ 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.¹⁹⁸

With respect to price derivation at the provincial level, Commerce 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 GOC 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.¹⁹⁹ Lastly, the GOC failed to explain how final price increases were allocated across the respondents’ provinces and across tariff end-user categories.²⁰⁰

In a supplemental questionnaire, Commerce requested that the GOC identify the legislation which may have eliminated the Provincial Price Proposals. The GOC referred Commerce to Notice 748 and Article 3 of both the “Notice of National Development and Reform Commission on Perfecting the Relevant Matters of Coal-Electricity Price Linkage Mechanism” and the “Pricing Catalogues of Central Government.”²⁰¹ As discussed above, Notice 748, issued by the NDRC, directs provinces to reduce prices by amounts specific to provinces. It neither explicitly eliminates Provincial Price Proposals nor defines distinctions in price-setting roles between national and provincial pricing authorities. Article 3 of Notice 3169, also issued by the NDRC, similarly directs that electricity sales prices “should be unfriendly determined the adjustment principle and price adjustment level of all provinces (price range) by National Development and Reform Commission...and should be published to the society for implementation.”²⁰² Article 3 of the Pricing Catalogues indicates that pricing authority rests with “the competent price

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at Exhibit II.E.c.4.

¹⁹⁷ *Id.*

¹⁹⁸ *See, e.g.*, Notice 748 Article 10 and Notice 3105 Articles II and X.

¹⁹⁹ *See* GOC IQR at 100-101.

²⁰⁰ *Id.* at 102.

²⁰¹ *See* GOC March 6, 2019 SQR at 16 and GOC IQR at Exhibit II.E.c.1 (Notice 3169) and Exhibit II.E.c.10 (Pricing Catalogues).

²⁰² *See* GOC February 5, 2019 IQR at Exhibit II.E.c.1.

department under the State Council.”²⁰³ As with Notice 748 and Notice 3105, Notice 3169 and the Pricing Catalogues do not explicitly stipulate that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions. Further, both Notice 3169 and the Pricing Catalogues again show the central role the NDRC plays in setting and adjusting electricity prices. Additionally, we requested that the GOC explain whether the province-specific price reductions indicated in Notice 748 were required to be adopted by all provinces. The GOC responded that, “sales prices for each pricing category within each province are dictated by the provincial authorities and do not need to include the exact on-grid amount dictated by the NDRC notice.”²⁰⁴ This response does not accord with the directive language in Notice 748, as discussed above. Finally, we requested that the GOC 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 GOC failed to explain what actions the NDRC would take in the event of non-compliance with directed price changes.²⁰⁵

Commerce additionally requested that the GOC identify the sources of the pricing factors that the NDRC relied upon to generate pricing values and provide translated copies of the relevant documentation. The GOC failed to provide the requested documents.²⁰⁶ 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 GOC explain, for each province in which a respondent or cross-owned company is located, how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the Price Proposals, and, how cost element increases and final price increases were allocated across the province and across tariff end-user categories.²⁰⁷ In its response, the GOC repeated its claim that there were no provincial pricing proposals used for or relevant to the POI prices.²⁰⁸

As explained above, the GOC failed on multiple occasions to explain the roles and nature of cooperation between the NDRC and provinces in deriving electricity price adjustments. Further, the GOC failed to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by provinces themselves. Consequently, we preliminarily determine that the GOC withheld information that was requested of it for our analysis of financial contribution and specificity and, thus, Commerce must rely on “facts available” in making our preliminary determination.²⁰⁹ 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. We also note that the GOC did not ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available.²¹⁰ In drawing an adverse inference, we find that the GOC’s provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is

²⁰³ *Id.* at II.E.c.10.

²⁰⁴ *Id.* at 17-18.

²⁰⁵ *Id.* at 18.

²⁰⁶ *Id.* at 18-19.

²⁰⁷ *See* GOC February 5, 2019 IQR at 101-102.

²⁰⁸ *Id.*

²⁰⁹ *See* section 776(a)(2)(A) of the Act.

²¹⁰ *See* section 776(b) of the Act.

specific within the meaning of section 771(5A) of the Act. The GOC 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.²¹¹ 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 China

While both Changfeng and Silin self-reported receiving “Other Subsidies” in their questionnaire responses, the GOC stated that:

The Department has requested information on various programs in this investigation according to allegations made out in a petition and as initiated by the Department. The GOC has cooperated with respect to the Department’s requests. Article 11.2 of the *WTO Agreement on Subsidies and Countervailing Measures* dictates that investigations may not be initiated on the Business Proprietary Treatment Requested – Information in Brackets Subject to APO basis of “simple assertion, unsubstantiated by relevant evidence.” Sufficient evidence with regard to the existence, amount, and nature of a subsidy must be presented for the Department to initiate the investigation of another program, consistent with Article 11.2(iii). Therefore, in the absence of allegations and sufficient evidence in respect of “other” subsidies, consistent with Article 11.2 and other relevant articles of the *WTO Agreement on Subsidies and Countervailing Measures* no reply to this question is warranted or required.²¹²

We issued a supplemental questionnaire to the GOC requesting full responses regarding the respondents’ reported “Other Subsidies.” The GOC reiterated its aforementioned statement regarding the *WTO Agreement on Subsidies and Countervailing Measures*.²¹³

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 China has withheld information that was requested of it, and, thus, that Commerce 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

²¹¹ *See* section 776(b)(4) of the Act.

²¹² *See* GOC IQR at 112-113.

²¹³ *See* GOC SQR at 30-31.

these “Other Subsidies” reported by Changfeng and Silin 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. Where such subsidies appear to be contingent on export performance, we have found these subsidies to be specific within the meaning of section 771(5A)(B) of the Act.

XII. 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 Wire and Cable Industry

Commerce is examining whether the GOC has encouraged the development of the AWC industry through financial support from SOCBs and government policy banks, such as the China Development Bank. Commerce has countervailed policy lending programs in previous investigations.²¹⁴

When examining a policy lending program, Commerce 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 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*²¹⁵ to further conclude that national and local government control over the SOCBs render the loans a government financial contribution.

Changfeng and three of Silin’s suppliers – Mingda Cable, Qingdao Cable, and Zhongzhou Cable – reported having loans from China SOCBs that were outstanding during the POI.²¹⁶ Commerce preliminarily finds that these loans provide countervailable subsidies under a policy lending program directed at the common alloy sheet industry. Record information indicates the GOC placed great emphasis on targeting the AWC industry for development throughout recent years. For example, the “*National 11th 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.”²¹⁷ The “*National 12th Five-Year Plans of Economic and Social Development (2011-2015)*” indicates the restructuring

²¹⁴ 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) (*Steel Sinks from China*) and accompanying IDM at 24-25.

²¹⁵ See *CFS Paper from China Final IDM* at Comment 8.

²¹⁶ See Changfeng IQR at page 9 and Exhibit 11; see also Changfeng SQR at Exhibit 2S-6; Zhongzhou Cable IQR at page 11 and Exhibit 9; Qingdao Cable IQR at page 10 and Exhibit 9; and Mingda Cable IQR at page 10 and Exhibit 8. Silin and one of its suppliers, Xinqi Cable, each reported that they did not have any financing outstanding during the POI. See Silin IQR at page 11; see also Xinqi Cable IQR at page 12.

²¹⁷ See GOC IQR Exhibit II.B.2, Guidelines of the Eleventh Five-Year Plan for National Economic and Social Development, Chapter 13 at page 16.

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.²¹⁸ The current “*National 13th 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, insurance, and investment platforms should be perfected.²¹⁹

Additional record evidence indicates that financial support is 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” (Guidance Catalogue) is an important basis for investment guidance and government administration of policies such as public finance, taxation, and credit.”²²⁰ Decision 40 further indicates that projects in “encouraged” industries shall be provided credit support in compliance with credit principles.”²²¹ The “Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue) (2005 version, 2011 version, and 2013 amendment)” specifically includes aluminum, and the development of production technology within it, as encouraged.²²² The “*Aluminum Industry Development Plan within the 12th Five-Year Plan*” describes the aluminum industry as providing indispensable and important basic raw materials for the construction of national economy, strategic emerging industries and development of national defense science and technology industry.”²²³ This document indicates targeted financial support for the aluminum sector:

It is necessary to conscientiously implement the aluminum industry access and related policies and regulations. Aluminum industry access conditions should be accelerated to further improve the industry access threshold and strict industry access management. The connection of aluminum industry policy and finance and taxation, banking, trade, land, environmental protection, safe production, electricity and other policies should be strengthened. Relying on the implementation of differential tariffs, try to adjust the tax and export tax rebates and other economic rods, the total expansion and exports of primary products should be strictly controlled...Fiscal and taxation policy support should be given in the high-tech aluminum industry, energy-saving emission reduction, red mud and other waste comprehensive utilization of new technologies, new product development and so on. Electrolytic aluminum enterprises meeting national

²¹⁸ See GOC IQR at Exhibit II.B.2, Twelfth Five-Year Outline of the Guidelines for National Economic and Social Development of the People’s Republic of China, Chapter 9 at page 10. See also GOCIQR at Exhibit II.B.4, “Aluminum Industry Development Plan within the 12th Five-Year Plan.”

²¹⁹ See GOC IQR at Exhibit II.B.2, Thirteenth Five-Year Plan for Economic and Social Development of the People’s Republic of China, Chapter 43, Section 7 and Chapter 49, Section 2.

²²⁰ See GOC IQR at Exhibit II.B. 7 at Chapter III Article 12.

²²¹ *Id.* at Chapter III Articles 13, 14, and 17.

²²² See GOC IQR at Exhibit II.B.5: Directory Catalogue on Readjustment of Industrial Structure (Version 2005) at VIII. 7; Catalogue for Guiding Industry Restructuring (2011 Version) at IX.4; Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment) at Section IX.4.

²²³ See GOC IQR at Exhibit II.B.4 at page 28.

access conditions are supported to actively carry out direct supply work.²²⁴

The “*Notice of Guidelines on Accelerating the Adjustment of Aluminum Industry Structure* (2006)” calls for strengthening the coordination of credit policy and industrial policy:

It is required to strictly abide by the rule that the minimum self-owned capital requirement for electrolytic aluminum projects shall be no less than 35% of the total investment. Financial institutions shall rationally allocate the lending credits taking into account the national macroeconomic adjustments, industrial policies, and ordinary lending principles. Financial institutions may continue to provide credits to oxide aluminum or electrolytic aluminum enterprises that are in compliance with national industrial policies and the market entrance threshold, provided such lending is in accordance with the ordinary lending principles.²²⁵

Thus, given the evidence demonstrating the GOC’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 AWC 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.”

For Changfeng and Silin’s suppliers and its cross-owned affiliates, 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.²²⁶ To calculate the benefit from this program, we used the benchmarks discussed above under the “Subsidy Valuation” section.²²⁷ 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 0.65 percent *ad valorem*, 0.37 percent *ad valorem*, 3.42 percent *ad valorem*, and 0.34 percent *ad valorem* for Mingda Cable, Qingdao Cable, Zhongzhou Cable, and Changfeng, respectively. For attribution of the Silin’s suppliers’ net subsidy rates to Silin, *see* Silin Preliminary Calculation Memorandum.

2. Export Buyer’s Credit

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, our preliminary determination regarding the GOC’s provision of export buyer’s credit is based on AFA. As AFA, we determine that the GOC’s provision of exporter 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. Furthermore, we determine on the basis of AFA that Silin and Changfeng, benefited from this program during the POI within the meaning of sections 771(5)(E) of the Act. Consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate of 10.54 percent *ad valorem* for Silin and Changfeng, a

²²⁴ *Id.* at page 37.

²²⁵ *See* Petition at Exhibit CVD-08.

²²⁶ *See* section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a).

²²⁷ *See* 19 CFR 351.505(c).

rate calculated for the same or similar program in another CVD proceeding involving imports from China.

3. Provision of Primary Aluminum for LTAR

Commerce is examining whether the GOC or other “authorities” within China provided Silin, its suppliers, or Changfeng with primary aluminum for LTAR. Mingda Affiliate I reported that it purchased primary aluminum during the POI.

The GOC 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 China possess, exercise, or are vested with governmental authority.²²⁸ As such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we 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.²²⁹

As discussed above in section “Use of Facts Otherwise Available and Adverse Inferences,” we find that the GOC’s refusal to provide certain information regarding the remaining primary aluminum producers from whom respondents sourced their input purchases warrants the use of AFA.²³⁰ 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.

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

In the GOC IQR, the GOC indicates that China produces over 99.5 percent of the primary aluminum it consumes,²³¹ importing less than half of one percent,²³² and in its SQR, the GOC indicates that about 40 percent of domestic consumption is from companies the GOC identifies as SOEs.²³³ Further, the GOC reported that a 15 percent export tariff was imposed on primary

²²⁸ See Memorandum, “Placing Information on the Record,” dated April 16, 2018.

²²⁹ See *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009), and accompanying IDM at 6.

²³⁰ For the remaining input producers, we are applying this finding only with regard to domestic Chinese producers to the extent the record information allows.

²³¹ See GOC February 5, 2019 IQR at 75-76.

²³² *Id.* at 76.

²³³ See GOC March 6, 2019 SQR at 8.

aluminum during the POI and the two years immediately prior, discouraging primary aluminum exports from China.²³⁴

Moreover, the GOC has identified the aluminum industry for priority development in the Guidance Catalogue, which includes aluminum, and the development of production technology within it, as encouraged.²³⁵ Decision 40 identifies the Guidance Catalogue as “the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc.”²³⁶ As discussed extensively above in the context of lending, the GOC also has a five-year plan in place specifically for the aluminum industry which outlines the GOC’s “total control” over the industry,²³⁷ and various interventions; e.g., “Relying on the implementation of differential tariffs try to adjust the tax and export tax rebates and other economic rods, the total expansion and export of primary products should be strictly controlled.”²³⁸

Thus, given the substantial government share in the market, the lack of import penetration, coupled with the restriction on exports in the form of the export taxes, and the GOC’s targeting of the industry for priority development and investment, we preliminarily determine that the domestic market for primary aluminum was distorted through the intervention of the GOC during the POI and the two years immediately prior.

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. Commerce’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 Commerce of the government-set price (tier three).²³⁹

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

²³⁴ *Id.* at 9 and Exhibit II.E.a.10.

²³⁵ *See* GOC IQR at Exhibit II.B.5, Section I.VII.7.

²³⁶ *See* GOC IQR at Exhibit II.B.7, Chapter III.

²³⁷ *See, e.g., Aluminum Industry Development Plan within the 12th Five-Year Plan* at 30.

²³⁸ *Id.* at 37.

²³⁹ *See* 19 CFR 351.511(a)(2).

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 into China, as provided by the GOC.²⁴⁰ Additionally, we added the appropriate VAT of 17 percent to the benchmark prices.

We compared these monthly benchmark prices to Mingda Affiliate II'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 Mingda Affiliate II in the amount of the difference between the benchmark prices and the prices Mingda Affiliate II paid. We divided the total benefit by the appropriate consolidated sales denominator, as discussed in the "Subsidies Valuation Information" section.

For the reasons discussed above, we have calculated a subsidy rate of 2.45 percent *ad valorem* for Mingda Cable for the provision of primary aluminum for LTAR.²⁴¹ For attribution of the Mingda Cable's net subsidy rates to Silin, *see* Silin Preliminary Calculation Memorandum.

4. Provision of Land-Use Rights for LTAR to Aluminum Wire and Cable Producers

Commerce is examining whether the GOC has encouraged the development of the AWC industry through the provision of land at less than adequate remuneration. Silin's suppliers and Changfeng reported purchasing land.

In examining this program, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for preferential land pricing to support such objectives or goals. The GOC's national five-year plans identify the provision of land and land financing as policy tools to direct economic development for key objectives. For example, the national 13th FYP states that, "Approval procedures related to the projects and initiatives included in this plan will be streamlined and priority will be given to them in site selection, land availability, and funding arrangements."²⁴² The 13th FYP identifies development goals for the region in which Silin operates as including "orderly relocation of industries" to the region and to "set up a number of centers for emerging strategic and high-tech industries, and develop a number of industrial clusters."²⁴³

The 12th FYP similarly identifies land management policies as development tools, referencing the importance of the Guidance Catalogue's encouraged industries alongside implementing differential land management policy: "Modify and perfect the current industrial guidance catalogue, clarify the encouraged, limited and prohibited industrial for different principle function areas. Implement the differential land management policy, scientifically set the different land using scale, and carry out strict land use control."²⁴⁴

²⁴⁰ Consistent with *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014) (*Citric Acid from China; 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 from China; 2011 Review* IDM at 90.

²⁴¹ *See* Silin Calculation Memorandum at Attachment 2 for the underlying calculation.

²⁴² *See* GOC IQR at Exhibit II.B.2, Chapter 80, Section 2.

²⁴³ *Id.* at Chapter 37, Section 3.

²⁴⁴ *See* GOC IQR at Exhibit II.B.2, Chapter 19, Section 2.

The 11th FYP instructs strengthened support for industrial policy, especially for high tech industries, alongside strengthened cooperation of land policies: “Strengthen and improve industrial policy work, reinforce the unified planning for domestic industry development and for investment introduction, strengthen the cooperation of the policies in credit, land, environmental protection, safety and science and technology with the industrial policy and use economic means to promote the development of industries. Strengthen the support for the weak links of high tech industries and equipment manufacturing industry, mainly support research and development and foster core competitive power.”²⁴⁵ It further calls for giving development priority to the high technology industry and intensive processing by enhancing the efficiency of land resources and the functions of special economic zones.²⁴⁶

The provincial FYPs mirror the national FYPs identification of land supply and financing as policy tools for economic development of encouraged industries. For example, the 11th FYP of Hebei Province states that they will “vigorously develop county-specific industries” and “optimize and upgrade traditional industries such as wire and cable.” To achieve this goal, they will “accelerate the concentration of county-specific industries and promote the construction of industrial communities.” They state that they will also “build industrial clusters with distinctive characteristics and strong competitive advantages.”²⁴⁷ In the 11th FYP for Jiangxi Province the regional government further demonstrates its efforts to develop the industry by stating that they will “promote the construction of three high quality bases, focusing on the formation of plates and wire” and that they will “further develop special products such as communication cables.”²⁴⁸ Later, they state their intention to “relax market access and increase policy support” for the “metallurgy” industry among others.²⁴⁹

Furthermore, these local FYPs identify the provision of land as a policy tool for achieving these goals. In the 13th FYP for Hebei Province they state that “efforts will be made to promote structural reforms on the supply side, optimize the allocation of factors such as labor, capital, land, technology, and management.”²⁵⁰ The 12th FYP of Jiangxi Province also outlines intentions to “gather in leading industries, and gather in industrial parks to create a group of industrial clusters with distinct characteristics, obvious advantages and strong competitiveness.”²⁵¹ Among the target industries for these parks they identify “metallurgy” and “metal processing.”²⁵² To achieve this goal, they plan to “Increase plot ratio, investment intensity and output per unit area of industrial parks, and promote the intensive management of land in the park.”²⁵³

As noted above in our discussion of the primary aluminum industry, the GOC has identified the aluminum industry for priority development in the Guidance Catalogue, which includes

²⁴⁵ *Id.* at Exhibit II.B.2, at Chapter 47.

²⁴⁶ *Id.* at Exhibit II.B.2, at Chapter 19.

²⁴⁷ See GOC March 6, 2019 SQR at Exhibit SQ-5, at 11th FYP of Hebei Province, Chapter 4.

²⁴⁸ *Id.* at Exhibit SQ-5, at 11th FYP of Jiangxi Province, Part 3, Section 2.

²⁴⁹ *Id.* at Exhibit SQ-5, at 11th FYP of Jiangxi Province, Part 4, Section 6.

²⁵⁰ *Id.* at Exhibit SQ-5, at 11th FYP of Hebei Province, Chapter 2, Section V.

²⁵¹ *Id.* at Exhibit SQ-5, at 12th FYP of Jiangxi Province, Chapter IV, Part 3, Chapter I.

²⁵² *Id.* at Exhibit SQ-5, at 12th FYP of Jiangxi Province, Chapter IV, Part 3, Chapter I, Section 1.

²⁵³ *Id.* at Exhibit SQ-5, at 12th FYP of Jiangxi Province, Chapter IV, Part 3, Section 2.

aluminum, and the development of production technology within it, as encouraged.²⁵⁴ Decision 40 identifies the Guidance Catalogue as “the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc.”²⁵⁵ Decision 40 also directs all local, provincial, and municipal governments under the Central Government’s control to cooperate closely and intensify the effectiveness of implementing industrial policies, and instructs that the relevant provisions of the state will apply to other preferential policies on encouraged industry projects. Additional record evidence indicates that industrial priority projects can receive reduced reserve prices of land sales. The “Notice of the Ministry of Land and Resources on Adjusting the Implementation Policy of the Minimum Price for Industrial Land Transfer” GuoTuZiFa No.56 (2009) clarifies that priority development of industries refers to industries that have been prioritized for development in local industry plans formulated in accordance with the Guidance Catalogue.²⁵⁶

As detailed above, national and provincial level development plans provide for priority land supply and financing arrangements for priority development projects. These plans also consistently identify the deep processing aluminum industry as a target for economic development. Thus, given the evidence demonstrating the GOC’s use of preferential pricing policies to develop the aluminum sector, together with evidence of similar policies in the provinces where respondents are located, we preliminarily determine there is a program to provide land for LTAR to producers of AWC within the meaning of section 771(5A)(D)(i) of the Act. Because the Chinese government owns all land in China,²⁵⁷ we preliminarily determine that the entities that provided the land to the respondents are “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. Given the total government ownership of the land market, we preliminarily determine that the domestic market for land was distorted through the GOC’s ownership.

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 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 0.97 percent *ad valorem*, 1.17 percent *ad valorem*, 4.11 percent *ad valorem*, 1.80 percent *ad valorem*, and 0.11 percent *ad valorem* for Mingda Cable, Qingdao Cable, Zhongzhou Cable, Xinqi Cable, and Changfeng, respectively.

²⁵⁴ See GOC IQR at Exhibit II.B.5, Section I.VII.7.

²⁵⁵ See GOC IQR at Exhibit II.B.7, Chapter III.

²⁵⁶ See Petition at Exhibit CVD-41.

²⁵⁷ See GOC IQR at 107.

For attribution of the suppliers' net subsidy rates to Silin, *see* Silin Preliminary Calculation Memorandum.

5. 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 GOC’s provision of electricity for LTAR on facts otherwise available. Therefore, we preliminarily determine that the GOC’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 provincial rates in China for each electricity category (*e.g.*, “large industry,” “general industry and commerce”) and “base charge” (either maximum demand or 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 from China*, 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.²⁵⁸ 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 Changfeng, Silin, and Silin’s suppliers (Mingda Cable, Qingdao Cable, Xinqi Cable, and Zhongzhou Cable) received benefits with regard to their base rate (*i.e.*, maximum demand or transformer capacity charge), we first multiplied each company’s monthly base rates by their corresponding consumption quantities. Next, we calculated the benchmark base rate cost by multiplying each company’s consumption quantities by its corresponding highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the respective transformer capacity costs paid by each company during the POI from their corresponding benchmark base rate costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from each company’s respective variable electricity payments and base rate payments.²⁵⁹

To calculate the net subsidy rates attributable to each company, we divided each company’s benefit by the appropriate sales denominators, as described in the “Subsidies Valuation” section above. On this basis, we preliminarily determine that Changfeng received a countervailable subsidy rate of 0.43 percent *ad valorem*. For Silin, the subsidy benefit for the provision of electricity was not measurable. For each of Silin’s suppliers – Mingda Cable, Qingdao Cable, Xinqi Cable, and Zhongzhou Cable – we have calculated the following subsidy rates: 1.01 percent *ad valorem*, 0.57 percent *ad valorem*, 3.16 percent *ad valorem*, and 0.88 percent *ad*

²⁵⁸ *See Wind Towers from China* IDM at 21-22.

²⁵⁹ *See Changfeng Preliminary Calculation Memorandum; see also Silin Preliminary Calculation Memorandum.*

valorem, respectively, for the provision of electricity. For attribution of the suppliers' net subsidy rates to Silin, *see* Silin Preliminary Calculation Memorandum.

6. Income Tax Reductions for High or New Technology Enterprises

Under Article 28 of the Enterprise Income Tax Law of the People's Republic of China and Article 93 of the Implementing Regulations for the Enterprise Income Tax Law of the People's Republic of China, a firm's income tax is reduced to a rate of 15 percent from the standard 25 percent rate, if an enterprise is recognized as a HNTE.²⁶⁰ Qingdao Cable reported that it used this program.²⁶¹ Commerce has previously found this program to be countervailable in *Shrimp from China*, and no record evidence provided in the instant investigation warrants a change to this finding.²⁶²

Consistent with our determination in *Shrimp from China*, we preliminarily determine that the income tax reductions under the HNTE program are financial contributions in the form of revenue foregone by the GOC under section 771(5)(D)(ii) of the Act and confer a benefit to Qingdao Cable in the amount of the tax savings pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). 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.

As provided under 19 CFR 351.509(a)(1) and (b)(1), we calculated the benefit as the difference between the taxes Qingdao Cable would have paid under the standard 25 percent tax rate and the taxes the company actually paid under the preferential 15 percent tax rate, as reflected on the tax return filed during the POI. We treated the tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We then divided the POI benefit by the appropriate total sales denominator, as described in the "Attribution of Subsidies" section.

On this basis, we preliminarily determine a net countervailable subsidy rate of 0.07 percent *ad valorem* for Qingdao Cable.²⁶³ For attribution of the Qingdao Cable's net subsidy rates to Silin, *see* Silin Preliminary Calculation Memorandum.

7. Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law

Under Article 30.1 of the Enterprise Income Tax Law, 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.²⁶⁴ Article 95 of the *Implementing Regulations of the Enterprise Income Tax Law of China* (Decree 512 of the State Council, 2007) provides that, if eligible research expenditures do not "form part of the intangible assets value," an

²⁶⁰ *See* GOC IQR at 35.

²⁶¹ *See* Qingdao Cable IQR at 14-18.

²⁶² *See, e.g., Shrimp from China.*

²⁶³ *See* Silin Preliminary Calculation Memorandum.

²⁶⁴ *See* GOC IQR at 37-38.

additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount.²⁶⁵ Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets' costs.²⁶⁶ Qingdao Cable reported that it used this program.²⁶⁷

We preliminarily determine that this program constitutes 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 specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1).²⁶⁸ To compute the amount of the tax savings, we calculated the amount of tax Qingdao Cable 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, as discussed in the "Subsidies Valuation" section.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.07 percent *ad valorem* for Qingdao Cable.²⁶⁹ For attribution of the Qingdao Cable's net subsidy rates to Silin, see Silin Preliminary Calculation Memorandum.

8. Subsidy Fund for Foreign Trade Development

Changfeng reported a non-recurring disbursement under this program.²⁷⁰ The GOC did not provide any information as to how the program operates.

As discussed above in the "Use of Facts Otherwise Available and Adverse Inferences" section, the GOC did not provide the required information. Absent information from the GOC, in accordance with sections 776(a) and (b) of the Act, as AFA, we find this grant to be contingent on export performance and therefore specific within the meaning of section 771(5A)(B) of the Act. We determine that the funds provided constitute a financial contribution in the form of a direct transfer of funds pursuant to section 771(5)(D)(i) of the Act and confer a benefit in the amount of the funds provided under 19 CFR 351.504.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ See Qingdao Cable IQR at 18-21.

²⁶⁸ These credits can be for either expensed or capitalized R&D expenditures. If a credit is for capitalized expenditures (*e.g.*, the expenditures were made toward developing an "intangible asset" or patent), however, the 50 percent deduction is amortized across the useful life of the developed asset. Therefore, even credits for capitalized expenditures would be allocated over tax returns filed during a number of years and would thus be recurring. See *e.g.*, *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 79 FR 33174 (June 10, 2014), and accompanying Preliminary Decision Memorandum at 34-35.

²⁶⁹ See Silin Preliminary Calculation Memorandum.

²⁷⁰ See Changfeng SQR at Exhibit 2S-9.

Consistent with 19 CFR 351.524(c)(1), we are treating the grants received under this program as non-recurring. To measure the benefit of the grants that is allocable to the POI, we first conducted the “0.5 percent test” for the grants. We divided the total amount approved by the relevant sales for that year. As a result, we found that each grant was greater than 0.5 percent of relevant sales and was properly allocated over the AUL. To calculate the countervailable subsidy rate, we added together the benefits attributed to the POI, and then divided the benefits by the appropriate sales denominator, as discussed in the “Subsidies Valuation” section. On this basis, we preliminarily determine a net countervailable subsidy rate of 0.02 percent *ad valorem* for Changfeng.²⁷¹

9. Special Fund for Foreign Trade Development

Changfeng reported a non-recurring disbursement under this program.²⁷² The GOC did not provide any information as to how the program operates.

As discussed above in the “Use of Facts Otherwise Available and Adverse Inferences” section, the GOC did not provide the required information. Absent information from the GOC, in accordance with sections 776(a) and (b) of the Act, as AFA, we find this grant to be contingent on export performance and therefore specific within the meaning of section 771(5A)(B) of the Act. We determine that the funds provided constitute a financial contribution in the form of a direct transfer of funds pursuant to section 771(5)(D)(i) of the Act and confer a benefit in the amount of the funds provided under 19 CFR 351.504.

Consistent with 19 CFR 351.524(c)(1), we are treating the grants received under this program as non-recurring. To measure the benefit of the grants that is allocable to the POI, we first conducted the “0.5 percent test” for the grants. We divided the total amount approved by the relevant sales for that year. As a result, we found that each grant was greater than 0.5 percent of relevant sales and was properly allocated over the AUL. To calculate the countervailable subsidy rate, we added together the benefits attributed to the POI, and then divided the benefits by the appropriate sales denominator, as discussed in the “Subsidies Valuation” section. On this basis, we preliminarily determine a net countervailable subsidy rate of 0.05 percent *ad valorem* for Changfeng.²⁷³

10. Funds for Foreign Trade Transformation and Upgrading Development in 2016

Changfeng reported a non-recurring disbursement under this program.²⁷⁴ The GOC did not provide any information as to how the program operates.

As discussed above in the “Use of Facts Otherwise Available and Adverse Inferences” section, the GOC did not provide the required information. Absent information from the GOC, in accordance with sections 776(a) and (b) of the Act, as AFA, we find this grant to be contingent

²⁷¹ See Changfeng Preliminary Calculation Memorandum.

²⁷² See Changfeng SQR at Exhibit 2S-9.

²⁷³ See Changfeng Preliminary Calculation Memorandum.

²⁷⁴ See Changfeng SQR at Exhibit 2S-9.

on export performance and therefore specific within the meaning of section 771(5A)(B) of the Act. We determine that the funds provided constitute a financial contribution in the form of a direct transfer of funds pursuant to section 771(5)(D)(i) of the Act and confer a benefit in the amount of the funds provided under 19 CFR 351.504.

Consistent with 19 CFR 351.524(c)(1), we are treating the grants received under this program as non-recurring. To measure the benefit of the grants that is allocable to the POI, we first conducted the “0.5 percent test” for the grants. We divided the total amount approved by the relevant sales for that year. As a result, we found that each grant was greater than 0.5 percent of relevant sales and was properly allocated over the AUL. To calculate the countervailable subsidy rate, we added together the benefits attributed to the POI, and then divided the benefits by the appropriate sales denominator, as discussed in the “Subsidies Valuation” section. On this basis, we preliminarily determine a net countervailable subsidy rate of 0.07 percent *ad valorem* for Changfeng.²⁷⁵

11. Development Fund for Special Industry

Changfeng reported a non-recurring disbursement under this program.²⁷⁶ The GOC did not provide any information as to how the program operates.

As discussed above in the “Use of Facts Otherwise Available and Adverse Inferences” section, the GOC did not provide the required information. Absent information from the GOC, in accordance with sections 776(a) and (b) of the Act, as AFA, we find this grant to be specific to Changfeng within the meaning of section 771(5A) of the Act. We determine that the funds provided constitute a financial contribution in the form of a direct transfer of funds pursuant to section 771(5)(D)(i) of the Act and confer a benefit in the amount of the funds provided under 19 CFR 351.504.

Consistent with 19 CFR 351.524(c)(1), we are treating the grants received under this program as non-recurring. To measure the benefit of the grants that is allocable to the POI, we first conducted the “0.5 percent test” for the grants. We divided the total amount approved by the relevant sales for that year. As a result, we found that each grant was greater than 0.5 percent of relevant sales and was properly allocated over the AUL. To calculate the countervailable subsidy rate, we added together the benefits attributed to the POI, and then divided the benefits by the appropriate sales denominator, as discussed in the “Subsidies Valuation” section. On this basis, we preliminarily determine a net countervailable subsidy rate of 0.01 percent *ad valorem* for Changfeng.²⁷⁷

12. Self-Owned Brand of Foreign Trade

Silin reported a non-recurring disbursement under this program.²⁷⁸ The GOC did not provide any information as to how the program operates.

²⁷⁵ See Changfeng Preliminary Calculation Memorandum.

²⁷⁶ See Changfeng SQR at Exhibit 2S-9.

²⁷⁷ See Changfeng Preliminary Calculation Memorandum.

²⁷⁸ See Silin SQR at Exhibit 2S-I-2.1.

As discussed above in the “Use of Facts Otherwise Available and Adverse Inferences” section, the GOC did not provide the required information. Absent information from the GOC, in accordance with sections 776(a) and (b) of the Act, as AFA, we find this grant to be contingent on export performance and therefore specific within the meaning of section 771(5A) of the Act. We determine that the funds provided constitute a financial contribution in the form of a direct transfer of funds pursuant to section 771(5)(D)(i) of the Act and confer a benefit in the amount of the funds provided under 19 CFR 351.504.

Consistent with 19 CFR 351.524(c)(1), we are treating the grants received under this program as non-recurring. To measure the benefit of the grants that is allocable to the POI, we first conducted the “0.5 percent test” for the grants. We divided the total amount approved by the relevant sales for that year. As a result, we found that each grant was greater than 0.5 percent of relevant sales and was properly allocated over the AUL. To calculate the countervailable subsidy rate, we added together the benefits attributed to the POI, and then divided the benefits by the appropriate sales denominator, as discussed in the “Subsidies Valuation” section. On this basis, we preliminarily determine a net countervailable subsidy rate of 0.02 percent *ad valorem* for Silin.²⁷⁹

13. Foreign Trade Product Innovation and R&D Design

Silin reported a non-recurring disbursement under this program.²⁸⁰ The GOC did not provide any information as to how the program operates.

As discussed above in the “Use of Facts Otherwise Available and Adverse Inferences” section, the GOC did not provide the required information. Absent information from the GOC, in accordance with sections 776(a) and (b) of the Act, as AFA, we find this grant to be contingent on export performance and therefore specific within the meaning of section 771(5A) of the Act. We determine that the funds provided constitute a financial contribution in the form of a direct transfer of funds pursuant to section 771(5)(D)(i) of the Act and confer a benefit in the amount of the funds provided under 19 CFR 351.504.

Consistent with 19 CFR 351.524(c)(1), we are treating the grants received under this program as non-recurring. To measure the benefit of the grants that is allocable to the POI, we first conducted the “0.5 percent test” for the grants. We divided the total amount approved by the relevant sales for that year. As a result, we found that each grant was greater than 0.5 percent of relevant sales and was properly allocated over the AUL. To calculate the countervailable subsidy rate, we added together the benefits attributed to the POI, and then divided the benefits by the appropriate sales denominator, as discussed in the “Subsidies Valuation” section. On this basis, we preliminarily determined a net countervailable subsidy rate of 0.13 percent *ad valorem* for Silin.²⁸¹

²⁷⁹ See Silin Preliminary Calculation Memorandum.

²⁸⁰ See Silin SQR at Exhibit 2S-I-2.1.

²⁸¹ See Silin Preliminary Calculation Memorandum.

14. Other Subsidies

Mingda Cable, Qingdao Cable, and Zhongzhou Cable reported receiving various non-recurring grants from the GOC during the AUL period. As discussed above in the “Use of Facts Otherwise Available and Adverse Inferences” section, the GOC did not provide the required information about these programs, and, therefore, in accordance with sections 776(a) and (b) of the Act, we preliminarily determine that these grants constitute a financial contribution under section 771(5)(D)(i) of the Act, and that they are specific to Mingda Cable, Qingdao Cable, and Zhongzhou Cable under section 771(5A) of the Act. We further preliminarily determine that these grants each confer a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504(a).

Consistent with 19 CFR 351.524(c)(1), we are treating the grants received under these programs as non-recurring. To measure the benefit of the grants that are allocable to the POI, we first conducted the “0.5 percent test” for the grants. We divided the total amounts approved by the relevant sales for the relevant year. Where we found that the grant was greater than 0.5 percent of relevant sales, it was allocated over the AUL. To calculate the countervailable subsidy rate, we added together the benefits attributed to the POI, and then divided the benefits by the appropriate sales denominator, as discussed in the “Subsidies Valuation” section.

Based on the methodology outlined above, Commerce preliminarily determines cumulative *ad valorem* subsidy rates of 0.07 percent for Mingda Cable, 0.29 percent for Qingdao Cable, 0.36 percent for Zhongzhou Cable.²⁸² For attribution of these companies’ net subsidy rates to Silin, *see* Silin Preliminary Calculation Memorandum.

B. Programs Preliminarily Determined Not to Be Used

- 1. Export Loans from Chinese State-Owned Banks**
- 2. Preferential Loans for State-Owned Enterprises**
- 3. Export Sellers Credits from Export Import Banks of China (China ExIm)**
- 4. Provision of Steam Coal for LTAR**
- 5. Provision of Land and Land Use Rights for LTAR to SOEs**
- 6. Provision of Land Use Rights for LTAR in Nanching Economic Development Zone**
- 7. Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization**
- 8. Income Tax Deductions/Credits for Purchase of Special Equipment**
- 9. Import Tariff and VAT Exemptions on Imported Equipment for Encouraged Industries**
- 10. VAT Rebates on Domestically-Produced Equipment**
- 11. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring**
- 12. Tax Grants, Rebates, and Credits in the Yixing Economic Development Zone**
- 13. Tax Incentives for Businesses in China (Shanghai) Pilot Free Trade Zone**
- 14. Exemptions for SOEs from Distributing Dividends**
- 15. The State Key Technology Project Fund**
- 16. Foreign Trade Development Fund Grants**
- 17. Grants for Energy Conservation and Emission Reduction**

²⁸² *See* Silin Preliminary Calculation Memorandum.

18. Grants for Retirement of Capacity

19. GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands

XIII. Calculation of the All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act state that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the “all-others” rate by weight-averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. We calculated the all-others’ rate using a simple average of the individual estimated subsidy rates calculated for the examined respondents.²⁸³ Consequently, we are assigning 13.67 percent *ad valorem* as the all-others rate.

XIV. 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 administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance. In accordance with section 705(b)(2) of the Act, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after Commerce makes its final affirmative determination.

XV. VERIFICATION

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

²⁸³ With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company’s publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010). Because complete publicly ranged sales data was not available, Commerce could not follow its normal methodology. Therefore, we used a simple average of the estimated subsidy rates calculated for the examined respondents.

XVI. DISCLOSURE AND PUBLIC COMMENT

We intend to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.²⁸⁴ Case briefs or other written comments for all non-scope issues 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 final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.²⁸⁵ Case briefs or other written comments on scope issues may be submitted no later than 30 days after the publication of this preliminary determination in the *Federal Register*, and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for the case briefs. For any briefs filed on scope issues, parties must file separate and identical documents on each of the records for the other concurrent countervailing duty and antidumping duty investigations. 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.²⁸⁶ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.²⁸⁷ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using Commerce's electronic records system, ACCESS.²⁸⁸ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,²⁸⁹ on the due dates established above.

²⁸⁴ See 19 CFR 351.224(b).

²⁸⁵ See 19 CFR 351.309(c)-(d); see also 19 CFR 351.303 (for general filing requirements).

²⁸⁶ See 19 CFR 351.309(c)(2) and (d)(2).

²⁸⁷ See 19 CFR 351.310(c).

²⁸⁸ See 19 CFR 351.303(b)(2)(i).

²⁸⁹ See 19 CFR 351.303(b)(1).

XVII. CONCLUSION

We recommend that you approve the preliminary findings described above.

Agree

Disagree

4/1/2019

X



Signed by: GARY TAVERMAN

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